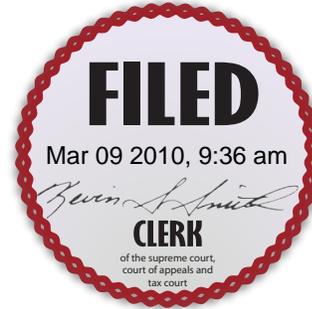


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP)
OF S.S.)
)
C.S. and L.S.,)
)
Appellants,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES, TIPPECANOE COUNTY)
)
Appellee.)

No. 79A02-0910-JV-983

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta H. Rush, Judge
Cause No. 79D03-0903-JT-30

March 9, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

C.S. (Mother) appeals the involuntary termination of her parental rights to S.S. Mother presents the following restated issue for review: Was the evidence sufficient to support the trial court's decision to terminate Mother's parental rights because there was a reasonable probability that the conditions resulting in S.S.'s placement outside the home would not be remedied, and that termination of her parental rights was in S.S.'s best interest?

We affirm.

S.S. was born on April 13, 2008 to Mother and Father.¹ On May 20, 2008, the Tippecanoe County Child Protective Services (CPS) received a report alleging that S.S. had suffered a fracture. A medical examination revealed that S.S. suffered several injuries including a broken left ulna, broken right humerus, blood collecting in her eyes, broken blood vessels in her mouth, and bruising to her face. After assessing S.S.'s injuries and speaking with Mother and Father, the examining physician concluded that the injuries were consistent with inflicted trauma. S.S. was removed from the parents' home and was placed in foster care with Mother's parents.

The DCS filed a petition alleging S.S. was a child in need of services ("CHINS"), and on June 23, 2008, the trial court adjudicated S.S. a CHINS based in part on S.S.'s injuries, and in part because Father previously had been convicted of neglect of a dependent, as a class C felony, for beating S.S.'s eighteen-month-old half-sibling. On July 21, 2008, the trial court approved disposition and participation orders requiring Father to participate in individual counseling, parenting classes, anger management, medication management, complete a

¹ Father is not seeking relief on appeal and has not filed a brief in this appeal. However, pursuant to Ind. Appellate Rule 17(A), a party of record in the trial court is a party on appeal.

parent, psychological and substance-abuse evaluation, and maintain suitable housing and employment. Mother was ordered to participate in parenting classes, complete a parenting, psychological, and substance-abuse evaluation, and maintain suitable housing and employment. Mother's order was amended to include the requirement that she participate in medication management.

Mother's psychological evaluation revealed a diagnosis of major depressive disorder, adjustment disorder with anxious mood, dependent personality traits, and low average intelligence functioning. Mother failed to maintain a stable source of income, with her only employment as a seasonal worker for the Salvation Army from Thanksgiving to Christmas of 2008. Mother began living at Transitional Housing, but was removed from the program after six months because she paid rent only one time.

Early on in the proceedings, Mother indicated a desire to obtain a divorce from Father for the safety of her child. The DCS case manager informed Mother that her odds of reunification with S.S. would improve if she divorced Father. Although Mother understood that S.S.'s injuries were not accidental, Mother refused to acknowledge Father's culpability in that regard. As of the date of the termination hearing, Mother was still married to Father, and visited him regularly. Until shortly before the termination hearing, Mother and Father were living with Father's aunt. Mother and Father lived various places together during the pendency of the case, at one point residing with one of Father's relatives in a neighboring town, and at another point living in a parking garage. Father indicated at the hearing that he and Mother intended to remain married.

Mother made progress with her visits with S.S., but her progress was slow and her participation was described as being only about seventy-five percent. Prior to the termination hearing, Mother remained reliant on visit facilitators to assist her with caring for S.S. in situations involving any meaningful stress. Mother's interaction with S.S. worsened as the case progressed, and she continued to make poor decisions and was defensive to provider suggestions about parenting. Furthermore, in the later stages of the case, Mother frequently failed to attend visits, and the visit facilitator was never able to recommend progress beyond full supervised visits. The DCS case manager stated that she did not believe Mother would be able to care for S.S. without direct assistance. The visit facilitator stated that it appeared Mother would require ongoing parenting assistance as S.S.'s needs changed.

On March 5, 2009, the DCS filed petitions to terminate the parental rights of Mother and Father as to S.S. Evidence was presented to the trial court at a bench trial held on May 7, 2009 and June 26, 2009. The trial court took the matter under advisement until issuing its order including findings of fact and conclusions thereon on July 23, 2009. Mother appeals.

Mother challenges the sufficiency of the evidence supporting the trial court's decision to terminate her parental rights as to S.S. More specifically, Mother argues the DCS did not prove by clear and convincing evidence that there was a reasonable probability that the conditions resulting in S.S.'s placement outside the home would not be remedied, and that termination of Mother's parental rights was in the best interest of S.S. Mother claims the trial court "glossed over, disregarded, or simply ignored a substantial amount of the evidence presented at trial." *Appellant's Brief* at 9.

We begin our review by acknowledging this court has long had a highly deferential standard of review in cases concerning the termination of parental rights. *In re K.S.*, 750 N.E.2d 832 (Ind. Ct. App. 2001). Thus, when reviewing the termination of parental rights, we will neither reweigh the evidence nor judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258 (Ind. Ct. App. 2004), *trans. denied*. We consider only the evidence and reasonable inferences most favorable to the judgment. *Id.*

Here, the trial court made specific findings and conclusions in terminating Mother's parental rights. Where the trial court enters specific findings of fact and conclusions thereon, we must first determine whether the evidence supports the findings. *Id.* Then, we determine whether the findings support the judgment. *Id.* We will not set aside the trial court's judgment terminating parental rights unless it is clearly erroneous. *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615 (Ind. Ct. App. 2006), *trans. denied*. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. *In re D.D.*, 804 N.E.2d 258. A judgment is clearly erroneous only if the findings of fact do not support the trial court's conclusions thereon, or the conclusions do not support the judgment. *Quillen v. Quillen*, 671 N.E.2d 98 (Ind. 1996).

"The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. These parental rights, however, are not absolute and must be subordinated to the children's interests when determining the proper disposition of a petition to terminate parental rights. *Id.* Parental rights may be terminated

when a parent is unable or unwilling to meet his or her parental responsibilities. *In re K.S.*, 750 N.E.2d 832.

To effect the involuntary termination of a parent-child relationship, the State is required to allege, among other things, that:

- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child[.]

Ind. Code Ann. § 31-35-2-4(b)(2). The State must establish these allegations by clear and convincing evidence. *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232 (Ind. 1992).

When determining whether a reasonable probability exists that the conditions justifying a child's removal from the family home will not be remedied, the trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509 (Ind. Ct. App. 2001), *trans. denied*. The trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.* at 512. The trial court may also properly consider the services offered to the parent by a county Department of Child Services, and the parent's response to those services, as evidence of whether conditions will be remedied. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244 (Ind. Ct. App. 2002), *trans. denied*. A county Department of Child Services is not required to provide evidence ruling out all possibilities of change; rather, it

need establish only that there is a reasonable probability the parent's behavior will not change. *In re Kay L.*, 867 N.E.2d 236 (Ind. Ct. App. 2007).

The trial court specifically found in relevant part as follows:

4. Mother has a history of instability issues as well. Mother has no other children. She completed the 10th grade. Mother's psychological evaluation revealed diagnoses of major depressive disorder, adjustment disorder with anxious mood, dependent personality traits, and low average intelligence functioning. Mother has not regularly complied with recommended medication management and individual counseling. During the psychological evaluation, Mother reported she intended to file for divorce specifically stating the following: "There's no way his story is plausible. I'm filing for divorce for the safety of my child. The Court thinks I'll go back to him but I won't. If I go back she'll get hurt again or end up dead and I'm not gonna have that. My daughter's number one." See DCS Exhibit 14. Although Mother was aware of Father's history of child abuse and has acknowledged that her child was severely hurt, she has maintained a relationship with Father. Mother was convicted of theft and check deception in July 2003. Mother has been unable to obtain or maintain independent, stable housing or employment. Mother was removed from Lafayette Transitional Housing for failure to comply with program regulations to pay rent and obtain employment. Mother currently resides with Father's relatives sleeping on an air mattress in the living room. Father also regularly resided there until approximately one (1) week ago. Although Mother reports she will begin work on July 9th, Mother has actually worked only one (1) month during the past year.

* * *

8. Review hearings were held on October 22, 2008 and January 26, 2009. By October [S.S.] had healed from her injuries and was developing normally. [S.S.] had been diagnosed with Duane's Syndrome, a disease affecting the outer eye muscles. [S.S.]'s maternal grandparents were pursuing [sic] necessary treatment. Mother was attending visitations, had completed evaluations, and had improved participation in case management services. Mother remained unemployed and continued to reside with Father and his roommate. Mother refused to accept any responsibility for the child's injuries despite her knowledge of Father's history of abuse and her failure to protect the child. . . . By January, [S.S.] was thriving in the care of her maternal grandparents. Mother had cancelled sixteen (16) of eighteen (18) scheduled visits. Mother had difficulty multi-tasking and appropriately interacting with the child during visitations she did attend. Mother had failed to file for divorce and expressed concern for the family dog due to mistreatment by Father. Mother had obtained seasonal employment but had failed to maintain contact with DCS. Mother's attendance at medication

management was inconsistent. . . .

9. A permanency hearing was held on March 5, 2009. By that time, the child remained with maternal grandparents who are willing to adopt. Neither parent had yet shown a real investment in reunification. Father was incarcerated for contempt for non-compliance with services. Father had continued to miss visitations and had yet to develop a bond with the child. Father had not completed the psychiatric evaluation for medication management or the substance abuse assessment. Father was unemployed and being evicted. Mother was continuing her relationship with Father including providing him with finances and visits during his incarceration. Mother was being discharged from transitional housing, was not regularly attending medication management, and was not invested in therapy. Mother had recently missed visits or arrived unprepared. Mother's anger escalated during visitations and Mother was observed feeding the child in a very rough manner. Mother threatened to have Father take care of her displeasure with visit facilitators. The parents remained in no position to care for the child.

10. The Court ordered a permanency plan of initiation of proceedings for termination of parental rights as to Mother and Father and placement of the child for adoption. The DCS filed its petitions in the above-referenced causes on March 5, 2009. The evidentiary hearing on the Verified Petitions to Terminate Parental Rights began on May 7, 2009 and concluded on June 26, 2009. At the time of the termination hearing, neither parent's circumstances had significantly improved. Mother's investment in services remained lacking despite having been found in contempt on two (2) occasions. Mother's recent efforts to attend some services do not overcome her historical failure to participate in necessary services for reunification. From November 2008 to May 2009, Mother had attended only forty-four (44) of eighty-one (81) scheduled visits canceling for weather delays, employment, illness, oversleeping, or other unknown reasons. Mother continued to require redirection in visits throughout the duration of the CHINS proceeding becoming frustrated and angry at times interacting forcefully with the child. . . .

11. CASA supports termination of parental rights in the best interests of the child. CASA believes the physician's statement that the child was at "high risk of injury or death if returned to the caregiver" continues to be true today based on Mother's failure to fully acknowledge the cause of the child's injuries. Mother has continued a relationship with the perpetrator of abuse against the child. CASA believes neither Mother nor Father are in any position to provide a safe, stable environment for [S.S.]. [S.S.] has thrived in foster care with her maternal grandparents and, despite the injuries she suffered, she is an adoptable child with no current special needs.

12. Although the parents love this child, neither has the current ability to meet the

child's needs. It is not safe for [S.S.] to be in the care of Mother or Father at this time. The parents' history of instability continues today. Mother has failed to demonstrate she will protect the child by maintaining a relationship with the Father who abused her. All imaginable services have been offered and nothing is singularly different in today's circumstances since the time of removal. To continue the parent-child relationships would be detrimental to the child. The child needs permanency now.

Appellant's Appendix at 510-512. The evidence most favorable to the judgment supports these findings, which in turn support the trial court's conclusions: 1) that there is a reasonable probability the conditions resulting in S.S.'s removal will not be remedied, and 2) that termination of Mother's parental rights is in S.S.'s best interest. The trial court's ultimate decision to terminate Mother's parental rights as to S.S. is also supported by this evidence and the findings.

"A pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, supports a finding that there exists no reasonable probability that the conditions will change." *Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. Furthermore, a trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration the parent's *habitual patterns of conduct* to determine the probability of future neglect or deprivation of the child. *In re D.D.*, 804 N.E.2d 258. Despite being offered services, Mother has failed to make any significant improvement in her ability to care for S.S.

Mother's argument is essentially a request for us to reweigh the evidence, a task we cannot do. Mother was advised about the services in which she needed to participate and

complete in order to be reunited with her child, and the record reflects that Mother failed to do what was necessary to significantly improve her ability to care for S.S.

It would be unfair to S.S. to continue to wait until Mother is willing to obtain and benefit from the help she needs. *See In re Campbell*, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (expressing an unwillingness to put the children “on a shelf” until their mother was capable of caring for them). This court will reverse a termination of parental rights “only upon a showing of ‘clear error’ – that which leaves us with a definite and firm conviction that a mistake has been made.” *Matter of A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting *Egley v. Blackford County Dep’t of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Judgment affirmed.

NAJAM, J., and BRADFORD, J., concur.