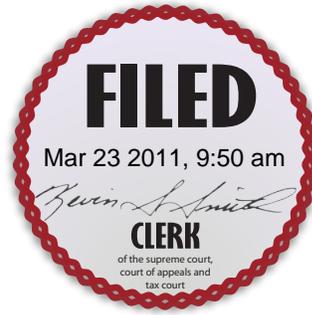


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE TERMINATION OF )  
THE PARENT-CHILD RELATIONSHIP OF H.P.: )

M.G. and R.P., )

Appellants-Respondents, )

vs. )

No. 20A03-1007-JT-397

INDIANA DEPARTMENT OF CHILD )  
SERVICES, )

Appellee-Petitioner. )

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APPEAL FROM THE ELKHART CIRCUIT COURT  
The Honorable Terry C. Shewmaker, Judge  
The Honorable Deborah A. Domine, Juvenile Magistrate  
Cause No. 20C01-1001-JT-7

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**March 23, 2011**

## MEMORANDUM DECISION - NOT FOR PUBLICATION

### FRIEDLANDER, Judge

M.G. (Mother) and R.P. (Father) appeal the involuntary termination of their parental rights to their child, H.P. Both parents challenge the sufficiency of the evidence supporting the trial court's termination order.

We affirm.

Mother and Father are the biological parents of H.P., born in October 2008. The facts most favorable to the trial court's judgment reveal that H.P. was taken into emergency protective custody by the local Elkhart County office of the Indiana Department of Child Services (ECDCS) on or about October 31, 2008, after receiving a call from local police personnel who had responded to a domestic disturbance call at the family home. The responding police officer informed ECDCS that in addition to the domestic violence that had occurred in the home that evening, both parents were exhibiting unstable mental health. Father was thereafter arrested on domestic battery charges, and H.P. was placed in foster care.

This was not ECDCS's first encounter with this family. Approximately two days after H.P.'s birth, and prior to the baby's release from Elkhart General Hospital, ECDCS received a referral indicating Mother and Father had both been involved in termination proceedings involving a prior-born child in Michigan in 2007.<sup>1</sup> In addition, ECDCS received another

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<sup>1</sup> For clarification purposes, we note that in addition to the involuntary termination of both Mother's and Father's parental rights to their prior born biological child, D.P., in Michigan in April 2007, Father's parental rights to two additional biological children were involuntarily terminated in Michigan in November 2000.

referral alleging that the parents could not afford to purchase formula to feed H.P. An investigation ensued, and after visiting the parents at the hospital, ECDCS placed H.P. on a 24-hour hold until the case manager could evaluate the family home. During the ensuing home-visit, both parents agreed to participate in family services, including mental health assessments and counseling. H.P. was thereafter released to the parents' care, but additional reports of domestic disturbances in the home were later reported during the several days leading up to H.P.'s removal.

ECDCS filed a petition alleging H.P. was a child in need of services (CHINS), and a hearing was held in November 2008. The parents entered a qualified admission to the allegations of the petition, after which the trial court adjudicated H.P. a CHINS. Following a dispositional hearing in December 2008, the trial court issued an order formally removing H.P. from Mother's and Father's custody and making H.P. a ward of ECDCS. The trial court's dispositional order further directed Mother and Father to participate in and successfully complete a variety of services in order to achieve reunification with H.P. Specifically, Mother and Father were ordered to, among other things: (1) exercise regular supervised visitation with H.P. as directed by ECDCS; (2) pay child support for H.P. (Mother to pay child support in the amount of \$10.00 per week and Father to pay child support in the amount of \$30.00 per week); (3) undergo psychological assessments and follow all resulting recommendations; and (4) participate in both individual and family counseling. Father was further directed to participate in an addictions assessment and follow all resulting

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Moreover, in January 2003 Mother voluntarily relinquished her parental rights to another biological child in Colorado.

recommendations, submit to random drug screens, and complete an anger management assessment and follow all resulting recommendations. Mother was also directed to attend Living With Abuse support group meetings.

Mother's and Father's participation in services was sporadic and ultimately unsuccessful. Although Father participated in random drug screens, he produced approximately eight positive screens for marijuana and one positive screen for cocaine during the CHINS case. Mother also produced one positive screen for marijuana. In addition, although both parents completed parenting classes and attended individual counseling sessions, neither was able to demonstrate an ability to use the parenting skills they had been taught during supervised visits with H.P. Domestic violence also continued in the family home resulting in Mother contacting the family case manager on three separate occasions during the CHINS case and requesting information about moving to a women's shelter because she feared for her safety. Although Mother was provided the shelter information she requested and the case manager actually made arrangements for housing at shelters for Mother on two separate occasions, Mother never left the home she shared with Father.

In January 2010, ECDCS filed a petition seeking the involuntary termination of Mother's and Father's parental rights to H.P. An evidentiary hearing on the termination petition was held on July 2, 2010. At the time of the termination hearing, Father was incarcerated and serving a three-year sentence for a domestic battery conviction involving Mother. During the termination hearing, ECDCS presented evidence showing neither Mother nor Father was currently capable of caring for H.P., and that neither parent had improved his/her overall ability to provide H.P. with a safe and stable home environment in

the future.

At the conclusion of the termination hearing, the trial court took the matter under advisement. On July 7, 2010, the trial court entered its judgment terminating Mother's and Father's parental rights to H.P. This appeal ensued.

We begin our review by acknowledging that 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). When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* In deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204 (Ind. Ct. App. 1999), *trans. denied*. Thus, if the evidence and inferences support the trial court's decision, we must affirm. *Id.*

Here, the trial court made specific findings in its order terminating Mother's and Father's parental rights. Where the court enters specific findings and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143 (Ind. 2005). First, we determine whether the evidence supports the findings, and second we determine whether the findings support the judgment. *Id.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions

do not support the judgment thereon. *Id.* We will reverse a judgment as clearly erroneous only if, after reviewing the record, we have a “firm conviction that a mistake has been made.” *Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 371 (Ind. Ct. App. 2007), *trans. denied*.

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*. Although parental rights are of a constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144 (Ind. Ct. App. 2008). In addition, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In re K.S.*, 750 N.E.2d 832.

To terminate a parent-child relationship, the State is required to allege and prove, among other things:

- (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) the 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; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code Ann. § 31-35-2-4(b)(2) (West, Westlaw through 2010 2nd Regular Sess.) .<sup>2</sup> The State’s burden of proof for establishing these allegations in termination cases “is one of ‘clear and convincing evidence.’” *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code Ann. § 31-37-14-2 (West, Westlaw through 2010 2nd Regular Sess.)). If the court finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship. I.C. § 31-35-2-8 (West, Westlaw through 2010 2<sup>nd</sup> Regular Sess.). Mother and Father challenge the sufficiency of the evidence supporting the trial court’s findings as to subsection (b)(2)(B) thru (D) of the termination statute cited above. *See* I.C. § 31-35-2-4(b)(2).

Initially, we observe that the trial court found ECDCS presented sufficient evidence to satisfy both subsections of (b)(2)(B) of the termination statute. *See* I.C. § 31-35-2-4(b)(2)(B)(i) & (ii). This statute, however, requires ECDCS to establish only one of the requirements of subsection (b)(2)(B) by clear and convincing evidence in order to terminate parental rights. Because we find it dispositive under the facts of this particular case, we shall consider only whether clear and convincing evidence supports the trial court’s findings regarding I.C. § 31-35-2-4(b)(2)(B)(i).

In determining whether there is a reasonable probability the conditions resulting in a

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<sup>2</sup> I.C. § 31-35-2-4 was amended by Pub. L. No. 21-2010, § 8 (effective Mar. 12, 2010). The changes became effective after the filing of the termination petition involved herein and are not applicable to this case.

child's removal or continued placement outside the family home will be remedied, 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 evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509 (Ind. Ct. App. 2001), *trans. denied*. The court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. *In re M.M.*, 733 N.E.2d 6 (Ind. Ct. App. 2000). Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244 (Ind. Ct. App. 2002), *trans. denied*. 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. *Id.* Finally, a trial court need not wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth are permanently impaired before terminating the parent-child relationship. *In re E.S.*, 762 N.E.2d 1287 (Ind. Ct. App. 2002).

Here, in finding that there is a reasonable probability that the conditions resulting in H.P.'s removal and continued placement outside of Mother's and Father's care will not be remedied, the trial court made extensive findings regarding the parents' respective histories of involvement with child protective services in several different states, domestic violence in the home, mental health issues, and current inability to care for H.P. In so doing, the trial court specifically found that, "[a]t the time of the termination hearing, [Father] was incarcerated for a D Felony Domestic Battery," and unable to care for H.P., having been

given a three-year suspended sentence to the Indiana Department of Correction in November 2009, only to have his original sentence imposed on February 8, 2010 due to a probation violation. *Appellant's Appendix* at 36. The trial court went on to find that “[n]o evidence, whatsoever, was presented indicating when [Father] will be released from incarceration.” *Id.*

The trial court’s findings also acknowledged ECDCS case manager Stephanie Johnson’s testimony that although both parents had completed parenting classes and were involved in individual and family therapy with Family Children’s Center therapist Marlene Villecco, both Mother and Father “were unable to use the parenting skills that they had learned” during visits with H.P. *Id.* at 31. The court further found that despite the parents’ participation in reunification services for over a year, both in Michigan in 2007 and again in the underlying proceedings, “none of the service providers involved in this case have reported seeing any progress in the parents’ abilities to care for their child . . . .” *Id.*

As for the parents’ mental health issues, the record reveals that Mother suffers with bipolar disorder and borderline personality with narcissistic and paranoid traits. As a result, Mother was prescribed a mood-stabilizing medication to help treat these conditions. In its findings, the trial court acknowledged case manager Johnson’s continuing concerns about both parents’ mental health issues. The court further found that although Mother reports she is currently taking her medication as prescribed, she has a “history of being on and then off her medication” and thus “there is no guarantee that her medication compliance will continue.” *Id.* at 35. As for Father’s self-reported diagnosis of Post Traumatic Stress Disorder, the trial court found that although Father claims he is taking medication for “trauma suffered while he worked as a fireman in New York on September 11, 2001,” Mother testified that Father

“never worked as a fireman in New York.” *Id.* Consequently, the court found Father is taking medication “claiming a condition for a trauma he never suffered,” thereby “rais[ing] additional concerns.” *Id.*

Finally, the trial court rejected the parents’ assertion that “conditions could have been remedied with just a little more help,” and that ECDCS prematurely “gave up on the parents” by discontinuing services before the termination hearing, finding that “at the time counseling with Ms. Vilecco was terminated, [Father] was incarcerated and no longer involved in therapy.” *Id.* at 32. The court went on to find that “even before [Father’s] incarceration[,] he was only minimally participating in counseling services because of reported ongoing conflicts between services and his work; thus termination of services assigned to [F]ather was merely a formality, with no substantive impact on the services provided.” *Id.* As for Mother, the court found that Mother had been in treatment with Vilecco for a year when services were terminated, that service providers had reported Mother was not making any progress in her ability to parent H.P., and that:

[Mother] had already completed parenting classes and anger management classes . . . and the only ongoing services for [Mother] . . . [that ] were discontinued was her individual therapy. . . . Visitation continued. Moreover, [Mother] was told that she could continue therapy at her own expense, under a sliding scale based upon her income. Nonetheless, [M]other never pursued the therapy at her own expense.

*Id.* at 32-33. These findings are supported by clear and convincing evidence.

During the termination hearing, therapist Vilecco confirmed that she had provided individual, couples, and parenting counseling to both Mother and Father, as well as anger management and substance abuse therapy. In describing the parents’ relationship, Vilecco

informed the court that there was “[a] lot of verbal abuse, emotional abuse, [and] a lot of not being able to communicate to each other effectively. . . .” *Transcript* at 91. When asked about the parents’ progress in therapy, Villecco reported Father had “called-off” approximately seventeen scheduled therapy sessions, as well as failed to participate in therapy during the months of May, June, July, and October 2009, due to “work conflict[s].” *Id.* at 105. Villecco also testified that although Father acknowledged he had a substance abuse problem, he was unable to abstain from using drugs and admitted to having “[a]t least two” relapses during the time she worked with him. *Id.* at 112. As for Mother, Villecco indicated that Mother experienced a lot of “ups and downs” during therapy and that Mother questioned on more than one occasion her ability to “take care of [H.P.]” *Id.* at 123.

Visitation supervisor Mark Pohl informed the court that he had supervised visits between Mother and H.P. for approximately fourteen months. When asked to describe Mother’s interactions with H.P. during visits, Pohl said it was a “mixed bag,” explaining that at times Mother would get “easily frustrated” and “become very negative” and enter a “downward spiral of negativity for the rest of the visit.” *Id.* at 140-141. Pohl also testified that Mother still does not have “very good skills in redirecting and patience with [H.P.],” and described an incident where Mother became very frustrated when one-year-old H.P. spilled some food on the floor and chastised the child by saying, “Why do you have to eat like such a pig?” *Id.* at 142-43. Pohl also informed the court that although Mother’s three-hour visits typically occurred between 10:00 a.m. and 1:00 p.m., Mother repeatedly failed to provide H.P. with lunch, or would simply provide dry cereal during visits. When asked to explain why he had never recommended unsupervised visits, Pohl stated Mother’s progress during

visits has been “a flat line” since January 2010, and further testified that he had seen “no significant changes that would cause me to think that there’s . . . any merit in increasing visits, or changing . . . the current status.” *Id.* at 148.

Finally, case manager Johnson testified that reunification services had been offered to Mother and Father for approximately twenty months yet neither parent had demonstrated an ability to provide H.P. with a safe and stable home. Johnson also confirmed that Father had tested positive for marijuana and/or cocaine approximately eight times during the CHINS case, repeatedly missed visits with H.P., and that both parents had failed to maintain steady employment. In addition, Johnson indicated that neither parent had benefited from marital counseling, which eventually was “put on hold” and replaced with individual counseling because “not much was getting accomplished” due to all the arguments during therapy. *Id.* at 257. When asked if Mother was able to “meet her responsibilities at this time,” Johnson replied, “No. I don’t believe so,” citing Mother’s historical failure to maintain employment, the history of domestic violence between Mother and Father coupled with Mother’s expressed intention to stay in a relationship with Father after his release from incarceration, and Mother’s “inappropriate” and “unrealistic” behavioral expectations for H.P. *Id.* at 273. As for Father, Johnson testified that Father was unable to meet his parental responsibilities due to his current incarceration, unresolved substance abuse and mental health issues, and history of domestic violence.

As previously explained, a trial court must judge a parent’s fitness to care for his or her children *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 children. *In re D.D.*, 804 N.E.2d 258. Where there are only temporary improvements and the parent's pattern of conduct shows no overall progress, the court might reasonably infer that, under the circumstances, the problematic situation will not improve. *In re A.H.*, 832 N.E.2d 563 (Ind. Ct. App. 2005). Since the time of H.P.'s removal, Mother and Father have been unable to achieve a stable home environment for any significant period of time, despite a wealth of services offered to both parents for approximately two years. Moreover, at the time of the termination hearing, Father had failed to successfully complete a majority of the trial court's dispositional goals and was serving a three-year sentence for domestic battery. In addition, although Mother had completed a number of services, she nevertheless was unable to successfully apply the parenting skills she had been taught when interacting with H.P. Consequently, at the time of the termination hearing, Mother remained unable to demonstrate that she was capable of providing H.P. with a safe and stable home environment. Based on the foregoing, we conclude that clear and convincing evidence supports the trial court's determination that there is a reasonable probability the conditions leading to H.P.'s removal and/or continued placement outside the parents' care will not be remedied. Mother's and Father's arguments to the contrary amount to an invitation to reweigh the evidence, which we may not do. *In re D.D.*, 804 N.E.2d 258.

We next consider the parents' assertion that ECDCS failed to prove termination of their respective parental rights is in H.P.'s best interests. In determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Indiana Department of Child Services and look to the totality of the evidence. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185 (Ind. Ct. App. 2003). In so

doing, the trial court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* Moreover, we have previously held that the recommendations of both the case manager and child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. *In re M.M.*, 733 N.E.2d 6.

In addition to the trial court's findings previously discussed, the trial court made several additional pertinent findings in determining that termination of parental rights is in H.P.'s best interests. The trial court found that the court-appointed special advocate (CASA) had concerns regarding Mother's "failure to show physical affection for [H.P.] during visits," noted that it was a "burden" to have three-hour visits with H.P. twice a week, and also noted Mother's repeated failure to feed H.P. during lunchtime visits. *Appellants' Appendix* at 34. The trial court also noted that Father's participation in visits with H.P. had been "limited by his choices," including taking naps and running errands during scheduled visits with H.P. *Id.* In addition, the trial court found that H.P. had been "out of the home of her parents for twenty months," that the child had lived with her current foster family "nearly all of her life," and that it would be "contrary to the interest of [H.P.] to continue to put her life on hold waiting for parents who have been unable to parent to date and are unlikely to be able to parent in the future." *Id.* at 37. Moreover, the court found H.P. was "bonded" to and had "thrived" in the foster home. *Id.* These findings, too, are supported by the evidence.

Both ECDCS case manager Johnson and CASA Heather Charles testified that they

believed termination of Mother's and Father's parental rights was in H.P.'s best interests. In so doing, Johnson indicated that H.P. was "doing well" in her current foster home and appeared "happy" and "bonded" to her foster family. *Transcript* at 266. Similarly, Charles informed the trial court that she had attended several supervised visits between H.P. and the parents, that it appeared to her that visiting with H.P. was a "burden" for Mother, and that she had observed "a lot of complaining and a lot of negativity" during visits. *Id.* at 192, 194, 198. Charles further testified that H.P. needs "constant interaction," "to be fed," and "to be loved," and that she believed there was a "lack of love" and a lack of "interaction" between Mother and H.P. during visits. *Id.* at 201-02. In addition, Charles informed the court that Father was "very rarely there" during visits and that he only spent approximately "ten percent" of the time he was there actually interacting with H.P. *Id.* at 196, 199-200. The rest of the time, Father was "focused on something else," such as running "errands" or sleeping. *Id.* at 195. Charles also confirmed that H.P. is "thriving" in her current foster home and that the foster parents had expressed an interest in adopting H.P. *Id.* at 204.

Based on the totality of the evidence, including Mother's and Father's failure to successfully complete and/or benefit from a majority of the trial court's dispositional orders, Father's current incarceration and unresolved substance abuse issues, as well as both parents' history of domestic violence and current inability to provide H.P. with a safe and stable home environment, coupled with the testimony from Johnson and Charles supporting termination, we conclude that clear and convincing evidence supports the trial court's determination that termination of Mother's and Father's parental rights is in H.P.'s best interests.

Finally, we consider whether sufficient evidence supports the trial court's

determination that ECDCS has a satisfactory plan for the future care and treatment of H.P. I.C. § 31-35-2-4(b)(2)(D) provides that before a trial court may terminate a parent-child relationship, it must find there is a satisfactory plan for the future care and treatment of the child. *Id.*; *see also D.D.*, 804 N.E.2d at 268. It is well-established, however, that this plan need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated. *Id.* ECDCS's plan is for H.P. to be adopted, either by the child's current foster parents who have expressed an interest to do so, or some other adoptive family. This plan provides the trial court with a general sense of the direction of H.P.'s future care and treatment. ECDCS's plan is therefore satisfactory.

#### CONCLUSION

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.” *In re A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting *Egly v. Blackford County Dep't of Public Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Judgment affirmed.

MAY, J., and MATHIAS, J., concur.