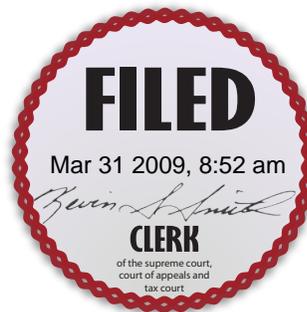


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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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 )  
A. S. and B. S., Children )

RICHARD STOTTMANN, )  
Appellant-Respondent, )

vs. )

SCOTT COUNTY DEPARTMENT OF )  
CHILD SERVICES, )  
Appellee-Petitioner. )

No. 72A01-0809-JV-451

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APPEAL FROM THE SCOTT CIRCUIT COURT  
The Honorable Roger L. Duvall, Judge  
Cause No. 72C01-0802-JT-8

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**March 31, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BROWN, Judge**

Richard Stottmann (“Father”) appeals the trial court’s termination of his parental rights to B.S. and A.S. Father raises two issues, which we restate as:

- I. Whether the trial court abused its discretion by admitting a report prepared by the court-appointed special advocate (“CASA”); and
- II. Whether the trial court’s termination of Father’s parental rights is clearly erroneous.

We affirm.

The relevant facts follow. Father and Patricia Stottmann (“Mother”) are the parents of B.S., born July 16, 2005, and A.S., born January 7, 2007. Mother died on January 17, 2007. Father is a convicted sex offender, and agreed to a safety plan, which included Father not being alone with the children and the children being cared for by their maternal grandmother. However, the Scott County Department of Child Services (“DCS”) removed B.S. and A.S. from Father’s care on January 18, 2007, because Father had not placed them with their maternal grandmother and had allowed Jerry Hodge, the maternal grandfather and a convicted sex offender, access to the children.

The trial court determined that B.S. and A.S. were children in need of services (“CHINS”) and placed them in foster care. The trial court ordered Father to, in part: (1) complete a psychological assessment through Dr. Wunsch and follow all recommendations; (2) participate in family preservation services through New Hope and follow all recommendations; (3) participate in a sexual perpetrator assessment through Connie Mosier; and (4) not allow any registered sex offenders near or have contact with the children.

Father was to attend counseling at LifeSpring, and Dr. Wunsch recommended that Father be evaluated for medication. However, Father stopped his LifeSpring counseling in July 2007 with minimal progress and stopped taking any medications. Father also admittedly minimized the events surrounding his sexual abuse conviction during conversations with a therapist. Father attended weekly supervised visitations with the children, but service providers saw little improvement in his parenting skills. Father also had credibility issues because he admittedly lied to DCS workers and service providers on several occasions.

Father recognized that he did not have the parenting skills to raise the children on his own. Karen Anderson moved in with Father to help provide care to the children. However, Karen previously had four of her children removed and placed in foster care. One of Karen's now-adult children, Tausha, described growing up in a "[v]ery violent household" until she was removed from Karen's care at the age of twelve. Transcript at 14. She noted that Karen was unconcerned that sex offenders were around the children and failed to protect the children from the sex offenders. Tausha stated that "[i]f [she] had kids [she] wouldn't put them in [Karen's] care." Id. at 15.

One of Karen's children, Danny Williams, is a convicted sex offender. Williams was a resident of Father's house following the children's removal, and Father was seen with Williams at Wal-Mart in the spring of 2008. At one supervised visitation, Father brought Williams with him and asked if Williams could see the girls. The DCS worker supervising visitation also noted that B.S. and A.S. did not have a good relationship with Karen. The DCS worker observed one interaction where B.S. told Karen, "no," and

Karen responded angrily, “you’ll find out what ‘no’ means.” Id. at 55. Karen and Father admittedly had an incident of domestic violence in which Karen threw a saw blade at Father, and Karen bragged about other domestic violence incidents. Karen also bragged to DCS workers about being mean to her animals, including kicking a dog so hard that Father thought the dog’s jaw was broken.

The DCS filed a petition to terminate Father’s parental rights to B.S. and A.S., and after an evidentiary hearing, the trial court granted the petition.

The issue is whether the trial court’s termination of Father’s parental rights is clearly erroneous. The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). However, these parental interests are not absolute and must be subordinated to the child’s interests in determining the proper disposition of a petition to terminate parental rights. Id. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id. The purpose of terminating parental rights is not to punish parents, but to protect children. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), reh’g denied, trans. denied, cert. denied, 534 U.S. 1161, 122 S. Ct. 1197 (2002).

When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. Bester, 839 N.E.2d at 147. We will consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. Id. Here, the trial court made findings in granting the termination of Father’s parental rights. When reviewing findings of fact and conclusions thereon entered in a

case involving a termination of parental rights, we apply a two-tiered standard of review. Id. First, we determine whether the evidence supports the findings. Id. Then, we determine whether the findings support the judgment. Id. The trial court’s judgment will be set aside only if it is clearly erroneous. Id. “A judgment is clearly erroneous if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment.” Id. (citation and internal quotations omitted).

Ind. Code § 31-35-2-8(a) provides that “if the court finds that the allegations in a petition described in [Ind. Code § 31-35-2-4] are true, the court shall terminate the parent-child relationship.” Ind. Code § 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege that:

- (A) one (1) of the following exists:
  - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
  - (ii) a court has entered a finding under Ind. Code § 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court’s finding, the date of the finding, and the manner in which the finding was made; or
  - (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
- (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.

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, 1234 (Ind. 1992); Doe v. Daviess County Div. of Children & Family Serv., 669 N.E.2d 192, 194 (Ind. Ct. App. 1996), trans. denied.

#### I.

The first issue is whether the trial court abused its discretion by admitting a report prepared by the CASA. Father argues that the testimony of the CASA and the CASA's report both contained hearsay. Father compares this situation to In re E.T., 808 N.E.2d 639, 645 (Ind. 2004), where the Indiana Supreme Court held that reports compiled by a social services agency describing home visits and supervised visitations did not qualify as business records and were not admissible as an exception to the hearsay rule. However, even if we assume that the CASA's testimony and report were inadmissible, any error was harmless.

We must disregard "any error or defect in the proceeding which does not affect the substantial rights of the parties." Ind. Trial Rule 61. Further, the erroneous admission of evidence that is merely cumulative of other evidence in the record is not reversible error. In re M.A.S., 815 N.E.2d 216, 222 (Ind. Ct. App. 2004). Father argues that the error was not harmless because the trial court relied upon the alleged hearsay testimony and report

to establish that B.S. was diagnosed with failure to thrive, that Father was previously involved with DCS, that Father previously failed to follow safety plans, and that the DCS previously substantiated neglect claims against Father and Mother. However, during the evidentiary hearing, Father admitted that B.S. did not gain any weight for seven months prior to her removal. Further, Father admitted that he had previously violated a DCS safety plan, and the DCS case manager testified regarding a history of Father violating safety plans. Given the evidence cumulative of the CASA's alleged hearsay testimony and report and the evidence discussed below, we conclude that any error in admitting the CASA's testimony and report was harmless and did not affect Father's substantial rights.

## II.

The next issue is whether the trial court's termination of Father's parental rights is clearly erroneous. Father seems to argue that the trial court's findings and conclusions are clearly erroneous regarding whether: (A) there was a reasonable probability that the conditions that resulted in the children's removal or the reasons for placement outside Father's home would not be remedied;<sup>1</sup> and (B) the termination was in the children's best interests.

### A. Remedy of Conditions Resulting in Removal.

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<sup>1</sup> To the extent that Father also argues the trial court erred by finding that the continuation of the parent-child relationship posed a threat to the well-being of the children, we note that Ind. Code § 31-35-2-4(b)(2)(B) required DCS to demonstrate by clear and convincing evidence a reasonable probability that *either*: (1) 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* (2) the continuation of the parent-child relationship poses a threat to the well-being of the child. The trial court specifically found a reasonable probability that the conditions that resulted in the children's removal would not be remedied, and there is sufficient evidence in the record to support the trial court's conclusion. See infra Part II(A). Thus, we need not determine whether the trial court's conclusion that there was a reasonable probability that the continuation of the

DCS was required to prove by clear and convincing evidence that there was a reasonable probability that the conditions that resulted in the children's removal or the reasons for placement outside Father's home would not be remedied. To determine whether a reasonable probability exists that the conditions justifying a child's continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his children at the time of the termination hearing and take into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. However, 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. When assessing a parent's fitness to care for a child, the trial court should view the parent as of the time of the termination hearing and take into account any evidence of changed conditions. In re C.C., 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), trans. denied. The trial court can properly consider the services that the State offered to the parent and the parent's response to those services. Id.

The trial court found there was a reasonable probability that the conditions resulting in the children's removal would not be remedied because: (1) Father had been involved with DCS on numerous occasions; (2) Karen Anderson, the person Father asked to assist him with the children, had an extensive history with DCS; (3) there was domestic violence between Father and Karen; (4) there has been little progress in improving Father's parenting skills; (5) Father failed to appropriately interact with the

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parent-child relationship poses a threat to the well-being of the children is clearly erroneous. See, e.g., Bester, 839 N.E.2d at 148 n.5; In re T.F., 743 N.E.2d 766, 774 (Ind. Ct. App. 2001), trans. denied.

children during visits; (6) Father failed to maintain contact with LifeSpring; (7) the propensity of Father as a registered sex offender to reoffend is mixed; (8) Father had allowed sex offenders in his household during the children's removal; (9) B.S. had "failure to thrive" while she was in Father's custody; and (10) Father admittedly has not been truthful with DCS. Appellant's Appendix at 11-12.

Father first argues that the trial court's finding regarding his failure to keep sex offenders out of his household is clearly erroneous. According to Father, since the children's removal, he kept sex offenders out of his household, obtained protective orders, and called the police if they came to his house. However, the DCS presented evidence that Danny Williams, Karen's son and a registered sex offender, was a resident of Father's house following the children's removal and that Father was seen with Williams at Wal-Mart in the spring of 2008. Given this evidence, the trial court's finding is not clearly erroneous.

Father further argues that the trial court erred by placing weight on his contact with sex offenders when he was not exposing the children to the sex offenders. However, the trial court's concern that Father would allow sex offenders to have contact with the children if the children were returned to him is valid. In fact, at one supervised visitation, Father brought Williams with him and asked if Williams could see the girls. We cannot say that the trial court erred by considering Father's continued contact with sex offenders.

Father next argues that DCS presented no evidence that his parenting skills had not improved. Father admitted that, when Mother died, he had limited parenting skills and that, as a result, Karen moved in with him to assist with the children. The DCS case

manager testified that DCS has offered services to Father, but they had “not seen much change in his ability to care for the children and to recognize their needs . . . .” Transcript at 31. Father had difficulties with “simple things” during the supervised visitations, such as determining the cause of a child’s cry, buckling the children into their car seats, and “just general interaction with the girls during visits.” *Id.* at 32. The DCS employee that supervised Father’s visitations with the children also testified to the lack of improvement in Father’s parenting skills. Given this evidence, the trial court’s finding that Father’s parenting skills had not improved is not clearly erroneous.

Next, Father argues that the trial court had no evidence to support a finding that he had a propensity to reoffend. The trial court found:

The evidence as to the propensity of the father to re-offend is mixed. In 2004 the father was seen by Mike Darrow who recommended treatment which was not followed. The father admitted that he told Mike Darrow that he minimized the sexual activities that resulted in his conviction. Since removal of the children, the father has been evaluated by Dr. Winsche and by Connier [sic] Mosier. There is no evidence before the Court that further perpetrator treatment was required as a result of those evaluations.

Appellant’s Appendix at 12. As evidenced by the finding, the trial court actually found that Father’s propensity to reoffend was unclear. Although the trial court had no evidence before it that further sexual offender treatment had been recommended, Father also admitted that he had minimized the “sexual abuse events” surrounding his conviction when he talked to Darrow. Transcript at 106. The trial court’s finding of a “mixed” propensity to reoffend is not clearly erroneous.

Finally, Father argues that his relationship with Karen Anderson should not be used as evidence in support of termination because DCS never told him that Karen should

leave his home. DCS presented evidence that Father moved Karen into his house to help him parent the children. However, Karen previously had four of her children removed and placed in foster care. One of Karen's children, Tausha, described growing up in a "[v]ery violent household" until she was removed from Karen's care at the age of twelve. Id. at 14. She noted that Karen did not care that sex offenders were around the children and failed to protect the children from the sex offenders. Tausha stated that "[i]f [she] had kids [she] wouldn't put them in [Karen's] care." Id. at 15.

The DCS worker supervising visitation testified that B.S. and A.S. did not have a good relationship with Karen. The DCS worker observed one interaction where B.S. told Karen, "no," and Karen responded angrily, "you'll find out what 'no' means." Id. at 55. Karen and Father admittedly had an incident of domestic violence in which Karen threw a saw blade at Father, and Karen bragged about other domestic violence incidents. Karen also bragged to DCS workers about being mean to her animals, including kicking a dog so hard that Father thought the dog's jaw was broken. Although DCS did not request that Father remove Karen from his household, given the evidence presented by the DCS regarding Karen, the trial court did not err by relying on Father's relationship with Karen in terminating Father's parental rights.

In summary, the DCS presented evidence that Father, a registered sex offender, failed to comply with a safety plan in place for the children's protection and, in fact, allowed the children to have contact with their maternal grandfather, also a registered sex offender. Father's parenting skills are limited and did not improve during the time the children were removed from his care. Even after the children were removed because

Father allowed a registered sex offender to have contact with them, Father continued to allow sex offenders in his household and even brought a registered sex offender to a visitation with the children. Father requested that Karen help him parent the children, but Karen has a substantial history of neglecting her own children and continued incidents of violence. Father was also required to attend counseling at LifeSpring, but stopped attending the therapy in July 2007. Under these circumstances, the trial court's conclusion that there was a reasonable probability that the conditions resulting in the children's removal would not be remedied is not clearly erroneous. See, e.g., In re A.I., 825 N.E.2d 798, 807 (Ind. Ct. App. 2005) (holding that the trial court's finding that the conditions were not likely to be remedied was not clearly erroneous), trans. denied.

B. Best Interests.

DCS was required to prove by clear and convincing evidence that the termination was in the children's best interests. In determining what is in the best interests of the children, the trial court is required to look at the totality of the evidence. A.F. v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1253 (Ind. Ct. App. 2002), trans. denied. In doing so, the trial court must subordinate the interests of the parents to those of the children involved. Id. “[T]he historic inability to provide adequate housing, stability, and supervision, coupled with the current inability to provide the same, will support a finding that continuation of the parent-child relationship is contrary to the child[ren]’s best interests.” In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005).

The DCS presented evidence that Father has a historic inability to care for and parent B.S. and A.S., that Father fails to recognize the importance of complying with the

safety plans and protecting the children from sex offenders, that Karen is an inappropriate choice to assist Father in caring for the children, that Father has failed to improve his limited parenting skills, and that Father failed to continue with his therapy at LifeSpring. Both the DCS case manager and the CASA testified that termination of Father's parental rights was in the children's best interest. In looking at the totality of the evidence, we cannot say that the trial court's finding regarding the children's best interest is clearly erroneous. See, e.g., A.I., 825 N.E.2d at 811 (holding that, based upon the totality of the evidence, the trial court's finding that termination was in the child's best interest was supported by the evidence).

For the foregoing reasons, we affirm the trial court's termination of Father's parental rights.

Affirmed.

ROBB, J. and CRONE, J. concur