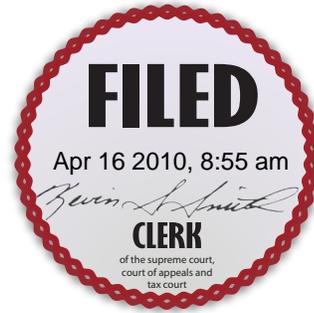


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**IN THE  
COURT OF APPEALS OF INDIANA**

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In Re the Matter of the Termination )  
Of The Parent-Child Relationship of )  
G.P., J.P., & M.A.D., )  
)  
M.D. & A.P., )  
)  
)  
Appellants-Respondents, )  
)  
)  
vs. )  
)  
The Indiana Department of Child Services, )  
)  
)  
Appellee-Petitioner. )

No. 76A04-1001-JT-36

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APPEAL FROM THE STEUBEN CIRCUIT COURT  
The Honorable Allen N. Wheat, Judge  
Cause Nos. 76C01-0901-JT-008  
76C01-0901-JT-12  
76C01-0901-JT-9

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**April 16, 2010**

## MEMORANDUM DECISION - NOT FOR PUBLICATION

**ROBB, Judge**

### Case Summary and Issue

A.P. (“Mother”) and M.D., Sr. (“Father”) appeal the involuntary termination of their parental rights to their respective children, raising the sole issue of whether there is sufficient evidence to support the trial court’s judgment. Concluding there is clear and convincing evidence to support the trial court’s determination that termination is in the children’s best interests, we affirm.

### Facts and Procedural History

Mother is the biological mother of G.P., born December 27, 1999; J.P., born April 20, 2001; and M.D., born November 5, 2003 (collectively referred to as “the children”). Father is the biological father of M.D. only.<sup>1</sup> The facts most favorable to the judgment reveal that in 2001, Mother, who was living in Iowa, separated from her husband, the biological father of G.P. and J.P.<sup>2</sup> Sometime thereafter, Mother commenced a relationship with Father and moved to Indiana.

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<sup>1</sup> The trial court terminated the parental rights of G.P. and J.P.’s biological father, Jo.P., in its September 2009 termination order. Jo.P. does not participate in this appeal. Consequently, we limit our recitation of the facts solely to those pertinent to Mother’s and Father’s appeal.

<sup>2</sup> The record indicates that while living in Iowa, Mother and Jo.P. were involved with the Iowa Department of Human Services.

In January 2006, the children were removed from Mother's and Father's care by the Indiana Department of Child Services, Steuben County ("SCDCS"), after SCDCS personnel substantiated a report of physical abuse by Father against G.P.<sup>3</sup> The investigation revealed Father had "spanked" G.P. with a board "a whole bunch of times" while Mother was at work, resulting in substantial bruising. Appellees' Appendix at 46. Also during the investigation, J.P. informed investigators that Father spansks him with the "Who's next" paddle. *Id.* Mother confirmed the existence of the "Who's next" paddle, and also admitted she left the children alone with Father while she worked during the week between Christmas and New Years.

A detention hearing was held, and the trial court determined there was probable cause to believe G.P., J.P., and M.D. were children in need of services ("CHINS"). The children were ordered to remain in foster care and an initial hearing in the CHINS matter was set for later the same month. The trial court also entered a no-contact order prohibiting Father from having contact with the children.

During an initial hearing in February 2006, Mother and Father admitted to the allegations of the CHINS petition. The trial court subsequently ordered SCDCS to continue to provide family services to Mother, and the children were ordered returned to her care. Later the same month, SCDCS received a report that Mother had left J.P., G.P., and M.D. in the care of a relative in Ohio and was refusing to return to retrieve the children. Mother also had failed to provide the relative adequate clothing, car seats, medical releases, or food for

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<sup>3</sup> This was not the family's first involvement with SCDCS. SCDCS provided home-based services to Mother and Father through an Informal Adjustment ("IA") in 2004 and 2005 due to bruises and welts observed on G.P. as a result of being spanked with a belt by Father. As part of this IA, Mother, who was the custodial parent of all three children, agreed to never leave the children alone with Father for more than two hours.

the children. J.P., G.P., and M.D. were returned to Indiana, placed in foster care, and reunited with Mother several days later.

On March 21, 2006, Mother and Father failed to appear for a scheduled dispositional hearing. The hearing was continued, and approximately one week later, the children were taken into protective custody after SCDCS substantiated a report from school officials in Walterboro, South Carolina, that Mother had attempted to enroll the children in school there. SCDCS's investigation revealed Mother had taken the children and fled Indiana to live with Father despite the trial court's standing no-contact order prohibiting Father from having contact with G.P., J.P., and M.D. The children, who were later found with Father and Mother at a relative's home in Walterboro by local South Carolina Department of Social Services personnel, were retrieved by SCDCS caseworkers on March 29, 2006. Upon their return to Indiana, the children were once again placed in foster care.

Notwithstanding the children's return to Indiana, Mother remained in South Carolina and had no contact with G.P., J.P., and M.D. for several months. The continued dispositional hearing eventually took place in October 2006. Mother, who had recently returned to Indiana and was living with a relative, was present for the hearing. Father failed to appear.

Following the dispositional hearing, the trial court issued an order formally removing the children from both Mother's and Father's care and directing each parent to participate in a variety of services in order to achieve reunification with the children. Specifically, Mother and Father were each ordered to cooperate with SCDCS personnel, adhere to visitation schedules, inform SCDCS of any and all household changes, and attend couples therapy with

a licensed therapist should the parents reconcile. Mother was also ordered to obtain employment and maintain suitable housing for herself and the children; submit to a psychological examination and parenting assessment and follow all resulting recommendations; work with Life Line Agency to learn effective parenting skills and appropriate discipline techniques; ensure that persons who have been ordered to have no contact with the children do not have contact with the children; refrain from using corporal punishment or any other inappropriate discipline with the children; and ensure the children attend all therapy sessions and doctors' appointments. Father was also ordered to maintain a stable income and provide support for M.D.

For the next two years, Mother's and Father's cooperation with service providers was inconsistent and plagued with extended periods of little or no contact with the children and/or SCDCS. Eventually, in January 2009, SCDCS filed petitions seeking the involuntary termination of Mother's and Father's parental rights to the children. A four-day evidentiary hearing on the termination petitions was held on August 12, 13, 19, and 26, 2009. During the termination hearing, SCDCS presented evidence showing Mother and Father, who had moved to Ohio, failed to complete a majority of the trial court's dispositional orders. Both parents also continued to test positive for illegal substances and failed to exercise regular visitation with the children. In addition, Mother confirmed she and Father were living together, but neither parent had completed couples therapy.

At the conclusion of the evidentiary hearing, the trial court took the matter under advisement. On September 10, 2009, the trial court issued its judgment terminating Mother's and Father's parental rights to G.P., J.P., and M.D. Both parents now appeal.

### Discussion and Decision

#### I. Standard of Review

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, 836 (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, 264 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. Id. Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied.

Here, in terminating Mother's and Father's parental rights, the trial court entered specific findings of fact. When a trial court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (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). If the evidence and inferences support the trial court's decision, we must affirm. L.S., 717 N.E.2d at 208.

“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. A trial court must subordinate the interests of the parent to those of the child, however, when evaluating the circumstances surrounding a termination. K.S., 750 N.E.2d at 837. In addition, although parental rights should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. Id. at 836-37.

“The State's burden of proof in termination of parental rights cases is one of ‘clear and convincing evidence.’” In re G.Y., 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code § 31-37-14-2). Moreover, Indiana Code section 31-35-2-4(b)(2)(C) provides that in order to terminate a parent-child relationship, the State is required to allege and prove, among other things, that termination of the parent-child relationship is in the child's best interests.

## II. Best Interests of the Children

Mother's and Father's sole argument on appeal is that there is insufficient evidence supporting the trial court's determination that termination of their respective parental rights is in G.P.'s, J.P.'s, and M.D.'s best interests given the “unique facts” of this case.<sup>4</sup> Appellants'

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<sup>4</sup> The record reveals that Mother's biological father was also the children's foster mother's step-father from the time the foster mother was eight years old until she was seventeen years old. Mother, who was physically abused by her own mother, was raised in a foster home and never lived in the same household as the foster mother. In addition, the foster mother testified during the termination hearing she only remembers

Brief at 4. Specifically, Mother and Father concede that they are “not arguing that the [trial] court erred in concluding that [it is in] the children’s best interest[s] . . . to remain with their foster parents.” Id. (Emphasis added). The parents nevertheless assert that there is a “less severe option available,” namely establishing a permanent guardianship for the children with the foster parents, and thus the trial court committed clear error when it terminated their parental rights. Id. at 2, 4.

We are mindful that, 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, 203 (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 recommendations by a case manager and child advocate to terminate parental rights, coupled with evidence demonstrating that the conditions resulting in removal will not be remedied, are 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, 13 (Ind. Ct. App. 2000).

Here, the trial court’s judgment contains numerous detailed findings supporting its determination that termination of Mother’s and Father’s parental rights is in the children’s best interests. Specifically, the trial court found that, at the time of the termination hearing,

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Mother staying at her home when foster mother was a child on two occasions, she does not socialize with Mother, and Mother is generally not invited to foster mother’s family gatherings.

Mother and Father were living together in Ohio and had lived in multiple states since 2002, including Iowa, Indiana, South Carolina, and Ohio. The court also observed Mother and Father had only been in their current residence for approximately four weeks, did not have a written lease, and were paying rent on a month-to-month basis. Several additional findings indicate that, at the time of the termination hearing, both parents were on “lay-off” status from their respective jobs, had criminal records, continued to test positive for illegal substances, and had exhibited little, if any improvement in their overall ability to parent the children despite “numerous services” since “the inception of this action.” Id. at 16, 18. The trial court also found:

30. [Father] has historically used corporal punishment as a means to discipline [G.P.] and [J.P.].

31. [G.P.] and [J.P.] are fearful of [Father].

\* \* \*

37. [G.P.] and [J.P.] are children with special needs.

38. [G.P.] suffers from impaired language development, anxiety disorder and low grade depression.

39. [J.P.] suffers from anxiety disorder, depression, language processing impairment[,] and post-traumatic stress disorder.

40. For [G.P.], [J.P.], and [M.D.] to thrive in the future[,] any caregiver must be willing to provide them a highly stable and structured environment, along with a developed sense of empathy and understanding toward the needs of others. Corporal punishment will only exasperate [sic] the challenges which are today being faced by [G.P.] and [J.P.].

\* \* \*

48. [G.P.], [J.P.], and [M.D.] are tightly bonded.

49. [Court Appointed Special Advocate (“CASA”)] has been involved in this case from its beginning.

50. CASA recommends the parental rights of all parents be terminated.

51. [G.P.], [J.P.], and [M.D.] have been in foster care placement together since March 24, 2006.

52. Foster Mother has addressed all of the special needs presented [all the children].

53. Foster Mother stands ready to adopt [the children] in order to permit them to remain together as a unit.

Id. at 19. The trial court thereafter concluded as follows:

5. [Mother] has shown that she will put the interests of [Father] ahead of those of [the children]. This fact was clearly manifested by her leaving the [S]tate of Indiana to travel to the [S]tate of South Carolina to be with [Father] in direct violation of a no-contact order entered by this Court.

[Mother's] parenting skills have increased slightly as a result of the plethora of services which have been presented to her. The parenting skills of [Father] remain stationary. The living arrangements of [Mother] and [Father] are adequate for the upbringing of children, but cannot be considered permanent in nature. . . . [G.P.] and [J.P.] continue to be fearful of [Father] because of disciplinary techniques employed in the past. The evidence reveals that [Mother's] and [Father's] future cessation of drug use is problematic.

6. The Court concludes that the termination . . . of the parent/child relationship is in the best interest[s] of [the children].

Id. at 21. Clear and convincing evidence supports the trial court's findings and conclusions cited above, which in turn support the court's ultimate decision to terminate Mother's and Father's parental rights to G.P., J.P., and M.D.

During the termination hearing, psychologist Barbara Gelder informed the court she had conducted psychological testing on all three children. Dr. Gelder testified all three children suffer from anxiety disorder, dysthymia<sup>5</sup>, and post-traumatic stress disorder. In addition, G.P.'s and J.P.'s overall I.Q. scores are in the "low average range," and both children were functioning below their calendar age due to "language deficits" which might also be indicative of language-based learning disabilities. Tr. at 275, 277, 283. Although M.D. was too young to undergo identical testing as G.P. and J.P., Dr. Gelder determined that M.D.'s overall functioning is likewise in the "low average" range. Id. at 287.

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<sup>5</sup> Dr. Gelder described dysthymia as "a lower grade more chronic kind of depression." Transcript at

When asked to describe the kind of parenting the children are going to require to be successful, Dr. Gelder stated that although the kids have “pretty decent I.Q.’s,” due to their language deficits, all three will nevertheless struggle in “getting what’s in their brain out their mouth.” Id. at 289. Dr. Gelder further explained:

[A] lot of times you get ‘I don’t know’ or just kind of blank stares from the kids[,] and a lot of times that’s misinterpreted as oppositional defiant disorder when in fact it’s not. . . . So, we need . . . caregivers who understand [these behaviors]. . . . You also have to have caregivers who are able to not take personally what the kids do or don’t do.

Id. at 289-91. Dr. Gelder also testified any future caregiver will need to be “flexible,” “empathetic,” able to “actively advocate” for the children in all settings, regularly communicate with their teachers, “set very clear boundaries,” provide “more external structure than what you normally” would need for children the same age, and use “positive reinforcement” as a parenting technique rather than corporal punishment. Id. at 289-92, 326-27.

Shirley Carey provided therapeutic visitations for the family. Carey testified that during visits, Father “did not demonstrate that he seemed to grasp the growth and development[al]” needs of M.D. Id. at 355. When questioned whether any of the children “express[ed] or display[ed] affection toward their biological parents” during visits, Carey replied, “For the most part, no.” Id. at 358. In addition, when asked to give her opinion regarding Mother’s and Father’s parenting skills as compared to “what the children need” on a growth and developmental level, Carey stated that she had “concerns” due to the parents’

“total lack of understanding” and “[in]ability” to “set boundaries,” provide “structure,” and “discipline” the children effectively. Id. at 359-60, 362-63.

Licensed social worker and therapist Agnus Osterholt Polston testified she began working with the children in November 2007. Polston stated G.P. and J.P. each confided separately during therapy sessions that Father had “hit,” “whipped,” and/or “paddled” them a lot prior to their removal from the family home. Id. at 125. Polston also testified G.P. was afraid of Father and had told her “numerous times” that he “does not feel comfortable with [Father] at all.” Id. at 121. Polston also informed the court that when the children visited with Mother and Father, their “problematic behavior,” including “lying, stealing, destroying property at the foster parents’ home, [and] inattentiveness at school,” “got worse.” Id. at 113. Similarly, therapist Jennie Adams testified that in 2007 she had spoken with SCDCS about “possibly ending the parental visits” due to the children’s “worsened behaviors, screaming, nightmares,” and sleeplessness after visits. Id. at 197.

In recommending against reunification of the family, Polston explained the children had been out of Mother’s and Father’s care for a substantial portion of their lives, had become “attached” and “bonded” to their foster parents, as well as each other, and that separating the siblings would be “devastating” to M.D. and not in any of the boys’ best interests. Id. at 122, 128. Polston further testified that after the children were informed of the termination proceedings and that they would be participating in a deposition, they began “waking up in the middle of the night crying” and experienced “diarrhea” and “vomiting.” Id. at 121, 130. Moreover, G.P. became “very angry” and asked Polston, “[W]hy won’t

anybody listen to me? I don't want to go anywhere[.] I just want to stay where I'm at [with the foster parents].” Id. at 121. Similarly, J.P. told Polston, “I want to stay where I'm at[.] I don't understand.” Id.

SCDCS case manager Melissa Hyre informed the court that she had been assigned to Mother's and Father's case since July 2007. Hyre confirmed that numerous services had been referred for the parents throughout the underlying CHINS and termination proceedings, but Mother and Father only completed the parenting assessment and/or psychological evaluation “in full.” Id. at 625. Hyre also indicated that both parents had tested positive for cocaine on multiple occasions, including in April 2009, and that the parents' ongoing drug use was a concern for SCDCS.

With regard to visitation, Hyre reported the parents failed to visit with the children at all from May through December 2007, visited with the children a total of twenty hours in 2008, and had participated in only “eight to ten hours of supervised visitation” as of the time of the termination hearing in 2009. Id. at 627. We have previously explained that failure to exercise the right to visit one's child “demonstrates a lack of commitment to complete the actions necessary to preserve [the] parent-child relationship.” Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) (quotation omitted), trans. denied.

When asked whether she believed termination of Mother's and Father's parental rights was in the children's best interests, Hyre answered affirmatively, referring to the parents' lack of visitation with the children, lack of cooperation with service providers, and the fact

the children had been “in [foster] care for almost 3 ½ years.” Tr. at 639. Hyre also confirmed the children were “doing really well” and were “properly cared for” in their current foster care placement. Id. at 641, 644.

Court appointed special advocate (“CASA”) Marilyn Karpinski also testified during the termination hearing. In recommending termination of Mother’s and Father’s parental rights, Karpinski acknowledged that J.P. and G.P. loved Mother. Nevertheless, Karpinski reported that G.P. had repeatedly told her he is afraid of Father because Father “beats him.” Id. at 491. Karpinski ultimately informed the court she believed termination of Mother’s and Father’s parental rights was in the children’s best interests, referring to the parents’ “track record” of non-compliance, lack of “empathy,” and G.P.’s “great fear” of being in the presence of Father. Id. at 502-03. Karpinski further stated the children “need permanency” and expressed concern not only with the length of time it would take to provide sufficient therapy to the children for a successful reunification with Mother and Father after having been removed from their care “for such a long period time,” but also with the fact “neither of the parents [has] demonstrated . . . a willingness to take part in the therapy that would be necessary” for reunification. Id. at 503. Finally, Karpinski agreed with Polston’s testimony that the children had bonded with one another, and that separating the children now would be “traumatic” and “devastating” to them because the only family “consisten[cy]” the boys experienced during the past three-and-one-half years was being together. Id.

Based on the totality of the evidence, including Mother’s and Father’s habitual pattern of neglectful conduct, failure to complete court-ordered services, and current inability to

demonstrate they can provide G.P., J.P., and M.D. with a safe and stable home environment, free from illegal drug use and inappropriate discipline techniques, coupled with the testimony from Dr. Gelder, Polston, Karpinski, and Hyre recommending termination of the parent-child relationships, we conclude clear and convincing evidence supports the trial court's determination that termination of Mother's and Father's parental rights is in all three children's best interests. See, e.g., In re A.I., 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding that testimony of child advocate and family case manager, coupled with evidence that conditions resulting in continued placement outside home will not be remedied, is sufficient to prove by clear and convincing evidence termination is in child's best interests), trans. denied.

Notwithstanding our conclusion here, we pause to specifically comment on the parents' assertion the trial court "imprudently imposed the ultimate sanction" on Mother and Father by terminating their parental rights rather than ordering the children's foster parents "be made permanent guardians." Appellants' Br. at 5. In making this claim, Mother and Father liken their case to In re R.H., 892 N.E.2d 144 (Ind. Ct. App. 2008), where another panel of this court reversed a trial court's termination order concluding that, under the specific facts of that case, the better option would have been to establish a guardianship in the foster parents, who were also the child's grandparents, rather than permanently terminating the parent-child relationship.

There are substantial differences between the facts of this case and those in R.H. The father in R.H. fully complied with everything requested of him by the Department of Child

Services. See R.H., 892 N.E.2d at 150. In addition, the father in R.H. did more than simply participate in services, as this court observed that the father also had achieved “successful outcomes to those services . . . .” Id. Here, we are faced with a very different situation. For approximately three-and-one-half years, Father and Mother refused to consistently participate in and successfully complete court-ordered services, including couples counseling and visitation with the children. By the time of the termination hearing, these conditions had not changed. In addition, the children had bonded to their current foster parents, who diligently attend to all of their physical and emotional needs while providing the children with a safe and stable home environment. Moreover, the foster parents informed the court that they are willing to preserve the children’s family unit by adopting all three children. Thus, there is clear and convincing evidence supporting the trial court’s finding that termination is in G.P.’s, J.P.’s and M.D.’s best interests. The parents’ arguments to the contrary amount to nothing more than an invitation to reweigh the evidence, which we may not do. D.D., 804 N.E.2d at 264; see also In re B.D.J., 728 N.E.2d 195, 201 (Ind. Ct. App. 2000) (stating that as long as the elements of Indiana Code section 31-35-2-4 are proven by clear and convincing evidence, termination of parental rights may occur); In re A.P., 734 N.E.2d 1107, 1118 (Ind. Ct. App. 2000) (stating elements required for termination of parental rights set forth in Indiana Code section 31-35-2-4 are exclusive), trans. denied.

### Conclusion

As this court observed in Matter of D.T., 547 N.E.2d 278, 286 (Ind. Ct. App. 1989), trans. denied, “children continue to grow up quickly; their physical, mental, and emotional

development cannot be put on hold while their recalcitrant parent fails to improve the conditions that led to their being harmed and that would harm them further.” A thorough review of the record reveals the trial court’s judgment terminating Mother’s and Father’s parental rights to G.P., J.P., and M.D. is supported by clear and convincing evidence. We therefore find no error.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.