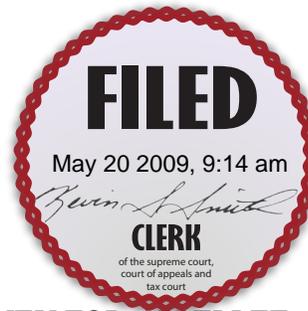


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEY FOR APPELLEE:

JILL M. ACKLIN  
Westfield, Indiana

DEBORAH S. BURKE  
Indiana Department of Child Services  
Marion, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE: INVOLUNTARY )  
TERMINATION OF THE PARENT-CHILD )  
RELATIONSHIP OF E.M. AND A.C., MINOR )  
CHILDREN, AND LAWANDA McGHEE, )  
THEIR MOTHER )

LAWANDA McGHEE, )  
 )  
Appellant-Respondent, )

vs. )

No. 49A02-0811-JV-1035

MARION COUNTY DEPARTMENT OF )  
CHILD SERVICES, )

Appellee-Petitioner, )  
and )

CHILD ADVOCATES, INC., )

Co-Appellee-Guardian Ad Litem. )

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APPEAL FROM THE MARION SUPERIOR COURT  
JUVENILE DIVISION

The Honorable Marilyn A. Moores, Judge  
The Honorable Larry Bradley, Magistrate  
Cause No. 49D09-0801-JT-4828

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May 20, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

## STATEMENT OF THE CASE

Appellant-Respondent, Lawanda McGee (Mother), appeals the trial court's Order terminating her parental rights to her minor child, A.C.

We affirm.

## ISSUE

Mother raises one issue on appeal, which we restate as follows: Whether the trial court erred in finding that termination of Mother's parental rights to A.C. was in the child's best interests despite A.C.'s wish to return home.

## FACTS AND PROCEDURAL HISTORY

E.M.<sup>1</sup> and A.C. were born to Mother on May 14, 1992 and March 2, 1996, respectively. On May 11, 2005, the Marion County Department of Child Services (DCS) filed a Child in Need of Services (CHINS) petition after E.M. reported that she had been sexually molested by her maternal uncle while Mother was incarcerated. That same day, both children were placed in foster care. On May 31, 2005, Mother admitted to the allegations of the CHINS' petition. On July 8, 2005, the trial court held a disposition hearing and ordered the children removed from Mother's care.

Mother was released from incarceration in November of 2006.<sup>2</sup> Upon her release, Mother immediately contacted DCS to commence services. Mother was instructed to

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<sup>1</sup> Although the trial court terminated Mother's parental rights with respect to E.M., Mother does not appeal this involuntary termination of her rights.

<sup>2</sup> Mother was incarcerated from September 2004 until November 2006 after being convicted for "[t]heft/[r]eceiving [s]tolen [p]roperty." (Appellant's App. p. 10). She was sentenced to eleven months in jail but remained incarcerated for over two years due to breaking prison rules.

complete a parenting assessment and home based counseling. She was also advised to have weekly contact with her case manager, consistently visit the children, “secure a legal and stable source of income,” and obtain suitable housing. (Appellant’s App. p. 10).

Mother completed the parenting assessment in December of 2006 and proceeded to home based case management services through a mental health provider, Adult and Child, in hopes of reuniting her with the children. Although she secured a position as a cashier in March of 2008, at this time, she refused to do urine screens and exhibited anger issues. During April, May, and June of 2008, Mother temporarily maintained employment at several different jobs. In addition, she actively started searching for housing, volunteered urine screens, and improved on her anger issues.

Nevertheless, after June 30, 2008, Mother stopped with the urine screens. She ceased all contact with her Adult and Child case manager until August of 2008. During an August 29, 2008 service provider meeting where A.C. was present, Mother became “very upset, . . . essentially exploded . . . she stormed out, you could hear her screaming and yelling down the hallway and in the elevator.” (Transcript p. 159). After seeing her Mother’s behavior, A.C. became “blank faced,” started getting “very teary eyed” and was “in some what of a shock a little bit.” (Tr. pp. 158-59). A.C. voiced her concerns about her Mother’s behavior and was very confused. However, Mother returned to the room and told A.C. “not to listen to anything else that anyone had to say [and] that she will be coming home to her.” (Tr. p. 79). After Mother left a second time, A.C. told the service providers that “what get’s me confused you all tell me that it might not happen and my mom keeps telling me that I’m coming home

and I never do.” (Tr. p. 80). Due to Mother’s irate behavior at the meeting, and with the absence of a stable income and housing, the trial court ordered the home based services terminated on October 3, 2008.

On January 31, 2008, DCS filed a Petition for Involuntary Termination of the Parent-Child Relationship between Mother and her two children. On October 22, 2008, the trial court conducted a fact-finding hearing on DCS’ petition. The next day, October 23, 2008, the trial court issued its Order, terminating Mother’s parental rights to E.M. and A.C..

Mother now appeals. Additional facts will be provided as necessary.

#### DISCUSSION AND DECISION

Mother contends that the DCS did not present sufficient evidence to support the involuntary termination of the parent-child relationship between Mother and A.C. In reviewing termination proceedings on appeal, this court will not reweigh the evidence nor assess the credibility of the witnesses. *In Re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We consider only the evidence that supports the trial court’s decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the trial court enters findings of fact and conclusions of law in its termination of parental rights, our standard of review is two-tiered. *Id.* First, we determine whether the evidence supports the findings, and second, whether the findings support the conclusions of law. *Id.*

In deference to the trial court’s unique position to assess the evidence, we set aside the trial court’s findings and judgment terminating a parent-child relationship only if they are

clearly erroneous. *Id.* A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it. *Id.* A judgment is clearly erroneous only if the conclusions of law drawn by the trial court are not supported by its findings of fact or the conclusions of law do not support the judgment. *Id.*

It is axiomatic that 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*. However, the trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination of the parent-child relationship. *In re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Parental rights may therefore be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.* at 836.

To effect the involuntary termination of a parent-child relationship, the DCS must present clear and convincing evidence establishing that:

(A) one (1) of the following exists:

(i) the child has been removed from the parent for at least (6) months under a dispositional decree;

(ii) a court has entered a finding under I.C. § 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) the child has been removed from the parent and had been under the supervision of a county officer of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is reasonable probability that:

(i) the condition 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.

I.C. § 31-35-2-4(b)(2).

In the instant case, Mother asserts that the trial court erred in terminating her parental relationship with her daughter. Specifically, she contends that the termination is not in A.C.'s best interest as A.C. expressed a wish to remain with Mother. To determine whether conditions are likely to be remedied, the trial court must examine Mother's fitness to care for A.C. as of the time of the termination hearing and take into account any evidence of changed circumstances. *Matter of A.N.J.*, 690 N.E.2d 716, 721 (Ind. Ct. App. 1997). At the same time, the trial court must evaluate Mother's patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.*

With respect to A.C.'s best interests, the trial court made the following findings:

23. [A.C.] is also in a pre-adoptive placement. Guardian Ad Litem [] has observed that her needs are being met in this placement.

24. [A.C.'s foster mother] wants an adoption to take place, feeling that the extended foster family loves and accepts [A.C.]. She is very well adjusted and interacts well with others.

25. [A.C.] desires to go home with her [M]other. If there is no other option, she would like to stay in her placement.

26. Termination of the parent-child relationship is in the best interests of the children. The children have been in placement for over three years. The children need to be able to get on with life in an environment they know will

be stable and permanent, and one in which their needs will be met. This is especially true of [A.C.] who has been left confused at times and on an emotional roller coaster as a result of her [M]other's behavior. To provide [Mother] with more time would only drag out the bad emotional time.

(Appellant's App. p. 12).

The evidence reflects that during the service provider meeting on August, 29 2008, Mother became irate and stormed out of the room. Upon her return, she instructed A.C. to disregard the service providers and that she would be coming home to Mother. After Mother had left again, A.C. expressed confusion because they "all tell [her] that it might not happen and [her] mom keeps telling [her] that [she's] coming home and [she] never does." (Tr. p. 80). Testimony establishes that after each visit with Mother, A.C. would get her hopes up, thinking that a resolution is near, only to be disappointed again. While A.C. might desire to return home to Mother, she also expressly stated that if this would not be possible, she wished to stay in her current placement where adoption is considered by A.C.'s foster mother.

A child's need for permanency—and a Guardian Ad Litem's (GAL) testimony regarding such—is an important consideration in determining a child's best interests. *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). Here, A.C.'s GAL, taking into account A.C.'s wish of reunification, considered all circumstances and recommended termination of Mother's parental rights. Specifically, the GAL stated:

[M]other has . . . demonstrated just instability of . . . not being able to find a stable home, a stable job, she's been very emotional, emotionally unstable, she's not proved that she has a free, lifestyle free of drugs or substance abuse and that for both girls is just a roller coaster for them. I don't feel that that's in

their best interests to continue with this maybe she will, maybe she won't kind of idea. . . . [J]ust what I've observed from [A.C.] is she get's her [sic] hopes up and then she's let down and I really feel, . . . she just had, she's just shut off emotionally and she needs some stability and some permanency so that she can move on with her life.

(Tr. p. 161).

In sum, the evidence clearly establishes that the trial court properly found that termination of Mother's parental rights to A.C. would be in A.C.'s best interests.

### CONCLUSION

Based on the foregoing, we conclude that the trial court did not err by terminating Mother's parental rights.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.