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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF: H.J.F. (Child) and	)	
S.S.W. (Mother),	)	
Appellant-Respondent,	)	
vs.	)	No. 71A03-1002-JT-68
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
The Honorable Barbara J. Johnston, Magistrate
Cause No. 71J01-0905-JT-89

May 25, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

S.S.W. ("Mother") appeals the probate court's order involuntarily terminating her parental rights to H.J.F. We affirm.

After Mother gave birth to H.J.F. on August 8, 2007, H.J.F. tested positive for THC and was later placed in foster care. Ultimately, H.J.F. was adjudged a child in need of services ("CHINS"). Mother was "ordered by the [probate] court to remain drug free, provide stable and suitable housing and to participate in home based services." Appellant's Br. at 7. Mother twice regained custody of H.J.F., but H.J.F. was removed from the home both times because of Mother's drug use.

On May 7, 2009, the Department of Child Services ("DCS") filed a petition for the involuntary termination of Mother's parental rights to H.J.F. On June 17, 2009, the probate court set a hearing on the petition for November 5, 2009. On its own motion, the court reset the hearing for January 29, 2010. Mother was notified of the new date but failed to appear at the hearing. Mother's counsel did appear. The probate court conducted the hearing in Mother's absence and announced that it was "defaulting" her and terminating her parental rights. Tr. at 17.[1] The court issued its written order that same day. Mother now appeals.

"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 J.S.*, 906 N.E.2d 226, 231 (Ind. Ct. App. 2009) (citation and quotation marks omitted). "However, the trial court must subordinate the interests of the parents to those of the child

[1] The court also defaulted and terminated the parental rights of H.J.F.'s biological father, who is not involved in this appeal.

when evaluating the circumstances surrounding a termination of the parent-child relationship. Parental rights may therefore be terminated when the parents are unable or unwilling to meet their parental responsibilities." *Id*. (citation omitted).

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

> (B) there is a reasonable probability that:
> (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; *or*
> (ii) 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 § 31-35-2-4(b)(2) (emphasis added). DCS must establish these allegations by clear and convincing evidence. *In re J.S.*, 906 N.E.2d at 231; Ind. Code § 31-37-14-2.

Mother's only contention is that DCS failed to prove that there is a reasonable probability that the conditions that resulted in H.J.F.'s removal will not be remedied. We point out, as we have many times in the past, that Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, and thus DCS was required to establish only one of the two requirements of subparagraph (B). *See, e.g.*, *In re I.A.*, 903 N.E.2d 146, 153 (Ind. Ct. App. 2009). Because Mother does not challenge the trial court's finding that the continuation of

the parent-child relationship poses a threat to H.J.F.'s well-being, we need not consider her argument.[2] Therefore, we affirm.

Affirmed.

BAKER, C.J., and DARDEN, J., concur.

[2] Mother asserts that "[a]t the time of trial, she had overcome her drug addiction by completing her drug plan[,]" and thus "[s]ince the primary reason for the removal of [H.J.F.] had been remedied (drug usage) at the time of trial, the court should have denied DCS' Petition to Terminate the parent-child relationship." Appellant's Br. at 9 (citation to appendix omitted). Mother's assertion disregards the testimony of DCS family case manager Tracy Fisher, who stated that Mother "has a cycle of staying clean for extended periods of time and then going back to being dirty." Tr. at 10.