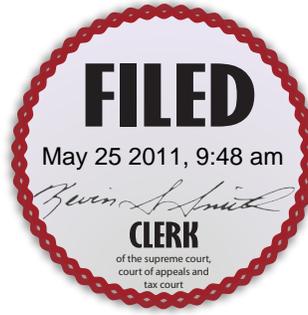


**Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**



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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 C.S., (Minor Child) and C.S. (Mother), )

Appellant, )

vs. )

THE INDIANA DEPARTMENT OF CHILD )  
SERVICES, )

Appellee, )

And )

CHILD ADVOCATES, INC., )

Co-Appellee (Guardian Ad Litem). )

No. 49A05-1010-JT-719

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Gary Chavers, Judge Pro Tempore  
The Honorable Danielle P. Gaughan, Magistrate  
Cause No. 49D09-1005-JT-20343

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May 25, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

C.S. (“Mother”) appeals the termination of her parental rights as to her minor child, C.S.

We affirm.

ISSUE

Whether there was clear and convincing evidence to support the termination of Mother’s parental rights.

FACTS

Some time in 2003, Mother was diagnosed with bi-polar disorder, anxiety disorder, and attention deficit hyperactivity disorder and prescribed medications to treat these disorders. On August 21, 2003, the Marion County’s office for the Indiana Department of Child Services (“DCS”)<sup>1</sup> filed a petition, alleging Mother’s two children, S.W. and A.W., to be children in need of services (“CHINS”) after Mother admitted to having a substance-abuse problem. Mother gave birth to a third child on September 11,

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<sup>1</sup> Formerly known as the Marion County Office of Family and Children.

2005. On or about June 14, 2006, DCS filed a petition, alleging that child to be a CHINS because Mother was in jail, awaiting trial for possession of marijuana, theft, battery, and receiving stolen property. On November 7, 2007, the trial court terminated Mother's parental rights as to her three children.

Mother gave birth to C.S. on November 17, 2008. On November 24, 2008, DCS filed a petition, alleging C.S. to be a CHINS. On March 26, 2009, DCS filed an amended petition, alleging C.S. to be a CHINS due to Mother being unable "to provide [C.S.] with a safe a[n]d appropriate home environment free from substance abuse"; Mother's use of marijuana during her pregnancy; and Mother having "mental health issues that need to be addressed[.]" (DCS's Ex. 14). Mother admitted the allegations set forth in the petition.

On April 17, 2009, the trial court determined C.S. to be a CHINS. The trial court therefore ordered Mother to "[p]articipate in and successfully complete a home-based counseling program"; "[p]articipate in and successfully complete a drug and alcohol assessment and successfully complete all recommendations made by the evaluations including intensive out-patient (IOP) treatment or in-patient treatment"; "[s]ubmit to random drug testing"; "[p]rohibit the use of non-prescription drugs in the home, and prohibit anyone to possess or use non-prescription drugs in the home"; and "visit [C.S.] on a consistent, regular basis as recommended by [the] counselor or caseworker[.]" (DCS's Ex. 10).

On May 6, 2010, DCS filed a petition to terminate Mother's parental rights. The trial court held a termination hearing on October 13, 2010.

Laura Kridle, a licensed mental health counselor at Gallahue Mental Health Services (“Gallahue”), testified that she provided home-based therapy for Mother. She testified that Mother often would not be home during her scheduled visits or would cancel the visits. Kridle testified that due to the sporadic visits, she did not believe Mother made any progress with her therapy.

Kridle further testified that Mother’s “mood was a little erratic,” particularly when she failed to take her medication. (Tr. 46). In December of 2009, Kridle had to take Mother to Community North Hospital “to get [her] back on her medicine . . . .” (Tr. 46). Kridle testified that even after Mother began taking her medication again, she remained inconsistent in her participation in services. Kridle also recounted a surprise visit she made to Mother “at about noon on a Friday,” during which she discovered that “[t]here was a party going on, very loud music, red eyes, a lot of people in the house, and [she] just had the feel that they were using drugs.” (Tr. 48).

Kridle testified that she ended Mother’s services in March of 2010 due to “lack of compliance.” (Tr. 51). Given her experiences with Mother, Kridle testified that she “did not feel comfortable with [C.S.] going back into [Mother’s] care.” (Tr. 48).

Ronald Barnard, an addiction counselor, testified that he began counseling Mother on August 20, 2009, after DCS referred Mother to Gallahue for out-patient group therapy “to help support and reinforce her recovery.” (Tr. 53). According to Barnard, the group was a “dual diagnosis group,” addressing “both addiction issues and mental health issues.” (Tr. 54). Barnard testified that Mother’s attendance was “spotty,” with Mother

attending only eight out of approximately thirty-five sessions held from August 20, 2009, to December 3, 2009. (Tr. 54). Mother also did not consistently take her medications as prescribed to her. Barnard testified that in February of 2010, Mother transitioned into “a more intensive program” after she suffered a relapse and failed to take her medication. (Tr. 56).

Stephanie Hart testified that she facilitates Gallahue’s “partial hospitalization program,” which, as the center’s “most intensive program,” requires attendance five days a week from 9:00 a.m. until 1:30 p.m. (Tr. 59). Hart testified that she worked with Mother from February of 2010 until May of 2010 but that Mother “only attended about seven sessions throughout that time period.” (Tr. 60).

Hart also testified that Mother was not compliant in taking her medication. When Mother failed to take her medication, she became more “aggressive” and “hostile . . . .” (Tr. 61). Hart further testified that Mother failed several random drug screens.

Given Mother’s “continuing to struggle with maintaining sobriety,” Hart testified that Gallahue required Mother to enter a halfway house as a condition of her treatment. (Tr. 61). Mother, however, failed to attend several meetings required before she could move into a halfway house. Gallahue therefore closed Mother’s case.

Hart testified that prior to closing Mother’s case, Mother sought to remain in Hart’s group because “she wanted to get her children back.” (Tr. 62). Accordingly, Hart arranged a meeting with Mother, Mother’s attorney, and Mother’s case manager. Mother, however, cancelled the meeting “because her attorney couldn’t be present.” (Tr.

62). Hart therefore scheduled another meeting; “neither [Mother] nor her attorney presented for that meeting.” (Tr. 62).

Christine Schmelzer, Mother’s case manager, testified that DCS referred Mother to several services, including two separate referrals for home-based counseling; two referrals for intensive outpatient treatment, which would include random drug tests; and a drug and alcohol assessment. Mother, however, failed to complete any of the services.

Schmelzer testified that C.S. has been with the same foster mother since May of 2009; C.S.’s placement is appropriate; and that the foster mother would like to adopt him. Given the length of the case, Schmelzer opined that termination would be in C.S.’s best interests because he “deserves permanency at this point,” and Mother has “a long pattern of . . . trying to do treatment and not being successful with it . . . .” (Tr. 74).

Andrea Manning-Dudling, the guardian ad litem (“GAL”) appointed to the case, recommended termination of Mother’s parental rights. She opined that Mother should not be given additional time to complete the court-ordered services because “[i]t’s been two years,” (tr. 83), and C.S. “needs stability[.]” (Tr. 82).

Mother testified that she did not implement the plan to stay at a halfway house because she could not afford it. Mother, however, admitted that she began receiving supplemental security income in 2004, which would have covered the cost of the halfway house, but she “just . . . wanted to be able to get [her] own place.” (Tr. 97). Mother also testified that she stopped taking her medication while participating in Gallahue’s program because she lost her Medicaid coverage. She stated that she subsequently had her

Medicaid benefits reinstated, and therefore, it is her “intent” to keep taking her medication. (Tr. 92). Mother, however, admitted that her Medicaid benefits were revoked because she “missed a[n] appointment or something like that.” (Tr. 95). Mother also testified that DCS terminated her visitation with C.S. because she missed three visits.

Mother testified that she began “a mental health intensive out-patient program at Saint Francis” in May of 2010, which she completed the following month. Immediately thereafter, she began a chemical dependency out-patient program, consisting of meetings three times a week. (Tr. 25). Mother testified that although the latter program was a six-week program, it took her four months to complete it because she had “attendance issue[s] . . . .” (Tr. 37). Mother further testified that she currently is “in treatment,” which consists of weekly meetings with her sponsor. (Tr. 25). Although Mother maintained that she was “living a sober and clean life,” (tr. 25), she admitted to using marijuana “two weeks” before the final hearing. (Tr. 26).

On October 14, 2010, the trial court entered its order, terminating Mother’s parental rights. The trial court found, in pertinent part, as follows:

17. There is a reasonable probability that the conditions that resulted in [C.S.]’s removal and continued placement outside the home will not be remedied by his Mother. [Mother]’s habitual pattern of substance abuse treatment and relapse over a period of at least seven years leads to a conclusion that this condition will not be remedied if given more time. [Mother] also has a demonstrated pattern of not regularly taking her mental health medications. [C.S.]’s CHINS proceeding has been pending for approximately twenty-two months, and at the time of trial, [Mother] had not remedied the condition of substance abuse, having tested positive in the Spring of 2010, and by her own admission, had smoked marijuana three [sic] weeks prior to this trial at Bar. She has failed to make a reasonable

effort toward successfully completing home based services to address parenting skills, and meeting [C.S.]’s needs. Further, it is improbable that conditions will be remedied as a result of [Mother]’s failure to follow through with her actions, as evidenced by her failure to attend home based services sessions, failure to follow through, or consistently follow through with substance abuse treatment, failure to follow through with visitation, and failure to keep her Medicaid benefits.

.....

21. Continuation of the parent-child relationship poses a threat to the well-being of [C.S]. [Mother] cannot offer [C.S.] an environment free from substance abuse. Given her history of irregular use of mental health medications, the Court is not convinced she will maintain medications, and substance abuse would interfere with her medications, even if taken. Continuing the parent-child relationship at this time would only postpone permanency for [C.S].

22. Termination of the parent-child relationship is in the best interests of [C.S]. He is in a pre-adoptive placement that is safe and stable. [Mother] is not in a position to provide a plan of permanency for [C.S]. . . . Termination, providing for the opportunity for adoption, would enable [C.S.] to have permanency in a safe, stable environment where his needs will be met.

(App. 12).

### DECISION

Although parental rights are of a constitutional dimension, the law allows for termination of these rights when parties are unable or unwilling to meet their responsibility. *In re A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). The purpose of termination of 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).

In reviewing the termination of parental rights, we will neither reweigh the evidence nor judge the credibility of witnesses. *In re I.A.*, 934 N.E.2d 1127, 1132 (Ind. 2010). We consider only the evidence most favorable to the judgment. *Id.* Where the trial court has entered findings of fact and conclusions of law, we apply a two-tiered standard of review. *Id.* We must determine whether the evidence supports the findings and then whether the findings support the judgment. *Id.* We will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.* A judgment is clearly erroneous if the findings do not support the conclusions or the conclusions do not support the judgment. *Id.*

When DCS seeks to terminate parental rights, it must plead and prove in relevant part that:

(B) that one (1) of the following is true:

- (i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.
- (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.

....

(C) that termination is in the best interests of the child[.]

Ind. Code § 31-35-2-4(b)(2). These allegations must be established by clear and convincing evidence. *I.A.*, 934 N.E.2d at 1133.

Mother argues that the trial court's "conclusion that the conditions for removal had not been remedied" was not supported by the evidence. Mother's Br. at 5. Mother also

argues that the evidence does not support a finding that she is a threat to C.S.'s well-being, where the trial court "did not point to any specific incident where [Mother] had ever done anything that had harmed her child in any way." *Id.*

Because subsection (b)(2)(B) is written in the disjunctive, however, DCS need prove only one of the two elements by clear and convincing evidence. *See I.A.*, 934 N.E.2d at 1133. Thus, if we hold that the evidence sufficiently shows that the conditions resulting in removal will not be remedied, we need not address whether the continuation of the parent-child relationship poses a threat to the well-being of the child. *See I.C. § 31-35-2-4(b)(2)(B); A.N.J.*, 690 N.E.2d at 721 n.2.

To determine whether the conditions are likely to be remedied, the trial court must examine the parent's fitness to care for the child "as of the time of the termination hearing and take into account any evidence of changed conditions." *In re S.P.H.*, 806 N.E.2d 874, 881 (Ind. Ct. App. 2004). The trial court, however, also must determine whether there is a substantial probability of future neglect or deprivation. *Id.* In so doing, the trial court "may properly consider 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." *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003).

The trial court may also consider the services offered to the parent and the parent's response to those services. *Id.* "Finally, we must be ever mindful that parental rights, while constitutionally protected, are not absolute and must be subordinated to the best

interests of the child when evaluating the circumstances surrounding termination.” *Id.* Thus, the trial court need not wait until a child is irreversibly harmed such that the child’s physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

Here, DCS initiated a CHINS proceeding due to Mother’s drug use and mental health issues, which contributed to an unsafe environment for C.S. The evidence presented shows that Mother has a long history of drug abuse, exasperated by her failure to adhere to prescribed treatments for her mental health disorders.

Despite being offered several services, Mother failed several drug tests and failed to complete court-ordered therapy, missing numerous sessions and meetings throughout the entire CHINS case. Only two weeks prior to the termination hearing, Mother used marijuana. Mother did not comply with her service providers’ recommendations, including that she move into a halfway house.

The evidence presented also shows that Mother did not take her medication on a consistent basis, causing her to behave erratically. Mother asserted that she did not take her medication because her Medicaid benefits were terminated; however, she later admitted that her benefits were suspended because she did not attend a required meeting. Mother also admitted to missing scheduled visitation with C.S. Given Mother’s pattern of conduct, we find that DCS established by clear and convincing evidence that there is a

reasonable probability that the conditions that resulted in C.S.'s removal from Mother's home will not be remedied.<sup>2</sup>

Affirmed.

RILEY, J., and BARNES, J., concur.

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<sup>2</sup> To the extent that Mother asserts that termination of her parental rights is not in C.S.'s best interests, we disagree. For the "best interest of the child" statutory element, the trial court is required to consider the totality of the evidence. *In re B.J.*, 879 N.E.2d 7, 22 (Ind. Ct. App. 2008), *trans. denied*. "[I]n determining the best interests of the children, the trial court must subordinate the interests of the parents to those of the children." *Id.* The testimony of a child's guardian ad litem and caseworker regarding the child's need for permanency supports a finding that termination is in the child's best interests. *McBride*, 798 N.E.2d at 203. Here, C.S.'s GAL and caseworker both testified that they believed termination to be in C.S.'s best interests as C.S. needs stability and permanency. C.S.'s caseworker testified that he has bonded with his foster mother, who provides C.S. with a stable environment and is willing to adopt C.S. Given the totality of the evidence, we find termination of Mother's parental rights to be in C.S.'s best interests.