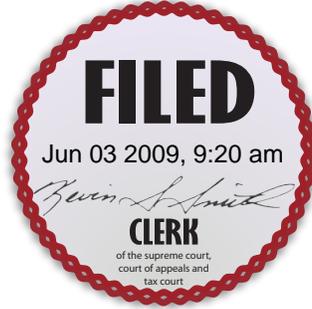


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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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 S.C., minor child, )

A.M. (Mother), )

Appellant-Respondent, )

vs. )

No. 57A03-0812-JV-591

INDIANA DEPARTMENT OF CHILD )  
SERVICES, NOBLE COUNTY, )

Appellee-Petitioner. )  
)

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APPEAL FROM THE NOBLE SUPERIOR COURT  
The Honorable Michael J. Kramer, Judge  
Cause Nos. 57D02-0711-JT-7, 57D02-0711-JT-8 & 57D02-0711-JT-9

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**June 3, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

A.M. (“Mother”) appeals the involuntary termination of her parental rights to her children, S.C., Ka.M., and Ki.M., claiming there is insufficient evidence to support the trial court’s judgment. Concluding the Noble County Department of Child Services (“NCDCS”) presented clear and convincing evidence to support the trial court’s judgment terminating Mother’s parental rights, we affirm.

### **Facts and Procedural History**

Mother is the natural mother of S.C., born on January 23, 1996, Ka.M., born on December 18, 1998, and Ki.M., born on May 17, 2001.<sup>1</sup> In March 2006, NCDCS case manager Beth Donovan received a report of abuse or neglect involving Mother. Donovan thereafter initiated an investigation and discovered that between October 2000 and March 2006, the Department of Child Services had substantiated at least ten separate allegations of child abuse or neglect involving Mother and the children in three separate counties. Donovan also substantiated the most recent referral involving Mother as to poor hygiene and lack of supervision for all three children; however, the children were not removed from Mother’s physical custody at that time. Mother, who was in the process of moving to a new residence, agreed to contact Donovan once she had completed the move for follow-up services. Mother failed to contact Donovan.

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<sup>1</sup> H.E., biological father of S.C., voluntarily relinquished his parental rights, in open court, to S.C. on August 8, 2008. Sh.C. is the biological father of Ki.M. Sh.C.’s parental rights to Ki.M. were involuntarily terminated by the trial court on October 29, 2008. No paternity was established for Ka.M. None of the children’s biological fathers, known or unknown, participate in this appeal. Consequently, we limit our recitation of the facts to those relevant solely to Mother’s appeal.

On September 1, 2006, Donovan substantiated another report of neglect or abuse involving Mother and the children. Yet another referral for physical abuse was substantiated in October 2006, when Ki.M. was observed with red marks on her left forearm. During this same time frame, Mother moved to DeKalb County after being served paperwork advising her that the NCDCS investigating case manager wanted to initiate in-home child in need of services (“CHINS”) cases. Several additional referrals for physical abuse pertaining to Mother and the children were also received and substantiated in October 2006.

On November 6, 2006, the NCDCS filed separate petitions alleging all three children were in need of services. However, the whereabouts of Mother and the children were unknown at the time. Eventually, Donovan received a tip from Southside School personnel that it was believed the children were attending school at Waterloo School. Donovan contacted the principal and counselor at Waterloo School and requested that they contact her if any concerns regarding the children should arise in the future.

Shortly thereafter, on December 19, 2006, Donovan was contacted by Waterloo School personnel, who had concerns regarding possible physical abuse and/or neglect of the children by Mother. Later that same day, S.C., Ka.M., and Ki.M. were all taken into emergency protective custody pursuant to a detention order and placed in licensed foster care. At the time of the children’s removal, Mother was again in the process of being evicted from her current residence. An investigation into relative placement for the children was unsuccessful; consequently, the children remained together in licensed foster care with the same foster family for the duration of the underlying proceedings.

Meanwhile, a fact-finding hearing on all three CHINS petitions was held on March 23, 2007. Mother admitted to the allegations contained in the petitions, and the trial court thereafter adjudicated the children to be CHINS. The court proceeded to disposition the same day, and, after reviewing the pre-dispositional report and other evidence presented during the hearing, the court entered substantially identical orders under each cause number requiring Mother to participate in a variety of services in order to achieve reunification with her children. Specifically, the trial court's dispositional orders directed Mother to, among other things: (1) participate in individual therapy sessions with Judy Williams at the Family Counseling Center as well as family sessions once deemed appropriate to do so; (2) submit to parenting skills and substance abuse assessments; (3) attend supervised visitation with the children; and (4) engage in home-based services through Children's First Center.

Mother's participation in services was sporadic from the very beginning of the CHINS case. For example, on April 18, 2007, Mother submitted to a comprehensive integrated assessment interview and an addiction screening assessment conducted by Jennifer Mertz of the Bowen Center. After interviewing Mother, Mertz was left with the diagnostic impression that Mother was suffering from adjustment disorder with depressed mood and that Mother also met the criteria for cannabis dependence with partial remission. Consequently, Mertz advised Mother to abstain from the use of drugs and alcohol and to learn positive anger management, emotional coping, and parenting skills with sobriety tools to prevent relapse. In order to accomplish these goals, Mertz recommended that Mother participate in individual counseling sessions and substance-

abuse group therapy sessions. The NCDCS made referrals to various providers for Mother to obtain these services. Contrary to Mertz's recommendations, however, Mother attended only two individual counseling sessions and none of the substance-abuse group therapy sessions.

It was also recommended that Mother obtain a complete psychological evaluation. Psychologist Judith Williams attempted to schedule an appointment with Mother to conduct a psychological evaluation in March, April, and August of 2007. Mother did not meet with Williams, however, until June 2008. Although Mother did participate in a clinical interview with Williams on June 5 and June 16, 2008, Mother failed to show for her next appointment and thereafter ceased all contact with Williams. In addition, Mother also failed to maintain regular contact with the NCDCS throughout the duration of the underlying proceedings and was constantly changing residences. This lack of communication and unstable housing made it difficult for the NCDCS to locate the family and to provide them with home-based services prior to the children's removal as well as to provide such services to Mother throughout the CHINS cases.

At a review hearing held on May 7, 2007, the trial court directed Mother to comply with its previous orders as well as with any recommendations made by the NCDCS. The court further ordered Mother to provide documentation of any services she completed, to participate in a complete psychological evaluation, and to submit to random drug screens. The trial court also suspended Mother's visitation privileges with the children until further notice of the court.

In July 2007, Mother was arrested and incarcerated for operating a vehicle while intoxicated. A periodic review hearing was held on or about September 7, 2007. Mother, who remained incarcerated, was not present at the review hearing but was represented by counsel. Following the hearing, the trial court issued an order re-directing Mother to comply with its previous orders and to provide the NCDCS with documentation of any services she had completed. Mother was further ordered to contact the NCDCS upon her release from the Allen County Jail. Finally, the trial court ordered Mother's visitation privileges terminated and directed Mother to refrain from all contact with the children unless the children's counselor approved of said contact. On November 1, 2007, the NCDCS filed a petition for the involuntary termination of Mother's parental rights to all three children.

Notwithstanding the ongoing involuntary termination proceedings, Mertz conducted a second assessment of Mother on January 4, 2008. The results of the second assessment were largely similar to that of the first. Mother still suffered from cannabis dependence, as evidenced by Mother's continued and increased use of marijuana despite her knowledge of the negative consequences associated with such usage. Mother also met the criteria for alcohol abuse. Consequently, Mertz recommended that Mother complete twenty sessions in a weekly substance abuse therapy group and that she participate in individual counseling. Mother attended one group therapy session and did not attend any individual counseling sessions.

A fact-finding hearing on the termination petition was held on October 24, 2008. On October 29, 2008, the trial court entered its judgment involuntarily terminating Mother's parental rights to S.C., Ka.M. and Ki.M. Mother now appeals.

### **Discussion and Decision**

Mother claims there is insufficient evidence to support the trial court's judgment terminating her parental rights to S.C., Ka.M, and Ki.M. Initially, we acknowledge 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). Thus, 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, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.*

In deference to the trial court's unique position to assess the evidence, we will set aside the trial court's 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*. A trial court's judgment is clearly erroneous if the court's findings of fact do not support its conclusions or if its conclusions do not support the judgment thereon. *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.

Here, the trial court made specific findings and conclusions in its judgment terminating Mother's parental rights. Where the trial court enters 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.*

“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, a trial court must subordinate the interests of parents to those of the child when evaluating the circumstances surrounding a termination. *K.S.*, 750 N.E.2d at 837. Termination of a parent-child relationship is therefore proper where a child’s emotional and physical development is threatened. *Id.* Although the right to raise one’s own child 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.

In order to terminate a parent-child relationship, the Department of Child Services is required to allege, 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;

Ind. Code § 31-35-2-4(b)(2)(B). These allegations must be established by clear and convincing evidence. *Egley v. Blackford County Dep’t of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992); *see also* Ind. Code § 31-37-14-2. “[I]f the court finds that the

allegations in a petition described in section 4 of [Indiana Code § 31-35-2-4] are true, the court *shall* terminate the parent-child relationship.” Ind. Code § 31-35-2-8 (emphasis added).

Mother’s sole allegation on appeal is that the NCDACS failed to prove, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in the children’s removal from her care will not be remedied. In so doing, Mother claims, “The evidence merely shows that [Mother] did not take advantage [of] the services provided by the [NCDACS]. It does not show, however, that [Mother] wasn’t taking advantage of services elsewhere.” Appellant’s Br. p. 5-6.

We pause to note that Indiana Code § 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, the NCDACS was required to establish, by clear and convincing evidence, only one of the two requirements of subsection (B). *See L.S.*, 717 N.E.2d at 209. Here, the trial court found both prongs of subsection (B) were satisfied. Mother, however, does not challenge the trial court’s finding that continuation of the parent-child relationships poses a threat to the children’s well-being. In failing to do so, Mother has waived appellate review of this issue, and consequently, the entire appeal altogether. Waiver notwithstanding, given our preference for resolving a case on its merits, coupled with the significance of the rights being affected in a termination of parental rights case, we will nevertheless review Mother’s allegation of error.

When determining whether a reasonable probability exists that the conditions justifying a child’s removal from the family home will not be remedied, the trial court must judge a parent’s fitness to care for his or her child at the time of the termination

hearing, taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. 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.* Pursuant to this rule, courts have properly considered 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. *In re A.F.*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. The trial court may also properly consider the services offered to the parent by a county Department of Child Services, and the parent’s response to those services, as evidence of whether conditions will be remedied. *Id.* at 1252. Finally, we point out that a county Department of Child Services (here, the NCDCS) is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent’s behavior will not change. *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

Our review of the record reveals abundant evidence demonstrating there is a reasonable probability Mother’s behavior will not change and, consequently, that the conditions resulting in the children’s removal from her care will not be remedied. The NCDCS initially became involved with the family because Mother was unable to provide a safe and stable home environment for the children, as evidenced by the family’s constantly changing residences and the numerous substantiated reports of physical abuse and neglect of the children perpetrated by Mother. The reasons for the children’s continued placement outside of Mother’s care were Mother’s continuing unemployment, periodic incarceration, unstable housing, and refusal to complete court-ordered services

designed to improve Mother's parenting skills and to address her substance abuse issues. At the time of the termination hearing, Mother was still unable to provide the children with the minimal necessities of life, including a safe and stable home environment.

In its judgment terminating Mother's parental rights to the children, the trial court made the following pertinent findings and conclusions regarding Mother's past patterns of conduct and future ability to remedy the conditions which had resulted in the children's removal from her care:

6. Between June 2002 and December 2006, Mother and the three (3) children moved twenty-five (25) different times.

\* \* \*

14. At the time of detention, Mother and the children were living in a mobile home that was cluttered and dirty and from which they were being evicted.

\* \* \*

23. Mother made no progress except that she attended G.E.D. classes and had assessments at the Bowen Center.

24. Mother's frequent moves to live with various boyfriends and her failure to notify Children First of her new addresses prevented regular meetings.

\* \* \*

34. Mother met none of the treatment goals established at the two (2) evaluations and never returned to the Bowen Center.

\* \* \*

45. Judith Williams met with Mother on June 5, 2008[,] and June 15, 2008[,] after prior attempts to meet with Mother were unsuccessful. Mother failed to appear after her second appointment.

46. Judith Williams diagnosed Mother with Post-Traumatic Stress Disorder because of being victimized and that she met the criteria for Anti-Social Personality Disorder.

\* \* \*

56. Mother failed to remain in regular contact with [NCDCS] during the course of the CHINS cases involving the three (3) children.

#### CONCLUSIONS OF LAW

\* \* \*

5. There is a reasonable probability that the conditions that resulted in the removal of the children will not be remedied because:
  - a. [Mother] has failed to comply with the orders of the court[:]
    - i. Mother failed to attend counseling sessions at the Bowen Center,
    - ii. Mother failed to attend substance abuse treatment at the Bowen Center,
    - iii. Mother failed to complete the evaluation with Judith Williams,
    - iv. Mother has had periods of incarceration which prevented her [from] caring for her children, and
    - v. Mother failed to follow through with the in-home services . . . .

Termination Judgment p. 2-6.<sup>2</sup>

Our review of the record reveals that, at the time of the termination hearing, Mother was unemployed and her place of residence and all contact information was unknown to the NCDCS. Additionally, despite the fact that approximately two years had passed since the time of the children's removal from her care, Mother had failed to successfully complete a majority of the trial court's dispositional goals, including substance abuse treatment, parenting classes, and individual and family counseling. Moreover, a case plan dated May 23, 2008, indicated that Mother had "not seen her children in over a year due to incarceration and refusing to attend therapy sessions[s] in order for the therapist to determine in what setting, if any[,], it would be appropriate for [Mother] to visit." Respondent's Ex. A p. 2.<sup>3</sup> This Court has previously stated that "the 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*

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<sup>2</sup> We cite directly to the trial court's judgment, which was inserted at the back of Mother's brief, as there was no Appendix filed in this case.

<sup>3</sup> Because the Volume of Exhibits submitted on appeal does not contain page numbers, we cite directly to the exhibits contained therein.

*County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) (internal quotation omitted), *trans. denied*

Testimony from various caseworkers and service providers further supports the trial court's determination that the conditions resulting in the children's removal from Mother's care will not be remedied. For example, Kris Delong, formerly a home-based service provider for the Children First Center, testified at the termination hearing that she had been assigned to Mother's case. Delong testified that the main goals she established with Mother included maintaining stable housing, obtaining a G.E.D, participating in mental health treatment, and improving home management and financial budgeting. When asked whether Mother had made any progress in these goals, Delong replied, "As a whole, no[.]" Tr. p. 29. Delong went on to explain that "there were some individual things that [Mother] made a little bit of progress [with] . . . she did begin taking classes for her G.E.D. . . . [a]nd she had done her assessments through the Bowen Center[.]" but Delong nevertheless concluded that "[w]e did not obtain any of the goals that we had discussed and set at the time." *Id.* at 29, 32. In addition, both NCDACS case manager Bobbie Barbour and Williams recommended termination of Mother's parental rights. In so doing, Williams testified that due to Mother's own "very rough life" as a child she, like the children, suffered from post traumatic stress disorder, which had manifested in her adult life as antisocial personality disorder, a disorder described as a "pervasive pattern of disregard for and the violation of the rights of others[.]" *Id.* at 48-49.

As previously explained, a trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration the parent's

*habitual patterns of conduct* to determine the probability of future neglect or deprivation of the child. *D.D.*, 804 N.E.2d at 266. Based on the foregoing, we conclude that the trial court's determination that there is a reasonable probability the conditions resulting in the children's removal from Mother's care will not be remedied, as well as its ultimate decision to terminate Mother's parental rights, is supported by clear and convincing evidence. Despite being offered extensive services, Mother has failed to make any significant improvement in her overall ability to care for her children in approximately two years. Moreover, Mother's habitual pattern of conduct, coupled with her refusal to participate in and successfully complete parenting classes, individual and family counseling, and substance abuse treatment, indicates that there is a substantial probability of future neglect, deprivation, and physical abuse of the children should they be returned to her care and custody at this time. *See Lang*, 861 N.E.2d at 372 (stating that a pattern of repeated abuse is relevant to a determination that a reasonable probability exists that conditions will not be remedied). Finally, we are not persuaded by Mother's argument that she is entitled to reversal because the NCDCS failed to prove she had not participated in services elsewhere.

Mother does not assert in her brief to this Court that she has ever participated in or successfully completed any program or service independent of the NCDCS's referrals. Also significant, the record clearly establishes that although repeatedly instructed by the trial court throughout the CHINS case to provide such verification, Mother failed to do so. Likewise, Mother never offered any evidence during the termination hearing, by affidavit, exhibit, testimony, or otherwise, indicating that she had ever independently

participated in or successfully completed services designed to accomplish the court-ordered dispositional goals. We therefore find Mother's assertion that insufficient evidence supports the trial court's judgment simply because the NCDACS failed to prove she had not obtained services elsewhere to be disingenuous, when Mother does not provide any such evidence herself.

This Court will reverse a termination of parental rights “only upon a showing of ‘clear error’ – that which leaves us with a definite and firm conviction that a mistake has been made.” *Matter of A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting *Egly*, 592 N.E.2d at 1235). We find no such error here.

Affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.