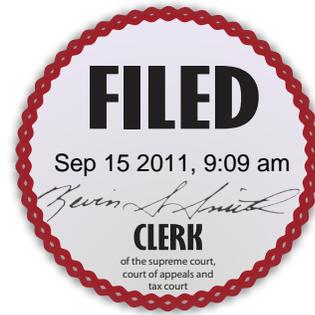


**Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**



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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE: TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF: )  
)  
)  
A.M. & M.M. (Minor Children), )  
)  
and )  
)  
T.H. (Mother) & A.A.M, SR. (Father), )  
)  
Appellants-Respondents, )  
)  
vs. )  
)  
THE INDIANA DEPARTMENT OF )  
CHILD SERVICES, )  
)  
Appellee-Petitioner. )

No. 02A03-1101-JT-67

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APPEAL FROM THE ALLEN SUPERIOR COURT  
The Honorable Charles F. Pratt, Judge  
Cause No. 02D08-1002-JT-133/135

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**September 15, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAKER, Judge**

Appellants-respondents T.H. (Mother) and A.A.M, Sr. (Father) (collectively “Parents”) appeal the trial court’s order terminating their parental rights with regard to their minor children, A.M. and M.M. Specifically, Parents’ sole challenge is that the trial court erred in admitting Parents’ drug test results into evidence and, without those positive tests results, the evidence is insufficient to support the trial court’s conclusion that there is a reasonable probability that the reasons that brought about the children’s placement outside the home will not be remedied. Parents do not challenge any of the trial court’s numerous other findings of fact or conclusions in support of its decision to terminate. Without determining the admissibility of the tests, we conclude that DCS presented sufficient independent evidence of continued substance abuse to support the trial court’s conclusion. Furthermore, the court’s decision to terminate parental right was not based solely on Parents’ continued substance abuse. Therefore, we affirm the judgment of the trial court.

## FACTS

T.H. is the mother of A.M., born on December 5, 2007, and M.M., born on March 2, 2009. A.A.M., Sr. is the alleged father of both children.<sup>1</sup>

On March 8, 2009, a police officer stopped Mother for driving while intoxicated. Father, A.M. and M.M. were also in the car. The officer arrested Mother for driving while intoxicated and on an active warrant issued for criminal conversion. Father was also arrested on an active warrant for criminal conversion, and both were incarcerated in the Allen County jail.

Two days later, following a preliminary hearing, the trial court found probable cause that A.M. and M.M. were children in need of services (CHINS). The court provisionally ordered the children's placement in foster care because both parents were in jail.

On April 14, 2009, the court conducted an initial hearing. During the hearing, Mother admitted that: (1) she was alleged to be driving while intoxicated with her children in her care; (2) she was the subject of an active arrest warrant for criminal conversion; (3) no other parent or relative was available to take care of the children during her arrest; (4) only two of her eight children resided with her; (5) her parental rights as to three of her prior born children had been terminated, and the other three

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<sup>1</sup> Although A.A.M., Sr. was identified as the father of the children, the trial court found from the Indiana Department of Health Putative Father Registry Affidavits, filed as exhibits during the proceedings, that no paternity adjudication was of record and no putative father had registered. For the purposes of this appeal, we will treat A.A.M., Sr. as the putative father.

children were taken from her due to her drug use; and (6) she had relationships with three different men, all of whom are registered sex offenders. Father admitted that: (1) he had not established paternity for either child; (2) he was arrested on an active warrant for criminal conversion; and (3) he had a criminal history beginning in 1986 until the date of his arrest that included convictions for criminal conversion, public intoxication, forgery, and burglary. After hearing the evidence, the court adjudged the children to be CHINS.

At a subsequent dispositional hearing, the trial court ordered the parents to comply with a parental participation plan (PPP) incorporated into the dispositional decree. The PPP required the Parents, among other things: to refrain from all criminal activity; maintain clean, safe and appropriate housing at all times; commence proceedings to establish paternity; and “[s]ubmit to random urinalysis testing, drug screens, and/or oral swabs as required by the DCS and or Caring about People and/or SCANS caseworkers and refrain from use of alcohol, illegal drugs, and other substance abuse . . . .” Appellant’s App. p 193-97. Parents indicated that they were willing and able to comply with the plan.

On August 27, 2009, the trial court held a CHINS review hearing, and found that Mother and Father failed to comply with the PPP and had not demonstrated an ability to benefit from the state-provided services under the PPP. The court then ordered a permanency hearing. At subsequent hearings on February 2, 2010, and March 19, 2010, the court again found that Parents were not compliant and that permanency plans were appropriate for the termination of parental rights.

Following four separate termination hearings, on January 12, 2011, the trial court issued its findings of facts and conclusions of law. In its order, the trial court first recognized the reasons for previously adjudging the children as CHINS and placing the Mother and Father on a PPP. Next, the order summarized the Mother and Father's actions subsequent to placement on a PPP. It found, in relevant part, that:

9. When the children were removed from the Mother's care, the Mother, and the Alleged Father were residing in a three bedroom home. In 2009, they briefly occupied a four bedroom residence and within a few months relocated to a three bedroom home owned by an individual who also has a history.
10. The Department has made appropriate referrals for services consistent with the requirements of the [PPP] and Dispositional decrees.
11. Neither parent has completed parenting instruction nor home based services.
12. From the testimony of SCAN family restoration worker, Jennifer Harley, the Court finds that the Alleged Father had an "I don't care" attitude during parenting instructions. She does not believe he benefitted from services.
13. The Mother was referred to a substance abuse treatment program and was required to complete a 12-Step Program. She did not complete the program.
14. The Respondent Alleged Father did not complete his drug and alcohol treatment program.
15. Paternity was not established as ordered.
16. Between April 14, 2009 and July 2nd, 2009, the Respondent Mother tested positive for cocaine eight (8) times and [ ] tested positive for marijuana five (5) times. In 2010 she tested positive for cocaine on February 27, 2010 and March 10, 2010.
17. Between April 14, 2009 and March 10, 2009, the Respondent Alleged Father tested positive nine (9) times for marijuana and on six (6) occasions he tested positive for cocaine; the most recent being March 10, 2010. He has refused to submit to some drug screen requests.

18. From the testimony of the Department's case manager, Tiffany King, the Court finds that the Respondent Mother was arrested for public intoxication in August 2010 and at the time that evidence was last presented the mother was in jail.
  19. The children have been placed outside of Mother's care for more than six months.
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21. The parent-child relationships of the Mother with two siblings of the children named herein have been involuntarily terminated. The Mother voluntarily terminated her parent-child relationship to a third child. The Mother acknowledged that her substance abuse was a significant fact in the loss of her parental rights.
  22. Should parental rights be terminated, the Department has an appropriate plan, that being adoption.

Appellant's App. p 8-9. Consequently, the court determined that there was a reasonable possibility that the basis for A.M and M.M.'s placement in foster care would not be remedied. The court concluded that the State established with clear and convincing evidence that terminating the parent-child relationships was in the best interest of the children. The court then terminated the parent-child relationships of Mother and Father as to A.M. and M.M. Mother and Father now appeal.

### DISCUSSION AND DECISION

Mother and Father argue that the trial court erred in admitting certain drug tests into evidence, and, without those tests, the evidence is insufficient to support the termination of parental rights.<sup>2</sup> Specifically, they challenge the foundation and chain of

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<sup>2</sup> We note that Mother and Father did not object at trial to several of the exhibits challenged on appeal. Individually, Mother challenges the admission of the drug test results in exhibits 28-35 and 45-47— all of her admitted drug tests; and Father challenges the drug test results in exhibits 37, 39-44, 48, 50, 53, and

custody regarding the admissibility of the tests. Mother and Father contend that, had the trial court properly excluded the results of the drug tests, the remaining evidence does not support the trial court's finding of continued substance abuse. Absent such finding, Parents argue that the trial court's conclusion that there is a reasonable probability that the conditions that resulted in A.M and M.M's removal from their home will not be remedied is unsupported.<sup>3</sup>

“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). However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. In re K.S., 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Termination of a parent-child relationship is proper where a child's emotional and physical development is threatened. Id. at 836. 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.

This court has long had a highly deferential standard of review in cases concerning the termination of parental rights. Id. When reviewing a termination of parental rights,

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55, but does not challenge the admission of the drug test results in exhibits 36, 38, 49, 51-2, and 54. At trial, Mother did not object to the admission of exhibits 28-35; and the father did not object to exhibits 40 or 41.

<sup>3</sup> Although Father presents sufficiency of the evidence as an issue, he fails to provide any argument in his brief. Since the Father appeals jointly with Mother, we will assume that Father would make the same arguments as Mother on appeal.

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). Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. Id. Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the 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).

Any error in the admission of evidence is harmless if the same or similar evidence is submitted without objection. In re Estate of Holt, 870 N.E.2d 511, 515 (Ind. Ct. App. 2007). Admission of evidence that is merely cumulative of other evidence generally amounts to harmless error as such admission does not affect a party's substantial rights. Id. Furthermore, appellate courts will not reverse the trial court's admission of evidence absent a showing of prejudice. Stowers v. Clinton Cent. School Corp., 855 N.E.2d 739, 748 (Ind. Ct. App. 2006).

Without determining whether the trial court properly admitted the drug test into evidence, our review of the record indicates that the trial court heard other evidence of Parents' continued substance abuse cumulative to that of the drug tests. Mother admitted at trial that she continued to use alcohol and drugs even after her children were declared CHINS. Tr. p. 49-50. In fact, she affirmed at trial that she had tested positive for cocaine and marijuana. Id. at 37, 49-50. Her Caring About People (CAP) caseworker testified that Mother admitted to continued alcohol and drug use. In fact, while on the PPP, in August 2010, Mother was again arrested for public intoxication. Id. at 313.

The State also presented other evidence of Father's drug use. Father admitted to his CAP caseworker that he continued to use drugs and did not believe that his drug use impacted his ability to parent. Id. at 271, 308. In August 2010, Father was also arrested for public intoxication. Id. at 81. Additionally, he stopped submitting to PPP- required drug screens. Id. at 87.

Even absent the drug tests, we cannot conclude that the court's conclusion that the Parents' continued to struggle with substance abuse is clearly erroneous and unsupported by the evidence. The testimony of Mother, Father, and their CAP caseworker independently supports the conclusion that Mother and Father continued to abuse drugs and alcohol. Parents only challenge the sufficiency of the evidence as to the drug screens and no other findings of the court. Therefore, we will affirm the judgment of the trial court.

Although we affirm on the substance abuse issue alone, we note that sufficient evidence exists independent of Parents' drug use to terminate their relationship with A.M. and M.M. Parents do not challenge any of the court's numerous other findings of facts and conclusions of law. The trial court found that Parents failed to complete many of the requirements of PPP. Appellant's App. p. 9. Neither parent completed home based parenting instruction services. Tr. p. 322. Father had a negative attitude during parenting instruction and did not benefit from services. Id. at 175. Neither parent established paternity as ordered. Id. at 318. And, at the time of the final termination hearing, Father was incarcerated. Id. at 317.

During the termination proceedings, the DCS family case manager provided testimony to support the trial court's conclusion that the Parents failed to maintain clean, safe, and appropriate housing for the children at all times. Id. at 314. Parents lived at three different residences over the course of the CHINS case. At the last residence the family case manager visited prior to the termination hearings, Parents were residing with an individual who also was involved with the DCS in another CHINS case. Id. At the prior residence, the home had no drywall in the living room areas, no sink in the bathroom, wires hanging out of the kitchen walls, rolls of carpet in the living room, and it was necessary to get water from the basement to flush the toilet. Id. at 315.

DCS presented evidence of Parents' continued substance abuse and their failure to comply with the requirements of the PPP. Accordingly, sufficient evidence supports the conclusion that there is a reasonable probability that the Parents would not remedy the conditions leading to the children's removal and the continuation of the parental relationship is a threat to the children's well-being. Therefore, the trial court properly terminated Mother's and Father's parental rights to A.M. and M.M..

The judgment of the trial court is affirmed.

KIRSCH, J., and BROWN, J., concur.