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ATTORNEY FOR APPELLANT:

MARK S. LENYO
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

TERESA W. MORGUSON
DCS, Saint Joseph County Office
South Bend, Indiana

ROBERT J. HENKE
DCS Central Administration
Indianapolis, Indiana

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF T.P.:	)	
C.P.,	)	
Appellant-Respondent,	)	
vs.	)	No. 71A03-1103-JT-178
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE SAINT JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
The Honorable Barbara J. Johnston, Magistrate
Cause No. 71J01-1008-JT-203

September 21, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

C.P. (Mother) appeals the involuntary termination of her parental rights to her child, T.P. On appeal, Mother challenges the sufficiency of the evidence supporting the trial court's termination order.

We affirm.

Mother is the biological mother of T.P., born in September 2004. In March of 2009, Mother "needed a break" so she left T.P. with a family friend for a two-to-four week period. *Transcript* at 75. Mother had let T.P. stay with this friend about five times before. On March 13, 2009, T.P. was badly burned while in the care of Mother's friend. T.P. consistently reported that Mother's friend had "put fire on him" causing him to suffer third-degree burns across his arms and chest and additional burns to his upper torso, upper thigh, and his face. *Id*. at 143. Mother's friend told Mother that T.P. had set himself on fire with a lighter. When asked if she ever reported the incident to police, Mother testified that she did not, but then immediately changed her testimony, claiming that she did report the incident but that she could not remember to whom or when she reported it.

T.P. was treated at Riley Hospital for Children and received multiple skin grafts. T.P. remained at Riley Hospital from March 13 through April 2. Mother stayed in T.P.'s hospital room while he remained a patient. On April 2, T.P. was discharged to Mother. Mother was given discharge instructions when she left Riley Hospital:

> I was told before I could leave Riley's [sic] Children's hospital that I had to learn how to take care of my son and what I—what I mean by take care of him, he had to have it's like Saran Wrap, he had to have the Vaseline put on his burns. Wherever there was a burn he had to have Vaseline put on his burns. Then he had the stuff that went over him look like Saran Wrap. Then the Ace Bandages, we had to wrap his chest in Ace Bandages and his legs before I could leave and I had to learn that procedure before I was allowed to take him. . . .

Id. at 273. Mother could not remember what hospital staff had instructed her regarding how often to change T.P.'s bandages, but she stated that she changed them twice per day.

After T.P. was released from the hospital, Mother took him to the home of another friend, J.S., a woman who Mother claimed was like a grandmother to T.P. J.S. acknowledged that T.P. was often at her home or her daycare and that she had a close relationship with him. Mother gave J.S. the instructions on how to care for T.P.'s burns and how to handle his dressings and then she left T.P. in J.S.'s care without leaving any information as to where she could be reached. Eight days later, on April 10, 2009, Mother took T.P. to the emergency room of a local hospital in South Bend because he was complaining of severe itching.

Following his release from Riley Hospital, T.P. was supposed to have follow-up appointments with burn specialists in Indianapolis, as well as physical and occupational therapy three times per week at a local hospital in South Bend. Mother did take T.P. to his follow-up examination with the burn specialists within the two-week period following his release from the Riley Hospital. Mother did not, however, take T.P. to the requisite therapy. During the termination hearing, Mother explained that she thought a doctor in Indianapolis was to contact her directly and tell her where to take T.P. for therapy. Mother acknowledged

that she had received referral slips to St. Joseph Regional Hospital, but that she was told no one at the local hospital could take care of his burns, so she took T.P. back to Indianapolis. Mother excused her failure to take T.P. for his needed therapy, testifying, "From my knowledge, I guess I got it wrong." *Id*. at 274.

At T.P.'s follow-up appointment in Indianapolis on April 17, 2009, medical personnel were concerned because T.P. was not receiving the necessary ongoing therapy since his release from the hospital. The St. Joseph County Department of Child Services (DCS) was contacted and conducted an assessment that resulted in T.P. being detained and placed in foster care. On April 20, 2009, DCS filed a petition alleging T.P. to be a child in need of services (CHINS), and the juvenile court conducted a detention hearing and continued T.P.'s detention and placement in foster care. An initial hearing on the CHINS petition was held on April 29, 2009, at which Mother admitted to the CHINS allegations and agreed her son needed services. DCS immediately arranged for visitation between Mother and T.P. At a May 27, 2009 dispositional hearing, the juvenile court ordered Mother to (1) participate in individual counseling; (2) visit with T.P. on a regular basis; (3) complete a psycho-parenting assessment and follow all recommendations; (4) maintain stable employment and/or a stable source of income; (5) maintain stable and adequate housing; and (6) maintain consistent contact with DCS, including notifying DCS within forty-eight hours of any address or phone changes.

To assist Mother in fulfilling the court's requirements, DCS Family Case Manager Amanda Harris made referrals to multiple agencies. Specifically, FCM Harris made referrals for visits between Mother and T.P. and arranged for transportation, for parenting classes, for

individual counseling and a parenting evaluation, and for home-based services, including assistance in finding and maintaining employment and arranging for parenting classes. The referrals remain valid for six months and if the referred individual is participating in services, the referrals may be renewed. If the individual is not participating in services, the referrals expire. Despite these referrals, Mother had not attended or even scheduled appointments for the psychological evaluation or individual counseling in the three months following the dispositional hearing. By the end of the six-month period, Mother had not complied with many of the referrals, and those referrals expired.

For those services Mother did utilize, her attendance was irregular. Mother used her referral for transportation to her visits with T.P. Over the course of these proceedings, however, Mother missed twenty-seven of at least seventy-five scheduled visits with T.P. Mother explained her missed visits with claims of lack of transportation, a claim that she was involved in a car wreck, and claim that she was attacked by a pit bull. With regard to counseling appointments and home-based services appointments, Mother would often not be home for scheduled visits or would cancel appointments with very little notice. At one point, Mother was hired by a temporary staffing agency. A family consultant with Lifeline Youth and Family Services (one of Mother's referrals) was en route to transport Mother to her orientation session with the temporary staffing agency when she was informed that Mother had cancelled the session. Mother rescheduled the orientation and requested transportation to the second meeting, but did not provide detailed information as to where she could be reached or located. Mother reportedly found the Lifeline consultant to be "too bossy." *Id*. at

56. In December 2009, the referral to Lifeline was closed due to Mother's lack of compliance and repeated cancellations.

In September 2009, four months after the referral was made, Mother participated in a psychological parenting evaluation. The evaluation occurred over two separate appointments and was completed in November 2009. Dr. Hershberger conducted the evaluation and in his report dated November 12, 2009, he outlined his findings and concerns. Dr. Hershberger administered an IQ test that revealed Mother has an IQ of 72. Dr. Hershberger explained that this means Mother has trouble with complex instructions and often requires reminders about tasks. The results of a personality test were of greater concern to Dr. Hershberger because the results indicated that Mother suffered clinical levels of paranoid delusions. Dr. Hershberger noted that the levels were "to the point suggesting possible clinical paranoia or some type of reality distortion which caused [him] to be concerned about [Mother's] mental health." *Id*. at 115.

The results of a second test administered by Dr. Hershberger, i.e., a parenting assessment, came back as invalid due to some of Mother's answers indicating that Mother was portraying herself in an unrealistic, overly positive light and virtually without fault. An adult-adolescent parenting inventory was deemed valid and indicated that Mother's parenting style put her children at risk because her expectations of children given their age were unrealistic. Mother informed Dr. Hershberger as to her discipline strategies, stated that he children do not do anything where they need to be punished and that she felt "being a good parent meant that you let the kids do what they want." *Id*. at 112. Overall, Dr. Hershberger's

assessment of Mother led him to conclude that the prognosis for a successful reunification between Mother and T.P. was "poor." *Id*. at 119.

During the winter months of 2009 there was a significant period of time when no visits were scheduled because Mother failed to contact the referral agency. In February and March 2010, the juvenile court suspended Mother's visits with T.P. because of her non-compliance. In April, the court reinstated visitation with the caveat that if Mother missed another visit, her visitation would again be suspended.

In May of 2010, DCS transferred the CHINS case to a new DCS Family Case Manager, Emily Magiera. FCM Magiera reviewed Mother's case file and noted that most of Mother's referrals had expired for non-compliance. FCM Magiera met with Mother on May 18, 2010 to outline the juvenile court's expectations of her in order to reunite her with T.P. FCM Magiera noted that Mother seemed to understand and was enthusiastic about getting back on track. FCM Magiera made new referrals for Mother for her visitation, individual counseling, parenting classes, and home-based services. By September 2010, Mother's enthusiasm had waned and she was yet again virtually non-compliant with services. Mother attended one intake session and one individual counseling appointment and never returned. Attempts were made to contact Mother about her non-compliance, to no avail. Mother's referrals for parenting classes and home-based services were again closed out unsuccessfully. Mother explained, "I started my services but they was [sic] also delayed because like I said the last time I was in here, I'm just – I'm not – I'm not the type of person that like [sic] to open up and share my business. So I – but I didn't finish." *Id*. at 275.

At a review hearing October 4, 2010, FCM Mageria informed the court that Mother had missed three additional visits with T.P. and was non-compliant with all other services except visitation. The juvenile court again suspended Mother's visitation with T.P.

Throughout the CHINS and termination proceedings, Mother had several different addresses and never informed DCS in writing of any of the changes. At various times, Mother has lived with her boyfriend, her uncle, and her grandmother. At one point, attempts were made to locate Mother at an address she provided, but the residence appeared to be abandoned. With regard to phone numbers, DCS records indicate that Mother had at least four different numbers, all of which were often disconnected or did not carry voicemail.

Mother did not maintain stable employment or any other source of income throughout the proceedings. Mother thwarted efforts by Lifeline for employment with a temporary staffing agency by failing to attend their orientation even when transportation had been arranged. Mother reported that the longest period of continuous employment was for one year when she worked at a restaurant.

Throughout the case, Mother was offered transportation to T.P.'s follow-up doctor appointments and his therapy sessions, but Mother did not take advantage of these services. On October 27, 2009, T.P. required an additional surgery to remove scar tissue. Mother was informed of the procedure and that his foster parent was taking him to the hospital. Discussions were had with Mother about transporting her to the hospital for T.P.'s procedure and a case manager with Lifeline agreed to take Mother, but Mother never made any follow-up arrangements. Mother did not attend the procedure.

In December 2009, T.P. started to exhibit some behavioral problems. His foster mother became especially concerned when T.P. began speaking about sexual matters at a level more advanced that what a five-year-old should know. Because problems persisted, T.P. was moved to therapeutic foster care with his current foster family. T.P. has had weekly sessions with Darlene Radcliff, a child therapist, since March 2010. Ms. Radcliff noted that T.P. initially presented as a "hyper vigilant child who is very easily startled." *Id*. at 135. She found him to be hyperactive and that he had a very high anxiety for a child of his age and had to frequently reassure him that he was safe. Ms. Radcliff was of the opinion that T.P. was suffering from post-traumatic stress disorder. In approximately ten months of play therapy with Ms. Radcliff and his placement in therapeutic foster care, T.P. has shown great improvement and is more relaxed, has better boundaries, and is involved in healthy activities. Even though he is no longer in therapy with Ms. Radcliff, T.P. continues to do well with his foster family.

FCM Harris and FCM Mageria each expressed their belief that continuation of the parent-child relationship between Mother and T.P. posed a threat to T.P.'s well-being. Both case managers cited Mother's lack of compliance with services designed to enhance her parenting ability and her inconsistency as placing T.P. at risk if he were to be placed with Mother. Even when obstacles such as transportation were removed, Mother did not participate in services. Both case managers questioned Mother's ability to manage T.P.'s medical care and needs. The CASA appointed to represent T.P. filed a report with the court setting forth her opinion that the long-term plan for T.P., i.e., adoption by his current foster parents, is in T.P.'s best interests.

On August 11, 2010, DCS filed its Verified Petition for Involuntary Termination of the Parent-Child Relationship, seeking to terminate Mother's parental rights to T.P. An initial hearing was held on September 13, 2010, at which Mother requested and was appointed counsel. At a subsequent hearing on September 27, Mother requested a trial on the DCS petition, and a trial date was set for December 17, 2010. On November 3, 2010, a Court Appointed Special Advocate (CASA) was appointed to represent T.P. Trial commenced as scheduled on December 17 and concluded during a second trial date on March 11, 2011, at which time the court took the matter under advisement. On March 18, 2011, the court entered its order, including its findings of fact and conclusions of law, terminating Mother's parental rights to T.P. Mother now appeals.

We begin our review by acknowledging 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 (Ind. Ct. App. 2001). 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 (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 court's judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717N.E.2d 204 (Ind. Ct. App. 1999), *trans. denied.* Thus, if the evidence and inferences support the trial court's decision, we must affirm. *Id.*

A parent's interest in the care, custody, and control of his or her children is arguably one of the oldest of our fundamental liberty interests. *Bester v. Lake Cnty. Office of Family*

& Children, 839 N.E.2d 143 (Ind. 2005). Hence, "[t]he 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.* These parental interests, however, are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. *In re M.B.*, 666 N.E.2d 73. In addition, 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. *In re K.S .*, 750 N.E.2d at 836.

Before an involuntary termination of parental rights may occur, the State is required to allege and prove, among other things:

> (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.
> > (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services; [and]
>
> (C) that termination is in the best interests of the child....

Ind. Code Ann. § 31-35-2-4(b)(2) (West, Westlaw current through 2011 1st Regular Sess.). The State's burden of proof for establishing these allegations in termination cases "is one of 'clear and convincing evidence.'" *In re G.Y.*, 904 N.E.2d 1257, 1260–61 (Ind. 2009) (quoting Ind. Code Ann. § 31-37-14-2 (West, Westlaw current through 2011 1st Regular Sess.)). If the court finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship. I.C. § 31-35-2-8

(West, Westlaw current through 2011 1st Regular Sess.).

On appeal, Mother does not challenge any of the court's findings of fact. Mother challenges only the trial court's conclusions, arguing that the evidence is insufficient evidence to establish either that there is a reasonable probability that the conditions that resulted in T.P.'s removal will not be remedied or that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.

The trial court's findings of fact track the facts as set forth above. Based on the facts as presented to the court, the court concluded:

> This child was seriously injured. Mother did not injure the child. She did, however fail to protect the child by allowing him to "visit" with a questionable individual who she knew little about and later failed to take him for treatment of the burns he suffered at the hands of this person.
>
> Mother's failure to complete services does not cause this court to terminate her parental rights. Rather, her ambivalence concerning who should be caring for a small child and her continued refusal to change provides impetus for the court to determine that she cannot keep this child safe.

Appellant's Appendix at A-10.

In reviewing the court's decision to terminate parental rights, we will keep in mind that termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. *In re R.S.*, 774 N.E.2d 927 (Ind. Ct. App. 2002), *trans. denied.* The trial court need not wait until the child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* Additionally, a child's need for permanency is an important consideration in determining the best interests of a child, and the testimony of the service providers may support a finding that termination is in the child's best interests. *McBride v.*

Monroe Cnty Office of Family & Children, 798 N.E.2d 185 (Ind. Ct. App. 2003); *see also In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009) ("Permanency is a central consideration in determining the best interests of a child.").

From the court's order it is clear that the court concluded there was a reasonable probability that the continuation of the parent-child relationship posed a threat to T.P.'s well-being. The court's conclusion is consistent with the opinion offered by both family case managers that worked with Mother during these proceedings. Mother's non-compliance with virtually all of the services offered improve her parenting skills and to help her meet T.P.'s needs, especially his medical needs, speaks volumes. As noted above, T.P. was severely burned and required follow-up medical treatment and therapy that Mother was not providing for him. T.P. required several procedures to deal with his burns, at which Mother was not present although she was made aware of such procedures. T.P. also suffered from post-traumatic stress disorder and it was through consistent therapy and a loving therapeutic foster home that T.P. was able to make great strides to returning to a carefree six-year old. Mother's "ambivalence" toward T.P., her inconsistency in participating in services, and her demonstrated inability to do what is in T.P.'s best interest support the court's conclusion that the continuation of the parent-child relationship posed a threat to T.P.'s well-being. *See In re A.K.*, 924 N.E.2d 212 (Ind. Ct. App. 2011), *trans. dismissed*. Clear and convincing evidence supports the court's judgment terminating Mother's parental rights to T.P.

Judgment affirmed.

DARDEN, J., and VAIDIK, J., concur.