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.

FILED
Sep 24 2009, 8:54 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

JOHN T. WILSON
Anderson, Indiana

ATTORNEY FOR APPELLEE:

ZACHARY Q. CRAIG
Indiana Department of Child Services
Anderson, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF A.F. AND HIS MOTHER, B.F., AND HIS PUTATIVE FATHERS, J.Y. AND D.F.	)	
B.F. (Mother),	)	
Appellant-Respondent,	)	
vs.	)	No. 48A05-0905-JV-237
MADISON COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable G. George Pancol, Judge
Cause No. 48D02-0809-JT-513

September 24, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Respondent Brandy F. ("Mother") appeals the involuntary termination of her parental rights to her son, A.F. On appeal, Mother claims that there is insufficient evidence supporting the trial court's judgment. We affirm.

FACTS AND PROCEDURAL HISTORY

Mother is the biological mother of A.F., born on October 9, 1998.[1] The facts most favorable to the trial court's judgment reveal that the Indiana Department of Child Services, Madison County ("MCDCS") became involved with Mother and her family in September 2001 after receiving a referral from St. Vincent Mercy Hospital in Elwood, indicating A.F.'s eighteen-month-old half-brother, L.W., had been left unsupervised in a bathtub and nearly drowned. During the following six months, the MCDCS received several additional referrals and anonymous tips alleging neglect and physical endangerment of the children by Mother.

On February 21, 2002, the trial court approved an Informal Adjustment for the family, and Mother was provided home-based counseling services through Preventative Aftercare. Mother, however, denied she needed help with her parenting skills and refused to cooperate with Preventative Aftercare home-based counselor Nancy Scott. Mother also refused to try any of the alternative discipline methods suggested by Scott and told Scott that "spank[ing]" was the only form of discipline that would work with her children. Appellee's App., Vol. II, p. 16. Mother also told Scott that her children "need to fear her." *Id.*

[1] A.F.'s biological father is unknown and does not participate in this appeal. The parental rights of A.F.'s alleged fathers, J.Y. and D.F., were terminated on February 5, 2009. The alleged fathers also do not participate in this appeal.

While working with Mother, Scott observed Mother spank A.F. with excessive force and sit on A.F. to restrain him. Scott also observed Mother feed the children a pile of dry hamburger buns piled on a dirty table or a bag of chips for breakfast or lunch. On several different occasions in March 2002, when either Scott or MCDCS case manager Thomas Hulse attempted to check on the family, Mother refused to come to the door even though voices from inside the home could be heard outside. On one of these occasions, Mother refused to answer the door despite the fact she could be heard yelling at the children while at least one of the children was also screaming.

On March 27, 2002, Hulse and another MCDCS caseworker, Scott, and Scott's supervisor all went to Mother's home to investigate an anonymous tip concerning bruises on the children. While there, the caseworkers observed multiple bruises on L.W.'s head. Mother was unable to explain how L.W. had acquired these bruises. Due to Mother's continuing refusal to cooperate with service providers and the unexplained bruises on L.W.'s head, the MCDCS took A.F. and L.W. into emergency protective custody, and the children were transported to Community Hospital in Anderson for evaluation. While at the hospital, no marks were found on A.F. However, the bruises on L.W. were observed by a hospital physician, who also substantiated possible physical abuse of L.W.

An emergency detention hearing was held on the following day, and the trial court determined that there was probable cause to believe both A.F. and L.W. were children in need of services ("CHINS"). The court also found that returning the children to Mother at that time would be contrary to the children's welfare and best interests. Consequently, the trial court issued an order providing that A.F. and L.W. be made wards of the

MCDCS and temporarily placing them in foster care.[2] Following a hearing in August 2002, the children were adjudicated CHINS.

On October 3, 2002, the trial court issued a dispositional order directing Mother to participate in a variety of services in order to achieve reunification with A.F. Specifically, Mother was directed to successfully complete both parenting classes and individual counseling, and to follow all resulting recommendations. Mother was also ordered to participate in home-based services and to exercise regular visitation with A.F. Mother, who suffers from bi-polar disorder, was later directed by the trial court to take all of her medications as prescribed, and to refrain from using illegal drugs and alcohol. Despite these court orders, Mother's participation in services and visitation with A.F. during the following two years was inconsistent. In addition, Mother was unable to participate in services and visitation with A.F. for several months in 2004 due to Mother becoming incarcerated.

The MCDCS eventually filed a petition to involuntarily terminate Mother's parental rights to A.F. on August 9, 2004. Mother later tested positive for cannabinoids on October 14, 2004, and on March 15, 2005. A two-day evidentiary hearing on the MCDCS's termination petition was held on June 28 and July 19, 2005. Mother was arrested for possession of marijuana in September 2005. On October 18, 2005, the trial court denied the MCDCS's request to terminate Mother's parental rights.

[2] The trial court's detention order also provided that the MCDCS could place L.W. with his biological father if it deemed such a placement appropriate after conducting a home study. L.W. was subsequently placed with his father, and the CHINS petition as to L.W. was eventually dismissed. We therefore limit our recitation of the facts to those relevant solely to Mother's appeal of the trial court's order terminating her parental rights to A.F.

The trial court held a permanency review hearing on January 26, 2006, and subsequently issued an order again directing Mother to successfully complete various services to achieve reunification with A.F. Specifically, Mother was ordered to continue to work with an individual counselor through either the Center for Mental Health (CMH) or the George Morriset Center and to follow all resulting recommendations. She was also instructed to participate in and successfully complete First Steps, a substance abuse program, parenting classes, and anger management classes. In addition, the trial court's order reiterated its directives that Mother use her medications only as prescribed, refrain from using illegal drugs and alcohol, submit to random drug screens if requested to do so, attend supervised visits with A.F., and adhere to the terms of her probation. Finally, the court's order provided that, if there was no "considerable improvement in the parent-child relationship" within the next six months, a petition to involuntarily terminate Mother's parental rights to A.F. could be filed again. Appellant's App. p. 37.

On September 23, 2006, the MCDCS filed a new petition for the involuntary termination of Mother's parental rights. Mother denied the allegations in the new termination petition, and a fact-finding hearing was held on January 20, 2009. At the conclusion of the hearing, the trial court took the matter under advisement. On February 5, 2009, the trial court issued its judgment terminating Mother's parental rights to A.F. This appeal ensued.

DISCUSSION AND DECISION

Mother challenges the sufficiency of the evidence supporting the trial court's judgment terminating her parental rights to A.F. In so doing, Mother claims the MCDCS

"simply gave up on her reunification with [A.F.]." Appellant's Br. p. 15. She further asserts that she has "taken advantage" of the services offered to her by the MCDCS and that she "has not demonstrated that she is unwilling to cooperate with the [MCDCS][.]" *Id.* Mother therefore contends that termination of her parental rights was "inappropriate based on all the evidence before the court." *Id.*

I. Standard of Review

Initially, we observe 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). When reviewing the trial court's judgment, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.*

Here, the trial court made specific findings in ordering the termination of Mother's parental rights. Where the trial court enters specific findings of fact, we apply a two-tiered standard of review. First, we must determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). In deference to the trial court's unique position to assess the evidence, we will set aside a 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; see also Bester*, 839 N.E.2d at 147. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. *D.D.*, 804 N.E.2d at 264. A judgment is clearly erroneous only

if the findings do not support the trial court's conclusions or the conclusions do not support the judgment thereon. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

"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, the trial court must subordinate the interests of a parent to those of the child when evaluating the circumstances surrounding the termination. *K.S.*, 750 N.E.2d at 837. Parental rights may therefore be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.* at 836.

In order to terminate a parent-child relationship, the State 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; [and]
>
> (C) termination is in the best interests of the child . . . .

Ind. Code § 31-35-2-4(b)(2) (2006). The State must establish each of these allegations by clear and convincing evidence. *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992). If the court finds that the allegations in a termination petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a) (2006). If the court does not find that the allegations are true, the court must dismiss the termination petition. Ind. Code § 31-35-2-8(b). Mother challenges the

sufficiency of the evidence supporting the trial court's findings pertaining to subsections (B) and (C) of the termination statute set forth above. *See* Ind. Code § 31-35-2-4(b)(2).

II. Analysis

A. Reasonable Probability Conditions Will Not Be Remedied

At the outset, we observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. A trial court must therefore find only one of the two requirements of subsection (B) have been established by clear and convincing evidence in order to satisfy this portion of the statute. *See L.S.*, 717 N.E.2d at 209. Here, the trial court determined that the MCDCS presented sufficient evidence to satisfy both requirements of subsection (B). Specifically, the trial court found that the MCDCS established there is a reasonable probability the conditions resulting in A.F.'s removal from Mother's care will not be remedied and that continuation of the parent-child relationship poses a threat to A.F.'s well-being. We begin our review by considering whether sufficient evidence supports the trial court's former finding.

When determining whether a reasonable probability exists that the conditions justifying a child's removal or continued placement outside the 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. *A.F. v. Marion County Office of Family & Children*, 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.* Finally, we point out that a county department of child services (here, the MCDCS) 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).

In determining that there is a reasonable probability the conditions resulting in A.F.'s removal and continued placement outside of Mother's care will not be remedied, the trial court set forth the seven-year procedural history of the underlying case and then found that Mother had "failed to comply with the services ordered by this Court under the Dispositional Decree and under the Permanency Review Order of January 26, 2006." Appellant's App. p. 64. The evidence most favorable to the trial court's judgment supports this finding, which in turn supports the court's ultimate decision to terminate Mother's parental rights to A.F.

The record reveals that following A.F.'s initial removal from the family home in 2002, Mother refused to cooperate with service providers and to consistently participate in and successfully complete court-ordered services including individual counseling, parenting classes, and anger management classes, thereby preventing the MCDCS from recommending that A.F be returned to her care. At the time of the second termination

hearing in 2009, conditions had not improved. Mother was unemployed, had failed to make a single court-ordered child support payment for A.F., and had failed to complete both parenting and anger management classes. In addition, Mother had failed to successfully participate in group and/or individual therapy, and had been denied visitation privileges with A.F. due to her sporadic attendance and the negative impact visits had on A.F.'s emotional well-being. Thus, despite having had approximately seven years and a wealth of services available to her, by the time of the termination hearing, Mother had failed to complete a majority of the trial court's dispositional goals and remained unable to demonstrate that she could provide a consistently safe and stable home environment for A.F.

The trial court's determination that there is a reasonable probability the conditions resulting in A.F.'s continued placement outside of Mother's care will not be remedied is also supported by witness testimony. During the termination hearing, MCDCS case manager Cora Wykoff acknowledged she had served as the case manager for Mother and A.F. since June 2003. Wykoff informed the court that although Mother had participated in some of the court-ordered services over the years, such as completing a parenting assessment and a psychological evaluation, Mother had failed to complete an anger management program and was unsuccessfully discharged from group therapy at CMH of Anderson due to her "lack of compliance" and failure to "show[] up for visits." Tr. p. 25. Wycoff further reported that it had taken Mother a year to complete the twelve-week First Steps substance abuse program, and that Mother had been arrested for possession of marijuana subsequent to her completion of the course. In addition, the record indicates

Mother was not currently participating in individual counseling because she refused to acknowledge to her therapist that she had any parenting problems to resolve.

Similarly, Jennifer Landis, formerly a case manager with Preventative Aftercare, testified that she had supervised Mother's visits with A.F. and had provided case management services for Mother from December 2003 through September 2006. Landis testified that she had filed a discharge report in May 2005 because Mother "was not complying with services" and because "supervised visits" had been discontinued. Tr. p. 48. When asked whether she had observed "any noticeable improvement or progress made by [Mother]" during her course of involvement in the case, Landis replied, "No." *Id.* at 51. Likewise, Court-Appointed Special Advocate ("CASA") Sandra Faulkenburg acknowledged during the termination hearing that she had not "noticed any kind of improvement" with Mother's ability to deal with her parenting issues. *Id*. at 100.

"A pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, supports a finding that there exists no reasonable probability that the conditions will change." *Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. Based on the foregoing, we conclude that the trial court's determination that there is a reasonable probability the conditions resulting in A.F.'s removal from Mother's care will not be remedied is supported by ample evidence. 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. Thus, the trial court had the responsibility of judging Mother's credibility and of weighing her testimony of changed conditions against the evidence demonstrating Mother's habitual pattern of neglectful conduct in failing to complete court-ordered services designed to improve her parenting ability, failing to pay court-ordered child support and obtaining stable employment, and in failing to provide a consistently safe and nurturing home environment for A.F. It is clear that the trial court gave more weight to evidence of the latter, rather than the former, which it was permitted to do. *See Bergman v. Knox County Office of Family & Children*, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding trial court was permitted to and in fact gave more weight to abundant evidence of mother's pattern of conduct in neglecting her children during several years prior to the termination hearing than to mother's testimony that she had changed her life to better accommodate the children's needs). Mother's arguments on appeal amount to an invitation to reweigh the evidence, and this we may not do. *D.D.*, 804 N.E.2d at 264.[3]

B. Best Interests

We next turn our attention to Mother's allegation that the MCDCS failed to provide sufficient evidence to establish that termination of her parental rights is in A.F.'s best interests. We are mindful that, in determining what is in the best interests of the child, the trial court is required to look beyond the factors identified by the Department of

[3] Having concluded the trial court's determination that there is a reasonable probability the conditions resulting in A.F.'s removal from Mother's care will not be remedied is supported by sufficient evidence, we need not address Mother's arguments regarding the sufficiency of the evidence supporting the trial court's determination that continuation of the parent-child relationship poses a threat to A.F.'s well-being. *See L.S.*, 717 N.E.2d at 209 (explaining that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive).

Child Services and to look to the totality of the evidence. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the trial court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* Moreover, we have previously held that the recommendations of the case manager and court-appointed advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

On appeal, Mother acknowledges the importance of stability and permanency in a child's life, but argues that "there is no evidence that permanency through adoption would be beneficial to [A.F.], or that remaining in foster care or with relatives would be harmful." Appellant's Br. p. 17. Mother therefore contends that the MCDCS failed to prove by clear and convincing evidence that termination of her parental rights is in A.F.'s best interests.

In its judgment terminating Mother's parental rights to A.F., the trial court found that "[d]ue to recommendations of the child's counselor and therapist, as well as the CASA and [MCDCS] case manager, no visitation has taken place between [Mother] and [A.F.] since the third week of September 2008." Appellant's App. p. 64. In addition, the trial court found that "[t]he CASA and [MCDCS] case manager, along with all service providers that have worked with [Mother], have recommended that termination of [Mother's] parental rights would be in the best interests of [A.F.]." *Id.* The record

supports these findings.

In recommending termination of the parent-child relationship, case manager Wykoff informed the court that Mother "continues to refuse to admit that she has had any part in this . . . and basically is not dealing with her own problems." Tr. p. 36. Wycoff also testified that she believed that termination of Mother's parental rights was in A.F.'s best interests due to his need for permanency and Mother's continuing inability to provide stability. In so testifying, Wykoff explained that A.F. had lived in ten different foster homes since his removal from Mother's care and further stated, "[A.F.] needs stability. He needs a family. He needs to know that someone is going to be there for him . . . and that he is always going to have a place to go." *Id.* When asked whether she had noticed any changes in A.F.'s behavior once visits with his Mother had been discontinued, Wycoff answered in the affirmative, stating the intensity and frequency of A.F.'s acting out had decreased and that A.F.'s behavior had become less aggressive.

Similarly, visitation supervisor Landis confirmed A.F.'s need for stability and permanency, stating, "I believe that if [A.F.] ha[d] stability and permanency[,] it might solve a ton of his problems." *Id.* at 52. Landis also testified that she had recommended that Mother's visitation privileges be suspended when she was involved with the case in 2005 because she felt the visits had become "traumatic" for A.F., stating:

> [A.F.] was offered no empathy. [Mother] was speaking to him about subjects that were far beyond what he could understand . . . like termination [c]ourt . . . [and] telling him what his father had done to her in the past. He was already dealing with so much[,] and presenting these new items to him without empathy was causing more problems therapeutically . . . .

Id. at 51-52.

Nikki Furry, former case manager with Kids' Peace, a therapeutic foster care agency, testified that she had been involved with Mother and A.F. for almost four years between 2002 and 2006. Furry stated that when Mother had ongoing visitation privileges with A.F., his behaviors "deteriorate[d] dramatically," and that he started "throwing temper tantrums, crying, becoming aggressive toward[] adult males that visit[ed] the foster home . . . [h]itting them in the groin area and getting into trouble at school." *Id.* at 66. Furry also testified that she could not "remember a time when [A.F.'s] behaviors were doing well in the foster homes and visitation [with Mother] was occurring." *Id.* at 69.

Specialized Alternatives For Family and Youth ("SAFY") family youth specialist Tim King explained during the termination hearing that he saw A.F. on a weekly basis in the foster home and that he had also previously supervised A.F.'s visits with Mother. King stated that he had observed A.F.'s behavior worsen during the times A.F. had ongoing visitation with Mother and that he had recommended that Mother's visits with A.F. be discontinued based on A.F.'s "increased aggression" in the foster home. *Id.* at 73. King also testified that once A.F.'s visits with Mother had been suspended in October 2008, A.F.'s behavior became "very stable." *Id.* at 75. Moreover, King confirmed the comments he had made in his October 2008 monthly report, which was admitted into evidence, that A.F. had become "less physically and verbally aggressive to everyone in the foster home[,]" that "several symptoms of his anxiety [had] dissipated[,]" and that the "only change in [A.F.'s] routine ha[d] been that he ha[d] not visited with [Mother] since the third week in September." *Id.*

Finally, CASA Faulkenburg informed the court that she had been appointed to the case in 2003 and that she had "had a lot of contact with [A.F.] and [Mother]." *Id.* at 99. In testifying that she believed termination of Mother's parental rights was in A.F.'s best interests, Faulkenburg stated that she did not believe Mother could provide A.F. with the "permanent, stable, loving, boundary home" that he needs. *Id.* at 100.

Based on the totality of the evidence, including Mother's failure to successfully complete a majority of the dispositional goals established during the CHINS case despite a wealth of services available to her for approximately seven years, coupled with the unwavering testimony of Wykoff, the CASA, and numerous services providers recommending termination of Mother's parental rights, we conclude that there is sufficient evidence to support the trial court's determination that termination of Mother's parental rights is in A.F.'s best interests. *See, e.g.*, *In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding that testimony of the CASA and family case manager, coupled with evidence that conditions resulting in continued placement outside the home will not be remedied, is sufficient to prove by clear and convincing evidence termination is in child's best interests), *trans. denied*.[4]

III. Conclusion

A thorough review of the record leaves this court convinced that the trial court's

[4] Notwithstanding our conclusion here, we nevertheless acknowledge Mother's concern regarding the minimal number of findings of primary facts contained in the trial court's termination order. Although it is well-settled that trial courts are not obligated by law to make specific findings of fact and conclusions of law when terminating parental rights, unless specifically requested to do so by the parties, *see Parks v. Delaware County Dept. of Child Servs.*, 862 N.E.2d 1277, 1280-81 (Ind. Ct. App. 2007), due to the significance of the rights being affected by a judgment that terminates a parent-child relationship, this Court has repeatedly encouraged trial courts to provide significant, detailed findings, thereby aiding judicial review. Here, the trial court's substantive findings, albeit minimal, are clearly supported by abundant evidence, and, in turn, support the trial court's judgment. We therefore find no error.

judgment terminating Mother's parental rights to A.F. is supported by clear and convincing evidence. Since the time of A.F.'s removal in 2002, Mother has failed to make any significant or sustained improvement in her ability to care for her son. It is unfair to ask A.F. to continue to wait until Mother is willing to obtain, and benefit from, the help that she needs. *See In re Campbell*, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (stating that the court was unwilling to put the children "on a shelf" until their mother was capable of caring for them). We 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.

The judgment of the trial court is hereby affirmed.

BAILEY, J., and VAIDIK, J., concur.