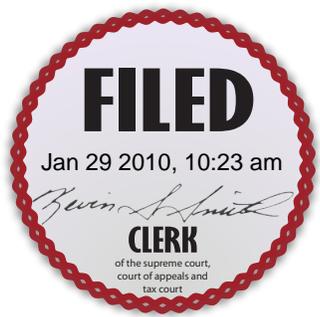


**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**



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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 )  
T.D.S., Father and K.J.F., Minor Child, and S.M.F., )  
Mother, and K.J.F., Minor Child, )  
S.M.F., Mother, )  
Appellant-Respondent, )  
vs. )  
INDIANA DEPARTMENT OF CHILD )  
SERVICES, )  
Appellee-Petitioner. )

No. 02A04-0909-JV-521

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APPEAL FROM THE ALLEN SUPERIOR COURT  
The Honorable Charles F. Pratt, Judge  
The Honorable Lori K. Morgan, Magistrate  
Cause No. 02D07-0809-JT-162

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**January 29, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Shawna F. (“Mother”) appeals the termination of her parental rights to her son, K.J.F. Finding the evidence sufficient to support that determination, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

Mother gave birth to K.J.F. on June 17, 2007. Mother had smoked marijuana during the pregnancy, and K.J.F. tested positive for marijuana at birth. K.J.F. was born eight weeks premature and was born with Williams Syndrome, which causes mild to severe retardation. K.J.F. also has a heart murmur, acid reflux, a lazy eye, and muscle separation. K.J.F. needs a feeding tube. K.J.F. remained in the hospital until September 6, 2007, when he was placed in specialized foster care.

On July 24, 2007, the juvenile court found probable cause that K.J.F. was a child in need of services (“CHINS”). The Allen County Department of Child Services (“DCS”) filed a CHINS petition that same day. On August 28, 2007, Mother admitted most of the allegations in the petition, including that K.J.F. had tested positive for marijuana at birth and that Mother had been involved with DCS since November 21, 2006, in regard to her three older children.<sup>1</sup> The court found K.J.F. to be a CHINS and approved a parent participation plan that required Mother to:

1. Refrain from all criminal activity;
2. Maintain clean, safe, and appropriate housing at all times;
3. Notify the Department of [C]hild Services within forty-eight (48) hours of all changes in household composition, housing, and employment;
4. Cooperate with all caseworkers, the Guardian ad Litem and/or CASA, by attending all case conferences as directed; maintaining

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<sup>1</sup> Mother’s parents now have custody of those children.

- contact[;] and accepting announced and unannounced home visits;
5. Immediately provide the caseworkers with accurate information regarding paternity, finances, insurance, and family history;
  6. Immediately provide the caseworkers and Mental Health Specialist with signed and current consents of release and exchange of information;
  7. Provide the child with clean, appropriate clothing at all times and;
  8. Fully cooperate with all rules of the child's placement.

In addition, you shall successfully complete and benefit from the following programs, services and/or other requirements in a timely manner:

9. Enroll in non-violence counseling at the Center for Nonviolence Program and successfully complete the program.
10. Obtain a drug and alcohol assessment at Caring About People, Inc. and follow all recommendations of the assessment.
11. Obtain suitable employment by September 28, 2007, or when her rehabilitation placement would allow and maintain said employment.
12. Commence proceedings to establish paternity by meeting with the IV-D Prosecutor and fully cooperate with the IV-D staff to establish paternity.
13. Obey the terms of your probation and follow all recommendations.
14. Submit to random urinalysis testing as required by the Department of Child Services caseworkers and refrain from use of alcohol, illegal drugs, and other substance abuse.
15. Attend and appropriately participate in all visits with your child as directed.
16. Enroll in the Center for Nonviolence Program parent education class and successfully complete the program.
17. Secure safe independent housing when released from rehabilitation treatment.
18. Follow all recommendations of your Park Center evaluation.
19. Attend all specialized training to meet the child's medical needs as permitted by the residential treatment provider.
20. Follow all rules and successfully complete Transitions or other residential treatment program.
21. Enroll in and satisfactorily complete a drug and alcohol treatment program approved by the Department of Child Services.

(Appellant's App. at 13.)

Many of these requirements overlapped with services she had already been ordered to complete due to DCS's involvement with her older children. In May 2007, Mother obtained a psychological evaluation from Park Center. Mother was administered the Personality Assessment Inventory, the Kaufman Brief Intelligence Test, the Child Abuse Potential Inventory, and the Parent/Child Relationship Inventory. Dr. Ina Carlson, who interpreted the test results, determined Mother had a "highly elevated abuse score" on the Child Abuse Potential Inventory, which meant many of the responses Mother gave were comparable to those given by people who have been convicted of child abuse. (Tr. at 124.) On the Personality Assessment Inventory, Mother had "an extreme elevation related to depression and also related to anxiety." (*Id.*) Mother's responses indicated "she was very overwhelmed in life and struggling to function and think clearly and make good decisions." (*Id.* at 124-25.)

Dr. Carlson recommended that Mother work with a case manager to help her follow through with her requirements. She further recommended Mother receive services from Addicted Women and Children or in-home services. Dr. Carlson also recommended that, after K.J.F. was born, Mother should see a psychiatrist to determine what medications would be appropriate for her depression and anxiety. Mother did not follow through with any of these recommendations.

Mother was first referred to Caring About People on November 27, 2006 and she was re-referred in May 2007. On July 25, 2007, Mother attended two hours of a six-hour assessment. On that date, she tested positive for marijuana and cocaine. She did not

show up for a subsequent appointment. In July 2008, after K.J.F. was born, Mother was again referred to Caring About People. All three referrals were closed unsatisfactorily.

Mother had first been referred to the Center for Nonviolence in the spring of 2007, and she was expelled from the program on May 22. On June 1, she was re-referred, and she began classes on August 1, 2007. Mother attended six of twenty-six weekly classes, then was expelled again after she stopped attending. Mother signed a re-entry contract on November 15, 2007, but she did not follow through.

In November 2007, Mother was incarcerated in the Allen County Jail because she failed to appear for a court hearing on a possession of marijuana charge.<sup>2</sup> Mother was ordered to serve thirty days. When she was released, she went to live with her parents.

In January 2008, Mother began inpatient treatment at Transitions. However, she left voluntarily in March 2008, before treatment was complete. Mother then went to live with her brother.

On July 21, 2008, Mother, who was on probation for a 2006 conviction of forgery, had her probation revoked because she tested positive for marijuana. Mother was ordered to serve two years.

Until her incarceration, Mother had attended all required medical training for K.J.F.'s special needs. Her visitation was limited due to K.J.F.'s health problems; however, she was allowed to attend K.J.F.'s doctor appointments and surgeries, which she did until she was incarcerated. Mother had been employed for a few months while

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<sup>2</sup> This charge pre-dated K.J.F.'s birth.

pregnant with K.J.F., but complications of the pregnancy required her to stop working. She did not obtain employment after K.J.F. was born.

K.J.F. was never returned to Mother's care. On September 3, 2008, DCS petitioned to terminate Mother's parental rights to K.J.F.<sup>3</sup> The termination hearing was held on February 10 and 17, 2009, while Mother was still incarcerated. She had earned her GED and anticipated being released within thirty days, but she could not provide a definite release date. On May 18, 2009, the juvenile court terminated Mother's parental rights to K.J.F.:

4. It is established by clear and convincing evidence that the allegations of the Petition are true in that there is a reasonable probability that the conditions that resulted in the child's removal and the reasons for the placement outside the parents' home will not be remedied, and/or that continuation of the parent/child relationship poses a threat to the well being of the child.

At the Initial Hearing in the underlying CHINS cause which was held on August 28, 2007, [Mother] admitted that she was the mother of [K.J.F.] and that [K.J.F.] tested positive for marijuana in his system at birth because she smoked marijuana during her pregnancy. Additionally, [Mother] admitted that she had been involved with the Department of Child Services since November 21, 2006, for lack of supervision, substance abuse and neglect in regards to her three older children, [H.V., T.J., and M.F.]

Evidence presented at the hearing on the Petition for Termination of the Parent/Child Relationship revealed that at the time of the initiation of the CHINS proceedings in the underlying CHINS cause, [Mother] did not have stable housing or employment and had a history of engaging in criminal activity which led to her incarceration off and on over the last several years. Further, the mother had a lengthy history of suffering from depression and anxiety which interfered with her ability to provide her children with a safe, stable home environment. Additionally, the mother had a history of drug addiction which also interfered with her ability to

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<sup>3</sup> Paternity of K.J.F. was established on March 18, 2008. DCS also petitioned to terminate the father's parental rights. The father's rights were terminated by the same order that terminated Mother's rights; however, he is not involved in this appeal.

provide a safe stable home for her children.

Evidence presented at the hearing . . . revealed that [K.J.F.] has been diagnosed with Williams Syndrome which is a genetic disorder. Additionally, the child has a heart murmur, acid reflux disease and requires a nasal gastric tube to assist with his feedings. Further, the child has a lazy eye and suffers from muscle separation which condition requires that he participate in physical therapy. At trial, the child's foster parent testified that the child's conditions require constant attention and supervision and ongoing specialized training to ensure that his special needs are properly attended to. Additionally, the foster parent testified that his special conditions require him to be examined and/or treated periodically at Riley Hospital in Indianapolis, Indiana. Evidence presented at the termination hearing revealed that the mother's driver's license is currently suspended and that she has not participated in ongoing training to assist her in addressing and/or attending to the child's special needs.

Evidence presented at the termination hearing revealed that the Department of Child Services made referrals for the mother's participation in a Drug and Alcohol Assessment which would have assisted the Department in determining appropriate services to address her drug addiction and for her participation in the Transitions program which is an in-patient drug and alcohol treatment program that assists persons with addictions to drugs and alcohol in obtaining sobriety and in learning tools and/or techniques to assist in maintaining sobriety. Evidence presented at trial revealed that the mother failed to complete the Drug and Alcohol Assessment and that she enrolled in the Transitions Program, but left the program after only a short time in the program.

Evidence presented at the termination hearing revealed that the Department of Child Services made a referral for the mother's participation in a psychological evaluation which was designed to assist the Department of Child Services in assessing the mother's psychological needs and in obtaining services to address those needs. Evidence presented at trial revealed that the mother completed the evaluation. Dr. Ina Carlson, the Vice President of Child and Adult Services at Park Center, testified at trial that the mother had an elevated Child Abuse Potential Inventory (CAPI) score and that she had elevated scores on the major depression and anxiety scales from the PAI. As a result of her interpretation of the psychological testing and other information, Dr. Carlson testified that she diagnosed the mother with major depression, anxiety and an inability to cope with stress. Dr. Carlson testified that she recommended that the mother participate in an in-patient drug and alcohol treatment program to address her addiction and that the mother submit to a psychiatric evaluation to determine whether

there was a need for medication to treat her depression and anxiety. Further, Dr. Carlson testified that she recommended in-home services and counseling to assist the mother with her depression and coping skills. When asked her opinion about whether the mother would be able to parent a special needs child in light of her diagnoses, Dr. Carlson testified that as of the time of the evaluation, she did not believe the mother would be able to parent a special needs child because she was overwhelmed by depression and anxiety. Dr. Carlson testified that the mother had indicated that she had a long history of suffering from feelings of anxiety and that the mother stated that she could not think clearly. Dr. Carlson further testified that her opinion about the mother's inability to provide for the child would only change if the mother participated in interventions to help her function better. Evidence presented at the termination hearing revealed that the mother failed to participate in or complete the recommendations from the psychological evaluation.

Evidence presented at trial revealed that the mother's inability to provide a safe, stable home environment and her inability to provide the basic necessities of a suitable home for the raising of the child which conditions existed at the time of the initiation of the CHINS proceedings in the underlying CHINS cause continued to exist at the time of the hearing on the Petition for Termination of the Parent/Child Relationship in that the mother was incarcerated at the time of the Termination hearing and admitted that she was unable to provide for the child's medical needs and that she could not provide housing for the child at that time. Further, the mother had not visited the child since June of 2008 because of her incarceration and the mother did not have employment or housing at the time of said hearing. The Court finds that the mother failed and/or refused to participate in or complete services that were designed to assist her in remedying the reasons for removal of the child from her home and that the reasons for the mother's involvement with the Department of Child Services that were present at the time of [K.J.F.'s] birth were, substantially the same as those present at the initiation of the CHINS proceedings that pertained to the mother's older children . . . for which mother had been ordered to complete services, but failed to complete and/or benefit from services provided.

\* \* \* \* \*

5. Termination of parental rights is in the best interests of [K.J.F.] in that the mother and father have shown over the course of the related CHINS cause, and in the fact of a treatment plan or plans, and numerous specific services made available and/or provided, that said parents continue to be unable, refuse, or neglect to provide for the basic necessities of a

suitable home for the raising of said child.

Evidence presented at trial revealed that . . . mother had not visited the child since June of 2008 and that neither parent had participated in or completed services that were designed to assist them in providing for the necessities of a suitable home for the raising of the child. The mother had resided in 3-4 locations since the initiation of the CHINS proceedings in the underlying CHINS cause and had been incarcerated in the Wells County Jail, Allen County Jail and Rockville Correctional Facility since the initiation of the CHINS proceedings in the underlying CHINS cause. Additionally, the mother had not had steady or stable employment since the initiation of the CHINS proceedings. Further, the mother had been referred to CAP for completion of a Drug and Alcohol Assessment and to Transitions for addictions treatment, however, the mother failed to complete the Drug and Alcohol Assessment and enrolled in, but failed to complete the Transitions Program. Further, the mother was ordered to complete a Psychological Evaluation and follow all recommendations contained in the evaluation. While the mother completed the evaluation, the mother failed to follow the recommendations contained in the evaluation which would have assisted the mother in addressing her psychological needs as well as her feelings of depression and anxiety.

(Appellant's App. 7-10.)

### **DISCUSSION AND DECISION**

We are highly deferential when reviewing termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We do not reweigh evidence or judge the credibility of 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 therefrom that are most favorable to the judgment. *Id.*

The juvenile court made specific findings. When a court enters specific findings of fact, we apply a two-tiered standard of review. First, we determine whether the evidence supports the findings, and second, 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 juvenile 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), *trans. denied, cert. denied* 534 U.S. 1161 (2002). A judgment is clearly erroneous only if the findings do not support the juvenile court’s conclusions or the conclusions do not support the judgment thereon. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

A petition to terminate a parent-child relationship must allege:

(A) [o]ne (1) of the following exists:

(i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

\* \* \* \* \*

(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;

(C) termination is in the best interests of the child; and,

(D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). The State must establish each of these allegations by clear and convincing evidence. *Egley v. Blackford County Dep’t of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992).

Mother asserts DCS did not prove the conditions resulting in the children’s removal and continued placement outside the home would not be remedied and that continuation of the parent-child relationship posed a threat to the children’s well-being.

Because Ind. Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, the juvenile court needed to find by clear and convincing evidence only one of the two requirements of subsection (B). *See L.S.*, 717 N.E.2d at 209. Where, as here, the juvenile court found both, we may affirm if the evidence supports either. *See In re B.J.*, 879 N.E.2d 7, 22 n.4 (Ind. Ct. App. 2008), *trans. denied*.

K.J.F. was removed from Mother's care because Mother had smoked marijuana during the pregnancy, and K.J.F. tested positive for marijuana at birth. Mother acknowledges that she continued to use marijuana after K.J.F.'s birth. Mother tested positive for marijuana and cocaine when she went for her assessment at Caring About People. In addition, Mother was required to submit to random urinalysis as required by DCS. Mother's caseworker testified Mother missed many of the required drug screens. The urine samples she did provide tested positive for marijuana.

Mother asserts there was no evidence her drug use "in any way [a]ffected the mother's ability to parent the child, nor [affected] the mother's ability to become employed or maintain a residence." (Appellant's Br. at 9.) We disagree. Mother's drug use led to her incarceration, which rendered her unable to care for K.J.F. or complete the services necessary for reunification. Mother admitted she was unable to provide for K.J.F. Mother has not worked at any point during K.J.F.'s life, nor has she had a stable residence. Since K.J.F. was born, she has lived with a friend, with her parents, with her brother, at Transitions, and in various correctional facilities. Mother has not been the owner or lessee of any of the places she has lived. Although Mother's most recent term

of incarceration was nearly over at the time of the hearing, she has not yet completed any type of drug treatment.

Due to her incarceration, Mother has not been able to meet the ongoing requirement for medical training on K.J.F.'s special needs. K.J.F.'s foster mother testified he needs "consistent care and supervision." (Tr. at 99.) The foster mother also testified K.J.F. sees a doctor at least once a month and has had to make numerous trips to Riley Hospital for Children. Mother's license is suspended, and she would be unable to transport K.J.F. to these appointments.

Dr. Carlson believed that, based on Mother's test results, she would be unable to parent a special needs child because she was overwhelmed by depression and anxiety. Dr. Carlson did not believe that would change without the intervention of appropriate services. However, Mother did not follow Dr. Carlson's recommendations and has not received any treatment for depression or anxiety. Dr. Carlson also found Mother had a "highly elevated abuse score" on the Child Abuse Potential Inventory, (Id. at 124), and Mother has not completed classes at the Center for Nonviolence.

Therefore, we cannot say the juvenile court erred by finding the conditions that led to K.J.F.'s removal would not be remedied. *See Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) ("A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change."), *trans. denied*.

Mother's ability to complete the necessary services was impeded by her drug use and incarceration. Meanwhile, K.J.F. has been in foster care his entire life. We cannot find the court erred in declining to give Mother additional time. *See In re Campbell*, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (court will not put children "on a shelf" until their parents are capable of caring for them).

Affirmed.

DARDEN, J., and KIRSCH, J., concur.