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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 )  
W.K. and R.K., Minor Children, and, )  
)  
WILLIAM KNAPP, )  
)  
Appellant-Respondent, )  
)  
MEREDITH KNAPP, )  
)  
Appellant-Respondent, )  
)  
vs. )  
)  
BARTHOLOMEW COUNTY DEPARTMENT )  
OF CHILD SERVICES, )  
)  
Appellee-Petitioner. )

No. 03A05-0703-JV-165

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APPEAL FROM THE BARTHOLOMEW CIRCUIT COURT  
The Honorable Heather M. Mollo, Referee  
The Honorable Stephen R. Heimann, Judge  
Cause No. 03C01-0601-JT-199

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September 20, 2007

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellants-respondents William and Meredith Knapp (collectively, the Knapps) appeal from the involuntary termination of their parental rights with respect to their minor children, W.K. and R.K. Specifically, Meredith claims that her due process rights were violated because the trial court waited approximately nine months after the fact-finding hearing to enter the termination order. The Knapps further maintain that the evidence was insufficient to support the termination of their parental rights because appellee-petitioner Bartholomew County Department of Child Services (DCS) failed to show that the conditions resulting in the children's removal would not be remedied or that the continuation of the parent-child relationship posed a threat to the well-being of the children. Finding no error, we affirm the judgment of the trial court.

FACTS

The Knapps are the parents of W.K., born March 28, 2000, and R.K., born January 1, 2001. On June 18, 2004, the DCS received a request from the Columbus Police Department to come to Meredith's home.<sup>1</sup> When DCS personnel arrived, several police officers were at the residence sorting through stolen merchandise, drugs, and paraphernalia. The house was

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<sup>1</sup> William and Meredith were not living together at the time.

“a mess, and there were dirty dishes, dirty food” and a large trashcan overflowing with food and trash. Tr. p. 100-01. The children were eating dog food when the officers arrived, and it was determined that Meredith had permitted W.K. and R.K. to play in the basement of the residence, which was unsanitary and unsafe. In light of these conditions—as well as Meredith’s potential arrest for possession of stolen property—the children were removed from the residence.

Prior to this incident, the DCS had received at least one other substantiated neglect report regarding the family. Specifically, it was reported that W.K. took an overdose of Meredith’s medication. Meredith had a history of drug abuse and she lost custody of five children in California. Meredith had been incarcerated for over one year as the result of a theft conviction in December 2002 and was on probation when R.K. and W.K. were removed from the residence.

While Meredith was incarcerated, she was able to visit with the children on only one occasion. The children’s paternal grandparents were appointed guardians during that time because William was not able to care for them. At some point, William lived with his parents and was unable to afford adequate housing for the children. A psychological evaluation revealed that William had very low self-esteem and suffered from depression. William would often watch movies all day and not get out of bed.

On November 16, 2004, the children were adjudicated children in need of services (CHINS). The trial court ordered William and Meredith to adhere to and participate in a visitation plan; demonstrate appropriate parenting skills during visits; obtain and maintain

adequate housing and employment; attend, participate in, and successfully complete, individual counseling; undergo a psychological evaluation; and attend parenting classes. Meredith was also required to successfully complete a substance abuse treatment evaluation, recommended programs, and substance abuse treatment screens.

As the CHINS case progressed, case plans from the DCS also included a plan for marital counseling sessions and referrals to psychiatrists. The Knapps were also to follow the DCS's recommendations after undergoing psychological evaluations, and Meredith was to comply with all terms of probation.

Although the Knapps were permitted to have supervised visits with the children at their residence, DCS caseworkers observed that the children primarily snacked on candy and sodas during the visits. There was only one bed in the residence, and there were concerns that the house was not sufficiently heated.

In February 2005, the Knapps moved into a mobile home but were evicted from that residence two months later. Although William secured a new residence, it had no electricity or water. Meredith also tested positive on drug screens on two occasions and was incarcerated from April 1, 2005, until May 2, 2005, as the result of a battery conviction. On August 12, 2005, DCS learned that Meredith had missed several Intensive Outpatient Program (IOP) appointments. On August 18, 2005, Meredith was incarcerated on another theft charge and remained in jail until June 1, 2006—less than one week prior to the termination hearing.

During the visits with W.K. and R.K., William did not interact with them on a regular

basis. On occasion, William would lose his temper and become physically aggressive with the children. Also, when Meredith was incarcerated, William requested that his visits with W.K. and R.K. be reduced from four hours to one hour because the children misbehaved and he was unable to control them. William's individual counseling sessions did not progress much beyond the gathering of background information because he did not attend most of the appointments.

William had several different jobs while Meredith was incarcerated. He worked at a gas station for a short time, but was eventually fired. William was also fired from a job at Lear Corporation. At the time of the termination hearing, it was established that William had not visited with the children for nearly two months. William was also unemployed and he was no longer taking his prescribed medication which, by his own account, allowed him to "function better." Tr. p. 50, 229. Meredith testified at the termination hearing about the goals that she had set for herself. However, at that time, Meredith had no residence of her own, was unemployed with no income, and had no driver's license.

The DCS caseworkers testified that when the children were initially placed in foster care, W.K. had constant anger issues. Both children displayed inappropriate sexual "acting out" behavior, and W.K. bit other children on more than one occasion. W.K. also harmed animals and appeared extremely withdrawn at times. At least one therapist suspected that W.K. had been sexually abused. Both children have individual educational plans (IEPs) at school. W.K. receives speech therapy for language delays and R.K. receives special education services for a communication disorder.

The DCS caseworkers noted that the children began to improve after they were placed in foster care. W.K. began to express his anger in a more constructive manner, and his aggression decreased in intensity and duration. The DCS personnel, therapists, and Court Appointed Special Advocate (CASA) all believed that that Meredith and William's parental rights should be terminated. Moreover, DCS personnel believed that the children should be placed for adoption.

Following the presentation of evidence on June 7, 2006, termination hearing, the trial court indicated that it required additional time to review the evidence, and it took the matter under advisement. Thereafter, on March 1, 2007, the trial court entered an order terminating the Knapps' parental rights as to W.K. and R.K. The Knapps now appeal.

## DISCUSSION AND DECISION

### I. Due Process Violation

Meredith argues that the termination order must be set aside because her due process rights were violated. Specifically, Meredith argues that the trial court's decision to wait nearly nine months before entering the termination order was unreasonable.

When the State seeks to terminate the parent-child relationship, it must do so in a manner that satisfies the requirements of due process. Santosky v. Kramer, 455 U.S. 745 (1982). Due process embodies the requirement of fundamental fairness. E.P. v. Marion County Office of Family & Children, 653 N.E.2d 1026, 1031 (Ind. Ct. App. 1995). The three factors to consider with regard to due process in termination matters are the private interests affected by the proceeding, the risk of error created by the State's chosen procedure,

and the countervailing governmental interest supporting use of the challenged procedure. A.P. v. Porter County Office of Family and Children, 734 N.E.2d 1107, 1112 (Ind. Ct. App. 2000).

We note that Indiana Trial Rule 53.2 provides that whenever a cause has been tried to the court and taken under advisement by the judge and the judge fails to determine any issue of law or fact within ninety days, the cause may be withdrawn from the trial judge and transferred to our Supreme Court for appointment of a special judge. The purpose of this rule is to expedite litigation. Weber v. Electrostatic Eng'g, 465 N.E.2d 1152, 1154 (Ind. Ct. App. 1984). However, this court has determined that if a party does not follow the procedure set forth in Trial Rule 53.2 and permits the case to proceed to final judgment, that party is estopped from complaining that the original judge retained jurisdiction over the case. Phares v. State, 796 N.E.2d 305, 308 (Ind. Ct. App. 2003).

Here, Meredith never filed a motion seeking an expedited ruling from the trial court. Rather, she waited until an adverse judgment was rendered to complain about the delay. Moreover, there was no stipulation or agreement by the parties reflected in the record that the provisions of Trial Rule 53.2 should not apply. Hence, the fact that the trial court stated that it might take considerable time to review the evidence did not serve to prevent Meredith from pursuing a remedy under Trial Rule 53.2. Therefore, Meredith is estopped from complaining about the trial court's delay in entering judgment and has waived the issue.

Waiver notwithstanding, we note that the petition to terminate Meredith's parental rights as to the children was filed on January 30, 2006. Appellants' App. p. 4-5. The fact-

finding hearing was held on June 6 and 7, 2006, at which time Meredith was represented by counsel. Tr. p. 9. Meredith was given the opportunity to cross-examine the witnesses who testified against her and she introduced her own evidence. Id. at 206-213. At no time during the hearing did Meredith allege that she was not afforded the opportunity to participate or that the timing of the hearing was not proper.

Additionally, while Meredith contends that her rights were violated because the trial court had no knowledge of her present condition when the termination order was entered, it is well established that the trial court must look to the parent's fitness at the time of the termination hearing. Matter of L.V.N., 799 N.E.2d 63, 69 (Ind. Ct. App. 2003). Moreover, the trial court must examine the parent's pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation. Matter of A.N.J., 690 N.E.2d 716, 721 (Ind. Ct. App. 1997). And it is proper for a trial court to consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. In re D.G., 702 N.E.2d 777, 799 (Ind. 1998).

Here, the trial court based its ruling on the facts that existed at the time of the termination hearing, which complies with the standard provided by this court. See Matter of L.V.N., 799 N.E.2d at 69. What may have occurred hundreds of days after the presentation of the evidence, or what may be Meredith's present condition, is not to be considered by the trial court. Therefore, we conclude that Meredith cannot successfully claim that her due process rights were violated merely because the trial court waited nine months after the termination hearing to make its ruling.



## II. Sufficiency of the Evidence

The Knapps contend that the evidence was insufficient to support the termination order. Specifically, they argue that the evidence failed to show that the conditions resulting in the children's removal or the reasons for placement outside the home would not be remedied or that the continuation of the parent child relationship poses a threat to the well being of the children.

In addressing the Knapps' contentions, we first note that when reviewing termination of parental rights proceedings on appeal, this court neither reweighs the evidence nor judges the credibility of witnesses. We consider only the evidence that supports the trial court's decision and the reasonable inferences that may be drawn from that evidence. In deference to the trial court's unique position to assess the evidence, we set aside the judgment terminating a parent-child relationship only if it is clearly erroneous. If the evidence and inferences support the trial court's decision, we must affirm. In re L.S., D.S., and A.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

The involuntary termination of parental rights is the most extreme sanction that a court can impose. Id. Termination severs all rights of a parent to his or her children. Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. Id. The purpose of terminating parental rights is not to punish the parents, but to protect their children. Id. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities. Id.

To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing the elements of Indiana Code section 31-35-2-4(b)(2). Thus, the State must prove that:

one (1) of the following exists:

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

(ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or

(iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(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.

I.C. § 31-35-2-4(b)(2).

When the trial court finds that there is a reasonable probability that the conditions that led to the child's removal will not be remedied and there is sufficient evidence in the record

to support that finding, it is not necessary for the DCS to prove or the trial court to find that continuation of the parent-child relationship poses a threat to the well-being of the child. In re S.P.H. and H.P.P., 806 N.E.2d 874, 882 (Ind. Ct. App. 2004). When determining whether certain conditions that led to the removal will be remedied, the trial court must evaluate a parent's habitual pattern of conduct to determine the probability of future negative behavior. In re D.J., 755 N.E.2d 679, 684 (Ind. Ct. App. 2001). And the trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development are permanently impaired before terminating the parent-child relationship. Id. As this court observed in Matter of D.T., 547 N.E.2d 278, 286 (Ind. Ct. App. 1989), "[t]he children continue to grow up quickly; their physical, mental, and emotional development cannot be put on hold while their recalcitrant parent fails to improve the conditions that led to their being harmed and that would harm them further."

We further note that the trial court may consider the services offered as well as the parent's response to those services. Id. Parental rights may be terminated when parties are unable or unwilling to meet their responsibilities. Ferbert v. Marion County OFC, 743 N.E.2d 766, 776 (Ind. Ct. App. 2001). Also, when determining what is in the best interests of the children, the interests of the parents are subordinate to those of the child. Id. at 773. Thus, parental rights will be terminated when it is no longer in the child's best interests to maintain the relationship. In re B.D.J., 728 N.E.2d 195, 200 (Ind. Ct. App. 2000). The best interests of the child are the ultimate concern in termination proceedings. That is, children should not suffer emotional or psychological harm or instability in order to preserve parental

rights. In re L.S., 717 N.E.2d at 210.

In this case, the evidence presented at the termination hearing established that the Knapps were not able to provide a safe environment for the children. Tr. p. 182. Meredith has a history of crack cocaine and methamphetamine use and a history of incarceration, and she failed several drug screens during the pendency of these proceedings. Id. at 10, 173. While the Knapps were offered numerous counseling and parenting services, they failed to complete those programs. Id. at 132, 149. Hence, the DCS caseworkers concluded that the Knapps made little or no progress on the goals set by the DCS. Id. at 33, 164. Indeed, couples' counseling sessions never commenced because neither William nor Meredith attended the appointments. Meredith and William also missed numerous visitation sessions with R.K. and W.K., and a DCS representative testified that there were "too many missed visitations and counseling sessions to count." Id. at 149.

The CASA testified at the final hearing that the Knapps' success in meeting goals that had been established by the DCS "was far from complete." Tr. p. 33. Meredith was given at least three opportunities to complete parenting classes without success. Her addictions were never satisfactorily addressed, as evidenced by the failed drug screens and her unwillingness to complete the IOP. William was also not able to demonstrate stability in his personal life with respect to his mental health, employment, or housing. Tr. p. 14, 28, 53, 176-77.

The caseworkers did not believe that the Knapps would remain stable and focused enough to present a suitable home for the children in the future. Indeed, the caseworkers believed that the children required permanency and recommended that William and

Meredith's parental rights over the children be terminated. Id. at 182-83, 189. The caseworkers observed that since the children had been in foster care, they had improved as a result of having stability and structure in their lives. Id. at 184-85, 201.

In light of these circumstances, it is apparent that the Knapps' pattern of unwillingness to deal with their parenting problems supports the trial court's determination that there exists no reasonable probability that the unacceptable conditions that led to the removal of the children would be remedied. In considering the above and recognizing that the trial court heard the testimony of all of the witnesses at the final hearing, observed their demeanor, and judged their credibility, as a reviewing court, we give proper deference to the trial court. Hence, we conclude that the trial court's ruling was not clearly erroneous in concluding that the DCS presented clear and convincing evidence that the Knapps' parental rights should be terminated pursuant to Indiana Code section 31-35-2-4.

The judgment of the trial court is affirmed.

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