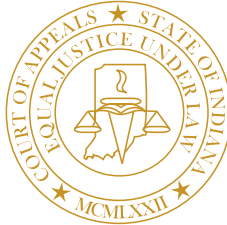


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

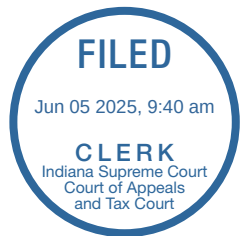
In re the Involuntary Termination of the Parent-Child
Relationship of P.R.W., G.T.W., and G.J.W. (Minor Children)
and C.N.W. (Mother),

Appellant-Respondent

v.

Indiana Department of Child Services,

Appellee-Petitioner



June 5, 2025

Court of Appeals Case No.
24A-JT-2478

Appeal from the Allen Superior Court
The Honorable James R. Heuer, Senior Judge

Trial Court Cause Nos.
02D08-2402-JT-31, -32, -33

Memorandum Decision by Judge Bailey

Judges Brown and Weissmann concur.

Bailey, Judge.

Case Summary

- [1] C.W. (“Mother”) appeals an order involuntarily terminating her parental rights to P.R.W., born on June 22, 2014, and twins G.T.W. and G.J.W., born on July 3, 2015 (collectively, “Children”).¹ We affirm.

Issues

- [2] Mother raises the following consolidated and restated issues:
1. Whether Mother’s due process rights were violated because there are missing portions of the transcript of the termination factfinding hearing.
 2. Whether the trial court clearly erred when it terminated Mother’s parent-child relationships with Children.

Facts and Procedural History

- [3] Mother is the biological mother of eight children. Her oldest child, A.P., is twenty-one years old, and she and another sibling of Children were raised by

¹ C.C. is the alleged Father of Children, but Mother did not obey the court order to take steps to establish paternity of Children. C.C. does not participate in this appeal.

guardians in Michigan. Three other siblings of Children were removed from Mother in Michigan and were subsequently adopted.

- [4] Mother moved to Indiana and first became involved with the Indiana Department of Child Services (“DCS”) on July 31, 2015, when twins G.T.W. and G.J.W. tested positive at birth for cocaine. DCS opened a Child in Need of Services (“CHINS”) case, and Children were removed from Mother for a total of twenty-two months between July 2015 and May 2017. The 2015 CHINS case ended with Children’s reunification with Mother, and the case was dismissed in December 2017.
- [5] On October 20, 2020, DCS received a report that Children were victims of educational neglect. Children had twenty-three to twenty-five unexcused absences, and Mother was unable to use the laptops provided by the school for remote learning days. On October 30, Mother was arrested for operating a vehicle while intoxicated with a BAC of .255 and for neglect of a dependent. Children and two other children were passengers in the vehicle. Mother later pleaded guilty to the charges and received a suspended sentence of two years and 183 days.
- [6] DCS removed Children from Mother’s care on November 6, 2020, and placed them with a relative. On November 9, Mother submitted to a drug screen at DCS’s request, and on November 16, the result came back positive for cocaine and THC. On November 17, DCS filed a petition alleging that Children were CHINS due to educational neglect and Mother driving a vehicle while

intoxicated with Children as passengers. On December 21, the trial court adjudicated Children as CHINS. In its dispositional decree, the court ordered Mother to engage in services, including obtaining substance abuse and diagnostic assessments and completing recommended treatment; submitting to random drug screens; engaging in home-based casework; establishing Children's paternity; complying with the requirements of criminal proceedings; participating in and following the recommendations of Family Recovery Court ("FRC"); and engaging in supervised visitation.

[7] Throughout the CHINS case, Mother had periods of compliance followed by relapses. Mother completed a substance abuse assessment through Phoenix and Associates and completed the recommended intensive outpatient treatment, which included individual and group counseling and drug screens. On January 14, 2021, Mother began participating in FRC, and she had numerous negative drug screens. Children were returned to Mother for a trial home visit beginning March 22, 2021.

[8] However, Mother missed some drug screens, and she tested positive for cocaine on seventeen occasions and for cannabinoid on six occasions. At an unannounced visit to Mother's home on October 6, 2021, DCS Family Case Manager ("FCM") Jedidiah Davis observed that Mother's speech was slurred, there were several empty alcohol bottles in view, and Children were present in the home. Mother submitted to a drug screen that day and tested positive for cocaine. The court ordered Children's immediate removal from Mother, and

the trial home visit was terminated. On July 7, 2022, Mother signed a stipulation agreeing to an unsuccessful discharge from FRC.

[9] Children were placed in licensed foster care after the trial visit with Mother ended in October of 2021. The first placement did not last long due to Children's behaviors. DCS then placed P.R.W. and G.S.W. together in a foster home, and it placed G.T.W. separately in another foster home. G.T.W. exhibited a lot of aggressive behaviors, and he had nine different placements during the 2020 CHINS case. He had to be removed from supervised visits with Mother due to his angry, aggressive, and physical behavior.

[10] G.T.W. had a neuropsychological examination when he was eight years old, and the examination disclosed that he had the social/emotional functioning of a two-year-old child. G.T.W.'s diagnoses included fetal alcohol syndrome, fetal exposure to cocaine and nicotine, PTSD, ADHD, general anxiety disorder, and persistent depressive disorder. He needed constant supervision by two caregivers. Due to his fetal alcohol syndrome diagnosis, which is a condition that would prevent him from "socially ag[ing] past [...] seven or eight" years old, it was likely that he would need a legal guardian when he reached the age of eighteen. Tr. at 126.

[11] Eventually, DCS was able to place G.T.W. in a therapeutic foster home in June 2022. At that time, G.T.W. was not on any medication, and "he would kick [and] fight." *Id.* at 133. The foster parents tried to place him in daycare, but all the daycares "kicked [him] out" due to his behaviors. *Id.* G.T.W. received

extensive services, including medication management, speech and occupational therapy with the Bowen Center, modified days and one-on-one sessions at his school, and additional support with StepStone Family and Youth Services.

[12] P.R.W. and G.J.W. also had behavioral needs that were not as extensive as those of G.T.W. P.R.W. was diagnosed with Oppositional Defiant Disorder and ADHD, and she received therapy with the Bowen Center and medication management. G.J.W. received medication and therapy and had an Individualized Education Plan (“IEP”) at school. At one point, when G.J.W. showed signs of regression, P.R.W. and G.J.W.’s foster parents requested that P.R.W. be placed elsewhere. P.R.W. was placed in the same foster home as G.T.W., and that home was not pre-adoptive. G.J.W. stayed with his foster parents, to whom he was bonded and who were willing to adopt him. G.J.W. was involved with extracurricular activities, including basketball, baseball, martial arts, and soccer.

[13] In February 2024, Children’s permanency plans were changed to termination of parental rights. Mother engaged in home-based services and, starting in April 2024, had individual therapy at Parkview Behavioral Health. While mother had had some periods of sobriety, she had never achieved six continuous months of sobriety at any time since the 2020 CHINS case began. Mother’s last positive drug screen was on June 26, 2024, when she tested positive for THC. All subsequent drug screens were negative. However, in July 2024, Mother was arrested for operating a vehicle while intoxicated, as a Level 6 felony.

[14] Mother's criminal case was still pending when the court conducted a two-day termination factfinding hearing on August 26 and 27. At that time, Mother had been employed full-time for sixteen months, and she had housing. A.P., Mother's grown child, had been living with Mother for almost one year and opined that Mother had "not struggled with addictions for the past three months." Appealed Order at 4. Children's Guardian ad Litem ("GAL") noted that Mother has "a pattern of relapse after periods of compliance" and opined that Children "are not safe in [M]other's care." *Id.* at 5. The GAL stated that, because Mother had failed to remedy the conditions that led to Children's removal and retention in foster care for four years, she was unlikely to ever do so. The GAL opined that termination is in Children's best interests, although "a post adoption contact agreement between [M]other and the [C]hildren is appropriate" due to Mother's bond with Children. *Id.*

[15] Home-based caseworker Don Bell, who also supervised visitation, testified that Mother would not be able to "handle" Children on her own. Tr. at 78. Bell explained that while G.T.W. by himself was "not a huge problem[,]," G.T.W. and G.J.W. together were "more of a problem[,] and all three Children together were a "big challenge." *Id.* at 83. Bell added that, even with his skill set, he and his wife would have difficulty "handl[ing]" all three Children at once. *Id.*

[16] FCM Tonya Sullivan opined that there was a reasonable probability that the conditions that resulted in Children's removal would persist, as especially shown by the facts that Mother was convicted of operating a vehicle while

intoxicated (“OWI”) at the beginning of the case and had another OWI charge just before the termination factfinding hearing. FCM Sullivan stated that, although Mother was “doing pretty well” at the time of the factfinding hearing, she had periods of relapses, including the recent felony charge. *Id.* at 156. FCM Sullivan noted that the CHINS case had been going on for four years and that Children needed permanency. Although P.R.W. and G.T.W. did not have pre-adoptive parents at the time of the termination hearing, DCS was looking at options for them. Children’s sister, A.P., was an option DCS was considering for P.R.W., and DCS planned to leave G.T.W. at his current therapeutic placement until it located an adoptive family for him.

[17] On September 11, 2024, the trial court issued findings of fact and conclusions thereon. Specifically, the court concluded that there is a reasonable probability that the conditions that resulted in Children’s removal or continued placement outside the home will not be remedied by Mother and that continuation of the parent-child relationship poses a threat to Children’s well-being. The court further concluded that termination of parental rights was in Children’s best interests, and it ordered said termination. However, the court also ordered that:

[M]other’s supervised visitation in the CHINS cases shall continue as currently structured. The Court recommends post adoption contact between [M]other and the three children subject

to the orders and approval of the Court having jurisdiction in the adoption proceedings.^[2]

Appealed Order at 6. This appeal ensued.

Discussion and Decision

Issue One: Due Process Claim

[18] As an initial matter, we must address Mother’s contention that she has been denied her due process right to a meaningful appeal because there are portions of the recording of the factfinding hearing that were not decipherable by the court reporter who prepared the transcript, and it is not possible to create a Statement of the Evidence under Appellate Rule 31. When the State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of due process. *K.C. v. Marion Cnty. Off. of Fam. & Child. (In re C.C.)*, 788 N.E.2d 847, 852 (Ind. Ct. App. 2003), *trans. denied*. “Due process requires ‘the opportunity to be heard at a meaningful time and in a meaningful manner.’” *S.S. v. Ind. Dep’t of Child Servs. (In re K.D.)*, 962 N.E.2d 1249, 1257 (Ind. 2012) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). We review constitutional claims de novo.

[19] Mother asserts that the flaws in the record are so significant that she must be given a new trial. A transcript of a court proceeding may sometimes be so

² Neither party addresses this portion of the order on appeal.

deficient that it deprives a petitioner of his right to adequate review. *See Ben-Yisrayl v. State*, 753 N.E.2d 649, 660 (Ind. 2001), *cert. denied*. And “a new trial is an appropriate remedy where there is no usable transcript available for appeal,” *Gallagher v. State*, 410 N.E.2d 1290, 1292 (Ind. 1980), although one making such a claim must “articulate some plausible way in which he was harmed by the lack of record,” *Ben-Yisrayl*, 753 N.E.2d at 660-61. Moreover, if no transcript of all or part of the evidence is available, Rule 31 of the Rules of Appellate Procedure allows a party to “prepare a statement of the evidence or proceedings from the best available means and proceed with a direct appeal of the original trial.” *Gallagher*, 410 N.E.2d at 1293 (citing a prior version of Ind. Appellate Rule 31). Our Supreme Court has “found that using such a reconstruction of the evidence on appeal is not a denial of ... due process rights.” *Id.*

- [20] Application of Appellate Rule 31 is “inappropriate only when the appellant is unable to reconstruct the record from his recollection, the recollection of those present at trial, or other extrinsic evidence.” *Groff v. State*, 415 N.E.2d 721, 724 (Ind. Ct. App. 1981) (citing *Gallagher*, 410 N.E.2d at 1293) (referring to prior version of App. R. 31); *see also Jones v. State*, 695 N.E.2d 1041, 1042 (Ind. Ct. App. 1998) (noting a “petitioner is entitled to a new trial only if he demonstrates that it would be impossible to reconstruct the record.”). Thus, in *Jones*, for example, a panel of this Court held the defendant’s attempts to reconstruct missing testimony were insufficient to demonstrate that it would be impossible to do so where the defendant presented no evidence that he had

attempted to contact the witnesses who testified during the hearing or the magistrate or court reporter. 695 N.E.2d at 1042.

[21] Here, Mother points to the following portions of the transcript that are “missing” because the recording was “unintelligible[:.]” p. 33, l. 11-13; p. 58, l. 9-11; p. 65, l. 14-16; p. 67, l. 14-17; p. 72, l. 17-19; p. 77, l. 14-25; p. 78, l. 23-25; p. 116, l. 16-18; and p. 127, l. 1-2. Appellant’s Br. at 16. However, we note that many of these “unintelligible” portions of the transcript are only one or two seconds long, and Mother does not claim that any testimony is missing from them. Other portions are on topics that are extraneous, such as the trial court’s brief statement to counsel regarding the mechanics of setting up a phone call by speaker phone. Tr. at 67, l. 15-16.

[22] Mother has identified only two portions of the transcript that are allegedly missing actual testimony: the testimony of visitation supervisor Bell regarding the potential for Mother to have visitation with Children “in the community,” *id.* at 77, and the testimony of case manager Shelby Trost, with StepStone Family and Youth Services, regarding the types of services G.T.W. was receiving at StepStone, *id.* at 126-27. However, as in *Jones*, Mother has failed to demonstrate that it is impossible to reconstruct the alleged missing testimony of Bell and Trost. While Mother’s attorney contacted counsel and the court and its staff and learned that none of them had notes from which they could reconstruct the missing testimony, Mother did not provide evidence that she attempted to contact Bell or Trost to reconstruct their testimonies.

[23] More importantly, Mother has failed to articulate any plausible way in which she was harmed by the alleged missing testimony. Mother says only that “[e]xculpatory evidence may have been obscured by the inaccessible sections of the transcript,” which “hamper[s]” Mother’s appeal. Appellant’s Br. at 17. However, regarding Bell’s testimony, it is not even clear that any testimony is missing, only that there was a brief “beeping sound in the background.” Tr. at 77. Regarding the approximately fifteen minutes of testimony missing from Trost, it is clear from the context that the missing testimony was a description of the services G.T.W. was receiving from StepStone at the time of the hearing.³ And, without explanation by Mother, it is not at all clear that Mother was harmed by the missing list of G.T.W.’s services at StepStone, especially since FCM Davis also provided testimony about the services G.T.W. received. *Cf. Jones*, 695 N.E.2d at 1041, 1042 (dismissing appeal without prejudice in order to provide Jones with additional opportunity to reconstruct the record where the record contained testimony from only one of State’s witnesses and some, but not all, of Jones’ witnesses); *Lile v. State*, 671 N.E.2d 1190, 1194 (Ind. Ct. App. 1996) (holding that the court could not conclude that there was sufficient evidence to support a waiver of jurisdiction where the entire transcript was lost and defendant demonstrated that it could not be reconstructed).

³ See Tr. at 126-27: “Q: And what sort of services is [G.T.W.] doing now? A: [G.T.W.] is involved with uhm medication management [3:03-3:18:05 indiscernible] I think that about covers it.”

[24] In short, Mother has failed to articulate any plausible way in which the gaps in the transcript have harmed her ability to obtain a meaningful appeal, and we find none. Therefore, we deny her request for a new trial and proceed to the merits of her appeal.

Issue Two: Termination of Parental Rights

Standard of Review

[25] We begin our review by acknowledging that “[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.” *Bailey v. Tippecanoe Cnty. Div. of Fam. & Child. (In re M.B.)*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *Schultz v. Porter Cnty. Off. of Fam. & Child. (In re K.S.)*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Termination of a parent-child relationship is proper where a child’s emotional and physical development is threatened. *Id.* Although the right to raise one’s own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[26] Before an involuntary termination of parental rights can occur in Indiana, DCS is required to allege and prove, among other things:

(A) that one (1) of the following is true:

* * *

(iii) The child has been removed from the parent and has been under the supervision of a local office or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(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.

* * *

(C) [and] that termination is in the best interests of the child

I.C. § 31-35-2-4(b)(2) (Feb. 2024). DCS need establish only one of the requirements of subsection (b)(2)(B) before the trial court may terminate parental rights. *Id.* DCS's "burden of proof in termination of parental rights cases is one of 'clear and convincing evidence.'" *R. Y. v. Ind. Dep't of Child Servs. (In re G. Y.)*, 904 N.E.2d 1257, 1260 (Ind. 2009) (quoting I.C. § 31-37-14-2).

- [27] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *Peterson v. Marion Cnty. Off. of Fam. & Child. (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 that are most favorable to the judgment. *Id.* Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. *Judy S. v. Noble Cnty. Off. of Fam. & Child. (In re L.S.)*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied*.
- [28] Here, in terminating Mother's parental rights, the trial court entered findings of fact and conclusions thereon. When a trial court's judgment contains special findings and conclusions, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings and, second, we determine whether the findings support the judgment. *Id.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court's decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208.
- [29] On appeal, Mother does not challenge any of the factual findings made by the trial court. When findings of fact are unchallenged, this Court accepts them as true. *L.M. v. Ind. Dep't of Child Servs. (In re S.S.)*, 120 N.E.3d 605, 608 n.2 (Ind. Ct. App. 2019). As such, if the unchallenged findings clearly and convincingly

support the judgment, we will affirm. *Kitchell v. Franklin*, 26 N.E.3d 1050, 1059 (Ind. Ct. App. 2015), *trans. denied*.

Waiver of Argument Under Indiana Code Section 31-35-2-4(d)

[30] Mother purports to challenge the trial court’s conclusions regarding subsection (d) of Indiana Code Section 31-35-2-4. Rule 46(A)(8)(a) requires that each contention in an appellant’s brief be “supported by cogent reasoning” and “by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal.” When an appellant provides no cogent argument for a contention, that contention is waived. *See, e.g., Burnell v. State*, 110 N.E.3d 1167, 1171 (Ind. Ct. App. 2018) (noting the presentation of the appellant’s contentions must contain a clear showing of how the issues and contentions relate to the particular facts of the case under review, and we will not review undeveloped arguments). Similarly, when an appellant provides no citation to legal authority supporting his contentions, those contentions are waived. *E.g., Shields v. Town of Perrysville*, 136 N.E.3d 309, 312 n.2 (Ind. Ct. App. 2019). Thus, under our Appellate Rules, “[i]t is not sufficient for the argument section that an appellant simply recites facts and makes conclusory statements without analysis or authoritative support.” *Kishpaugh v. Odegard*, 17 N.E.3d 363, 373 n.3 (Ind. Ct. App. 2014).

[31] Because Indiana Code Section 31-35-2-4(d) is written in the disjunctive, DCS is required to establish, by clear and convincing evidence, only one of the two requirements of that subsection of the statute. *L.A. v. Ind. Dep’t of Child Servs. (In re I.A.)*, 903 N.E.2d 146, 153 (Ind. Ct. App. 2009). Here, the trial court

concluded that DCS had proven both requirements. Yet, Mother provides cogent analysis, argument, and supporting authority only for her challenge to the conclusion that there is a reasonable probability that the reasons for Children’s removal or continued placement outside the home will not be remedied. Although Mother states in the summary of her argument that “[t]he trial court erred in finding that the continuation of the parent-child relationship presented a threat to the well-being of the children,” she makes no further mention of this requirement at all, much less the cogent reasoning required by the Appellate Rules. Appellant’s Br. at 7. Therefore, she has waived her challenge to the latter conclusion. And because that conclusion, alone, supports the trial court’s determination under Indiana Code Section 31-35-2-4(d), we need not and do not address Mother’s contention that the trial court erred in concluding that there exists a reasonable probability that she will not remedy the conditions that resulted in Children’s removal or continued placement outside the home.

Best Interests of the Children

- [32] In determining whether termination of parental rights is in the best interests of a child, the trial court is required to look at the totality of the evidence. *In re A.K.*, 924 N.E.2d 212, 224 (Ind. Ct. App. 2010). “A parent’s historical inability to provide adequate housing, stability and supervision coupled with a current inability to provide the same will support a finding that termination of the parent-child relationship is in the child’s best interests.” *Castro v. State Off. of Fam. & Child.*, 842 N.E.2d 367, 374 (Ind. Ct. App. 2006), *trans. denied*.

“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.” *In re A.K.*, 924 N.E.2d at 224.

[33] The evidence most favorable to the judgment shows that Children have special needs and require extra supervision and support, especially G.T.W. Yet the evidence also shows that, throughout the lengthy 2020 CHINS case, Mother’s periods of compliance with court-ordered services designed to assist her in learning to care for Children were always followed by relapses. While Mother began participation and experienced some success in FRC, she ultimately agreed to her unsuccessful discharge from FRC. While Mother had numerous clean drug screens, she also tested positive for drugs on numerous occasions, including as recently as two months prior to the termination hearing. And Mother—who had been convicted of driving while intoxicated with Children in the car at the beginning of the 2020 CHINS case—had a new driving while intoxicated charge pending at the time of the termination hearing. Mother also never took steps to establish the paternity of Children, as ordered.

[34] These facts led the home-based caseworker to believe that Mother could not care for Children on her own. Moreover, the FCM and CASA testified that termination of Mother’s parental rights is in Children’s best interests and that Children need permanency which Mother cannot provide. Given that testimony, in addition to evidence that the continuation of the parent-child relationship poses a threat to the well-being, safety, physical health, or life of

Children, we hold that the totality of the evidence supports the trial court's determination that termination is in Children's best interests. *See, e.g., Ramsey v. Madison Cnty. Dep't. of Fam. & Child.*, 707 N.E.2d 814, 818 (Ind. Ct. App. 1999) (noting testimony by child's counselor that it would be in child's best interests to terminate the parent-child relationship, along with evidence that the reason for removal would not be remedied and the relationship posed a threat to child, was sufficient to support the termination).

Conclusion

[35] While the transcript of the termination factfinding hearing contains some gaps, Mother has failed to articulate any plausible way in which the gaps impair her ability to obtain a meaningful appeal, and we find the transcript sufficiently complete to allow our meaningful review of the merits of Mother's claims. However, those claims fail because the trial court's uncontested findings of fact support its conclusions and the resulting judgment terminating Mother's parental rights. The trial court did not clearly err.

[36] Affirmed.

Brown, J., and Weissmann, J., concur.

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