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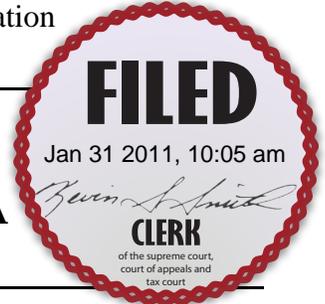
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**IN THE  
COURT OF APPEALS OF INDIANA**



IN RE THE TERMINATION OF THE PARENT- )  
CHILD RELATIONSHIPS OF S.S., a child, )  
and T.S. & B.S., the parents. )

T.S. (Mother) and B.S. (Father), )  
Appellants-Respondents, )

vs. )

No. 15A05-1006-JT-406

THE INDIANA DEPARTMENT OF CHILD )  
SERVICES, DEARBORN COUNTY OFFICE, )  
Appellee. )

APPEAL FROM THE DEARBORN CIRCUIT COURT  
The Honorable James B. Morris, Special Judge  
Cause No. 15C01-0903-JT-001

**January 31, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

T.S. (“Mother”) and B.S. (“Father”) appeal the Dearborn Circuit Court’s judgment terminating their parental rights to the child, S.S. We affirm.

### **Issue**

Mother and Father challenge the sufficiency of the evidence supporting the trial court’s judgment. In so doing, Mother and Father present the following consolidated issues for review:

- (1) Whether clear and convincing evidence supports the trial court’s determination that there is a reasonable probability the conditions resulting in S.S.’s removal and/or continued placement outside their care will not be remedied; and
- (2) Whether clear and convincing evidence supports the trial court’s determination that termination of the parent-child relationships is in S.S.’s best interests.

### **Facts and Procedural History**

Mother and Father are married, living together, and the biological parents of S.S., born in June 2008. The facts most favorable to the trial court’s judgment reveal that at the time of S.S.’s birth, the Indiana Department of Child Services, Dearborn County (“DCDCS”) was providing services to the family through an on-going child in need of services (“CHINS”) case involving S.S.’s older sibling, C.S. Because the parents had not sufficiently participated in and/or completed court-ordered reunification services, DCDCS took S.S. into emergency protective custody prior to the child’s discharge from the hospital and thereafter

filed a petition alleging S.S. was also a CHINS.<sup>1</sup>

S.S. was adjudicated a CHINS in September 2008, and, following a dispositional hearing later the same month, the trial court entered an order formally removing S.S. from both parents' care and custody and adjudicating the child a ward of DCDCS. The trial court's dispositional order also directed both Mother and Father to participate in and successfully complete a variety of services in order to achieve reunification with S.S. Specifically, Mother and Father were directed to participate in parenting classes, individual counseling, weekly supervised visitation with S.S., and home-based services. Both parents were also directed to participate in psychological evaluations.<sup>2</sup>

Mother's and Father's respective participation in court-ordered services was inconsistent from the beginning and ultimately unsuccessful. Although Mother and Father attended scheduled visits with S.S., they oftentimes missed or were late for their appointments. In addition, both parents needed repeated instructions on how to safely care for S.S.'s daily needs. Father, in particular, needed constant reminders on how to support the baby's head, how to carry the child's baby seat safely without banging it on walls and jolting the baby inside, and how not to kiss S.S. with an "open mouth." Transcript p. 67. In addition, although both parents completed the court-ordered parenting classes, service providers indicated that both parents were unable to demonstrate they had improved their

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<sup>1</sup> Mother and Father voluntarily relinquished their parental rights to C.S. several months after S.S.'s birth. Father also voluntarily relinquished his parental rights to two older children from a previous marriage to be adopted by his brother and sister-in-law.

<sup>2</sup> We observe that the parties failed to include copies of the CHINS and dispositional orders in the Record on appeal thereby frustrating this court's review.

respective parenting abilities. In addition, Mother discontinued participating in counseling services against the advice of her counselor, and both parents repeatedly stated to case workers that they no longer needed help with parenting.

Mother and Father also submitted to psychological evaluations with Dr. Gayla Kaibel. The first evaluation of Mother and Father occurred in March of 2007 during the CHINS case involving C.S. The parents were re-evaluated in August 2008. Dr. Kaibel's evaluations revealed that Mother has a Full Scale IQ score of 72, Father has a Full Scale IQ score of 61, and both parents function in the mild mental retardation range. Although Dr. Kaibel noted that both parents are capable of following simple instructions and of performing certain daily living tasks, such as cooking and shopping, both parents have difficulty grasping basic parenting concepts, transferring lessons from one situation to another, and are easily frustrated and confused. Dr. Kaibel also observed that Mother struggles with anger management.

Following her initial evaluation, Dr. Kaibel's written report indicated that Mother and Father should not be automatically "assumed to be incapable of daily care of children," but that they would "need close and frequent assistance to see dangers and find solutions across their child's life." Appellant Father's App. p. 60. Dr. Kaibel further indicated that unless provisions were made for Mother and Father to receive indefinite, in-home assistance, or unless a guardianship of S.S. was established, S.S. would be at significant risk of substantial danger if returned to the parents' care. Dr. Kaibel's recommendations remained unchanged following her re-evaluation of both parents approximately one-and-a-half years later in

August 2008.

DCDCS eventually filed a petition to involuntarily terminate Mother's and Father's parental rights to S.S. in March 2009. A two-day evidentiary hearing was held in February 2010, and the trial court entered an Amended Order on Termination on June 21, 2010. Both parents now appeal.

## **Discussion and Decision**

### A. Standard of Review

We begin our review by acknowledging that this court has long had a highly deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). When reviewing the termination of parental rights, we will neither reweigh the evidence nor judge witness credibility. 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 most favorable to the judgment. Id. Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside a 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.

Here, in terminating Mother's and Father's parental rights, the trial court entered specific findings and conclusions. When a trial court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. Bester v. Lake County Office of Family & Children, 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. L.S., 717 N.E.2d at 208.

### B. Analysis

“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, a trial court must subordinate the interests of the parent to those of the child when evaluating the circumstances surrounding a termination. K.S., 750 N.E.2d at 837. 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.

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

- (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)(B) and (C) (2008).<sup>3</sup> “The State’s burden of proof in termination of parental rights cases is one of ‘clear and convincing evidence.’” In re G.Y., 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code § 31-37-14-2). If the court finds the allegations in a petition described in section 4 of this chapter are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a). Mother and Father challenge the sufficiency of the evidence supporting the trial court’s findings as to subsections (b)(2)(B) and (C) of the termination statute cited above. See Ind. Code § 31-35-2-4.

#### 1. Conditions Not Remedied/Threat

Initially, we observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. The trial court therefore need only find one of the two requirements of subsection (b)(2)(B) has been established by clear and convincing evidence. See L.S., 717 N.E.2d at 209. Because we find it to be dispositive under the facts of this case, we need only consider whether DCDCS established, by clear and convincing evidence, that there is a reasonable probability the continuation of the parent-child relationships between Mother, Father, and S.S. pose a threat to S.S.’s well-being. See Ind. Code § 31-35-2-4(b)(2)(B)(ii).

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 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

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<sup>3</sup> Indiana Code section 31-35-2-4 was amended by Pub. L. No. 21-2010, § 8 (eff. March 12, 2010). The changes to the statute became effective after the filing of the termination petition involved herein and are not applicable to this case.

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 consider any services offered to the parent by the county department of child services, and the parent's response to those services, as evidence of whether conditions will be remedied. Id. at 1252.

In determining that continuation of the parent-child relationship poses a threat to S.S.'s well-being, the trial court made several pertinent findings pertaining to Mother's and Father's past involvement with DCDCS, as well as each parent's unresolved mental health issues and current inability to care for S.S. Although the trial court acknowledged Mother and Father had completed parenting classes, submitted to psychological examinations, and participated in visits with S.S., it further found that both parents were "not always cooperative with [DCDCS], were sometimes hostile[,] and often limited in their ability to assess the needs of the child." Appellant Father's App. p. 10. In addition, the trial court acknowledged Dr. Kaibel's psychological evaluations, which indicated that both parents "may not recognize, diagnose[,] or understand" S.S.'s needs, thereby placing Mother and Father "at a greater than average risk to neglect their child." Id. The trial court also determined that Mother and Father "do not always recognize that they need assistance with parenting and will refuse the available help that is necessary for the safety of the child." Id.

As for S.S.'s physical and emotional well-being, the trial court found that even with someone there with them to direct them all the time "[Father] and [Mother] could not care for [S.S.] emotionally." Id. The court pointed out that Father had been observed "sleeping with the child awake in his arms" and kissing S.S. "with an open mouth" on multiple occasions, but would not follow the visitation supervisor's directions and would have to be redirected "on a regular basis for the same activity." Id. The trial court also found that the evidence presented indicated that neither parent could "recognize a health problem" and, "if told[,] would not recognize it again in another similar situation." Id. Finally, the court found Mother has "anger and hostility problems," and was "recently arrested and charged with strangulation, domestic battery[,] and disorderly conduct for allegedly choking her mentally challenged stepson and striking [Father] with a lantern battery and broom." Id. A thorough review of the record reveals that these findings are supported by the evidence.

Testimony from various caseworkers and service providers during the termination hearing makes clear that despite a wealth of services available to both parents for approximately two years, Mother's and Father's circumstances remained largely unchanged, and they both remained incapable of demonstrating an ability to provide S.S. with a safe and stable home environment. During the termination hearing, Dr. Kaibel, Guardian ad Litem ("GAL") Cheryl Shampoo, and multiple case workers all recommended termination of both parents' parental rights to S.S. In so doing, caseworkers and service providers recounted that both Mother and Father had indicated they no longer needed any help in parenting S.S. Social worker and counselor Debbie Sinclair likewise testified Mother had requested that all

her counseling services be terminated, against Sinclair’s advice, because Mother no longer needed her services. When asked whether Mother had resolved her anger issues, Sinclair answered in the negative. Sinclair went on to testify that she did not believe either parent could “cognitively process . . . any need that [S.S.] might have emotionally” or how to help S.S. “behaviorally,” and that both parents would be “significantly impaired in trying to raise their child.” Transcript pp. 40, 47. Similarly, Dr. Kaibel testified that both parents had “made basically little to no progress” in improving their respective abilities to parent S.S. Id. at 85. Dr. Kaibel went on to say that although she believed neither parent would purposefully harm S.S., she nevertheless felt that Mother and Father “simply are not able to predict problems or dangers ahead of time,” and that without significant resources, S.S. would be in “substantial danger” if returned to their care. Id. at 85-87.

A trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 199 (Ind. 2003). When the evidence shows that a child’s emotional and physical development is threatened, termination of the parent-child relationship is appropriate. Egly v. Blackford County Dep’t of Public Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992). Based on the foregoing, we conclude that DCDCS presented clear and convincing evidence to support the trial court’s findings and ultimate determination that continuation of the parent-child relationships between Mother, Father, and S.S. pose a threat to S.S.’s well-being.

## 2. Best Interests

We next consider Mother's and Father's assertions that DCDCS failed to prove termination of their respective parental rights is in S.S.'s best interests. In determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Indiana Department of Child Services and look to the totality of the evidence. McBride, 798 N.E.2d at 203. 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 both the case manager and child advocate to terminate parental rights, coupled with 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).

In addition to the findings previously cited, the trial court acknowledged that Mother and Father "are functioning in the mildly mentally retarded range and would have difficulty recognizing and understanding health issues related to common childhood diseases. The lack of recognition and the ability to respond to the needs of the child put the child at serious risk." Appellant Father's App. p. 9. The trial court thereafter determined that termination of both Mother's and Father's parent-child relationships with S.S. are in the child's best interests. These findings, too, are supported by the evidence.

The record reveals that S.S. is currently living and thriving in a pre-adoptive foster home and that all DCDCS case managers involved in this case recommended termination of

Mother's and Father's parental rights. Moreover, in recommending termination of parental rights, GAL Shampoo informed the trial court that S.S. is bonded with her current foster parents, that the foster parents are providing S.S. with the type of environment the child needs to grow, and that both Mother and Father fail to grasp "the full magnitude of what it takes to raise a child." Tr. p. 10.

Based on the totality of the evidence, including Mother's and Father's failure to complete and/or benefit from a majority of the trial court's dispositional orders and current inability to provide S.S. with a safe and stable home environment, coupled with the testimony from GAL Shampoo and multiple DCDCS case managers recommending termination of parental rights, we conclude that clear and convincing evidence supports the trial court's determination that termination of Mother's and Father's parental rights is in S.S.'s best interests. Mother's and Father'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 265.

Affirmed.

NAJAM, J., and DARDEN, J., concur.