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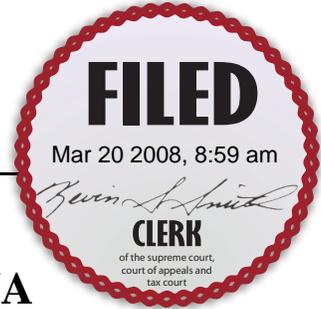
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**IN THE
COURT OF APPEALS OF INDIANA**

DONALD STEDMAN and TERRI STEDMAN,)
)
Appellants-Respondents,)

vs.)

No. 28A05-0707-JV-361)

GREEN COUNTY DEPARTMENT)
OF CHILD SERVICES,)
)
Appellee-Petitioner.)

APPEAL FROM THE GREENE CIRCUIT COURT
The Honorable Erik C. Allen, Judge
Cause Nos. 28C01-0608-JT-6 and 28C01-0608-JT-9

March 20, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Donald Stedman (“Father”) and Terri Stedman (“Mother”) appeal from the trial court’s termination of their parental rights with respect to their son, D.S. Mother also appeals from the trial court’s termination of her parental rights with respect to her daughter, P.W.¹ Father and Mother present the following issues for our review:

1. Whether the trial court abused its discretion when it permitted witnesses to testify regarding out-of-court statements made by P.W.
2. Whether the Greene County Department of Child Services (“DCS”) presented sufficient evidence to sustain the termination of their parental rights.
3. Whether the trial court violated Mother’s constitutional rights when it faulted her for not admitting to having molested P.W.

We affirm.

FACTS AND PROCEDURAL HISTORY

Mother gave birth to P.W. on June 18, 2001. Mother married Father on January 22, 2004. Later that year, Mother became pregnant. Mother had a difficult pregnancy. In approximately December 2004, Mother’s brother, Jerry Welty, and Welty’s girlfriend, Pixie Fowler,² moved in with Mother, Father, and P.W. Father was working as an over-the-road truck driver during that time and was absent from the residence for long periods of time.

On March 27, 2005, DCS received a report that P.W., who was then three years old, had bruises and a “busted lip.” Transcript at 134. Jarrod Chambers, a DCS family caseworker, investigated the report. Chambers and a police officer interviewed P.W.,

¹ P.W.’s father is not a party to this appeal.

² Fowler has a criminal history.

who stated that Mother, Father, Welty, and Fowler had caused the bruises. P.W. stated that “they all paddled her and they all spanked her with their hands.” Id. at 136. In addition, P.W. reported that she cut her lip trying to drink out of a toilet. Chambers and the officer then went to P.W.’s residence and spoke to the four adults. Father and Mother admitted having spanked P.W., but denied using a paddle. Father stated, “[J]ust because you spank a child and leave a bruise it is not beating a child.” Id. at 138. Father and Mother told Chambers that P.W. probably hurt herself during one of her tantrums. Mother also explained that P.W. might have gotten bruised during a “basket hold,” which is a technique that a caseworker had previously taught Mother.

Chambers observed that P.W.’s bedroom was “very bare.” Id. at 139. Father and Mother explained that P.W. had been misbehaving, so they had made her bedroom look like a “jail cell.” Id. They said that “they wanted to show her what it would be like to be in jail.” Id. Chambers also observed a plastic toilet on the floor of P.W.’s room. That toilet was “filled to the top with urine and feces” despite the fact that P.W. had not been home “for at least a day.” Id. On March 28, 2005, the trial court issued an emergency order removing P.W. from Father and Mother’s residence and placing her in foster care. DCS also filed a petition alleging that P.W. was a child in need of services (“CHINS”) on that date.

On April 25, a health care provider, Ronit Reuveny, reported possible sexual abuse on P.W. based on findings during a physical examination. Reuveny observed an “eczema-like rash” and a “single thin laceration” across each of the labia. Id. at 623. Reuveny believed that the laceration was approximately “10 to 14 days” old, but she also

believed it was possible that it had occurred earlier and had been “reopened.” Id. at 625-26. Reuveny questioned P.W., outside the presence of her foster mother, about whether anyone was “touching her the wrong way.” Id. at 626. P.W. stated that her foster mother and her “grandmother” touched her when they bathed her.³ Reuveny then asked P.W. whether “there was [sic] any men or man” who touched her in the “wrong way,” and P.W. responded, “my dad.” Id. at 627.

On May 2, 2005, Heather Perkins, a case manager for DCS, and Julie Martin, an investigator for the Greene County Prosecutor’s Office, interviewed P.W. for approximately forty-five minutes. Perkins and Martin had great difficulty with P.W., who threw a “temper tantrum” and even became “violent” during the interview. Id. at 969. But P.W. did tell them that “her mom, her dad, Aunt Pixie and Uncle Jerry had stuck their hands and fingers inside her pee-pee hole.” Id. at 971. P.W. made that statement despite not wanting “to talk about her being molested.” Id.

Perkins and Martin then interviewed Father, Mother, Welty, and Fowler regarding P.W.’s allegations. Each of them denied having molested P.W. On May 31, Perkins and Martin re-interviewed P.W., who was much calmer that day. Perkins and Martin clarified with P.W. that Father was not involved in the molestation, only Mother, Welty, and Fowler. Martin subsequently re-interviewed Welty and Fowler. During that interview, Martin learned that Mother had given birth to D.S. on June 3, 2005. Martin informed DCS that D.S. had been born, and DCS filed a petition alleging that D.S. was a CHINS.

³ The context of Reuveny’s testimony makes clear that P.W. was not alleging “bad touching” by her foster mother or foster grandmother, just touching incident to bathing.

That petition alleged that emergency removal was necessary “for [D.S.’s] health and safety.” Appellants’ App. at 65. D.S. was placed with P.W.’s foster family.

The trial court found both P.W. and D.S. to be CHINS on September 21, 2005.

DCS established case plans for Mother and Father, as follows:

A. [Mother] shall receive individual therapy on a basis as recommended by her therapist and shall follow all recommendations made by that therapist.

B. [Mother] shall participate in a licensed Sex Offender treatment evaluation and shall follow all recommendations made by that therapist. [Mother] shall work with Family Case Manager, Carol A. Phelps, to find an appropriate facility.

C. [Mother] shall participate in a psychological evaluation and shall follow all recommendations made by that therapist.

D. [Mother] shall meet with and cooperate with case management services through the Bloomfield Hamilton Center.

E. [Mother] shall meet with and cooperate with homemaker services through the Bloomfield Hamilton Center.

F. [Mother] shall allow announced and unannounced home visits by the supervising case manager and all other service providers in this case.

G. [Mother] shall sign all releases as requested by [DCS], the Debra Corn Agency, Inc., and Hamilton Center.

H. [Mother] shall report to [DCS] any changes of address, telephone number, household situation or employment within 24 hours of that change.

I. [Mother] shall provide an appropriate meal and snacks for [D.S.] while [D.S.] is in her care.

J. [Mother] shall provide an appropriate bed for [D.S.] at all times when he is in her home.

K. [Father] shall receive individual therapy on a basis as recommended by his therapist and shall follow all recommendations made by that therapist.

L. [Father] shall participate in a psychological evaluation and shall follow all recommendations made by the therapist.

M. [Father] shall participate in a minimum of twelve parenting sessions through the Debra Corn Agency, Inc.

N. [Father] shall meet with and cooperate with case management services through the Bloomfield Hamilton Center.

O. [Father] shall meet with and cooperate with homemaker services through the Bloomfield Hamilton Center.

P. [Father] shall allow announced and unannounced home visits by the supervising case manager and all service providers in this case.

Q. [Father] shall sign all releases as requested by [DCS], the Debra Corn Agency, Inc., and Children's Sanctuary.

R. [Father] shall report to [DCS] any changes of address, telephone number, household situation or employment within 24 hours of that change.

S. [Father] shall provide an appropriate meal and snacks for [D.S.] while [D.S.] is in his care.

T. [Father] shall provide an appropriate bed for [D.S.] while he is in his home.

U. Visitation between [Mother], [Father], and [D.S.] shall be at the discretion of [DCS].

Appellants' App. at 100-02.⁴ Father and Mother were somewhat compliant with their case plans, but DCS caseworkers were not satisfied with the level of parenting skills each had demonstrated, their visitation with the children was inconsistent, and Mother did not complete sexual offender counseling.

On May 22, 2006 and August 30, 2006, DCS filed petitions to terminate Mother's parental rights with respect to P.W. and to terminate Mother's and Father's parental

⁴ The parties do not direct us to a copy of the dispositional order regarding P.W. in the appendix, but we assume for the purposes of this appeal that Mother's case plan was substantially similar to the one regarding D.S.

rights with respect to D.S. DCS filed a notice of intent to offer as evidence statements P.W. made to various witnesses. Following a hearing on that notice, the trial court ruled that P.W. was unavailable to testify at the termination hearing.

Following a hearing on the petitions to terminate Father's and Mother's parental rights, conducted over the course of five days in March and April 2007, the trial court ordered that Father's and Mother's parental rights be terminated with respect to D.S. and that Mother's parental rights be terminated with respect to P.W. The trial court found and concluded in relevant part:

4. The circumstances that led to the detention of [P.W.] involved a report in which allegations of physical abuse were substantiated on [Mother] and [Father] regarding [P.W.]. Fingertip bruises were found on the child and [Mother] and [Father] admitted that they spanked the child with their hand, which is consistent with the fingertip bruises.

5. A report of sexual abuse was received regarding [P.W.] on April 26, 2005. [P.W.] reported being molested by her mother, . . . among others. After investigation, child molesting was substantiated on [Mother] and environmental life/health endangering was substantiated on [Father] and [Mother] regarding [P.W.]. [Mother] denied molesting her daughter at this time.

6. The circumstances that led to the detention of [D.S.] involved the substantiation of child molesting on [Mother] and environmental life/health endangering on [Father] and [Mother] regarding [P.W.]. Due to this substantiation, [D.S.] was removed to ensure his health and safety.

7. A Fact-Finding Hearing was held on August 30, 2005 and both children were determined to be CHINS by the Court on September 21, 2005.

8. Dispositional Decrees were entered in both cases on November 2, 2005, and both children have remained out of the home since before that date. Through those dispositional decrees, [Mother] and [Father] were ordered to participate in services.

9. At case reviews on May 15, 2006, September 11, 2006 and January 8, 2007 it was determined by the Court that [Mother] had not complied with

the case plan or had not fully complied with the case plan (May 15, 2006), had not visited with the children on a regular basis, had not enhanced her ability to fulfill her parental obligation, and had not cooperated with the Department of Child Services. At Case reviews on May 15, 2006, September 11, 2006, and January 8, 2007 it was determined by the Court that [Father] had not complied with the case plan or had not fully complied with the case plan (May 15, 2006), had not visited with the child on a regular basis, had not enhanced his ability to fulfill his parental obligation, and had not cooperated with Department of Child Services.

10. [P.W.] has disclosed on numerous occasions and to numerous individuals that she was molested by her mother. She has continued to make disclosures and her statements have remained substantially consistent regarding [Mother].

11. [P.W.] has suffered from severe emotional trauma due to her molestation in the form of behavior problems and sexually acting out.

12. [P.W.]'s behavioral problems escalate when she has been in the presence of her mother or when there is potential that she will be in the presence or care of her mother.

13. On March 15, 2006, [Mother] admitted that she had sexually molested her daughter to Joyce Knutti, and she gave specific details as to how and where she molested her daughter.

14. One week after admitting to sexually molesting [P.W.], [Mother] recanted her admission and stated that she could not remember if she had molested [P.W.] or not. Although it is not clear exactly what [Mother]'s level of participation was in the sexual molesting, the Court finds there is persuasive, competent evidence that proves by clear and convincing evidence that [Mother] had knowledge of the molestation and did play a significant role in the events.

15. [Mother] stopped attending sex offender treatment in August 2006 without completing treatment as ordered. Due to non-compliance with sex offender treatment, [Mother] meets the criteria for and is at high risk for re-offending. [Mother] did not inquire about restarting sexual offender treatment until January 2007.

16. Visitation between [Mother] and [P.W.] was suspended by the Court in April 2006 based on the recommendation that continued visitation would be detrimental to [P.W.] and visitations have never been reinstated due to non-compliance by [Mother] in services and due to continued therapist

recommendation that visits between [Mother] and [P.W.] remain suspended.

17. Visitation between [Mother] and [D.S.] was voluntarily ended by [Mother] in August 2006 due to [Mother] wanting to voluntarily terminate her parental rights and was then suspended by the Court on September 11, 2006 due to non-compliance and has never been reinstated.

18. [Father] has never had unsupervised visitation with [D.S.] since his removal in June 2005. The amount of time that [Father] visits with [D.S.] has decreased over time. When asked about making up visits that were canceled by him or Children's Sanctuary staff, [Father] has declined to make the visits up.

19. Sufficient measurable progress has not been made by [Mother] and [Father] in regards to parenting skills in supervised visits with [D.S.] since they began after his removal in June 2005.

20. There are ongoing concerns that the Stedman home is infested with cockroaches, and there have been concerns regarding the safety of the steps going into the home, and that there are large amounts of trash around the home. Visitation had to be moved from the home due to these conditions and visits have never been able to resume at the home.

21. [Father] has not made progress in therapy regarding the issues of [Mother] sexually molesting her daughter because he does not believe [Mother] was involved in the molestation and refuses to address the issue, does not take responsibility for [P.W.]'s bruises and physical abuse, and not separating himself from [Mother] as recommended. Due to his denial surrounding these issues, there are concerns about [Father]'s ability to parent. Primarily the Court finds [Father]'s failure to acknowledge and respond to [Mother]'s role in the sexual abuse of [P.W.] to be indicative of his future inability to care for and protect both [P.W.] and [D.S.], should either of them be returned to his care.

22. [Mother] has not made significant progress in therapy regarding the issues surrounding the molestation of her daughter, past issues of abuse, and parenting issues. According to Dr. Pauly, [Mother]'s lack of significant progress on her issues in counseling causes her to pose a threat to the children in that she could not be assured of providing a protective and safe environment for the children if in her care.

23. [Mother] and [Father] have had significant gaps in attending individual therapy and when in therapy have not been working on or made significant

progress regarding the underlying issues surrounding the removal of the children nor parenting issues. Without working on these underlying issues on a weekly and consistent basis, [Mother] and [Father] would likely continue to place the children at risk.

24. Dr. Pauly testified that [P.W.] needs a highly structured environment with her parents always behaving in a consistent manner so that she can feel safe, and the parents would need to be pro-active in establishing a consistent environment. The inconsistent participation and cooperation in services by both [Mother] and [Father] shows an inability to provide the consistent environment to meet [P.W.]'s needs to feel safe and to emotionally progress with her issues.

25. Since [P.W.] has been placed in the Gaskin foster home, there have been substantial improvements in her behavior and emotional well-being.

26. Until [P.W.] is in a permanent living environment, she will not be able to more fully recover and move on from the trauma she suffered as a result of being sexually molested. The Court believes it is clear that [Mother] and [Father] are not able to provide such an environment for [P.W.].

27. More than two years have passed since [P.W.] was removed from her parents, and nearly two years have passed since [D.S.] was removed from his parents, and in that two years the parents have made minimal progress in becoming able to fulfill their parental obligations.

28. [Mother] and [Father] have not demonstrated that they can adequately parent or care for [P.W.] and [D.S.] as [Mother] has had no visitation with her children and [Father] has had only minimal visitation with [D.S.].

29. [DCS] has made reasonable efforts to reunify this family.

30. Termination of the parental rights of [Mother] and [Father] is in the best interest of [P.W.] and [D.S.] for the reasons enumerated above, and so that these children may be able to soon achieve a permanent, stable, and safe living environment.

31. Any matter enumerated above as a Finding of Fact that may be found as a Conclusion of Law is hereby deemed a Conclusion of Law.

II. CONCLUSIONS OF LAW

* * *

2. The conditions which led to the children being placed apart from their parents are: substantiated reports of physical abuse, child molestation, environmental life/home endangering and then lack of progress in therapy by both parents, lack of progress in visitations by both parents, lack of compliance with ordered services, and failure by both parents to prove that they can protect these children from future abuse.

3. There is a reasonable probability that the conditions that led to the children's removal or the reasons for placement outside of the parents' home will not be remedied. The Court bases this conclusion upon the totality of the evidence submitted at the trial and upon the findings of fact set forth herein.

4. The Court concludes that it is in the best interest of the children that [Mother] and [Father]'s parental rights be terminated. The Court has weighed the children's need for continued contact with their parents against the long-standing and pressing need for stability, safety, nurturing, and permanence;

5. The court further concludes that [DCS]'s plan of continued placement in the foster care home of Jason and Jill Gaskins, with the intent of possible adoption by the Gaskins, is an appropriate and satisfactory plan for the children;

6. The Court Concludes that [DCS] has proved by clear and convincing evidence that their Petition for Involuntary Termination of Parental Rights as to both children should be granted and that the termination of the parental rights of [Mother] and [Father] should be granted.

Appellants' App. at 2-6. This appeal ensued.

DISCUSSION AND DECISION

Standard of Review

Initially, we note that the purpose of terminating parental rights is not to punish parents, but to protect the children. Weldishofer v. Dearborn County Div. of Family & Children (In re J.W.), 779 N.E.2d 954, 959 (Ind. Ct. App. 2002), trans. denied.

“Although parental rights are of a constitutional dimension, the law allows for the

termination of those rights when parents are unable or unwilling to meet their responsibilities as parents. This includes situations not only where the child is in immediate danger of losing his life, but also where the child's emotional and physical development are threatened." Id.

In reviewing a decision to terminate a parent-child relationship, this court will not set aside the judgment unless it is clearly erroneous. Everhart v. Scott County Office of Family & Children, 779 N.E.2d 1225, 1232 (Ind. Ct. App. 2002), trans. denied. Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences to support them. Id. When reviewing the sufficiency of the evidence, this court neither reweighs the evidence nor judges the credibility of the witnesses. Id.

To support a petition to terminate parental rights, DCS must show, among other things, that 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.

Ind. Code § 31-35-2-4(b)(2)(B). DCS must also show that termination is in the best interest of the child and that there exists a satisfactory plan for the care and treatment of the child. Ind. Code § 31-35-2-4(b)(2)(C), (D). These factors must be established by clear and convincing evidence. Ind. Code § 31-34-12-2.

In interpreting Indiana Code Section 31-35-2-4, this court has held that the trial court should judge a parent's fitness to care for his or her child as of the time of the termination hearing, taking into consideration evidence of changed conditions. J.K.C. v.

Fountain County Dep't of Pub. Welfare, 470 N.E.2d 88, 92 (Ind. Ct. App. 1984). However, recognizing the permanent effect of termination, the trial court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. Id. To be sure, the trial court need not wait until the child is irreversibly influenced by a deficient lifestyle such that the child's physical, mental and social growth is permanently impaired before terminating the parent-child relationship. Id. at 93.

A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, will support a finding that there exists no reasonable probability that the conditions will change. Matter of D.B., 561 N.E.2d 844, 848 (Ind. Ct. App. 1990). Where there are only temporary improvements and the pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve. Matter of D.L.W., 485 N.E.2d 139, 143 (Ind. Ct. App. 1985). When the evidence shows that the child's emotional and physical development is threatened, termination of the parent-child relationship is appropriate. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

Issue One: Admission of Evidence

Father and Mother both contend that the trial court abused its discretion when it allowed testimony by several witnesses regarding out-of-court statements made by P.W.⁵

⁵ DCS presented evidence that: P.W. told Dr. Susan Pauly that Mother, Father, Welty, and Fowler had touched her "genital area," transcript at 25; P.W. told Julie Martin that Mother, Father, Welty, and Fowler had touched her "peepee hole," transcript at 45; P.W. told Judy Clayton that Mother had touched her "private parts," transcript at 53; P.W. told Elaine Garrett that Mother, Welty, and Fowler

We review a trial court's admission of evidence for an abuse of discretion. In re J.V., 875 N.E.2d 395, 401 (Ind. Ct. App. 2007). An abuse of discretion will only be found when the decision is clearly erroneous or against the logic and effect of the facts and circumstances before the trial court. Id.

Indiana Code Section 31-35-4-2 provides:

A statement or videotape that:

(1) is made by a child who at the time of the statement or videotape:

(A) is less than fourteen (14) years of age; . . .

(2) concerns an act that is a material element in determining whether a parent-child relationship should be terminated; and

(3) is not otherwise admissible in evidence under statute or court rule;

is admissible in evidence in an action described in Section 1 of this chapter if the requirements of Section 3 of this chapter are met.

And Indiana Code Section 31-35-4-3 provides:

A statement or videotape described in Section 2 of this chapter is admissible in evidence in an action to determine whether the parent-child relationship should be terminated if, after notice to the parties of a hearing and of their right to be present:

(1) the court finds that the time, content, and circumstances of the statement or videotape and any other evidence provide sufficient indications of reliability; and

(2) the child:

* * *

(C) is found by the court to be unavailable as a witness because:

“would put their fingers in her hole,” transcript at 64; P.W. told Vicki Starr, her foster mother, that Mother “does bad touches,” transcript at 73; and P.W. told Jill Gaskins that Mother, Welty, and Fowler “had done bad touches and that [Father] looked out the window,” transcript at 85.

(i) a psychiatrist, physician, or psychologist has certified that the child's participation in the proceeding creates a substantial likelihood of emotional or mental harm to the child[.]

Here, the trial court found that each of the elements of Indiana Code Section 31-35-4-3 was satisfied and admitted the testimony of several witnesses that P.W. stated that Mother molested her on one occasion. On appeal, Father and Mother contend that the time, content, and circumstances of the statements provide insufficient indicia of reliability to be admissible. While we find the content of P.W.'s statements to the various witnesses to be substantially consistent, there is no indication that any of the statements were made close in time to the alleged molestation, and the statements themselves were not sufficiently close in time to each other to prevent implantation or cleansing. See Carpenter v. State, 786 N.E.2d 696, 704 (Ind. 2003) (finding testimony recounting child's statements improperly admitted under protected person statute, which requires same indicia of reliability as Indiana Code Section 31-35-4-3).

Regardless, even if the testimony was erroneously admitted, we apply the harmless error rule, determining if the probable impact of the error, in light of all the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties. Purvis v. State, 829 N.E.2d 572, 585 (Ind. Ct. App. 2005), trans. denied. Improper admission of evidence is harmless error when the erroneously admitted evidence is merely cumulative of other evidence before the trier of fact. Id.

Here, DCS presented testimony that Mother admitted to having molested P.W. on one occasion, in early 2005. Specifically, Joyce Knutti, Mother's therapist, testified as follows:

Terri stated the first offense she was aware of and participated in occurred either at the end of January or beginning of February, 2005. It took place in her home, “during the afternoon because it was still sunny outside.” Don, her husband, was on the road trucking. [Welty] and [Fowler] were sitting on the floor in front of the entertainment center. Terri was sitting on the couch. They had been watching some television program but she could not recall what. She denied they were using drugs or alcohol at the time of the offense. [P.W.] was standing beside [Fowler] and was barefoot wearing a dress. Terri could not recall if [P.W.] had on underwear. At this point in her disclosure Terri interjected [Fowler] did a spell earlier. She went on to explain that [Fowler] was into wicca and paganism and “[Fowler] told me that she and [Welty] had done a spell”. . . . I refocused her back to disclosure by asking her more about what was going on at the time of the offense. She stated [P.W.] had done something. “We were all mad at her. . . [Fowler] had her by the arm, [and Fowler] said ‘this is what happens to bad girls.’ I thought at first she was going to spank her. She put her finger in [P.W.]’s vagina.” When asked for how long, [Mother] stated “30 seconds or a minute. Not a long time.” When asked how deeply [Fowler] had penetrated [P.W.]’s vagina, she stated, “I couldn’t see how far because she had on a dress.” I asked her how [P.W.] reacted and she said [P.W.] was crying. She went on to disclose [Fowler] moved her hand and told [Welty] to do it. [Welty] put his finger in her vagina about 30 seconds to one minute at the most. “It was real quick.” She was asked how far [Welty] penetrated [P.W.]’s vagina with his finger, and she stated she couldn’t see. Again, she was asked how [P.W.] was reacting and she stated [P.W.] was crying. “[Fowler] told [P.W.] to go over to me. She did what [Fowler] said. I just looked at [Fowler]. [Fowler] said, ‘I have murdered once, what’s to keep me from doing it again?’ I thought she was threatening my life. [P.W.] was standing beside me still crying. I put the tip of my finger in her vagina about 30 to 45 seconds,” and she indicated like this with her thumb and forefinger, which was basically up to her first knuckle. “I pulled out my finger and told [P.W.] to go play. She did, and I went to my room.”

Transcript at 713-16. Knutti also testified that Mother admitted having observed Fowler put her finger inside P.W.’s vagina on another occasion a few days later. A short time after that, Mother had to be hospitalized, and she left P.W. in the care of Fowler and Welty, since Father was out of town.

Even though Mother subsequently recanted, her detailed admission to Knutti is clear and convincing evidence of the molestation. And the testimony that P.W. told several witnesses that Mother molested her on a single occasion is merely cumulative evidence. Mother's admission, without more, is sufficient to support the trial court's conclusion that Mother molested P.W. It was for the trial court to assess Mother's credibility on this issue. Any error in the admission of testimony concerning P.W.'s out-of-court statements was harmless.

Issue Two: Sufficiency of the Evidence

Father's Contentions

Father contends that the evidence does not support the trial court's conclusion that there is a reasonable probability that the conditions that led to D.S.'s removal or the reasons for placement outside of the parents' home will not be remedied. In particular, he asserts, "There was no clear and convincing evidence presented at the termination hearing that reasonable efforts to rehabilitate the parents, particularly Father, failed or that there was a substantial likelihood that Father would neglect [D.S.] or deprive him of life's necessities." Brief of Appellant Father at 20. We cannot agree.⁶

To the extent Father contends that he should not be held responsible for Mother's molestation of P.W., that contention fails. Father has never admitted that Mother molested P.W. despite the clear and convincing evidence otherwise, and Father insists that he and Mother will stay married and will continue to live together. Thus, Father has not dealt with the issue of the molestation in his individual therapy. The evidence

⁶ Father does not challenge the sufficiency of the evidence with respect to any of the other elements of Indiana Code Section 31-35-2-4(b)(2).

supports the trial court's conclusion that Mother molested P.W. and that Mother has not completed sexual offender therapy. The evidence supports the trial court's finding that Father's "failure to acknowledge and respond to [Mother]'s role in the sexual abuse . . . [is] indicative of his future inability to care for and protect both [children] should either of them be returned to his care." Appellants' App. at 4. See, e.g., In the Matter of A.J., E.J., and J.J., 877 N.E.2d 805, 816 (Ind. Ct. App. 2007) (holding Mother's untreated mental illness, denial of having mental illness, and continued denial that Father molested child supported termination of her parental rights).

Moreover, while Father maintains that he fully complied with his case plan, there is substantial evidence contradicting that assertion. For instance, Vicky Starr, a Family Support Worker with Children's Sanctuary, testified that she supervised visits between Father and D.S. from October 17, 2005 until March 13, 2007. Starr testified that Father sometimes missed visits without presenting adequate documentation explaining his absence, like a note from work or a physician's office. At one point, Father went almost one month without visiting D.S. Starr also testified that Father would frequently leave visits early or arrive at visits late without explanation. Starr observed that Father had difficulty making sure that D.S. got enough to eat. And on one occasion, Father "used the same wipe on [D.S.]'s mouth after he had used it on [D.S.]'s bottom[.]" Transcript at 344.

Starr observed cockroaches on the floor next to D.S. during a supervised visit at the Stedmans' residence in February 2006, and in June 2006, during a supervised visit at a church, Starr observed cockroaches crawling out of a diaper bag Father and Mother had

brought with them. Starr testified that cockroaches crawled out of the diaper bag on “numerous occasions,” including in July 2006. Id. at 356. Finally, there was evidence that Father and Mother were still trying to deal with the cockroach problem at the time of the termination hearing.

Father maintains that the trial court ignored improvements in conditions at his residence, such as his repairs to an unsafe stairwell and using pesticides in an effort to eliminate the cockroaches. But, while a termination of parental rights cannot be based entirely upon conditions which existed in the past, but which no longer exist, here, there was other evidence supporting termination. See In re Termination of Parental Rights of P.C., B.T.D., and B.R.F., 630 N.E.2d 1368, 1374 (Ind. Ct. App. 1994), trans. denied. Starr opined that she was concerned that Father would be unable to provide proper nourishment for D.S. and that D.S. “might be slightly neglected” if returned to his care. Transcript at 366. Elaine Garrett, Starr’s supervisor, testified that Father does not have “the knowledge and requisite parenting skills to be able to take care of [D.S.]” Id. at 459. That evidence of Father’s deficient parenting skills, coupled with Father’s inconsistent visitation with D.S., his continued denial that Mother molested P.W., and his refusal to divorce Mother, supports the trial court’s conclusion that there is a reasonable probability that the conditions that led to D.S.’s removal or the reasons for placement outside of the parents’ home will not be remedied.

Father’s contentions on this issue amount to a request that we reweigh the evidence. There is clear and convincing evidence supporting each element of Indiana

Code Section 31-35-2-4(b)(2). The trial court did not err when it terminated Father's parental rights.

Mother

Mother contends that the evidence does not support the trial court's conclusions that: there is a reasonable probability that the conditions that led to P.W. and D.S.'s removal or the reasons for placement outside of the parents' home will not be remedied; or that termination is in the children's best interests.⁷ The crux of Mother's argument on appeal is that P.W.'s allegations that Mother molested her were the result of "suggestive, repetitive, and forceful questioning" and should not be believed. Brief of Appellant Mother at 29. Likewise, Mother maintains that she would not have admitted to the molestation had she not been subjected to "months of intense pressure" to make the admission. Id. at 26. But Mother's arguments, like Father's, amount to a request that we reweigh the evidence, which we will not do.

Again, DCS presented clear and convincing evidence that Mother molested P.W. and that Mother did not complete sexual offender treatment. In addition, Mother admitted having molested P.W., even if she did retract that admission. Mother's participation in individual therapy was inconsistent, and in August 2006, she decided to voluntarily terminate her parental rights with respect to both P.W. and D.S. While Mother subsequently changed her mind about voluntary termination, she did not resume therapy and was prohibited from visiting with P.W. or D.S. thereafter.

⁷ Mother also contends that the evidence does not support a determination that continuation of the parent-child relationships threatens the children's well-being. But because the statute is written in the disjunctive, we need not address that issue.

Vicky Starr testified that she observed evidence that Mother was smoking during visits with D.S., despite a strict prohibition against smoking around D.S. and despite D.S.'s breathing problems. Further, both Starr and Elaine Garrett, of Children's Sanctuary, testified that Mother had not demonstrated parenting skills adequate to care for P.W. or D.S. There is clear and convincing evidence supporting each element of Indiana Code Section 31-35-2-4(b)(2). The trial court did not err when it terminated Mother's parental rights.

Issue Three: Self-incrimination

Finally, Mother contends that the State violated her right against self-incrimination when it required her to admit to molesting P.W. In particular, Mother maintains that if she had acknowledged and taken responsibility for the molestation, which was required of her in her sexual offender therapy, the State could have used that admission against her in a criminal proceeding. We cannot agree.

In Daymude v. State, 540 N.E.2d 1263, 1268 (Ind. Ct. App. 1989), trans. denied, we addressed this issue and held that "the physician-patient privilege is not abrogated with regard to confidential communications disclosed by a defendant while participating in counseling sessions ordered by a trial court pursuant to a report of child molesting." In so holding, we observed:

[t]here is no question that the family therapy sessions are an integral and necessary part of the patient's diagnosis and treatment. If the physician-patient privilege is denied to those family members involved in CHINS counseling, then the alleged child abusers will be discouraged from openly and honestly communicating with their counselors. Without open and honest communications between the physician and the family members, the rehabilitative process will fail. Consequently, the child, whom the statute is

designed to help and protect, is denied an opportunity for complete rehabilitation.

Id. at 1266-67. In light of our holding in Daymude, Mother's contention on this issue must fail.⁸

CONCLUSION

The evidence is sufficient to support the trial court's conclusion that there is a reasonable probability that the conditions that resulted in the children's removal will not be remedied. And there is also clear and convincing evidence that termination is in the best interests of the children and that there exists a satisfactory plan for the care and treatment of the children. We conclude that DCS presented sufficient evidence to support the trial court's termination of Father's and Mother's parental rights.

Affirmed.

BAILEY, J., and CRONE, J., concur.

⁸ Indeed, in her Reply Brief, Mother concedes that if Daymude is still good law, which it is, then the issue is moot.