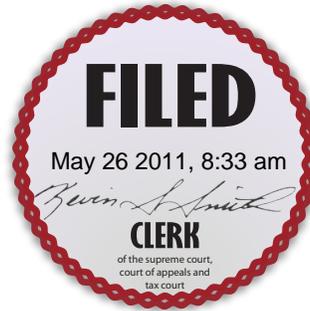


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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R.A., )  
 )  
Appellant-Respondent, )  
 )  
vs. ) No. 82A05-1011-JT-730  
 )  
INDIANA DEPARTMENT OF CHILD SERVICES, )  
 )  
Appellee-Petitioner. )

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APPEAL FROM THE VANDERBURGH SUPERIOR COURT  
The Honorable Brett J. Niemeier, Judge  
Cause No. 82D01-1006-JT-00053

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**May 26, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

R.A. (“Mother”) appeals the involuntary termination of her parental rights to her son A.A., claiming there is insufficient evidence to support the trial court’s termination order. Concluding the Indiana Department of Child Services (“DCS”) presented clear and convincing evidence to support the trial court’s judgment terminating Mother’s parental rights, we affirm.

## **FACTS AND PROCEDURAL HISTORY**

Mother is the biological mother of A.A., born June 3, 2009. The facts most favorable to the trial court’s judgment reveal that on July 16, 2009, DCS filed a petition alleging that A.A. was a child in need of services (“CHINS”). A.A. had tested positive for alcohol at birth and had to remain in the neonatal intensive care unit for several weeks after he was born. Mother, who was fourteen years old at the time, had not had “any provisions or services arranged to assist with the medical and physical needs of her child upon discharge, indicating an inability and lack of preparation to care for a newborn.” Appellant’s App. at 9-10.

The trial court adjudicated A.A. to be a CHINS and issued a dispositional order directing Mother to successfully complete a variety of tasks and services designed to facilitate her reunification with A.A., including: (1) participation in parent aide programs; (2) outpatient therapy; (3) substance abuse evaluation and follow up treatment recommendations; (4) parenting education classes; (5) nurturing classes; (6) random drug screens; (7) supervised or monitored visitation services; (8) remain drug and alcohol free;

(9) attend school; and (10) learn how to operate an apnea monitor and perform infant CPR.

Because Mother did not show a willingness to comply with the court's dispositional order, on June 29, 2010, DCS filed a petition seeking the involuntary termination of Mother's parental rights to A.A. Following a hearing on that petition on August 26, the trial court found and concluded in relevant part as follows:

9. [Mother] has run away from placements in Evansville, Indiana[,] including United Methodist Home and Hillcrest Children's Home. She did this with the knowledge that she would not have the opportunity to visit with her son [A.A.] She was placed at Southwest Regional Youth Villages, Inc, between her times of running away from less restrictive placements, which did not change her behavior. She is placed as a ward herself at Southwest Regional Youth Villages, Inc. at the time of this hearing.

10. When asked of her future plans, [Mother] testified that she wants to be a mortician. She has done no research on the profession. She does not have any realistic comprehension of what morticians do. This is an example of [Mother]'s limited understanding of the world.

11. [Mother] claims she is going to live with her aunt, but the aunt has not agreed.

12. [Mother] has a past history of poor grades, truancy, and inappropriate behavior in school leading to her being expelled. She has attended an alternative school, Christa McAuliffe, but didn't learn anything from it. During the summer while placed at Southwest Regional Youth Villages, Inc., she made all F's in very easy subjects. She simply didn't care. She testified that she is now really working hard in school, so that she can keep her baby. Yet, she could not testify to one specific item that she is studying about in any of her classes. [Mother]'s TABE scores range from being the equivalent of a third grader to a fifth grader.

13. When in her father's care, [Mother] used to use alcohol every weekend and has used illegal drugs in the past too. She also had sexual relationships with three men over the age of 18, but simply told her father they were only 16, as if that makes it alright. [Mother]'s father delivered illegal drugs to her in placement.

14. [Mother] claimed that she got serious about having [A.A.] in her care about a month and a half ago. The court believes that this probably isn't true, rather it is just easy to say at this time.

15. [Mother] was born on October 14, 1994, and is fifteen (15) years old. [A.A.] is a little over a year old.

16. [Mother] does not have an adequate support system. Her father has not had any control over her behavior. Her mother suffered severe injury as a child when she was shot in the head and has never [been] able to parent [Mother]. [Mother] has not had adequate role models or education and does not now have or will have in the reasonable future, the necessary parenting skills or maturity to care for [A.A.]

17. Currently, [Mother]'s father Carlos Amos lives with his brothers. He does not have a house of his own. He is on disability from back and neck injuries, which he received from an automobile accident, and receives SSI in the amount of \$670.00 per month. Carlos admitted that he was unable to supervise [Mother]. He did not know if she had sex in their home with older men, because he was a deep sleeper. He could not get [Mother] or her sister to listen to him.

18. When [Mother] was at the hospital immediately after her son [A.A.]'s birth, she showed little interest in visiting with him.

19. Except for the periods that [Mother] "was on the run[,"] she had regular visits with [A.A.] supervised by parent aides. [Mother] cannot apply what they attempted to teach her concerning the care and parenting of [A.A.] She often needed prompting and simple parenting skills repeatedly shown to her. In one incident, when [A.A.] was choking, she laughed. [Mother] was easily distracted by other people nearby rather than focusing her attention on [A.A.] during their visits. [Mother] had no concept of putting [A.A.]'s needs ahead of her own.

20. [Mother] had no concept of the needs of [A.A.]; she attempted to have him walk when he was a few months old. In another incident, she pulled him by his legs to try to make him crawl. In fact, from the testimony, [Mother] treated [A.A.] more like a doll than a living child with needs that should be met before her own needs.

21. The CASA also testified as to [Mother's] immaturity and inability to care for [A.A.] and supported the position that a termination of parental rights was in the best interests of [A.A.]

22. [A.A.] is a fragile child, who needs breathing treatments and other special care.

23. [A.A.] is thriving in his current placement, which he has been in for most of his life.

24. [Mother] drank alcohol on a regular basis during the pregnancy of [A.A.]

25. [Mother] is currently at her third placement at Southwest Regional Youth Villages Services, Inc. Her first placement at Southwest Regional Youth Villages Services, Inc was from October 6, 2009[,] to October 15, 2009[,] after running away from a less restrictive placement. Her next placement at Southwest Regional Youth Villages Services, Inc. was from November 2009 to January 2010 after having run away from a less restrictive placement. Her current placement at Southwest Regional Youth Villages Services, Inc. began on May 6, 2010. She has made progress in her behavior over the last month and a half before this trial.

However, while the placement at Southwest Regional Youth Villages Services, Inc is non-secure, it is more difficult to leave, because it is surrounded by a fence. [Mother] still has severe substance abuse problems concerning alcohol, pills, and marijuana. She is also not improving in her parenting skills in supervised visits with [A.A.] She still does not have adequate family resources to aid her much less aiding her as a teen mother with a special needs baby.

### Conclusions of Law

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7. The Court now finds by clear and convincing evidence that the allegations of the petition to terminate parental rights are true in that:

a. [A.A.] has been removed from the care and custody of his parents for at least six (6) months after the dispositional decree, specifically from September 22, 2009, to present.

b. There is a reasonable probability that the conditions that resulted in the removal of [A.A.], having continued, placement outside the care and custody of [sic] will not be remedied in regards to the mother or father as the mother is still in placement due to her educational, behavioral, and substance abuse issues. The father is unknown and has never appeared for any hearing or made his whereabouts or intentions known. The mother also

simply lacks the maturity, common sense, and knowledge to be an appropriate mother.

c. There is reasonable probability that the continuation of the parent-child relationship between the Unknown Father and his child [A.A.] poses a threat to the well-being of [A.A.], since the father is not known and has showed no interest in learning about the child.

d. There is a reasonable probability that the continuation of the parent-child relationship between [Mother] and her child [A.A.] poses a threat to the well-being of [A.A.] as the mother is incapable of caring for the child in a safe, stable, and secure manner.

e. Termination of the parent-child relationship between [A.A.] and his mother, [Mother], and Unknown Father is in the child's best interests because the child needs a mother who can take care of herself and the child, and a father who knows the child. This is a sad case in which a father, Carlos Amos, who has very limited parenting skills raised a child, [Mother], who became pregnant and who has limited intelligence and no realistic idea or capability to raise a child.

f. The plan of the Department of Child Services for the care and treatment of [A.A.] upon termination of parental rights is adoption, which is acceptable and satisfactory.

Appellant's App. at 14-17. Mother now appeals the termination of her parental rights to A.A.

## **DISCUSSION AND DECISION**

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 a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. In re D.D., 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences 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. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied. A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment thereon. Bester, 839 N.E.2d at 147. Thus, if the evidence and inferences support the trial court's decision, we must affirm. L.S., 717 N.E.2d at 208.

A parent's interest in the care, custody, and control of his or her children is arguably one of the oldest of our fundamental liberty interests. Bester, 839 N.E.2d at 147. Hence, "[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." In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. These parental interests, however, are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. Id. In addition, 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. K.S., 750 N.E.2d at 836.

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

- (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.

\* \* \*

- (C) that termination is in the best interests of the child;
- (D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2)(B) - (D) (2010). Moreover, “[t]he 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 (2008)).

Mother does not challenge any of the trial court’s findings or conclusions. “Where a party challenges only the judgment as contrary to law and does not challenge the specific findings as unsupported by the evidence,” this Court “does not look to the evidence, but only to the findings to determine whether they support the judgment.” Smith v. Miller Builders, Inc., 741 N.E.2d 731, 734 (Ind. Ct. App. 2000). In addition, our Supreme Court has recently reiterated that “on appeal, it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by the appellant [here, Mother] before there is a basis for reversal.” Best v. Best, 941 N.E.2d 499, 503 (Ind. 2011). Moreover, Indiana Code Section 31-35-2-8(a) states that if the trial court finds that the allegations of the termination petition are true, the court shall terminate the parent-child relationship. See id.

Here, in its judgment terminating Mother’s parental rights to A.A., the trial court made multiple findings and conclusions regarding Mother’s history of alcohol and drug abuse, refusal to attend school on a regular basis, lack of maturity and resources necessary to raise a child, running away from placement facilities, disinterest in parenting A.A., and inability to demonstrate appropriate parenting skills. The trial court also observed that A.A. is “thriving” in his placement in foster care. Appellant’s App. at 15.

And the trial court found that termination was in the best interests of A.A. Based on these and other findings, the trial court ordered that the parent-child relationship between Mother and A.A. be terminated, and the evidence supports those findings.

Again, Mother's contentions on appeal amount to a request that we reweigh the evidence. In particular, Mother asserts that her parental rights should not be terminated because she had demonstrated improvements in several areas of her life in the six weeks leading up to the termination hearing. But again, Mother has failed to assert and/or establish that any of the trial court's specific findings are unsupported by the evidence. We will not reweigh the evidence on appeal.

This court will reverse a trial court's termination order only upon a showing of "clear error"—that which leaves us with a definite and firm conviction that a mistake has been made. A.J. v. Marion County Office of Family & Children, 881 N.E.2d 706, 716 (Ind. Ct. App. 2008), trans. denied. Here, the trial court made ample findings to support its ultimate decision to terminate Mother's parental rights to A.A., and Mother has failed to establish that the court's findings are not supported by the evidence. We therefore find no error. See e.g., Kirk v. Kirk, 770 N.E.2d 304, 307 (Ind. 2002) (explaining that, on appeal, it is not enough to show the evidence might support some other conclusion, rather, the evidence must positively require the conclusion contended for by the appellant before there is a basis for reversal).

Affirmed.

ROBB, C.J., and CRONE, J., concur.