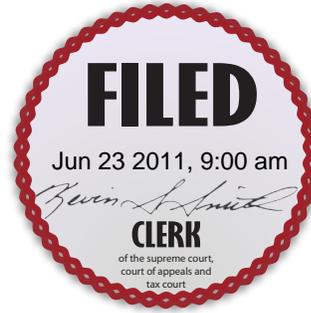


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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S.E., )  
)  
Appellant-Respondent, )  
)  
vs. ) No. 79A04-1101-JT-27  
)  
INDIANA DEPARTMENT OF CHILD SERVICES, )  
)  
Appellee-Petitioner. )

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APPEAL FROM THE TIPPECANOE SUPERIOR COURT  
The Honorable Loretta H. Rush, Judge  
The Honorable Faith A. Graham, Juvenile Magistrate  
Cause Nos. 79D03-1008-JT-125, 79D03-1008-JT-127, 79D03-1008-JT-129 and 79D03-1008-JT-131

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**June 23, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

S.E. (“Mother”) appeals the involuntary termination of her parental rights to her four minor children, 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 Z.E., C.K., N.N., and T.N. The facts most favorable to the trial court’s judgment reveal that in August 2009, DCS filed petitions alleging that Z.E., C.K., N.N., and T.N. were each children in need of services (“CHINS”). DCS had received reports that Mother was using drugs and physically abusing the children. In the course of a home visit, a DCS employee found that Mother’s house was messy and that there was an inadequate amount of food in the house for the children. Mother denied abusing drugs, but she admitted that she drank alcohol and frequently ingested dextromethorphan (“DXM”) for its intoxicating effects.

The trial court adjudicated each of the four children to be CHINS and issued dispositional orders directing Mother to successfully complete a variety of tasks and services designed to facilitate her reunification with the children, including: (1) stop consuming alcohol; (2) follow all recommendations from any assessments or evaluations; (3) participate and complete a psychological evaluation and follow all recommendations; (4) participate in individual therapy to address mental health issues and follow all recommendations; (5) participate in medication management if recommended by her

therapist and follow all recommendations; (6) participate and complete a parenting assessment and follow all recommendations; (7) participate and complete home-based case management to learn how to set up a family budget, parenting techniques, time management, etc.; (8) obtain and maintain safe housing suitable for children; and (9) obtain and maintain a legal and stable source of income.

After Mother showed only limited success in compliance with the case management plan, DCS filed petitions seeking the involuntary termination of Mother's parental rights to each of the four children. Following a hearing on those petitions on October 28, 2010, the trial court found and concluded in relevant part as follows:

#### FINDINGS OF FACT

1. [S.E.] (DOB 08/13/1985) is the Mother of [Z.E.] (DOB 01/30/2004), [C.K.] (DOB 02/03/2005), [N.N.] (DOB 04/18/2006), and [T.N.] (DOB 06/10/2007). [S.C.] (DOB 06/26/1980) is the father of [Z.E.] [A.K.] (DOB 06/24/1986) is the father of [C.K.] [Tr.N.] (DOB 08/10/1987) is the father of [N.N.] and [T.N.]

2. Tippecanoe County Child Protective Services ("CPS") received a report on August 3, 2009 alleging that Mother was using cocaine and marijuana around the children. It was further alleged that Mother yelled and slapped the children. A second report was received on August 5, 2009, alleging that the children are always hungry, that Mother smacks the children, and that Mother gives the children beer. Investigation revealed the home to be messy with very little food available. Mother admitted drinking but denied drug use. Mother admitted she does not have appropriate parenting skills which was evident by observation. [S.C.] had had no contact with his child and did not wish to pursue contact. [A.K.] was contacted but failed to appear at an appointment to discuss the allegations. [Tr.N.]'s children were in his physical custody with arrangements for liberal visitation with Mother.

3. The children initially remained in the care of Mother and [Tr. N.] while services were provided to the family. The children, [N.N. and T.N.], were subsequently removed from [Tr.N.]'s care and placed with Mother pursuant to a CHINS Detention Hearing Order issued on or about September

21, 2009. The children were all found to be Children in Need of Services (“CHINS”) at a fact finding hearing on October 8, 2009 and a dispositional order was issued on or about November 9, 2009. All of the children were thereafter placed in protective custody pursuant to a CHINS Detention Hearing Order issued on or about March 2, 2010. The conditions of Mother’s home had deteriorated, Mother admitted to drinking with the children present, Mother was unable to provide adequate supervision for the children’s behaviors, Mother allowed inappropriate persons to have contact with the children, and Mother requested removal of the children. The children, [T.N. and N.N.], were placed with a relative where they remain. The children, [Z.E. and C.K.], were placed in foster care where they remain. The children have since continuously remained out of the parents’ care.

4. A CASA was appointed to represent the best interests of the children. Case conferences or family team meetings were held periodically. The Tippecanoe County Department of Child Services (“DCS”) and CASA prepared separate written reports and recommendations prior to each hearing. Pursuant to dispositional orders, Mother was offered the following services: psychological evaluation, individual therapy, medication management, parenting assessment and education, substance abuse assessment, and home-based case management. The Fathers were offered the following services: parenting assessments, substance abuse assessments, therapy, and case management. These services were exhaustive and were designed to address the parents’ difficulties. Evaluations revealed no barriers to the parents’ ability to participate in services and achieve reunification.

5. Mother has a long-term history of instability, criminal behavior, and substance abuse. Mother has been diagnosed with bipolar disorder. Mother has demonstrated an inability to maintain a stable residence, utilities, and employment. Mother was convicted of Leaving the Scene of an Accident (Class C Misdemeanor) on January 19, 2005. Mother failed to comply with her terms of probation and was sentenced to incarceration. Mother was convicted of Minor Consumption of Alcohol (Class C Misdemeanor) on August 17, 2006. Mother was convicted of Public Intoxication (Class B Misdemeanor) on June 15, 2009. During the CHINS proceedings, Mother tested positive for the presence of alcohol on February 3, 2010, June 11, 2010, and June 28, 2010. Mother admitted to abusing over-the-counter medication, specifically DXM, during the CHINS proceedings.

6. Review hearings were held on February 23, 2010, March 29, 2010, and June 22, 2010. By February, it was determined Mother struggled with a number of issues in addition to the original reasons for DCS involvement including extensive substance abuse. Mother initially demonstrated some

improved interaction with the children in a supervised visitation setting. Mother was participating in case management services. Mother was initially discharged for non-attendance and then resumed therapy services at Wabash Valley. Mother admitted drinking and associated with inappropriate persons who became out of control in the presence of the children. Case management services were increased to avoid removal of the children from the home.

By March, Mother's initial improvements had been followed by a failure to maintain progress. The children had been removed from Mother's home and were thriving in relative and foster care placements. Mother failed to consistently attend visits and struggled managing all four (4) children simultaneously. Safety and supervision concerns persisted. The children become out of control, refuse to listen to Mother, run away from Mother, and spend periods of time screaming and crying. Visitation was adjusted so that Mother visited with only two (2) children at a time. Mother was attending therapy but was not invested. Mother had failed to complete a substance abuse assessment and failed to follow through with GED classes. Mother continued to be involved in inappropriate relationships with persons involved in criminal behavior, substance abuse, and other ongoing CHINS proceedings. Specifically, Mother was present when her boyfriend's children were removed from his care and continued to associate with [C.R.] who overdosed and had children removed from her care.

By June, Mother was employed at McDonald's but had lost her HUD housing. Mother continued to demonstrate a lack of sobriety and poor judgment in relationship choices. Specifically, Mother had again abused over-the-counter medications and was observed at a bar with a person involved in another CHINS proceeding. Mother allowed these inappropriate persons to stay at her home. Mother was still not consistently attending therapy and had just begun substance abuse treatment. Mother was found in contempt on June 22, 2010 for failing to stay drug/alcohol free, failing to participate in services, and failing to attend visitations. The children continued to thrive in their placements but were totally out of control after visits with Mother. Mother's visits were suspended in July after continuing to miss scheduled visitation times. The Court authorized Mother's visits to resume after Mother displayed one (1) month of compliance with services.

7. A permanency hearing was held on August 30, 2010 at which time the permanent plan was determined to be termination of parental rights and adoption. By that time, the children had all improved behaviorally with increased structure and routine in their current placements. None of the parents had shown a real investment in reunification and were in no better position to care for the children. By that time, Mother had obtained a

driver's license, a GED, and was living with relatives. Mother had been suspended from employment at Rosewalk for a period of time for non-attendance. Mother was attending case management but was not engaged. Mother remained uninvested in therapy. Mother still failed to understand the reasons for removal stating she would take care of her children "the same way she has for the past six years." Over those six (6) years, Mother displayed a pattern of failing to maintain stability for her children, associating with persons involved in criminal and substance abuse behavior including the fathers of all three (3) children, and was herself involved in criminal and substance abuse behavior. Mother often stated she was overwhelmed with the aggressive and out of control behaviors exhibited by the children while in her care. The children have ceased these behaviors since removal from Mother's care.

8. The Court ordered a permanency plan of initiation of proceedings for termination of parental rights as to Mother and Father and placement of the children for adoption. The DCS filed its petitions in the above-referenced Cause Nos. on August 30, 2010. The evidentiary hearing on the Verified Petitions to Terminate Parental Rights was held on October 28, 2010. Mother's circumstances had not significantly improved and she had made no substantial progress toward resolving the reasons that resulted in removal of the children. Throughout the CHINS proceeding, Mother failed to take medications as prescribed, continued to use alcohol and DXM, failed to consistently attend counseling, and was actively resistant to substance abuse treatment. After being advised that continued negative relationships with inappropriate persons would impede reunification efforts, Mother made no progress in removing herself from these types of relationships. Shortly before the permanency hearing, Mother "lost" her car for the second time after picking up two (2) unknown males while with [S.C.] who was also involved in a CHINS proceeding. [S.C.] was observed in Mother's car in September. Although Mother participated in substance abuse counseling in the last few months, she is in early recovery and still displays problematic behavior and questionable judgment. Mother's substance abuse counselor is concerned about Mother's current contact with [S.C.] and believes it will likely take at least an additional year before Mother has established sobriety and can safely parent her children. Mother's recent efforts are consistent with her historical pattern of periods of improvement followed by failure to maintain progress and do not outweigh her lengthy history of failing to maintain the stability necessary to safely provide for her children. Mother has yet to demonstrate one (1) full month of compliance with services and her visits remained suspended. She has had no contact with the children in five (5) months.

9. The Fathers all have long-standing histories of instability, substance abuse, and criminal behavior as well. At the evidentiary hearing on October 28, 2010, each Father reported a desire to voluntarily terminate parental rights. [S.C.] executed a consent to voluntary termination of parental rights. [S.C.] admitted he cannot offer a home for his child and that he had little to no contact with his child prior to the CHINS proceeding. [A.K.] executed a consent to voluntary termination of parental rights. [A.K.] admitted that neither he nor Mother is capable of providing a stable home for their child. [Tr.N.] executed a consent to voluntary termination of parental rights. [Tr.N.] admitted that that neither he nor Mother are capable of providing a stable home for their children and agreed that Mother has been given multiple chances but has not resolved her problems.

10. CASA, Christy Phillips, supports termination of parental rights in the best interests of the children because Mother has continued to display cycles of positive and negative behavior. CASA noted the children are in stable environments and have made great improvements. The children are bonded with their current care providers and have no special needs. The children are adoptable even if the current placements are unable to adopt for any reason. It would be detrimental to the children to continue reunification as the parents pose a danger to the children.

11. Although the parents love these children, none have the current ability to meet the children's needs. It is not safe for the children to be in the care of the parents at this time. Mother's history of instability, criminal behavior, and substance use continues. The Fathers' history of instability, criminal behavior, and substance use continues as well. All imaginable services have been offered and nothing is singularly different in today's circumstances since the time of removal. To continue the parent-child relationships would be detrimental to the children. The children need permanency now.

## CONCLUSIONS OF LAW

1. There is a reasonable probability that the conditions that resulted in the removal of the children from the parents' care or the reasons for the continued placement outside the home will not be remedied. The parents have yet to demonstrate the ability or willingness to make lasting changes from past behaviors. There is no reasonable probability that the parents will be able to maintain stability and remain substance free in order to care and provide adequately for these children.

2. Continuation of the parent-child relationships poses a threat to the well-being of the children. The children need stability in their lives. The

children need parents with whom they can form a permanent and lasting bond to provide for their emotional and psychological as well as their physical well-being. The children's well-being would be threatened by keeping them in parent-child relationships with parents whose own choices and actions have made them unable to their needs.

3. DCS has a satisfactory plan of adoption for the care and treatment of this children following termination of parental rights. The children can be adopted and there is reason to believe an appropriate permanent home has or can be found for the children.

4. For the foregoing reasons, it is in the best interests of [Z.E.], [C.K.], [N.N.], and [T.N.] that the parental rights of [S.E.], Mother, be terminated. Further efforts to reunify would have continued negative effects on the children. The Court contemporaneously approves the voluntary termination of parental rights of [the fathers] under separate orders.

Appellant's App. at 34-37. Mother now appeals the termination of her parental rights to her four children.<sup>1</sup>

### **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

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<sup>1</sup> The children's fathers are parties on appeal, see Indiana Appellate Rule 17(A), but they are not participating in this appeal.

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 first challenges the trial court’s related findings that the children would be detrimentally impacted by the continuation of the CHINS proceedings and that the “children need permanency now.” Appellant’s App. at 36. Mother maintains that there is no evidence in the record to support those findings. But, to the contrary, Karen Husted Warren, a supervisor for the Community and Family Resource Center, testified that “the length of time that it would take [Mother to consistently maintain improvements in her life in terms of parenting the children], even if we were to continue to progress ahead, would be a long time for the children to remain in foster care.” Transcript at 80. And the CASA testified that the children had been CHINS “for a very long time” and that in her opinion “it would be detrimental to uproot them again.” Id. at 214. Moreover, in support of those findings, the trial court stated, “All imaginable services have been offered [the parents] and nothing is singularly different in today’s circumstances since the time of the removal.” Appellant’s App. at 36.

It is well-settled that a court need not wait until children are irreversibly harmed such that their physical, mental, and social development is permanently impaired before termination of the parental-child relationship. R.G. v. Marion County Office, Dept. of Family and Children, 647 N.E.2d 326, 328 (Ind. Ct. App. 1995). The evidence supports the trial court’s findings that the children would be detrimentally impacted by the continuation of the CHINS proceedings and that the children need permanency now.

Next, Mother contends that the trial court's conclusion that the conditions that led to the children's removal have not been remedied is clearly erroneous. In particular, she maintains that the evidence shows that some of those conditions have been remedied, and the others "could be remedied with continued effort and appropriate services." Brief of Appellant at 11. First, because the evidence supports the trial court's finding that the children need permanency and should not have to wait for Mother to attempt to make more progress, Mother cannot prevail on this claim. Regardless, as our Supreme Court has reiterated, "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).

Here, there is ample evidence that Mother has not remedied several of the underlying factors that led to the children's removal. We have 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. Again, 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. In re 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. In re D.L.W., 485 N.E.2d 139, 143 (Ind. Ct. App. 1985).

Here, the evidence shows that Mother has a sustained history of drug and alcohol abuse, associations with inappropriate people, inconsistent treatment of her mental illness, and lack of consistent participation in visitation with the children and counseling. Despite Mother's recent progress, the evidence, as a whole, supports the trial court's determination that there is a reasonable probability that the reasons for the children's removal will not be remedied. Indeed, Karen Husted Warren testified that she believes the reasons for the children's removal are not likely to be remedied. We will not reweigh the evidence. Because the statute is written in the disjunctive, we could stop here. Nevertheless, we also address the sufficiency of the evidence regarding the reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the children.

Again, Mother contends that her recent progress in visitation with the children shows that they would not be harmed by a continuation of her relationship with them. But Mother ignores the evidence that as recently as four or five months before the final hearing, she was non-compliant in services and engaging in risky behavior, including

suspected prostitution in her home. Transcript at 72. Warren testified that while Mother had “demonstrated periods of times out of the few months where she has shown improvement in her ability [to parent the children,]” those periods of stability were “followed by decomposition and inability to maintain safety for herself. And while there have been improvements there continues to remain safety concerns with [Mother].” Id. at 80. Finally, Warren testified that resuming visitation with the children would mean “reintroducing risks to the children.” Id. at 81. The evidence is sufficient to support the trial court’s conclusion that continuation of the parent-child relationships poses a threat to the well-being of the children.

In its judgment terminating Mother’s parental rights to the children, the trial court made multiple findings and conclusions regarding Mother’s criminal history, history of alcohol and drug abuse, inability to maintain steady employment, failure to consistently exercise visitation with the children, continued associations with inappropriate persons, and failure to follow through on prescribed treatment of her mental illness. The trial court also observed that the children are thriving while in foster care. And the trial court found that termination was in the best interests of the children. Based on these and other findings, the trial court ordered that the parent-child relationship between Mother and the children be terminated, and the evidence supports those findings.

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 months leading up to the termination hearing. But again, Mother has failed to demonstrate that any of the trial

court's 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.