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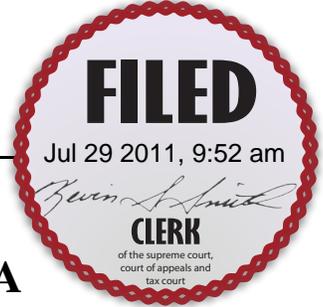
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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP OF)
K.S., G.G., and S.S. (MINOR CHILDREN) and)
)
A.S. (MOTHER),)
)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
Appellee-Petitioner.)

No. 48A04-1011-JT-731

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable G. George Pancol, Judge
Cause Nos. 48D02-0907-JT-364, 48D02-1002-JT-86, 48D02-1002-JT-87

July 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

A.S. (“Mother”) appeals the termination of her parental relationship with her three oldest children, S.S., K.S., and G.G. This case began in July 2008 when the Department of Child Services (“DCS”) received a report that G.G. was being locked in his room for long periods of time. DCS filed a petition alleging that G.G. was a child in need of services (“CHINS”). While the case was pending, additional facts came to light which led to DCS filing CHINS petitions regarding S.S. and K.S. All three children were found to be CHINS and removed from the home. All three children have been diagnosed with attention deficit hyperactive disorder (“ADHD”) and reactive attachment disorder, which have caused behavioral problems.

Mother initially had supervised visits with the children, but those visits were terminated because the children’s behavior regressed after visits and because Mother sometimes behaved inappropriately during visits. Mother participated in home-based services, which were closed due to lack of progress. Mother also completed a parenting class, but did not benefit from it. Mother has significant mental health issues, but she discontinued medication and counseling. At the time of the termination hearing, Mother was unemployed and living in a one-bedroom apartment with another adult.

On appeal, Mother argues that there was insufficient evidence to support the termination of her parental rights. There is substantial evidence in the record that Mother struggles to care for herself, cannot provide for the children, and cannot offer the children the stability that they need in order to address their behavioral issues. Therefore, we affirm.

Facts and Procedural History¹

Mother has four children: her daughter S.S., born December 9, 1997; her son K.S., born January 24, 2001; her son G.G., born August 12, 2003; and her daughter H.L., born November 29, 2006. Each of her children has a different father, and she has been married to three of the fathers. Mother's involvement with DCS began in November 2007, when DCS investigated allegations that G.G. was confined to his room most of the day. At the time, Mother was married to C.L., her third husband and the father of H.L. C.L. stated that G.G.'s schedule included attending Head Start in the morning, napping from noon to 5:00 p.m., eating dinner, and then going to bed at 7:00. Mother stated that she was working two jobs and slept when she was not working. DCS substantiated neglect against Mother and C.L. because both of them "verified that they made G.G. spend most of his waking time in his bedroom due to his behavior problems." Petitioner's Ex. 122 at 5.² G.G. was placed with his maternal grandmother, but was returned to Mother's care after Mother completed home-based services and started participating in family and individual counseling.

¹ Our review has been hampered by several issues concerning the preparation of the record. Initially the court reporter sent us a transcript volume that exceeded 250 pages and was falling apart under its own weight. *See* Ind. Appellate Rule 28(A)(6) (limiting transcript volumes to 250 pages). The court reporter also failed to send us any of the exhibits, despite Mother's request that the record include the exhibits. When we received the exhibit volumes, several of the exhibits were upside down. The transcript was riddled with errors, including a lack of appropriate punctuation, typographical errors, and misspellings. In addition, it appears that in many instances the court reporter may have replaced a word with another similar word. We believe that we were able to ascertain the meaning of all pertinent testimony in the record, and it does not appear that the parties have any disputes concerning the manner in which the testimony was transcribed. However, we cannot overstate the importance of an accurately prepared transcript, as it is the only means that we have to determine precisely what transpired during a hearing. An inaccurate or incomplete record could potentially lead to an unjust result. Moreover, we note that preparation of the transcript is often a significant portion of the cost of pursuing an appeal. We expect the record to be completed with more care than was exercised in this case.

² Throughout this opinion, we have replaced names with initials when quoting from the record.

On July 9, 2008, DCS filed a petition alleging that G.G. was a CHINS. The petition alleged that G.G. was still being locked in his bedroom for hours and that G.G. was not allowed to use the bathroom, but instead had to use a bowl on the floor in his bedroom. G.G. told a DCS case manager that he had to “‘pee’ on the floor” and that C.L. would “‘use a belt on his butt.” Appellant’s App. at 17. K.S. showed the case manager the bowl that G.G. had to use as a toilet.

Mother denied the allegations of the CHINS petition, and a factfinding hearing was held. While the case was under advisement, additional allegations came to light. On October 22, 2008, DCS received a report that G.G. was drooling excessively, could not hold his head up, and was moving in slow motion. G.G. was hospitalized. Testing did not provide any conclusive evidence of what had caused G.G.’s symptoms, and he was released from the hospital to Mother’s care on October 25, 2008. Later that day, however, medical personnel expressed concerns to a DCS case manager about G.G.’s release to Mother. G.G. had told them that he had rat feces in his bedroom, that he had to stay in his bedroom most of the time, that he had to use a pot in his room for a toilet, and that C.L. had given him an extra pill the day that his symptoms started. Medical personnel stated that G.G.’s symptoms were consistent with ingesting a toxin or being given too much of his prescribed medication. A case manager went to the home and found G.G. confined in his room with a gate, and there was a pot on the floor of his room. G.G. was detained and placed in foster care briefly until he could be placed with his maternal grandfather.

On October 28, 2008, DCS filed a petition alleging that S.S., K.S., and H.L. were CHINS. DCS had received a report from relatives who were taking care of S.S. and K.S. Mother and C.L. had dropped them off, along with a bottle in which several medications were mixed. The relatives had no instructions as to what pills each child was supposed to take. The relatives spoke to a pharmacist, who helped them to identify the medications. However, the pharmacist cautioned that the pills could have “cross contaminated” while they were mixed together. Petitioner’s Ex. 59 at 2.

DCS also learned that K.S. had threatened to kill Mother and C.L. because of the way that they treated G.G. and that he was hospitalized after he tried to kill himself by wrapping a belt around his neck. K.S. stated that when he returned home from the hospital, C.L. beat him and grounded all of the children for a month because they had revealed information about the way that G.G. was treated. S.S. and K.S. stated that they were not allowed to play outside. After school, they had to do their homework and then spend the rest of the evening in their rooms. They also stated that they were “not allowed to eat a lot of the food in the home because it is for their mom and C.L.” *Id.*

On the same day that the CHINS petition was filed, S.S., K.S., and H.L. were removed from the home and placed with their maternal grandfather. Ultimately, all four of the children were found to be CHINS. Mother was ordered to maintain suitable housing including adequate food, clothing, beds, and working utilities; to maintain sufficient income to support the family; to complete a substance abuse evaluation; to attend individual counseling and follow all recommendations; to participate in family counseling as

recommended; to complete a parenting assessment; to participate in intensive home-based services; to participate in supervised visitation with the children; and to pay child support.

On January 14, 2009, Mother began working with Lisa Lance, a home-based therapist with Bethany Christian Services. H.L. had been returned to the home by that time. According to Lance, C.L. was “doing a lot of the parenting and domestic duties around the home.” Tr. at 141. Mother “had difficulty assuming the parental role” and struggled with setting and enforcing limits. *Id.* Lance felt that Mother lacked a “basic understanding of how to parent.” *Id.* at 143.

Although Lance did not witness any violence between Mother and C.L., both of them admitted to Lance that there had been episodes of violence. H.L. was again removed from the home on June 7, 2009, when police were called to the home because Mother and C.L. were fighting over H.L. and trying to pull her away from each other. Around that time, Mother left C.L. and moved into a shelter. Mother later was asked to leave the shelter because she was caught selling her prescription drugs. Since then, Mother has had no consistent housing, but has lived with a variety of acquaintances.

On June 13, 2009, Mother stopped working with Lance. Mother had made little progress toward the goals that Lance had set for her, and Lance changed her focus to reuniting H.L. with C.L. Mother and C.L. divorced, and C.L. eventually was awarded sole custody of H.L.³

³ The CHINS case involving H.L. was dismissed after C.L. was granted full custody of her; therefore, the case involving H.L. is not at issue in this appeal. Facts concerning H.L. are mentioned only to the extent that they are indicative of Mother’s ability to parent in general.

Mother was initially compliant with the requirement to obtain counseling. Mother already had diagnoses of generalized anxiety disorder, obsessive-compulsive disorder, bipolar disorder, and borderline personality disorder. On April 2, 2009, Mother obtained a psychological assessment from Dr. Mary Papandria. Mother reported that she was taking ten medications for a variety of conditions including migraines, asthma, anxiety, and depression. Dr. Papandria diagnosed bipolar disorder with psychotic features, adjustment disorder with anxiety, and personality disorder with narcissistic borderline and schizotypal traits. In her report, Dr. Papandria stated:

This woman appears somewhat incapable of making sound decisions regarding the welfare of her children at this time. She is showing evidence of severe psychological disturbance including Bipolar Disorder, anxiety, and personality features that may interfere with her ability to effectively parent her children, particularly during times of stress, even normal day-to-day stress.

....

Of greatest concern, is her lack of insight into her behavior and her sense of responsibility for why her children were removed from her care. She tends to minimize the significance of the reasons the children were removed and tends to blame others for their removal.

Petitioner's Ex. 116 at 18-19. Dr. Papandria recommended that Mother receive counseling more than twice a month and that her medications be monitored. Dr. Papandria felt that the children would be at risk of continued neglect unless Mother received "some type of assistance on a regular basis." *Id.* at 19.

Mother began counseling with Dr. Melissa Zehr on July 23, 2009. Mother had a total of four sessions with Dr. Zehr. The last session took place on October 19, 2009; after that, Mother was discharged from the clinic because she had missed several appointments. Dr.

Zehr worked with Mother on decision-making in relationships, recognizing unhealthy relationships, and establishing appropriate boundaries, but did not see much progress. During the three months that Dr. Zehr worked with Mother, Mother had at least two different boyfriends and also met with a man whom she met on the internet and who turned out to be a registered sex offender.⁴ Although Mother expressed a desire to get her children back, she seemed more focused on her relationships with men. Mother had been having supervised visits with her children through the Children's Bureau, but the Children's Bureau refused to continue as the supervisor for Mother's visitation after she failed to abide by the rules, particularly that she not discuss her dating relationships with her children. Mother insisted that she should not lie to her children if they asked about her relationships. Dr. Zehr suggested other responses, such as, "I can't discuss that with you," but Dr. Zehr was uncertain as to whether Mother would implement her suggestions. Tr. at 80.

Mother stopped taking her medications in September 2009 without consulting a doctor. Mother did not receive any further counseling until after the termination hearing commenced.

Mother later became pregnant with another child. Mother claimed to be engaged to the child's father, although he was already married. Mother worked for a temp agency for a while, but had to quit after she got pregnant because she was placed "on strict pelvic rest." *Id.* at 323. Mother never paid child support even when she was employed.

⁴ Mother claims that she reported this man to the police after she found out that he was a registered sex offender.

The court terminated Mother's visitation with G.G. on August 26, 2009, and with S.S. and K.S. on March 3, 2010, primarily due to concerns that the children's behavior was regressing after visits with Mother. S.S., K.S., and G.G. have all been diagnosed with ADHD and with reactive attachment disorder, which is caused by abuse or neglect within the first year of life. This disorder has caused a variety of behavioral problems. G.G. tends to be aggressive and withdrawn, and he has a hard time forming meaningful bonds. According to his therapist, Ann Robinson, G.G. shows no sign of attachment to his mother or siblings. G.G. made slow progress in therapy and regressed after visits with his Mother. Robinson believed that the visits triggered negative memories for G.G. G.G.'s placement has changed several times because caregivers have struggled to handle his behavior. G.G. has also had trouble with potty training, has had problems with weight gain, had a cyst removed, has had seizures, has a heart murmur, and had a hernia surgery.

K.S. struggles with depression, hyperactivity, and anger. K.S. felt responsible for the family's problems, and visits with his Mother tended to increase his feelings of guilt. Robinson described his attachment to Mother as "superficial." *Id.* at 32.

S.S. lacked appropriate boundaries; for instance, she was "very obsessed with boys ... telling boys that she was going to have sex with them at school." *Id.* at 34. S.S.'s behavioral problems have also included aggression, illogical lying, stealing, being defiant, not paying attention at school, and not wanting to do her school work. S.S. was at one time placed with her maternal grandmother, but was moved to foster care because the grandmother was unable to handle S.S.'s behavioral problems. Robinson described S.S.'s relationship with Mother as

a “love hate relationship.” *Id.* at 37. Both S.S. and K.S. talked about being upset after seeing Mother.

In the fall of 2009, S.S. and K.S. were placed with their maternal grandmother, and Mother continued to try to make contact with the children after her visitation was terminated. Mother would attend the church that S.S., K.S., and their grandmother attended and would try to communicate with them there. The grandmother told the children’s case manager, Shannon Hunt, that “some of that was strained and awkward and not appropriate for a church setting [with Mother] trying to get their attention ... when they didn’t want it.” *Id.* at 184. Mother also made phone calls to the children and appeared at school functions.

On July 23, 2009, DCS filed a petition to terminate Mother’s parental relationship with G.G., and on February 10, 2010, DCS filed petitions to terminate her parental relationship with S.S. and K.S. An evidentiary hearing regarding all three children commenced on June 1, 2010, and was continued on June 15 and July 20, 2010. During this time, Mother completed a year-long parenting class that she had been taking through the Salvation Army. Mother also submitted to drug testing and began attending a mood disorder counseling group.⁵

At the hearing, three different doctors testified concerning Mother’s mental health issues. Dr. Andrew Skinner saw Mother periodically between August 19, 2004, and June 10, 2009. Dr. Skinner primarily worked with Mother on medication management; however, in

⁵ Mother’s drug screen was negative. DCS has not argued that illicit drug use is a contributing factor to Mother’s parenting problems.

May 2008, Dr. Skinner saw Mother for inpatient treatment because she was suicidal after a fight with her husband. Mother admitted herself after walking around in traffic hoping to get hit.

Dr. Skinner testified that bipolar disorder caused Mother to go through periods where she was depressed and avoided activity and periods where she was highly energetic and impulsive. Mother's personality disorder led to a "pattern of intense and unstable [interpersonal] relationships characterized by a pattern of over idealization initial[ly] and then devaluation once the relationship grows closer." *Id.* at 99. Dr. Skinner did not think this pattern of idealization and devaluation would carry over to a parent-child relationship, but stated that a person with a personality disorder could have difficulty parenting due to irritability, anger, and impulsivity.

Dr. Skinner testified that he saw "episodes of ... functioning better," but overall, he felt that her functioning seemed to be worse within the last year that he was involved with Mother's treatment. *Id.* at 109. Dr. Skinner stated that he would not recommend that she stop taking medication. Based on her past behavior, Dr. Skinner believed that without medication, Mother would tend to be impulsive, angry, irritable, depressed, and unwilling to engage in life. He felt that there was a risk that she would neglect the children or be aggressive toward them. Dr. Skinner testified that Mother's disorders are "episodic in nature," and there "could be times when she would function well but I would be concerned about the long term prognosis." *Id.* at 104.

Dr. Papandria testified that bipolar disorder is a chronic condition that will not go away. Dr. Papandria “would not expect much improvement and maybe even deterioration” if Mother was not taking medication. *Id.* at 222. People with bipolar disorder who quit taking medication tend to have rapid, severe mood swings and an inability to function or take care of family. Decompensation could occur over a period of days or months. Dr. Zehr likewise testified that she would not recommend that Mother stop medication and that Mother could decompensate quickly without her medications.

Shelly DeLong, a family development specialist with the Salvation Army, testified about Mother’s involvement in parenting classes. The classes met on a monthly basis, but Mother asked to attend weekly. Nevertheless, DeLong felt that she could not recommend that the children be returned to Mother:

I feel that [Mother] has told me what she wants me to hear but she has not taken responsibility for what has happened and why the children were removed. It took her many months to even get that out to me of what the specific reasons were and at this point I just don’t feel comfortable constantly having to remind her ... that she played a part in why she does not have the children.

Id. at 123. DeLong was not sure that Mother would be able to implement the things that she learned in parenting class.

Lance, the home-based counselor, had some positive observations about Mother. She observed some of Mother’s visits with her children and felt that they had positive interactions, although Mother sometimes had difficulty on following through with discipline. Mother and C.L. had significant financial difficulties and had not had hot water in their home for four years; however, Lance felt that Mother was resourceful and managed to provide for

the family with very little income. Lance stated that Mother exhibited a willingness to learn, but had made very minimal progress. Lance felt that Mother needed more work on her parenting skills, coping skills, and self-care. During the time that H.L. was in her care, Mother seemed depressed and spent most of the day sleeping, while C.L. handled most of the parental responsibilities. Because Mother had struggled with being involved in H.L.'s care, she did not think that Mother would be able to care for multiple children.

Robinson, the children's counselor, testified that Mother and C.L. were upset about DCS's involvement in their family and denied that there had been any abuse or neglect. Robinson felt that all of the children had made some progress since their removal from Mother's home, but they tended to regress after visiting with Mother. Due to the children's behavioral issues and their minimal attachment to Mother, Robinson felt that it would be in the children's best interests to have no more contact with Mother. Sally Stonebreaker, the children's court appointed special advocate ("CASA"), likewise testified that she thought that termination was in the children's best interests.

Hunt, the family case manager, highlighted several incidents during visitation that she felt were inappropriate. Mother talked about her fights with C.L., brought along a boyfriend whom she had been dating only a couple weeks, would tell the children at each visit that they were going to come home, and told S.S. that "she was going to take her out to the shed and they were going to fight [if S.S.] kept misbehaving." *Id.* at 171. Mother had also been allowed to attend the children's medical appointments, but this was disallowed after Mother

repeatedly rescheduled appointments that had been made by the foster parents and caused disruptions during the appointments.

As to the requirements of Mother's participation order, Hunt testified that home-based services were closed due to lack of progress, that visitations were discontinued because of problematic behavior during the visits, that counseling was closed because Mother failed to show up for appointments, that Mother had never paid child support, and that Mother lacked stable housing or income. Hunt acknowledged that Mother had completed a parenting class, but she felt that it did not change Mother's parenting techniques or ability to cope with multiple children. Since Mother has been off her medications, Hunt feels that Mother "seems like she [is] functioning better [but] still showed poor decision making." *Id.* at 179. Because of Mother's significant mental health needs, the children's mental health needs, Mother's instability, and the imminent addition of an infant to the family, Hunt felt that termination was in the children's best interests.

Mother presented testimony from Laura Summers, whom Mother had met in group therapy within the previous month. Summers was allowing Mother to share her one-bedroom apartment while Mother searched for a job. Summers testified that Mother is caring, loving, and funny and that she had no concerns about Mother interacting with her grandchildren.

Mother also testified. She stated that she was at work at the time when G.G. was given too much of his medication. Mother acknowledged that G.G. can be aggressive, but claimed that a therapist had taught her how to handle his fits. She claimed that C.L. made G.G. stay in his room while she was at work. Mother stated that they put the bowl in G.G.'s

room because a doctor suggested it when they started having problems with him going on the floor. Mother denied that there was inadequate food for the children.

Mother agreed that her first two husbands were physically abusive, that her third husband was verbally abusive, and that episodes of abuse occurred while the children were present. Mother claimed that her current boyfriend was not abusive. Mother admitted that she was removed from the shelter because she sold her prescription medications and stated that she had lived in six different places since then.

Mother testified that she had been working for Anderson Community Schools, but was fired after DCS removed the children. Since then, she has had some work through a temp agency, and last worked in February 2010. Mother claimed that a previous attorney had told her that she was not required to pay child support. At the time of the hearing, Mother had a pending application for social security benefits. Mother testified that her conditions include fibromyalgia, scoliosis, arthritis in her knees, tendinitis in one ankle, bipolar disorder, anxiety, depression, and borderline personality disorder. Nevertheless, Mother denied needing any medication.

Mother testified that she had been on fifteen medications and that she was “constantly drowsy” and “had no energy.” *Id.* at 294. Since quitting her medications, Mother stated that she feels “[w]onderful” and that others have noticed “a big difference in me.” *Id.* 295. Mother testified that she feels more alert and focused. When the DCS attorney questioned Mother about whether she sees spirits, Mother responded:

A. Yes I do[.] I believe in spirits. My grandmother comes and visits me and there ain't nothing wrong with that.

....

Q. Do you hear voices still?

A. Positive ones. I'm not crazy[,] I'm not stupid.

Id. at 365. Mother claimed that she had difficulty making her appointments with Dr. Zehr because of car trouble; however, she also admitted that there were times that she simply did not feel like going to appointments. Mother testified that June 14, 2010, was the first availability for the mood disorder group in which she was participating at the time of the hearing. She stated that DCS never set up family therapy. Mother denied that the visits with her children were problematic. Mother testified that she was tested for drugs on her own accord on June 10, 2010, because DCS had never offered that service to her.

Mother denied the claims of service providers that she slept all day, was minimally involved with H.L.'s care, and did not take responsibility for the children's removal. When the attorney for DCS asked Mother what role she played "in regards to the department becoming involved," Mother said, "The part that I play is being their mother. You took my children from me[,] I was under medication[,] I knew there [were] problems[,] and I was trying to put a stop to it[,] I came to you guys for help[,] not for you to take my children away from me."⁶ *Id.* at 348.

⁶ Other than this testimony from Mother, the record does not reflect that Mother proactively sought help with the problems that were occurring in the home at the time when DCS first became involved.

On November 1, 2010, the trial court issued three similar orders terminating Mother's relationship with S.S., K.S., and G.G. In the order relating to K.S.'s case, the trial court found:

8. The child, K.S. threatened to hang himself with a belt and to kill his mother because he had concerns for the way his mother and step father treated his younger sibling, G.G. in that they would lock G.G. in his bedroom for long periods of time and not allow G.G. to use the family bathroom. Also, it was discovered that the children were beat with a belt for speaking with DCS in regards to these allegations in the past.

....

14. Respondent-Mother does not have sufficient housing, and is without an income.

....

16. Respondent-Mother was discharged from Home-Based services.

17. Respondent-Mother and C.L. divorced and C.L. was granted sole physical and legal custody of H.L.

....

20. Respondent-Mother had C.L. perform most of the household duties, including caring for the children.

21. Respondent-Mother's visitation had been discontinued by court order after a full evidentiary hearing on March 3, 2010.

22. Respondent-Mother has diagnosis with significant mental health disorders like Generalized Anxiety Disorder, Major Depressive Disorder, Borderline Personality Disorder, Bi-Polar Disorder and Obsessive-Compulsive Disorder.

....

24. At the time of this hearing, Respondent-Mother had stopped all mental health services, including counseling and medication, despite the recommendations by her various mental health providers.

25. Respondent-Mother has a history of making irrational relationship choices.... Dr. Skinner indicated that such decision making of the Respondent-Mother is indicative of her mental health disorders, and such decisions continue to put the life and health of her children in jeopardy.

....

27. During the course of these proceedings, Respondent-Mother sought mental health treatment at Aspire, Indiana. In her intake it is noted that she self reported that she has both visual and auditory hallucinations. Untreated mental health problems pose[] a significant risk [to] the well-being [of the] children.

28. Respondent-Mother has not paid the court ordered child support.

....

31. Ms. DeLong would not recommend the return of the children to Respondent-Mother's care, despite the completion of the various programs. Respondent-Mother refuses to acknowledge that she has had any role in this Court and DCS involvement with her family and has not achieved some [of] the goals that Ms. DeLong set out for Respondent-Mother, specifically, mental health treatment, employment, and stable housing.

....

38. The child, K.S., [has been diagnosed with] Reactive Attachment Disorder and will continue to need ongoing therapy.

....

40. [B]oth the Family Case Manager and the CASA believe it is in the child's best interest that parental rights be terminated.

Appellant's App. 70-75. In S.S.'s case, the court additionally found that S.S. has been diagnosed with reactive attachment disorder, has been acting out sexually, lacks appropriate

boundaries, and will need ongoing therapy. In G.G.'s case, the court found that he was being locked in his bedroom and being forced to use a bowl for a toilet despite previous involvement by DCS on the same issues. The court also found that G.G. has reactive attachment disorder and will need ongoing therapy.

In each case, the trial court found that there was a reasonable probability that the conditions that resulted in the children's removal would not be remedied because Mother had failed to satisfactorily complete many of the ordered services, she had not benefitted from the services that she did complete, she had discontinued mental health treatment, and she lacked adequate housing and income. The court found that the continuation of the parent-child relationship posed a threat to the children's well-being for the same reasons. The trial court also found that termination was in the best interests of all three children. Mother appeals all three orders.⁷

Discussion and Decision

When reviewing a trial court's order terminating a parent-child relationship, we will not set it aside unless it is clearly erroneous. *Castro v. State Office of Family & Children*, 842 N.E.2d 367, 372 (Ind. Ct. App. 2006), *trans. denied*. We will neither reweigh evidence nor judge witness credibility. *In re A.I.*, 825 N.E.2d 798, 805 (Ind. Ct. App. 2004), *trans. denied*. Rather, we will consider only the evidence and inferences most favorable to the judgment. *Id.*

In *Bester v. Lake County Office of Family & Children*, our supreme court stated:

⁷ The children's fathers are not involved in this appeal.

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. A parent's interest in the care, custody, and control of his or her children is perhaps the oldest of the fundamental liberty interests. Indeed the parent-child relationship is one of the most valued relationships in our culture. We recognize of course that parental interests are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. Thus, parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities.

839 N.E.2d 143, 147 (Ind. 2005) (citations, quotation marks, and alteration omitted). In recognition of the seriousness with which we address parental termination cases, Indiana has adopted a clear and convincing evidence standard. *Castro*, 842 N.E.2d at 377.

To terminate the parent-child relationship, DCS must establish that

(A) one (1) of the following exists:

(i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

...

(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;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2).⁸ Mother challenges the court's findings and conclusions pertaining to paragraphs (B) and (C).

⁸ Indiana Code Section 31-35-2-4 was amended by Public Law Number 21-2010, Section 8 (effective March 12, 2010). We have quoted the version of the statute in effect at the time that the petition was filed. *See In re A.B.*, 924 N.E.2d 666, 670 n.4 (Ind. Ct. App. 2010) (applying the version of the statute in effect at the time the petition was filed).

I. Threat to the Well-Being of the Children

The trial court found that the conditions that resulted in the children's removal would not be remedied and that the continuation of the parent-child relationship poses a threat to the well-being of the children. However, we note that paragraph (b)(2)(B) is written in the disjunctive. Thus, DCS was required to establish, by clear and convincing evidence, only one of the two requirements of paragraph (B). *In re I.A.*, 903 N.E.2d 146, 153 (Ind. Ct. App. 2009).

We conclude that there was sufficient evidence that continuation of the parent-child relationship poses a threat to the well-being of the children. In determining whether the continuation of the parent-child relationship poses a threat to the child's well-being, the trial court need not wait until the child is irreversibly influenced by a deficient lifestyle before terminating the relationship. *In re E.S.*, 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002). Instead, "[w]hen the evidence shows that the emotional and physical development of a child in need of services is threatened, termination of the parent-child relationship is appropriate." *Id.* A parent's habitual patterns of conduct is relevant to determine whether there is a substantial probability of future neglect or deprivation of the child. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). "A court may properly consider 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." *McBride v. Monroe Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). The trial court may also consider the services offered by DCS to the parent and the parent's response to those services. *Id.*

Mother blames C.L. for the children's removal. She notes that G.G. claimed that C.L. gave him an extra pill. Mother also claims that C.L. mixed the children's medications and that C.L. kept the children in their rooms while she was at work. At a minimum, Mother's history of unstable and abusive relationships exposed the children to inappropriate caregivers. However, we also note that the trial court was not required to believe Mother's claim that problems occurred only while she was at work.

Even if Mother's divorce of C.L. remedied the initial problems that led to the children's removal, there was still ample evidence that the parent-child relationship posed a threat to the children's well-being. Mother highlights her own testimony that there were no problems during her visits, Lane's testimony that she observed some positive interactions between Mother and her children, her roommate's testimony that she was not concerned about allowing Mother to be around her grandchildren, and Dr. Skinner's testimony that the pattern of idealization and devaluation generally did not occur within the context of a parent-child relationship. However, the evidence favorable to the judgment is that all three children had significant therapeutic needs and would regress after visiting with Mother. Visits with Mother brought up bad memories and feelings of guilt in the children. S.S. and K.S. both talked about feeling upset after visits with Mother. Hunt provided several examples of Mother's inappropriate behavior during visits.

Mother also exhibited poor judgment in discontinuing her own mental health treatment. Mother contends that lack of insurance impeded her ability to obtain counseling, but the record does not reflect what time period was affected by this issue. Mother had seen

Dr. Skinner periodically since 2004, and the record also reflects that she saw a different therapist before transferring to Dr. Zehr in 2009. Mother was discharged from the Anderson Center, where Dr. Skinner and Dr. Zehr work, after she missed several appointments. Mother claims that the missed appointments were due to lack of reliable transportation, but Mother also testified that sometimes she did not feel like attending her appointments. Mother joined a therapy group on June 14, 2010, about eight months after she last saw Dr. Zehr. Mother claimed that this was the first option that was available to her.

Even though Mother was in group therapy at the time of the termination hearing, there was no indication that she intended to resume taking appropriate medications. Mother claims that she has been more energetic since she stopped taking her medications. Hunt testified that Mother seemed “maybe a little bit more stable in thinking or in her responses,” but also noted that “she still showed poor decision making.” Tr. at 179. Dr. Papandria acknowledged that she was taking a lot of medication and that the combination of medications might affect how Mother feels; nevertheless, Dr. Papandria testified that without treatment, Mother would likely decompensate and experience rapid mood swings. Dr. Skinner testified that Mother could have episodes where she appeared to be functioning well, but without medication, her long-term prognosis was poor and there was a risk that she would neglect her children or be aggressive toward them. Dr. Zehr likewise testified that Mother would likely decompensate without medication.

Finally, Mother notes the efforts that she made to get a job, as well as some of the extra efforts she made at self-improvement, including taking parenting classes weekly when

she was only required to go monthly; taking classes on nutrition, personal finances, and business skills; and taking initiative to be tested for drugs. Mother certainly has made some efforts toward reunification, and Hunt testified that Mother was “one of my more involved moms that I work with.” *Id.* at 205. However, both Lane and DeLong felt that she failed to benefit from the services offered. Mother exhibits poor judgment in her self-care and in her personal relationships. She struggled to exercise appropriate parenting skills when H.L. was the only child present in the home, and the record shows that the three oldest children all have substantial mental health needs and behavioral issues. Mother is unemployed, sharing a one-bedroom apartment with another adult, and has another child on the way. Mother’s arguments mostly emphasize the evidence that is favorable to her and not to the judgment. We decline her request to reweigh the evidence and conclude that Mother has not demonstrated that the trial court’s conclusion that continuation of the relationship poses a threat to the children’s well-being is clearly erroneous.

II. Best Interests of the Children

Mother makes a brief argument concerning the best interests of the children, essentially relying on the evidence already discussed.

We are mindful that, in determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Department of Child Services and to consider the totality of the evidence. In so doing, the trial court must subordinate the interests of the parent to those of the child. The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. Moreover, we have previously held that the recommendations of the case manager and court-appointed advocate to terminate parental rights, in addition to 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 J.S., 906 N.E.2d 226, 236 (Ind. Ct. App. 2009) (citations omitted).

The children's therapist, the CASA, and the family case manager all testified that termination would be in the children's best interests. Given the children's minimal attachment to Mother, the disruptive effect of her visits, and the factors discussed in the previous section, that conclusion is well-supported. As Mother has not shown that the judgment is clearly erroneous, we affirm.

Affirmed.

ROBB, C.J., and NAJAM, J. concur.