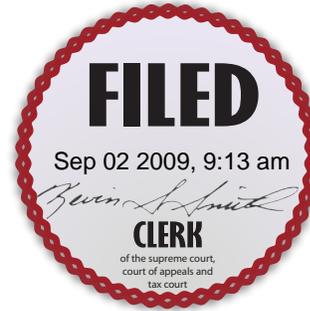


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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L.A., )  
 )  
Appellant-Respondent, )  
 )  
vs. ) No. 16A01-0902-JV-75  
 )  
INDIANA DEPARTMENT OF CHILD SERVICES,)  
 )  
Appellee-Petitioner. )

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APPEAL FROM THE DECATUR CIRCUIT COURT  
The Honorable John A. Westhafer, Judge  
Cause No. 16C01-0807-JT-0201

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**September 2, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

L.A. (“Mother”) appeals from the trial court’s order terminating her parental rights over her minor child D.W. Mother raises a single issue for our review, namely, whether the Indiana Department of Child Services (“DCS”) presented sufficient evidence to sustain the termination of her parental rights.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

Mother is the biological mother of D.W., who was born on August 29, 2007. In November 2007, DCS filed a petition alleging that D.W. was a child in need of services (“CHINS”). In the petition, DCS specifically alleged that Mother had failed to provide necessary medical treatment for D.W., namely, obtaining an x-ray ordered by D.W.’s physician. At the initial CHINS hearing on November 29, Mother admitted that D.W. was a CHINS. DCS placed D.W. with a paternal aunt and uncle.

DCS established a case plan for Mother, which required her to attain and maintain stable housing and employment; to undergo a psychological evaluation and substance abuse assessment; to submit to drug screens; to undergo therapy and intensive outpatient substance abuse treatment; and to have supervised visitation with D.W. Mother did not comply with all of the terms of the case plan. In particular, while Mother regularly attended supervised visitations with D.W., Mother would occasionally “zone out” during the visitations, and the case manager would have to “call her back to the present.” Transcript at 84-85. And Mother would fail to notice when D.W. got herself into dangerous situations, such as playing with an electrical outlet or climbing up too high

onto something. The case manager observed that “when [D.W.] is getting herself in trouble or something is happening [Mother] can’t move quick[ly] enough to stop her or help her.” Id. at 86.

Further, while Mother obtained employment at Subway, she was fired, rehired, and fired a second time during a nine-month period. And Mother underwent the required psychological evaluation, but she did not fully comply with the prescribed treatment plan. For instance, she did not take her medication as prescribed and she only sporadically attended appointments with her therapist. Mother has been diagnosed with schizophrenia, but she denies being mentally ill. One psychologist testified that her prognosis is poor.

On July 29, 2008, DCS filed a petition to terminate Mother’s parental rights with respect to D.W. Following a hearing on December 16, the trial court entered its order terminating Mother’s parental rights with respect to D.W. and made findings and conclusions. Mother now appeals.

### **DISCUSSION AND DECISION**

Mother contends that the evidence is insufficient to support the involuntary termination of her parental rights. 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. 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). 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).

Here, Mother first contends that one of the trial court's findings is clearly erroneous. In particular, Mother maintains that there is nothing in the record demonstrating that the trial court appointed a CASA in this case. Thus, Mother asserts that the trial court's finding that the CASA recommended termination of Mother's parental rights is clearly erroneous. Indeed, while a CASA was present at the termination

hearing, she did not testify, and DCS did not offer into evidence the CASA's report.<sup>1</sup> Thus, Mother is correct that the trial court erred when it based its finding number 22 on the CASA report.

Regardless, the error was harmless. Findings, even if erroneous, do not warrant reversal if they amount to mere surplusage and add nothing to the trial court's decision. Lasater v. Lasater, 809 N.E.2d 380, 398 (Ind. Ct. App. 2004). Here, the trial court made several findings relevant to the issue of whether termination of Mother's parental rights was in D.W.'s best interest.<sup>2</sup> And both Elizabeth House, a family consultant with Lifeline Youth and Family Services, and Meghan Schantz, a family case manager, testified that termination was in D.W.'s best interest. The trial court's partial reliance on the CASA report was surplusage.

Mother also contends that "the trial court's judgment ignores the evidence favorable to the mother." Brief of Appellant at 11. But that is a request that we reweigh the evidence on appeal, which we will not do. DCS presented clear and convincing evidence both that the conditions that resulted in D.W.'s removal will not be remedied and that the continuation of the parent-child relationship poses a threat to D.W.'s well-

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<sup>1</sup> While the record on appeal does not show that the CASA submitted a report to the trial court, DCS states that the CASA submitted a report to the trial court in the underlying CHINS proceedings. Because that report is not a part of the record in the termination proceeding, we cannot consider it on appeal. In a separate order, we deny DCS' motion for leave the supplement the record on appeal with a copy of the CASA's report.

<sup>2</sup> For instance, the trial court found that D.W. needs permanency now and cannot afford to wait for Mother to make meaningful progress towards the goals in her case plan and that D.W. has adjusted very well to her relative placement.

being.<sup>3</sup> And the evidence shows that termination is in D.W.'s best interest and that there is a satisfactory plan for the care and treatment of D.W.<sup>4</sup>

In particular, Mother was diagnosed with schizophrenia, but she denied having any mental illness. As a result, Mother did not take her medication as prescribed and did not consistently attend therapy. In addition, Mother admitted to using alcohol "frequently," despite her knowledge that she should not drink alcohol while taking her prescribed medication. Transcript at 81. And Mother reported having auditory and visual hallucinations. Linda McIntire, a clinical psychologist who evaluated Mother, testified:

[T]here's been some difficulty with treatment compliance. So that's a poor prognostic indicator. With a schizophrenia diagnosis that's chronic, so that's a poor prognosticator. With you know, community-based and home-based services, we still had difficulties, at least with the last of my involvement in this case, with employment and managing and keeping appointments. So those are all indicators that make me say it is theoretically possible that somebody that is that severely mentally ill could be a well enough parent, theoretically yes. Do I think that the odds are very good in this case or that's going to happen in the next several years, the answer would [be] no.

Transcript at 111.

And, again, during supervised visitations with D.W., Mother did not demonstrate the skills necessary to parent D.W. Specifically, Mother occasionally "zoned out" and would have to be "call[ed] back to the present." Id. at 84. Mother failed to recognize

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<sup>3</sup> Again, the statute is written in the disjunctive, so only one of these elements need be proven.

<sup>4</sup> Mother does not dispute that D.W. had been removed from Mother for at least six months under a dispositional decree. To the extent that Mother contends that the termination petition was filed prematurely and Mother was not given enough time to show progress in her case plan, that contention is without merit. DCS complied with the statute.

dangerous situations that D.W. would get herself into, such as attempting to play with an electrical outlet or climbing up too high on something and risking a fall. Further, Mother sometimes had difficulty keeping D.W. on the changing table during diaper changes, did not recognize that her car seat was not properly fastened in the car on one occasion, and had difficulty feeding D.W. bites that were appropriately sized for her. Mother also demonstrated a poor understanding of D.W.'s nutritional needs, stating on one occasion that D.W. needed to eat fruits and vegetables "because the fruits and vegetables match, the color matches the aura of the kid and that's how you decide what fruits and vegetables to give." Id. at 87-88.

This is not a case where a parent has shown consistent progress in complying with a case plan. While Mother showed promise in some areas, overall her compliance was inconsistent and her progress was stagnant, at best. Elizabeth House, a family consultant who worked closely with Mother, testified:

I don't know how much progress has been made because I feel as if many of the things that I've gone over with her are repeated over and over and the same mistakes are made over and over again. So although one day it may seem that she's progressed, she understands it, the next day that we'll go over it, it's lost.

Id. at 96. Mother was not able to maintain stable employment, and while she obtained housing, she indicated a desire to move at the time of the termination hearing. Mother was unable to transition from supervised to unsupervised visitation with D.W. due to Mother's behavior during visits and concern for D.W.'s safety. See transcript at 39.

In sum, the undisputed evidence supports the trial court's termination order. The clear and convincing evidence demonstrates that the conditions resulting in D.W.'s

removal would not be remedied and that termination was in the best interest of D.W. See  
I.C. § 31-35-2-4(b)(2). Hence, the trial court's order is affirmed.

Affirmed.

KIRSCH, J., and BARNES, J., concur.