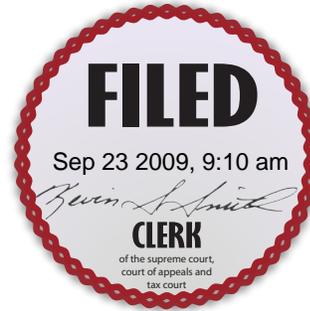


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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE TERMINATION )  
OF THE PARENT-CHILD RELATIONSHIP )  
OF H.S., (Child), )  
 )  
and, )  
 )  
C.O., (Mother), )  
 )  
Appellant-Respondent, )  
 )  
vs. )  
 )  
MONROE COUNTY DEPARTMENT OF )  
CHILD SERVICES, )  
 )  
Appellee-Petitioner. )

No. 53A04-0905-JV-268

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APPEAL FROM THE MONROE CIRCUIT COURT  
The Honorable Frances G. Hill, Judge  
Cause No. 53C06-0712-JT-854

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**September 23, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

**Case Summary**

C.O. (“Mother”) appeals the termination of her parental rights to H.S. We affirm.

**Issue**

Mother raises three issues, which we consolidate and restate as whether the trial court’s termination of Mother’s parental rights to H.S. is clearly erroneous.

**Facts**

Mother has four children, H.S., born May 13, 1994, Ad.S., born April 23, 1993, Aa.S., born July 6, 1991, and L.O., born April 25, 1989.<sup>1</sup> Mother has had a lengthy history with various departments of child services due to sexual abuse of Aa.S. and Ad.S. by a step grandparent, neglect of the children, lack of supervision, educational neglect, and unsanitary home conditions.

In December 2005, the Monroe County Department of Child Services filed a petition alleging that the children were in need of services because, although the DCS

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<sup>1</sup> The parental rights of H.S.’s father were voluntarily terminated.

was assisting the family through a service referral agreement, the family continued to have problems. The petition alleged that none of the children were in school and that Mother had not cooperated with DCS's efforts to remedy the problem. Mother admitted the allegations of the petition, and the trial court found that the children were in need of services. The trial court ordered Mother to undergo a mental health evaluation and follow all recommendations, make sure that the children went to school each day, maintain good home and hygiene conditions, provide appropriate supervision for the children, actively participate in home-based family preservation services, participate in individual and family counseling, and obtain a substance abuse evaluation. The children remained in Mother's care at that time.

Other issues arose during the CHINS proceedings, including Ad.S.'s "sexual maladaptive behaviors" and molestation of a stepsibling, Aa.S.'s "inability to control his behavior," problems with hygiene and home conditions, and head lice infestations. Tr. p. 162. In the spring of 2006, Aa.S. was placed in residential care at Resources due to his serious mental health issues, and in July 2006, the trial court ordered that the other three children be removed from Mother's care. H.S. and L.O. were placed in foster care, and Ad.S. was placed at Resolute for inpatient treatment due to his sexually maladaptive behaviors and mental health issues. Both Ad.S. and Aa.S. ultimately were placed with the Southwest Indiana Regional Youth Village ("SWIRVY").

In December 2007, the DCS filed a petition to terminate Mother's parental rights as to H.S.<sup>2</sup> At the time of the termination hearing, both Mother and L.O. were incarcerated in the Crawford County Jail facing charges of Class C felony conspiracy to traffic in a controlled substance with an inmate. After a hearing, the trial court entered findings of fact and conclusions thereon terminating Mother's parental rights to H.S.

### **Analysis**

The issue is whether the trial court's termination of Mother's parental rights to H.S. is clearly erroneous. The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). However, these 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. Id. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id. The purpose of terminating parental rights is not to punish parents, but to protect children. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied, cert. denied, 534 U.S. 1161, 122 S. Ct. 1197 (2002).

When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. Bester, 839 N.E.2d at 147. We will consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. Id. Here, the trial court made findings in granting the termination of Mother's

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<sup>2</sup> The DCS also filed a petition to terminate Mother's parental rights as to Aa.S. and Ad.S., but the DCS proceeded only with the termination of parental rights as to H.S.

parental rights. When reviewing findings of fact and conclusions thereon entered in a case involving a termination of parental rights, we apply a two-tiered standard of review. Id. First, we determine whether the evidence supports the findings. Id. Then, we determine whether the findings support the judgment. Id. The trial court’s judgment will be set aside only if it is clearly erroneous. Id. “A judgment is clearly erroneous if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment.” Id. (citation and internal quotations omitted).

Indiana Code Section 31-35-2-8(a) provides that “if the court finds that the allegations in a petition described in [Indiana Code Section 31-35-2-4] are true, the court shall terminate the parent-child relationship.” Indiana Code Section 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege 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;
  - (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court’s finding, the date of the finding, and the manner in which the finding was made; or
  - (iii) the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

- (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.

The State must establish these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992); Doe v. Daviess County Div. of Children & Family Serv., 669 N.E.2d 192, 194 (Ind. Ct. App. 1996), trans. denied.

Mother argues that the trial court's findings and conclusions are clearly erroneous regarding whether: (A) there was a reasonable probability that the conditions resulting in H.S.'s removal or the reasons for placement outside Mother's home would not be remedied;<sup>3</sup> and (B) the termination was in H.S.'s best interests.

A. Remedy of Conditions Resulting in Removal.

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<sup>3</sup> Mother also argues the trial court erred by finding that the continuation of the parent-child relationship posed a threat to the well-being of H.S. We note that Indiana Code Section 31-35-2-4(b)(2)(B) required DCS to demonstrate by clear and convincing evidence a reasonable probability that either: (1) the conditions resulting in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or (2) the continuation of the parent-child relationship poses a threat to the well-being of the child. The trial court specifically found a reasonable probability that the conditions resulting in H.S.'s removal would not be remedied, and there is sufficient evidence in the record to support the trial court's conclusion. Thus, we need not determine whether the trial court's conclusion that there was a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of H.S. is clearly erroneous. See, e.g., Bester, 839 N.E.2d at 148 n.5; In re T.F., 743 N.E.2d 766, 774 (Ind. Ct. App. 2001), trans. denied.

DCS was required to prove by clear and convincing evidence that there was a reasonable probability the conditions resulting in H.S.'s removal or the reasons for placement outside Mother's home would not be remedied. In making this determination, the trial court must judge a parent's fitness to care for her child at the time of the termination hearing and take into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. However, the trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." Id. When assessing a parent's fitness to care for a child, the trial court should view the parent as of the time of the termination hearing and take into account any evidence of changed conditions. In re C.C., 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), trans. denied. The trial court can properly consider the services that the State offered to the parent and the parent's response to those services. Id.

The CHINS finding was based upon educational neglect, and H.S was removed from Mother's home due to:

Mother's inability or refusal to receive counseling for herself to address pain management for chronic pain and potentially addictive medication; Mother's denial and minimization of the problems of sexual abuse, learning delays, and other problems of her children; Mother's three arrests and brief incarceration; Mother's periods of loss of electricity for failure to manage utilities and failure to pay rent despite assistance from Department of Child Services; Mother's failure to enroll [H.S.] in summer school as directed by Family Solutions for essential remediation; continued deterioration of the condition of the children while in Mother's placement with regard to their education, stability, behavior, and wellbeing despite the presence of Life Coaches

and counseling services for Mother and children; negative [e]ffect on education of children by multiple moves of residence and school changes.

CASA's App. pp. 16-17.

Mother argues that these conditions have been remedied and that the trial court looked only to her past conduct rather than "the current state of affairs." Appellant's Br. p. 8. According to Mother, she is now steadily employed with a flexible schedule, has a suitable home, and had "researched and intended to institute an adequate plan regarding the school attendance and supervision of her children." Id. at 11. Mother argues that the educational neglect has been resolved by her improvements.

The trial court's following findings make clear that the trial court found Mother's improvements to be lacking.

15. Mother has not resolved the educational neglect which is a significant problem. . . . There is no evidence from the service providers that Mother has exhibited the skill, effort or ability to make sure [H.S.] would attend school. Mother testified that she tried to get her children to go to school and that she did have trouble getting them to go. Mother's testimony is that she did allow the children to miss school sometimes when they didn't want to go, but that the children are now mature and grown and she will make sure they get to school, minimizes the educational neglect problem and does not demonstrate a likelihood that Mother will be able to control [H.S.'s] behavior and insure that she attends school. [H.S.] has specialized educational needs. She has ADHD and educational delays. [H.S.] will need supervision, encouragement and help with her education to avoid reoccurrence of her past failure to attend school when living with Mother. Through the structure and rules in the foster home, [H.S.] has accepted the need to attend school, and she has begun to attend willingly and participate in basketball and other activities. Mother has not demonstrated that she has the skills, appreciation, or commitment to provide this structure and to insure [H.S.'s] attendance and necessary participation in the educational process.

\* \* \* \* \*

17. Mother has not demonstrated that she appreciates the sexual safety needs and risks of [H.S.]. . . . Mother has indicated that she wants her teenage sons, [Aa.S. and Ad.S.] to return to the home. Living in the household with her brothers amplifies the safety risks for [H.S.]. Mother testified that she was not concerned about [H.S.] having inappropriate sexual boundaries or about her being sexually active if she was returned to her home. However, the past history of the family raises serious concerns about [H.S.'s] sexual safety. In 2001, one or both of Mother's sons, [Aa.S. and Ad.S.] were molested while living under Mother's care. Later, [Ad.S.] sexually touched his step-sister while living in the home, and the DCS Case Manager testified on cross examination regarding concern that Mother didn't believe the step-sister. [Ad.S.] has sexual maladaptive behaviors and has received institutional treatment since July 2006 for this condition, including his current placement at SWIRVY. SWIRVY has created a safety plan that would need to be followed for the sexual safety of children in [Ad.S.'s] presence, including [H.S.]. Mother's review of the safety plan is recounted in further findings. The CASA met with [H.S.'s] school teachers in the sixth grade when the school raised concerns of inappropriate sexual touching with the opposite sex and [H.S.'s] body movement with boys. [H.S.'s] past history places her at risk for inappropriate sexual behavior and possible sexual abuse in an unsupervised environment, particularly if her brother [Ad.S.] is present.
  
18. Mother has not demonstrated that she can provide the supervision and structure necessary to insure [H.S.'s] emotional and physical safety, particularly when her brothers are returned to the home. [Aa.S.] has a conduct disorder and behavioral problems. [Aa.S.] has been in institutional placement related to his behavior, including Resources and then he was placed at SWIRVY related to "huffing." Virshawn Champion served as [Aa.S.'s] therapist, off and on, from December 2006 until January of 2008. While she worked with him [Aa.S.] often didn't attend school, was often missing, and didn't follow rules. He had two failed foster care placements and lived with his Father for a period of time. Up to and including March 2007, Ms. Champion observed 3 to 4 visits with Mother, [Aa.S.] and [H.S.] in which [Aa.S.] was aggressive and hurtful to [H.S.], and [Aa.S.] was aggressive, yelling, cursing and threatening to Mother. Mother was unable to control [Aa.S.'s] behavior during visits. More

recently, Mother's therapist Kerry Davies and the CASA observed visits of [H.S., Ad.S. and Aa.S.] in Mother's home. The visits were chaotic and Mother was not able to control the situation even when other professional care givers were in the room. The CASA observed that Mother allowed aimless wandering by the children and [Aa.S.] exhibited aggressive tendencies and picked on [H.S.]. Mother did not provide structure or control.

19. DCS provided an individual therapist for Mother, Kerry Davies. In this therapy, Mother did not accept responsibility for the involvement of [DCS] with her family and did not exhibit a significant commitment to therapy or change. Mother did not do homework assigned for the therapy. Of the last 18 scheduled therapy sessions (ending the week before the fact finding hearing) Mother attended only half of the sessions. In therapy, Mother minimized her responsibility for her involvement in the criminal system. In therapy, Mother indicated the existence of the Safety Plan for [Aa.S.] and [Ad.S.] from SWIRVY, but she didn't review the plan with the therapist, ask questions, or clarify how she would put it into action. When the therapist observed a visit in Mother's home with [H.S.] and her brothers the behaviors and wandering of the children were "loose" and Ms. Davies had sincere concerns for the absence of appropriate boundaries between the boys and [H.S.]. She noted the boys had their hands on [H.S.'s] back and legs. The goal of the Mother's therapy was to keep the children safe, and the therapist stated that Mother has not met this goal.
20. Mother's testimony vacillated between her sentiments that she doesn't seem to know what the problems are or why the children have not been returned to her, and her specific statements that she was aware of what she was supposed to do and of the safety issues related to safe supervision of [H.S.] and that she can handle them. When asked about her work with DCS and Family Solutions therapists, Mother responded that she has "no idea" what she was to accomplish, and she stated that she was not given goals or that they were not specific enough. Mother testified that she believes that she did everything asked of her and she doesn't know how to get the children back. On the other hand, Mother testified that she knows that her supervision of the boys will affect [H.S.'s] safety. Mother said she will learn from counselors at SWIRVY what [Aa.S.'s] "triggers" for aggression are. Mother testified that she was aware of the extensive and intense safety plan for the boys from SWIRVY which she referred to as "outrageously closely supervised,"

including being sure Mother is home when the boys return from school, and not allowing [Ad.S.] to ride the bus or have any unsupervised situations. Mother testified that she was aware that [Ad.S.] has issues of sexual acting out, and there are concerns with [Aa.S.] for violence or inappropriate physical behavior. She is aware that the boys have ADHD, mood disorders, and anger management issues that will require counseling and significant supervision. Mother testified that she would be able to arrange her work schedule to supervise the children at all times, and to address emergencies that might arise with [Ad.S.]. While Mother's restatement of the Safety Plan for her sons and her listing of the needs of the children and how she will meet them is positive, her credibility is doubtful given her other testimony that she doesn't know what she could do to get her children back. Her credibility is also doubtful given her testimony denying that [H.S.] is at high risk for sexually inappropriate behavior, Mother's unwillingness in therapy with Kerry Davies to work on areas of change, and her failure to supervise and provide structure in a recent home visit with all three children. The Court does not find that Mother will follow the rigorous safety plans for supervision to insure that [H.S.] is safe when the boys are returned to the home.

21. At the time of this fact finding hearing, Mother and her oldest daughter, [L.O.], had been arrested and were incarcerated, awaiting posting bond, in the Crawford County jail on charges of Conspiracy to Traffic a Controlled Substance to an Inmate, a Class C Felony. Mother has a prior offense of Check Deception, and the Court's July 31, 2006, order mentions Mother's involvement in the criminal system. While the current arrest is certainly not evidence of guilt, Mother's continued involvement in the criminal system is consistent with her past history of life choices that affect her children negatively and indicates an ongoing pattern.

Appellant's App. p. 78-81.

Mother challenges several of these findings. First, Mother argues that Finding 17 is clearly erroneous because the risk of sexual activity by H.S. is speculative. However, the evidence supports the trial court's finding. The CASA testified that H.S. had engaged in inappropriate sexual touching and movements in the sixth grade and that, in middle

school, “there was always an undercurrent but never anything overt as far as her . . . sexual behavior.” Tr. p. 214. H.S.’s therapist testified that H.S. has boundary issues with boys and struggles with knowing when to “say no to people.” Id. at 81. Supervised visitations between Mother and the children were “chaotic,” with Mother unable to control the children. Id. at 141. There was also a lot of physical contact during the supervised visitations, such as hugging, hand holding, and hands on another’s back or leg. If the children were returned to Mother, she described the proposed level of supervision over Aa.S. and Ad.S. as “outrageously supervised at all times.” Id. at 30. Given prior sexual abuse in the household, Mother’s historical lack of supervision and ability to control the children, and Mother’s failure to take the safety plan seriously, we cannot say that the trial court’s concern about risk to H.S. is clearly erroneous.

Mother next argues that Finding 18 is clearly erroneous regarding her ability to properly supervise the children to protect H.S. Mother argues that the supervised visitations relied upon by the trial court occurred in 2007 and that the parties have undergone two years of therapy since that time. Mother also argues that “[a]ny fear about the boys’ behavior is speculative.” Appellant’s Br. p. 16. However, Roxanna Collier, visit supervisor, testified regarding supervised visits over the six months prior to the termination hearing. Collier testified that the visits were not “progressive.” Tr. p. 102. Kerry Davis, Mother’s therapist, testified that she started helping with supervised visits in September 2008, six months before the termination hearing. Davis testified that the visits in Mother’s home were “[p]retty chaotic,” that the physical boundaries were “very loose,” and that the boys teased H.S. Id. at 123. Consequently, we conclude that the

trial court's finding regarding Mother's inability to properly supervise the children is not clearly erroneous.

The trial court found Mother's limited improvements lacking when compared with her past conduct, her recent incarceration, her inability to control the children during supervised visitations, her failure to understand the reasons for the children's removal, and her failure to take the risks to H.S. seriously. Mother's arguments to the contrary amount to an invitation to reweigh the evidence, which we cannot do. Doe, 669 N.E.2d at 194. Under these circumstances, the trial court's conclusion that there was a reasonable probability that the conditions resulting in H.S.'s removal would not be remedied is not clearly erroneous.

B. Best Interests.

DCS was required to prove by clear and convincing evidence that the termination was in H.S.'s best interests. In determining what is in the best interests of a child, the trial court is required to look at the totality of the evidence. A.F. v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1253 (Ind. Ct. App. 2002), trans. denied. In doing so, the trial court must subordinate the interests of the parents to those of the child involved. Id. "[T]he historic inability to provide adequate housing, stability, and supervision, coupled with the current inability to provide the same, will support a finding that continuation of the parent-child relationship is contrary to the child's best interests." In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005).

The trial court found that termination of Mother's parental rights to H.S. was in the best interests of H.S. because "Mother has not demonstrated a current ability to

provide a safe and secure home for [H.S.] and regular school attendance, particularly in light of Mother's recent incarceration in the Crawford County Jail, nor does Mother's intention to maintain [H.S.] in a home with her brothers provide the safety, security, and structure needed by [H.S.]." Appellant's App. p. 82. Mother argues that she understood and intended to implement the safety plan regarding the boys and H.S., that H.S. wanted to live with Mother, that parental rights should not be terminated because a foster home is a "better place to live," and that too much emphasis was placed on her current incarceration. Appellant's Br. p. 20.

The trial court's order makes it clear that the trial court did not terminate Mother's parental rights because the foster home was a better place to live or because Mother was currently incarcerated. Rather, the trial court considered Mother's incarceration as evidence that Mother continues to make poor choices.<sup>4</sup> See Appellant's App. p. 81 ("While the current arrest is certainly not evidence of guilt, Mother's continued involvement in the criminal system is consistent with her past history of life choices that affect her children negatively and indicates an ongoing pattern."). The DCS presented evidence of a historical inability of Mother to provide adequate supervision of the children. The trial court found that Mother's assertion she would follow the safety plan was not credible. Given Mother's testimony that the safety plan required the boys to be

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<sup>4</sup> Mother relies upon the recent opinions of *In re J.M.*, 908 N.E.2d 191 (Ind. 2009), and *In re G.Y.*, 904 N.E.2d 1257 (Ind. 2009). In both *J.M.* and *G.Y.*, our supreme court held that the involuntary termination of parental rights of incarcerated parents was not warranted where the incarcerated parents were scheduled for release soon and the parents' "ability to establish a stable and appropriate life upon release can be observed and determined within a relatively quick period of time." *J.M.*, 908 N.E.2d at 196. Here, unlike in *J.M.* and *G.Y.*, Mother's parental rights were not terminated due to her incarceration. Consequently, we do not find Mother's argument persuasive.

“outrageously supervised at all times” upon their release from SWIRVY, we cannot say that the trial court’s finding is clearly erroneous. Tr. p. 30. Further, both the DCS case manager and the CASA testified that termination of Mother’s parental rights was in H.S.’s best interest. Based on the totality of the evidence, we conclude that the trial court’s determination that termination was in H.S.’s best interests is supported by clear and convincing evidence.

### **Conclusion**

Clear and convincing evidence supports the trial court’s judgment terminating Mother’s parental rights to H.S. Accordingly, we affirm.

Affirmed.

NAJAM, J., and KIRSCH, J., concur.