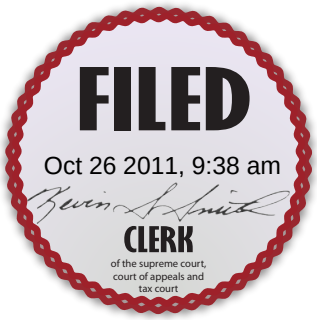

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF:	)	
A.R.S. and A.L.S. (minor children)	)	
and	)	
L.S. (mother) and X.K. (father),	)	
Appellant-Respondent,	)	
vs.	)	No. 02A04-1103-JT-157
THE INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petetioner.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Charles F. Pratt, Judge
Cause No. 02D08-1005-JT-130
02D08-1005-JT-131

October 26, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issues

L.S. ("Mother"), mother of A.R.S. and A.L.S., and X.K. ("Father"), father of A.R.S., appeal the trial court's involuntarily termination of their parental rights. They raise three issues for our review, which we consolidate and restate as the following two: whether the trial court properly denied their motions to dismiss based on alleged procedural defects in the petitions for termination; and whether clear and convincing evidence supports the trial court's order terminating their parental rights. Concluding any defect in the termination petitions did not deny the parents due process and that the evidence supports the trial court's termination of their parental rights, we affirm.

Facts and Procedural History

Mother and Father are the parents of A.R.S., born May 17, 2005. Mother also had a child, A.L.S., on June 12, 2006, with another man.[1] Both children resided with Mother. On

[1] C.J. was identified as A.L.S.'s father, but his paternity had not been established at the time of the termination hearing. Nonetheless, his rights as the alleged father were also terminated as part of these proceedings; he does not participate in this appeal.

July 28, 2008, the Allen County Office of the Department of Child Services ("DCS") received a report that Mother had "whooped" the children with a belt, leaving red marks on A.R.S.'s cheek and back and a bruise under A.L.S.'s eye. The children were removed from Mother's custody and placed in foster care; DCS filed a petition alleging the children were in need of services ("CHINS") because of Mother's and Father's neglect and Mother's abuse of the children. At the time, Mother was unemployed and had a prior neglect referral to DCS with respect to the children. She also faced criminal charges as a result of the incident precipitating the children's removal. Father was on house arrest, behind in child support, and had not maintained regular contact with A.R.S. Following a fact-finding and dispositional hearing, the CHINS court adjudicated the children to be CHINS in August 2008, and ordered a parent participation plan, pursuant to which both Mother and Father were ordered to comply with the "standard eight" conditions. Transcript at 319, 334. In addition, Mother was ordered to obtain and maintain suitable employment; bring a resolution to all criminal charges and obey the terms and conditions of probation; obtain a drug and alcohol assessment, a psychiatric evaluation, and a psychological evaluation; attend and participate in visitation with the children; and refrain from using physical discipline. Father was ordered to obtain a family functioning assessment, pay support as ordered, and attend and participate in visitation. The children were continued in their licensed foster care placement, with supervised visits to take place with the parents.

At a review hearing in January 2009, the CHINS court found Mother in substantial compliance with the parent participation plan. Nicole Bowland, the DCS family case

manager for this case, testified at the termination hearing that at the time of that review hearing, she agreed with this assessment of Mother's progress. The children were continued in their foster care placement, but visitation, although still supervised, was allowed in Mother's home. Father's visitation was suspended due to non-compliance.

In May 2009, Mother pleaded guilty to the battery charge that stemmed from the 2008 incident, and in June 2009, she was sentenced to three years at the Department of Correction ("DOC"), all suspended to probation. At a permanency hearing in July 2009, the CHINS court found Mother in full compliance with the parent participation plan. Bowland testified at the termination hearing that at the time of the permanency hearing, she agreed with this assessment. The CHINS court found Father was not in compliance, and, although continuing the children in foster care, agreed to DCS's proposed permanency plan of eventual reunification with Mother. At a review hearing in November 2009, the CHINS court found Mother in full compliance. Bowland testified at the termination hearing that although Mother had completed a lot of services by that time, she had begun "to go downhill" and was no longer working toward or successfully completing the remaining services. Id. at 340. In addition, Mother had been employed at two jobs for a total of approximately only six weeks during the CHINS proceedings. The CHINS court also found Father remained non-compliant and continued the children in foster care.

In January 2010, the court in Mother's criminal case found that she had violated her probation by failing to find and maintain employment and added six months of home detention as a condition of her probation. In February 2010, the CHINS court held a hearing

following which it reinstated Father's supervised visitation with A.R.S., but he never attended a visit. In April 2010, the CHINS court held a permanency hearing regarding DCS's proposed permanency plan which had been amended to termination of parental rights and adoption of the children. The CHINS court found that Mother was no longer in compliance with the parent participation plan and authorized the filing of a petition to terminate parental rights. DCS filed a petition to involuntarily terminate parental rights on May 11, 2010. In her criminal case, Mother did not complete the process of setting up her home detention and on May 18, 2010, was committed to DOC to serve two years, followed by one year of probation. For his part, Father was in and out of jail throughout the pendency of the CHINS proceedings. In May 2010, he was charged with possession of marijuana, pled guilty, and was sentenced in October 2010 to one and one-half years in DOC. Both Mother and Father were therefore incarcerated when the termination hearing was held over several days in October, November, and December 2010.

Following the termination hearing, the trial court entered an order finding by clear and convincing evidence the children had been outside the care of the parents for more than twenty-four months preceding the filing of the petition for termination, there is a reasonable probability the conditions resulting in the children's removal or placement outside the home would not be remedied and the continuation of the parent-child relationship posed a threat to the children's well-being, termination was in the children's best interest, and there was a satisfactory plan for the care and treatment of the children. Mother's and Father's parental rights were accordingly terminated. The parents now appeal.

Discussion and Decision

I. Standard of Review

When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility, but consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. In re M.W., 943 N.E.2d 848, 853 (Ind. Ct. App. 2011), trans. denied. The trial court entered findings of fact and conclusions thereon in granting DCS's petition to terminate the parents' 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: first, we determine whether the evidence supports the findings; second, we determine whether the findings support the judgment. Id. We will set aside the trial court's judgment 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.

Indiana Code Section 31-35-2-4(b) provides that a petition to terminate a parent-child relationship involving a child in need of services must meet the following requirements:

> (2) The petition must allege:
>
> (A) that one (1) of the following is true:
>
> (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.
>
> (iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the

most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(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.

(iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services.

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

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

(3) The petition must indicate whether at least one (1) of the factors listed in [Indiana Code section 31-35-2-4.5(d)(1) through 4.5(d)(3)] applies and specify each factor that would apply as the basis for filing a motion to dismiss the petition.

The State must establish the allegations by clear and convincing evidence. Egly v. Blackford Cnty. Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992). 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."

II. Motion to Dismiss Petition

Mother and Father first contend the trial court erred in denying their motions to dismiss the termination petitions for being procedurally defective. As noted above, one of the statutory requirements of a termination petition is that it indicate whether one of the provisions in Indiana Code section 31-35-2-4.5(d) ("Section 4.5") is applicable. Ind. Code § 31-35-2-4(b)(3). Section 4.5 applies if the trial court has made a finding that reasonable

efforts for family preservation or reunification are not required or the child is in certain placements outside parental custody, including in a foster home; and the child has been removed from parental custody and under DCS supervision for not less than fifteen of the most recent twenty-two months. Ind. Code § 31-35-2-4.5(a) (emphasis added). If the section applies, a termination petition shall be filed. Ind. Code § 31-35-2-4.5(b) (emphasis added). If any of the following circumstances apply, however, and are proved by clear and convincing evidence, the termination petition shall be dismissed: the current case plan has documented a compelling reason for concluding that filing or proceeding on a petition for termination is not in the best interests of the child; reasonable family preservation or reunification services are required, have not been provided in accordance with the case plan, and the period for completion of family services has not expired; or reasonable family preservation or reunification services are required, have not been provided, and the family services are substantial and material in relation to the plan to return the child to the parents. Ind. Code § 31-35-2-4.5(d).

At the start of the termination hearing, Mother and Father moved the trial court to dismiss the termination petitions because the petitions seeking termination failed to indicate whether any provision of Section 4.5 applied and therefore did not meet the requirements of Indiana Code section 31-35-2-4. The trial court denied the motions to dismiss. The termination petitions allege that the children had been removed from the parents for at least six months under a dispositional decree and had been removed from the parents and under the supervision of DCS for at least fifteen months of the most recent twenty-two months, but

they lack the allegation required by Indiana Code section 31-35-2-4(b)(3) regarding the applicability of Section 4.5. See Appellants' Appendix at 97-102. Mother and Father contend they were denied due process by DCS's failure to comply with the statutory requirements. See Bester v. Lake Cnty. Office of Family & Children, 839 N.E.2d 143, 146 (Ind. 2005) ("The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children.").

Prior to 1999, filing of a termination petition was entirely discretionary. See Phelps v. Sybinsky, 736 N.E.2d 809, 816 (Ind. Ct. App. 2000), trans. denied. In response to federal legislation, however, the termination statutes were amended in 1999 to require the filing of a termination petition if the child had been removed from a parent and placed under DCS supervision for at least fifteen of the most recent twenty-two months. Ind. Code § 31-35-2-4.5(b); Phelps, 736 N.E.2d at 814. If one of the provisions of Section 4.5(d) applied, however, a motion to dismiss was required to be filed, and the petition was required to be dismissed if the applicability of a provision of Section 4.5(d) was proved by clear and convincing evidence. Thus, section 31-35-2-4 was amended to add a requirement that the petition for termination indicate whether a motion to dismiss would be forthcoming. In the case of Everhart v. Scott Cnty. Office of Family & Children, 779 N.E.2d 1225 (Ind. Ct. App. 2002), trans. denied, this court held that where Section 4.5 "does not apply because the grounds for seeking the petition to terminate the parent-child relationship are that the child has been removed from the parent for six months, the petition need not state that [Section] 4.5 and the factors under [Section 4.5(d)] do not apply." Id. at 1229; see also In re Kay L.,

867 N.E.2d 236, 241 (Ind. Ct. App. 2007) (holding that even if Section 4.5 would apply, any error in omitting reference to it was harmless where the termination petition also alleged the independent ground for termination that the children in question had been removed from the parent's care for at least six months under a dispositional decree).

Mother and Father point out that at the time Everhart and Kay L. were decided, Indiana Code section 31-35-2-4(b) read slightly differently than it does now:

> (b) The petition must:
> * * *
> (2) 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) after July 1, 1999, 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.
> (3) Indicate whether at least one (1) of the factors listed in section 4.5(d)(1) through 4.5(d)(3) of this chapter applies and specify each factor that would apply as the basis for filing a motion to dismiss the petition.

Kay L., 867 N.E.2d at 240. Mother and Father argue the subsequent amendment of the statute which changed the language to "(3) The petition must indicate whether at least one (1)

of the factors listed in [section 31-35-2-4.5] applies . . .” clearly manifests legislative intent that a statement regarding Section 4.5 be included in every petition for termination.

We acknowledge the amendment, but note that given the structure of the previous statute, it has read that “[t]he petition must . . . [i]ndicate” whether Section 4.5 applies since 1999. Although the termination petitions in this case did allege that the children had been removed from the parents and under DCS supervision for fifteen out of the most recent twenty-two months, they also alleged that the children had been removed from the parents for at least six months under a dispositional decree, and this is an independent ground for termination pursuant to Indiana Code section 31-35-2-4(b)(2)(A). More importantly, Mother and Father do not allege that any of the circumstances listed in Section 4.5(d) apply, and they have advanced no substantive ground pursuant to that section for dismissing the petitions. Although the better course may have been for DCS to state simply in the termination petitions that none of the factors in Section 4.5(d) applied to this case, Mother and Father were not misled or otherwise harmed by the petitions as filed, and were not denied due process by the omission. See E.P. v. Marion Cnty. O.F.C., 653 N.E.2d 1026, 1031 (Ind. Ct. App. 1995) (noting the phrase “due process,” though never precisely defined, “expresses the requirement of fundamental fairness”) (quotation omitted). The trial court did not err in denying the motions to dismiss.

III. Sufficiency of the Evidence

Mother and Father also contend the trial court clearly erred in granting the petitions for termination because there is not clear and convincing evidence that the conditions which

resulted in the children's removal or placement outside the home would not be remedied or that the continuation of the parent-child relationship posed a threat to the well-being of the children.[2] We note first that although DCS alleged and the trial court found both grounds, these are alternative grounds for granting termination, and DCS was only required to prove and the trial court to find one or the other. See Ind. Code § 31-35-2-4(b)(2)(B); In re I.A., 934 N.E.2d 1127, 1133 (Ind. 2010). Because Father is the parent only of A.R.S., we will address the circumstances regarding Mother and Father separately.

A. Evidence as to Mother

With respect to the elements at issue as they relate to Mother, the trial court found as follows regarding both children:

> . . . By the clear and convincing evidence the court determines that the reasons for placement outside the home of the parents will not be remedied. . . . The Mother has been diagnosed with emotional traits that require correction therapeutically in order to ensure that a child will be safe in her care. However, she has not completed her counseling program and has not demonstrated during her supervised visits ability to appropriately parent. Despite therapy and a conviction for battery to a child she still expressed that [she] would "whoop the child." The Court therefore concludes that continuation of the parent-child relationship poses a threat to the well-being of the child. Despite the provision of supportive services, the Mother has engaged in behaviors that resulted in her incarceration. Knowing that her failure to maintain employment would jeopardize her criminal case and her ability to achieve reunification with her children, she voluntarily terminated her employment. Neither parent is presently in a position to provide the child with support, supervision, care, or housing. The child has special emotional and behavorial needs that neither parent has demonstrated an ability to meet. . . . The Court therefore concludes that 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.

[2] Mother and Father do not challenge the trial court's findings that termination is in the best interests of the children or that there is a satisfactory plan for the care and treatment of the children following termination.

Appellants' App. at 7 (order with respect to A.R.S.), 15-16 (order with respect to A.L.S.).

In determining whether there is a reasonable probability the conditions that resulted in the child's removal will not be remedied, the trial court must judge a parent's fitness to care for his or 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. Pursuant to this rule, courts have properly considered 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. A.F. v. Marion Cnty. Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. The trial court can also consider the services that were offered to the parent and the parent's response to those services. In re C.C., 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), trans. denied. The time for parents to rehabilitate themselves "is during the CHINS process, prior to the filing of the petition for termination." Prince v. Dep't of Child Servs., 861 N.E.2d 1223, 1230 (Ind. Ct. App. 2007) (emphasis in original).

The children were removed from Mother because of physical discipline she imposed that caused injury to both girls. In the course of the counseling she was ordered to do as part of her parent participation plan, she was given a "child abuse potential inventory" which resulted in "elevated abuse scales" for rigidity or lack of flexibility and stress emanating from other people. Tr. at 116. Both girls have behavorial and social skills training needs because they present aggressive and oppositional behaviors and suffer from anxiety. In addition,

A.L.S. has been diagnosed with hyperactivity. See id. at 293. The children's behavorial issues are of concern in conjunction with Mother's elevated scales because "of the added stress with parenting, [there is the] potential for problems with the relationship or for potential abuse issues." Id. at 119. The supervisor of visits between Mother and the children noted that Mother was not always attentive to the children; on a few occasions, she said she was "gonna whoop 'em," id. at 191; and she threatened them with the "bogeyman" if they went upstairs when she did not want them to, id. at 192. Although the supervisor stated that she did not "really believe she meant" that she would "whoop" the children, id., that Mother would even jokingly make such a statement seems to indicate Mother does not appreciate that the conduct that led to the children's removal was inappropriate. The supervisor testified that she supervised visits from April to December 2009 and Mother's attendance was inconsistent and visits degenerated over time as Mother became less attentive to and less focused on the children.

Mother attended slightly more than half her scheduled mental health counseling sessions, and the records do not reflect that she was released from her counseling or that she completed it. Throughout the CHINS proceedings, Mother's lack of employment was a problem. She worked at one job for approximately one month before quitting due to what she termed a hostile environment. She then worked at a different job for approximately two weeks before quitting because she felt she was not getting enough hours. Those six weeks are the only time she was employed since the CHINS petitions were filed in July 2008. Her lack of employment not only impacted her compliance with the parent participation plan, but

also with the terms of probation in her criminal case, and ultimately resulted in her probation being revoked and her subsequent incarceration. Her probation officer testified that she had a "lack of follow-through and effort in obtaining employment," despite knowing the consequences. Id. at 46. At the time of the termination hearing, she still had approximately four months to serve, plus an additional year of probation to follow, a condition of which would be obtaining and maintaining employment.

The evidence shows that at the inception of the CHINS proceedings, Mother was participating in services, cooperating with DCS, and in compliance with the parent participation plan. However, the evidence also shows that as time went on, Mother's conduct deteriorated, especially her relationship with the children. Professionals assessed her as having an elevated risk of physical abuse, especially if she perceived the children as a source of stress, which was likely given the children's own diagnoses. At the time of the termination hearing, Mother was incarcerated, and she had no present ability to care for the children.

Mother cites In re J.M., 908 N.E.2d 191 (Ind. 2009), in support of her argument that her incarceration should not have been a significant factor in determining whether to terminate her parental rights. In J.M., our supreme court affirmed the trial court's denial of a petition to terminate parental rights, holding that the evidence supported the conclusion that the incarcerated parents' ability to establish a stable and appropriate home for the child could be determined within a relatively short time after their release, which was imminent. Id. at 196. The evidence supporting that conclusion included that the parents' probable release

dates were soon, that they had fully cooperated with services required of them while in prison, that they had a relationship with the child prior to their incarceration and had attempted to keep the child in the care of relatives prior to their convictions, and that because they had taken steps to provide permanency for the child upon their release – including completing self-improvement programs while in prison, the father obtaining employment, housing, and transportation, and the mother completing her bachelor's degree while in prison – the child's need for permanency was not prejudiced by the denial of the petition. Id. at 194-96.

Unlike the parents in J.M., Mother had not fully cooperated with services prior to her incarceration and there was no evidence that she was participating in services while in prison; her relationship with the children had deteriorated by the time of her incarceration; and she had no concrete plans in place to provide permanency for the children upon her release. Her release date was only approximately one month after the trial court entered its termination order, and Mother's plan upon release was to find "employment, stable housing, and get[ ] back into college," tr. at 476, and she expressed a preference to do so in Indianapolis rather than Fort Wayne, id. at 475. However, given Mother's lack of commitment to finding employment during the two years preceding the termination hearing, her ability to translate her plan into reality within a short time after release from prison is questionable at best. Moreover, unlike the procedural posture of J.M., in which the denial of a petition for termination was being reviewed on appeal, here, we are reviewing the grant of a termination petition.

In short, the evidence supports the trial court's conclusion that the conditions which resulted in the removal of the children from Mother's custody will not be remedied, as she has not demonstrated an appreciation that her conduct in using excessive physical punishment of the children was inappropriate and she was assessed with an elevated tendency toward physical abuse. The evidence also supports the trial court's conclusion that continuation of the parent-child relationship poses a threat to the children's well-being for the foregoing reason and also because Mother had become increasingly inconsistent and disinterested in the children as the CHINS proceedings progressed. See tr. at 198 (Mother stated to her caseworker that the children "bore" her); In re A.K., 924 N.E.2d 212, 221 (Ind. Ct. App. 2010) (holding evidence sufficient to support conclusion that continuation of parent-child relationship poses a threat to child's well-being when evidence shows mother's "lack of interest in maintaining a relationship" with child), trans. dismissed. Further, Mother showed no ability or plan to care for the children in an appropriate manner upon her release from prison. We cannot say the trial court's judgment terminating the parent-child relationship between Mother and the children was clearly erroneous.

B. Evidence as to Father

With respect to the elements at issue, the trial court found as follows:

> . . . The Father has only seen the child twice since 2008 despite having been adjudicated to be the father and having been granted parenting time rights in a paternity case shortly after the child's birth. The Father has engaged in criminal behavior during the pendency of the underlying CHINS case that has resulted in a self exclusion from participation in services. He has not completed the Family Functioning Assessment to determine the services needed for the reunification of the child into his care. He has not provided for the care and support of the child. Despite the passage of over twenty four

> months leading to the date of the Factfinding, the Father has not made any significant efforts to develop and maintain meaningful contact with the child or to provide for her care. . . . Neither parent is presently in a position to provide the child with support, supervision, care, or housing. The child has special emotional and behavorial needs that neither parent has demonstrated an ability to meet. . . . The Court therefore concludes that 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.

Appellants' App. at 7 (emphasis in original).

The trial court found that there is a reasonable probability that the conditions that resulted in A.R.S.'s removal or the reasons for placement outside the home of the parents will not be remedied. Because A.R.S. did not reside with Father, the conditions that resulted in her removal – physical discipline by Mother inflicting injury – are not attributable to Father. Therefore, the inquiry with respect to Father is whether there is a reasonable probability that the reason for placement outside the home of the parents will not be remedied. See In re I.A., 934 N.E.2d at 1134.

A.R.S. was removed from Mother's care and placed in foster care in July 2008. At that time, Father was under court supervision for a Class C felony possession of cocaine conviction, and had just been assigned to a community transition program. Exhibit Volume, State's Exhibit 18. Although Father's paternity of A.R.S. had been established, Father had been incarcerated for some time, was behind on child support, and had no apparent relationship with A.R.S. at the time she was removed from Mother's custody. See Appellants' App. at 64 (order on October 28, 2008 fact-finding hearing finding Father had only seen A.R.S. eight or nine times since her birth and only once in the past six months). These facts have not significantly changed since the CHINS proceedings were initiated.

Father committed additional crimes during the pendency of the CHINS case and was again incarcerated, not due to be released from custody until several months after the termination hearing. Partly as a consequence of his periodic incarceration, Father did not complete a family functioning assessment or parenting services, remained behind on child support, and had only seen A.R.S. twice in the two years leading up to the filing of the termination petition. The evidence supports the trial court's conclusion that there is a reasonable probability the reasons A.R.S. was placed outside Father's custody when she was removed from Mother's custody will not be remedied. The trial court's judgment terminating Father's parental rights to A.R.S. is not clearly erroneous.

Conclusion

Mother and Father were not denied due process by the omission of a reference to the applicability of Section 4.5 in the termination petitions. The trial court's determination that the parent-child relationships should be terminated is not clearly erroneous, and the trial court's judgment is therefore affirmed.

Affirmed.

BARNES, J., and BRADFORD, J., concur.