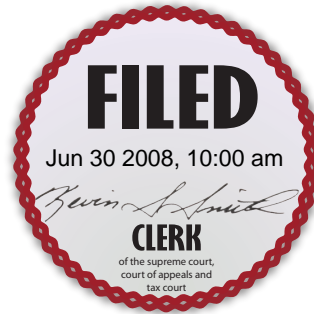


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

In the Matter of the Termination of the Parent-)
Child Relationship of I.S.D., child, and Jeffrey D.,)
father, and Elizabeth B., mother,)

JEFFREY D., Father, and)
ELIZABETH B., Mother,)

Appellants-Respondents,)

vs.)

No. 79A02-0711-JV-1031

TIPPECANOE COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner.)

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta Rush, Judge
Cause No. 79D03-0704-JT-103

June 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Elizabeth B. (“Mother”) and Jeffrey D. (“Father”) appeal the involuntary termination of the parent-child relationship with their son, I.S.D., raising the following restated issue: whether the Tippecanoe County Department of Child Services (“DCS”) presented clear and convincing evidence to support the termination of Mother and Father’s parental rights as to I.S.D.

We affirm.

FACTS AND PROCEDURAL HISTORY¹

Mother and Father are the parents of I.S.D., born August 8, 2004. At the time I.S.D. was conceived, Mother was married to Father’s son, Brendan. After Brendan had an affair with Mother’s sister, Mother retaliated against Brendan by having sex with Father, which resulted in her pregnancy with I.S.D. At the time of I.S.D.’s birth, Father was incarcerated for operating while intoxicated (“OWI”) and being a habitual substance offender.

I.S.D. is Mother’s first child. In March 2006, Mother gave birth to another child, who tested positive for heroin and whom she gave up for adoption. Mother has a history

¹ We note that Father’s Appendix included a copy of the entire Transcript. As we recently noted:

Aside from being a waste of paper and unnecessarily bloating the record on appeal, this practice violates Indiana Rule of Appellate Procedure 50(A)(2). Subsection (d) compels the inclusion of “*the portion* of the Transcript that contains the rationale of decision and any colloquy related thereto, if and to the extent the brief challenges any oral ruling or statement of decision,” while subsection (g) allows a party to include any “*brief portions* of the Transcript . . . that are important to a consideration of the issues raised on appeal[.]”

Steve Silveus Ins., Inc. v. Goshert, 873 N.E.2d 165, 172 (Ind. Ct. App. 2007) (emphases in original; citations omitted).

of substance abuse, including an addiction to heroin and cocaine. She has also used alcohol, marijuana, methamphetamine, and ecstasy.

Father has five other children in addition to I.S.D. The three oldest children are adults and live in the same city as Father; however, Father has not seen them since they were in their early teens because he did not approve of their choices. Father was ordered to pay child support for the three older children, but he did not pay regularly and accumulated an arrearage. These three children were also each involved in a child in need of services (“CHINS”) case, but Father did not complete services in their CHINS cases. Father’s other two children are teenagers and live in North Carolina.

Father also has a history of substance abuse and has used alcohol and marijuana regularly since he was a teenager. Father received treatment in 1982, 1988, and 1996 but was still unable to quit. While Father was incarcerated for his OWI conviction and being a habitual substance offender, he did not use any drugs.

In addition to these two convictions, Father’s criminal history also includes multiple convictions for OWI as well as convictions for resisting law enforcement, possession of marijuana, operating a vehicle while privileges suspended for life, and being a habitual traffic offender.

DCS had initial contact with Mother in April 2006 after Mother and her boyfriend, Steve, were involved in a drunk-driving automobile accident. Mother was a passenger in Steve’s truck when he crashed into another motorist, causing injury to the other motorist and to Mother. At the time of the collision, both Mother and Steve were intoxicated and had been drinking at Steve’s house in I.S.D.’s presence prior to getting in the truck.

Mother left I.S.D. at Steve's house in the care of Steve's relatives, who also had been drinking. After DCS investigated and substantiated neglect, I.S.D. was removed from the home and placed in foster care.² At the time I.S.D. was removed from Mother's home, Father was still incarcerated for OWI and being a habitual substance offender.

On April 17, 2006, following a detention hearing, the DCS filed a petition alleging that twenty-month old I.S.D. was a CHINS. On May 12, 2006, Father was released from the Indiana Department of Correction to a community corrections work release program. The trial court held a fact-finding hearing in July 2006, and Father admitted that I.S.D. was a CHINS. The trial court determined that the I.S.D. was a CHINS and issued a parental participation decree ordering Mother and Father to participate in a variety of services in order to achieve reunification with I.S.D.

The trial court ordered Mother to, among other things, visit I.S.D. on a regular basis; participate in individual counseling, an intensive outpatient program ("IOP"), and home-based services with Community Family Resource Center ("CFRC"); complete a psychological and psychiatric evaluation and follow all recommendations; submit to random drug screens, remain drug free, and regularly attend 12 Step meetings; complete parenting classes; attend a Babies Can't Wait program; and maintain contact with DCS. The trial court also ordered Father to, among other things, visit I.S.D. on a regular basis; participate in individual counseling, a relapse prevention program, and home-based services; complete a psychological evaluation and follow all recommendations; submit to

² I.S.D. was later placed in a relative foster care placement with his maternal aunt ("Aunt").

random drug screens, remain drug free, and regularly attend Alcoholics Anonymous (“AA”) meetings; complete parenting classes; and maintain contact with DCS. As part of a later review order, the trial court also ordered Father to obtain and maintain a full-time job and housing.

Both parents made attempts to engage in court-ordered services but did not follow through and fully comply with all that was required. For example, Mother initially participated in the Babies Can’t Wait program and was able to have extensive visitation with I.S.D., but she was eventually dismissed from the program around May 2006 when she missed a majority of visits. When Mother attended supervised visitations with I.S.D., the visits went well and she interacted appropriately; however, Mother was inconsistent in her visits and missed multiple visits with I.S.D. during the CHINS proceeding and after the termination petition had been filed. Mother also did not fully comply with the requirement to complete all drug screens, remain drug free, and to complete a substance abuse program. Mother tested positive for cocaine in May 2006, December 2006, and May 2007. She also tested positive for marijuana in July 2006 and August 2006, but she denied smoking it and claimed that she was merely around people who were smoking it. Mother had positive drug screens for opiates and benzodiazepines, some of which were related to prescription medications she was taking. Mother admitted to drinking alcohol at different periods during the pendency of the CHINS proceeding. Mother also failed to complete a substance abuse program and failed to attend parenting classes. In February 2007, Mother was convicted of disorderly conduct for an event that occurred in December 2006 and during which she had been drinking alcohol. In April 2007,

Mother—who was approximately five months pregnant—went bungee jumping and got a tattoo that became infected.

During the initial months of the CHINS proceeding, Father, who was in a work release program, participated in visitation with I.S.D., completed a rapid assessment, attended some relapse prevention meetings, and complied with requests for random drug screens, resulting in no positive drug or alcohol tests. Father attended a parenting assessment, but he did not attend parenting classes. By September 2006, Father violated work release by not paying his fees and was transferred to the county jail. While he was incarcerated, he did attend AA meetings. After Father was released from jail and returned to work release in November 2006, he engaged in visitation with I.S.D. and attended some services. However, Father again violated work release and was incarcerated in the county jail in January 2007 until May 2007. Father was ultimately released from community corrections in June 2007 but thereafter did not participate in individual counseling, relapse prevention, AA meetings, or parenting classes. Father resumed visitation with I.S.D. but then missed multiple scheduled visitations in July and August 2007.

On April 10, 2007, DCS filed petitions to terminate Mother and Father’s parental rights to I.S.D. The trial court held termination hearings on July 27, August 23, and September 4, 2007. Father testified and admitted that, at the time of the termination hearing, he did not have a job or a place to live, but he claimed that if he were to get I.S.D., Father’s own mother could “have [him] set up . . . by tomorrow.” *Tr.* at 289. Father acknowledged that he would need to get a residence on the bus route; obtain

furniture, clothing, and food; establish utilities; and arrange for childcare before he would be ready for I.S.D.

Mother testified and admitted that she has used drugs in the past and even during the CHINS proceeding. Mother, however, denied that drugs were a problem or that they resulted in any sort of deprivation to I.S.D.

Lisa Faroute, the maternal grandmother of I.S.D. (or Mother's mother), testified that Mother has struggled with substance abuse during her adult life. Faroute also testified that Mother had engaged in conduct that put I.S.D. in danger—for example, by drinking alcohol and driving with I.S.D. in the car.

Holly Guinn, who was employed by CFRC and supervised visitations between Mother and I.S.D., testified that Mother was bonded with I.S.D. and that her visits went well, but that Mother missed many scheduled visits.

Neda Cochran, the family support case manager and visitation facilitator with CFRC, testified that she worked with Father during the times he was in work release and explained that Father was able to form a bond with I.S.D. and that Father's visits with I.S.D. went well. She further testified that Father was involved in case management services, but that his cycling in and out of jail hampered any progress with services.

Laura Kirchhofer, who was I.S.D.'s therapist, testified that Father's missed visits with I.S.D. caused I.S.D. to become angry and aggressive to the point of hitting. She also testified that during extended periods of time when Father would not attend scheduled visitation, I.S.D. did not have negative behaviors. Kirchhofer testified that I.S.D.'s current placement with Aunt was going "very, very well" and that if the trial court were

to terminate Mother and Father's parental rights, I.S.D.'s placement with Aunt was a viable placement option for I.S.D.'s long-term care. *Tr.* at 58.

Dee Fox, the DCS family case manager, testified that when she went to Mother's house a couple of weeks prior to the September 2007 termination hearing, Mother came outside and started yelling at Fox and would not let her into her residence. Fox also testified that Father did not maintain monthly contact with her after he was released from community corrections. Fox further testified that there was no reasonable probability that Mother and Father could remedy the conditions that led to I.S.D.'s removal and placement outside the home and that continuation of the parent-child relationship would be a danger to I.S.D.'s well-being. Fox also testified that termination of Mother and Father's parental rights was in I.S.D.'s best interests.

Following the termination hearing, the trial court issued an order terminating Mother and Father's parental rights to I.S.D. The trial court's order included extensive findings and conclusions in support of its order to terminate Mother and Father's parental rights.³ The trial court's findings detailed Mother and Father's current situations at the time of the termination hearing, their compliance—and lack thereof—with services, their housing and employment situations, as well as their criminal histories, history of drug and alcohol use, and relationship histories. The trial court synthesized the evidence presented in the following finding:

The parents love their child. Both parents' lack of participation in services along with ongoing, untreated drug/alcohol and instability and problems

³ We commend the trial court for its thoughtful and thorough findings and conclusions entered in support of its decision to terminate Mother and Father's parental rights.

pose a threat to the child. Both parents' history of inappropriate and violent relationships pose a threat to the child's emotional well-being. Both parents' pattern of behaviors over short and long periods indicate an inability to sustain improvements over an extended length of time. The child remains at risk for suffering further emotional and physical harm if reunited with either parent. The conditions that led to removal have not been remedied. The parents appeared at the termination hearing no more stable than at the time of removal. To continue the parent-child relationships would be detrimental to the child. The parents have shown they do not have the ability and/or desire to care for this child. The child has suffered harm and needs permanency now. The parents do not currently have the ability to meet the child's needs.

Mother's App. at 20; *Father's App.* at 24-25. The trial court concluded, in part, that there was a reasonable probability that the conditions that resulted in I.S.D.'s removal or the reasons for his placement outside the home would not be remedied, that continuation of the parent-child relationship posed a threat to I.S.D.'s well-being, and that termination was in I.S.D.'s best interests. Mother and Father now appeal.

DISCUSSION AND DECISION

The purpose of terminating parental rights is to protect children, not to punish parents. *In re D.L.*, 814 N.E.2d 1022, 1027 (Ind. Ct. App. 2004), *trans. denied*. Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied*.

The trial court supported its order terminating the Mother and Father's parental relationship with I.S.D. with specific findings and conclusions. Thus, we engage in a two-tiered standard of review: first, we determine whether the evidence supports the findings; second, we decide whether the findings support the judgment. *In re W.B.*, 772

N.E.2d 522, 529 (Ind. Ct. App. 2002). We will not set aside the specific findings unless they are shown to be clearly erroneous. *Id.* A finding is clearly erroneous only when there are no facts or reasonable inferences in the record supporting it. *Id.* In reviewing the record, we consider only the evidence and inferences favorable to the trial court's decision, without reweighing evidence and without judging witness credibility. *Id.*

Mother and Father argue that DCS failed to present sufficient evidence to support the termination of their parental rights. IC 31-35-2-4(b)(2) sets out the following relevant elements that DCS must allege and prove by clear and convincing evidence in order to terminate the parent-child relationship:

- (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.

Because subsection (b)(2)(B) is written in the disjunctive, the trial court need only find either that the conditions causing removal will not be remedied or that the continuation of the parent-child relationship poses a threat to the child. *In re S.M.*, 840 N.E.2d 865, 868 (Ind. Ct. App. 2006).

I. Conditions for Removal and Reasons for Placement Outside the Home Not Remedied

Mother and Father both argue that the termination of their parental rights was erroneous because DCS failed to prove that there was a reasonable probability that the conditions that resulted in I.S.D.'s removal or the reasons for his placement outside the home will not be remedied.⁴

To determine whether a reasonable probability exists that the conditions justifying a child's continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for the child at the time of the termination hearing, taking into consideration any evidence of changed conditions. *In re A.N.J.*, 690 N.E.2d 716, 721 (Ind. Ct. App. 1997). The trial court must also evaluate the parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* A trial 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 employment and housing. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). Additionally, the trial court can properly consider the services offered by DCS to the parent and the parent's response to those services as evidence of whether conditions will be remedied. *Id.* "A pattern of

⁴ Mother and Father also argue that the trial court erred by finding that the continuation of the parent-child relationship would pose a threat to the well-being of I.S.D. As noted above, IC 31-35-2-4(b)(2)(B) required DCS to demonstrate by clear and convincing evidence a reasonable probability that *either*: (1) 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* (2) the continuation of the parent-child relationship poses a threat to the well-being of the child. Because we conclude that clear and convincing evidence supports the trial court's conclusion that a reasonable probability exists that the conditions that led to I.S.D.'s removal and reasons for placement outside the home will not be remedied, we need not review whether the evidence supports the trial court's conclusion that a reasonable probability exists that the continuation of the parent-child relationship poses a threat to I.S.D.'s well-being. *See Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 148 n.5 (Ind. 2005).

unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change.” *In re L.S.*, 717 N.E.2d 204, 210 (Ind. Ct. App. 1999), *trans. denied, cert. denied*, 534 U.S. 1161 (2002). “Also, the failure to exercise the right to visit one’s children demonstrates a lack of commitment to complete the actions necessary to preserve [the] parent-child relationship.” *Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) (internal quotes and citation omitted), *trans. denied*.

A. Mother

Mother does not challenge any of the trial court’s findings and acknowledges that the trial court’s findings are supported by the evidence. *See Mother’s Br.* at 14-16. Instead, Mother contends that the trial court’s findings regarding her drug use, poor relationship choices, employment history, criminal history, and mental and emotional health—when considered individually—do not support the trial court’s conclusion that there was a reasonable probability that the conditions that resulted in I.S.D.’s removal or the reasons for placement outside the home will not be remedied. *See id.* at 9-16.

Here, the trial court did not use these *individual* findings to support its conclusion that the conditions would not be remedied. When reviewing the trial court’s order, it is clear that the trial court’s conclusion that there was a reasonable probability that the conditions would not be remedied was based upon an amalgamation of all these specific findings as well as other findings regarding Mother’s missed visitations with I.S.D. and

failure to comply with services. Indeed, the trial court synthesized and summarized its findings in the following conclusion regarding conditions not being remedied:

There is a reasonable probability that the conditions that resulted in the removal of the child from the parents' care or the reasons for the continued placement outside the home will not be remedied. Both parents have histories of substance abuse that remain untreated and instability in their personal lives. Neither parent has yet demonstrated the ability or willingness to make lasting changes from their past behaviors, remain drug free, establish stability, and refrain from unlawful behavior. There is no reasonable probability that the parents will be able to care and provide adequately for their child.

Mother's App. at 20; *Father's App.* at 25. The trial court's findings support the trial court's conclusion that there was a reasonable probability that the conditions that resulted in I.S.D.'s removal or the reasons for placement outside the home will not be remedied, and the trial court's conclusion is not clearly erroneous.

B. Father

Father also does not challenge any of the trial court's findings. Father acknowledges that he has a criminal history and that I.S.D. could not be placed with him "throughout the CHINS case and most of the termination case [because] he was incarcerated or was at the the [sic] Work Release facility." *See Father's Br.* at 25. Father also acknowledges that he has a history of substance abuse, that he did not complete a court-ordered relapse prevention program, that he violated work release, and that he had not obtained housing or established stability at the time of the termination hearing. *See id.* at 23-24. Nevertheless, Father claims that the evidence relating to him does not support the trial court's conclusion regarding conditions not being remedied. Father asserts that his work release violations were wrongful; points to his compliance with drug

screens and negative drug test results, his sobriety while he was incarcerated and in work release, his attendance at AA meetings, and his completion of half of the relapse prevention program sessions; and argues that he “has remedied or should be given a sustained opportunity to show that he can remedy the conditions that lead [sic] to the Department of Child Services placing I.[S.]D. with someone other than him.” *Id.* at 25.

Father’s argument directing our attention to evidence in his favor is nothing more than a request to reweigh the evidence, which we will not do. Furthermore, the trial court need not wait until a child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *McBride*, 798 N.E.2d at 199. In its findings, the trial court highlighted Father’s positive involvement in case management services, such as his compliance with drug screens and AA meetings, and the trial court acknowledged that there was some indication that Father’s work-release violations were wrongful. Yet, the trial court also included numerous findings revealing Father’s shortcomings with services and lack of stability that led the trial court to conclude that the reasons for placement outside the home would not be remedied. Based on the record before us, sufficient evidence existed to support the trial court’s conclusion that there was a reasonable probability that the conditions that resulted in I.S.D.’s removal or the reasons for placement outside the home will not be remedied.

II. Best Interests

Father also argues that there was insufficient evidence to show that termination of the parent-child relationship was in the best interests of I.S.D.⁵ In determining what is in the best interests of the child, the trial court is required to look at the totality of the evidence. *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. In doing so, the trial court must subordinate the interests of the parents to those of the child involved. *Id.* Testimony of service providers, such as the DCS caseworker, has been found to be sufficient to support the trial court's conclusion that termination was in the best interests of the child. *McBride*, 798 N.E.2d at 203.

In arguing that the trial court erred by concluding that termination was in I.S.D.'s best interests, Father cites to *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615, 619 (Ind. Ct. App. 2006), *trans. denied*. In *Rowlett*, we recognized that the father had "made a good-faith effort to better himself as a person and as a parent" by availing himself of every opportunity for treatment. *Rowlett*, 841 N.E.2d at 622. The father was incarcerated throughout the entire termination proceedings and for all but two months of the CHINS proceedings; accordingly, he did not have a chance to participate in DCS services. *Id.* at 619. The father, however, participated in a therapeutic community while in prison, and, as of two weeks prior to the termination hearing, the father had participated in nearly 1,100 hours of individual and group services, including services in encounters, anger management and impulse control, parenting skills, domestic

⁵ Mother does not challenge the trial court's determination that termination was in I.S.D.'s best interests.

violence, self-esteem, self-help, and substance abuse. *Id.* at 622. The father had also earned twelve hours of college credit from Ball State University and was enrolled in an additional eighteen hours; had been accepted at the University of Evansville and planned to take courses upon his release; had secured employment and a place to live; and planned to continue counseling to remain drug free. *Id.* Additionally, the father maintained contact with his children while incarcerated by writing letters and through telephone calls. *Id.*

Here, Father's circumstances are distinguishable from *Rowlett*, because unlike the father in *Rowlett*, Father did not have any contact with I.S.D. while he was incarcerated, was not incarcerated at the time of the termination hearing, and did have the opportunity to demonstrate his willingness and ability to assume parental duties. Father was released from prison to work release just one month after the CHINS case was filed, at which point DCS services were available. While Father was on work release, he was ordered to visit I.S.D. on a regular basis; participate in individual counseling, a relapse prevention program, and home-based services; complete a psychological evaluation and follow all recommendations; submit to random drug screens, remain drug free, and regularly attend AA meetings; complete parenting classes; obtain and maintain a full-time job and housing; and maintain contact with DCS. Father was given a chance to participate in these services to work towards reunification with I.S.D. Father did participate in visitations with I.S.D., attended some relapse prevention sessions, and complied with requests for random drug screens; however, he then violated the terms of work release, resulting in his return to jail. After Father was released from jail and returned to work

release, he engaged in visitation with I.S.D. and attended some services but then again violated work release and was returned to jail. After Father was ultimately released from community corrections, he did not participate in individual counseling, relapse prevention, AA meetings, or parenting classes and did not maintain regular contact with DCS. Father resumed visitation with I.S.D. but then missed multiple scheduled visitations, which caused I.S.D. to become angry and aggressive to the point of hitting. Furthermore, at the time of the termination hearing, Father did not have a job or a place to live and admitted that he would need to get a residence on the bus route; obtain furniture, clothing, and food; establish utilities; and arrange for childcare before he would be ready for I.S.D. In short, Father was given the opportunity to participate in services and to demonstrate his willingness and ability to assume parental duties but failed to do so. Thus, his reliance on *Rowlett* is misplaced.

Here, the totality of the evidence demonstrated that the termination of Father's parental rights was in I.S.D.'s best interests. The evidence most favorable to the judgment showed that Father had a criminal history, a history of substance abuse, and was not present for the majority of I.S.D.'s short life. Although the record indicates that Father loves I.S.D. and partook in some of the court-ordered services, he had not established the stability or ability necessary to meet I.S.D.'s needs and to adequately provide for him. Additionally, there is evidence that I.S.D. was doing well in his placement with Aunt, who was willing to adopt him. Furthermore, the DCS caseworker testified that termination of Father's parental rights was in I.S.D.'s best interests. *Tr.* at 334.

Based on the record before us, sufficient evidence existed to support the trial court's determination that termination of Father's parental rights was in I.S.D.'s best interests. We reverse a termination of parental rights "only upon a showing of 'clear error' — that which leaves us with a definite and firm conviction that a mistake has been made." *Egley v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992). We find no such error here and, therefore, affirm the trial court.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.