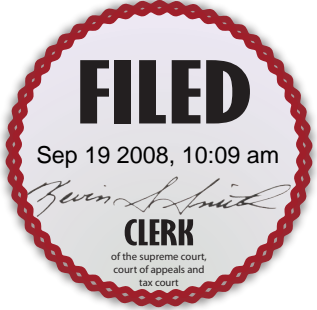


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF:)

H.G. and S.G., Minor Children,)

LISA G., Mother,)

Appellant-Respondent,)

vs.)

No. 02A05-0802-JV-106

ALLEN COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner.)

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Charles F. Pratt, Judge
The Honorable Lori K. Morgan, Magistrate
Cause Nos. 02D07-0704-JT-71 and 02D07-0704-JT-72

September 19, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Lisa G. (“Mother”) appeals the termination of her parental rights to H.G. and S.G. Finding the evidence sufficient to support that determination, we affirm.

FACTS AND PROCEDURAL HISTORY

Mother gave birth to H.G. on October 1, 2001, and to S.G. on December 2, 2003. On December 25, 2005, the Allen County Department of Child Services (“DCS”) received a report that Mother, H.G., and S.G. were living in a house with no water or heat. Two days later, DCS intake caseworker Andrea Goebel went to Mother’s residence, “substantiated neglect,” (Tr. at 24), and offered to put Intensive Intervention Services in place to assist Mother so she could keep H.G. and S.G. (“the girls”) in the home.

However, “successful completion of all the goals of the services” did not occur (*id.* at 30), so DCS filed a Report of Preliminary Inquiry and Investigation with the court. At a hearing thereon, the court found probable cause to believe the girls were children in need of services (“CHINS”), ordered DCS to file the CHINS petition, ordered Mother to engage in services, and left the girls in Mother’s custody.

DCS filed the CHINS petition on April 6, 2006. At the fact-finding hearing on May 10, 2006, Mother admitted many of DCS’s allegations, including: (1) Mother and her daughters were living with Mother’s ex-husband, who is not the biological father of either daughter; (2) Ex-husband is on the sex offender registry, has convictions of forgery and theft, and is on probation for a marijuana offense; (3) On December 27, 2005, Mother and Ex-husband were staying with the children in a house that did not have running water and from which they were to be evicted on December 30, 2005; (4) Mother and Ex-

husband were not employed, and Mother supported the family through public assistance, her father's SSI payments, food stamps, and Medicaid; (5) Mother has mental health problems, including depression, and has been involuntarily committed in the past; (6) In February 2006, Ex-husband, Mother, and the girls moved into the home of Ex-husband's sister, who at that time had an open case with DCS for neglect of her own children; (7) Mother "cancelled or no showed for several appointments with her service provider in January and February of 2006"; (State's Exhibit 11 at 3); (8) Even though DCS and service providers informed Mother it was inappropriate to leave her daughters with a sex offender or with a parent under investigation for neglect, Mother continued to leave the girls in the care of Ex-husband and his sister, and Mother did not want to move from their home to obtain independent housing; and (9) Mother "requires the intervention of this court in order to receive support and services to help her better parent her children" (*Id.* at 4.)

The court found the girls to be CHINS and entered a parent participation plan that required Mother to:

1. Refrain from all criminal activity;
2. Maintain clean, safe, and appropriate housing at all times;
3. Notify the Department of Child Services within forty-eight (48) hours of all changes in household composition, housing, and employment;
4. Cooperate with all caseworkers by attending all case conferences as directed; maintaining contact, and accepting announced and unannounced home visits;
5. Immediately provide the caseworkers with accurate information regarding paternity, finances, insurance, and family history; and
6. Immediately provide the caseworkers with signed and current consents of release and exchange of information.
7. Provide your children with clean, appropriate clothing at all times.

In addition, you shall successfully complete and benefit from the following programs, services and/or other requirements in a timely manner:

8. Obtain suitable employment and maintain said employment, or maintain a stable legal means of income.
9. Obtain a psychological assessment at Park Center as directed and follow the recommendations of the assessment.
10. Enroll in family counseling at Park Center or other licensed provider, attend all sessions, and successfully complete the counseling program.
11. Enroll in SCAN home based services program, participate in all sessions, and successfully complete the program.
12. Commence proceedings to establish paternity by meeting with the IV-D Prosecutor and fully cooperate with the IV-D staff to establish paternity.
13. Provide appropriate caretakers for your children as directed.
14. Take all medications as prescribed.
15. Enroll the children in Erin's House and cooperate with the program.

(App. at 68-69.)

Thereafter Mother engaged in a number of activities that concerned the caseworkers. For example, Mother allowed a man she had dated less than thirty days, and whose last name she did not know, to live with her and the girls, and she allowed him to supervise the girls. Mother also continued to permit Ex-husband to have contact with the girls. Mother was not willing to comply with all of the court's orders in the parent participation plan; in fact, her caseworker characterized her participation as "substantially non-compliant." (Tr. at 53.) She did not take all of her medications regularly, and although she worked at a fast food restaurant for a few weeks, she never found stable employment. She obtained the assessment at Park Center, but did not follow through to complete any of the recommendations, such as anger management and home-based services.

During May or June of 2006, Ex-husband's sister and her husband molested one of the girls when they were all living in the same house. Based thereon, on July 5, 2006, the court removed the girls from Mother's care and placed them in foster care.

In January of 2007, Mother obtained fully subsidized housing. Although her lease prohibited her from allowing others to live with her, she allowed her fiancé to move into the apartment with her. He would not be permitted to join Mother's lease because he has a criminal record including felonies. Accordingly, if Mother did not ask Fiancé to move out, she was at risk of losing the only stable housing she had since her father died.

DCS had concerns about whether Fiancé was an appropriate person to interact with the girls. Fiancé had voluntarily terminated his parental rights to his three children¹ after one of the children was burned while in his care and he had been unable to benefit from services offered by DCS. When Fiancé attended visitation with Mother, conflict between Fiancé and S.G. occurred frequently, and Mother had to intervene between them because Fiancé has been unable to implement suggestions from the visitation supervisor.

In February of 2007, the court found mother had not complied consistently with the parent participation plan and it authorized DCS to file a petition to terminate Mother's parental rights. On September 11, 2007, and October 10, 2007, the court heard evidence regarding the termination petition. On January 11, 2008, the trial court found:

4. It is established by clear and convincing evidence that the allegations of the Petition are true in that there is a reasonable probability that the conditions that resulted in the child's removal and the reasons for the placement outside the parent's home will not be remedied, and/or that

¹ The biological parents of those three children are Fiancé and Mother's sister.

continuation of the parent/child relationship poses a threat to the well-being of the child.

* * * * *

Evidence presented at the hearing on the Petition for Termination of the Parent/Child Relationship revealed that the mother and alleged and unknown fathers have failed to remedy the conditions that resulted in the child's removal from the home. Specifically, evidence presented at trial revealed that the mother has failed to participate in counseling which would have assisted her in addressing her mental health problems which problems interfere with her ability to appropriately parent her children. At trial, the Department of Child Services case manager and the Family and Children's Services therapist testified that during the course of the CHINS proceedings, the mother failed to regularly attend counseling sessions and that she just recently re-initiated counseling services on September 10, 2007, the day before the termination trial began. The therapist testified that her counseling agency was hesitant/reluctant to permit the mother to return to their agency for counseling because of her poor attendance record. Further, the therapist testified that she is currently only working with the mother on anger management issues because the mother is not comfortable discussing the sexual abuse that she suffered as a child. Additionally, at trial, the SCAN restoration worker who regularly works with the mother testified that the mother had an anger outburst in September of 2007 and that the mother and her fiancée [sic] constantly argue during their visitation with the children. The restoration worker testified that based upon her interactions with the mother, she does not currently believe that the mother has benefited from the anger management counseling received at Family and Children's Services.

Evidence presented at the Termination Hearing revealed that the mother was not regularly taking the medication that had been prescribed for her for her [sic] mental illness. At the Termination Hearing, the SCAN case manager testified that the mother receives a prescription for her psychotropic medications when she attends medication reviews with her psychiatrist. She further testified that at the medication reviews, the psychiatrist will review the mother's medications and write a prescription for her medication with three to four refills. The restoration worker testified that the mother is supposed to schedule subsequent appointments with the psychiatrist every three to four months in order to have her medications refilled. The restoration worker testified that she took the mother for a walk-in appointment with her psychiatrist on October 5, 2007, and learned that the last medication review attended by the mother was in January of 2007. She testified that she discussed this information with the mother and that the mother said that she was not regularly taking her medications because she was experiencing side effects. The restoration

worker further testified that she encouraged the mother to schedule another medication review with her psychiatrist so that he could adjust her medication and/or dosages. At the Termination Hearing, the mother acknowledged that she does not function well when she does not take her medications.

Additionally at trial, the mother acknowledged that since the beginning of the CHINS case, she has not had regular or steady employment and that she has had to rely on others in order to meet her financial needs. At trial, the SCAN restoration worker testified that she has offered to assist the mother in obtaining employment by taking her to apply for employment, but that the mother has refused to accept her assistance.

Evidence presented at trial revealed that the mother has moved at least five times since the beginning of the CHINS proceedings in the underlying CHINS case, but that the mother has been residing in her current apartment since February of 2007. However, evidence presented at trial revealed that the mother could lose her housing at any time because her fiancée [sic] who has a felony record is living in the apartment and is not on the lease. Evidence presented at trial revealed that the apartment complex does not allow persons with felony convictions to reside in their apartments and that they do not allow individuals who are not on the lease to reside in their apartments. Additionally, evidence presented at trial revealed that the mother's current fiancée [sic] has a history of involvement with the Department of Child Services and that he voluntarily terminated his parental rights to two of his children because of an inability to provide for the children. Additionally, evidence presented at trial revealed that during the mother's visitations with her children, she and her fiancée [sic] often argue and fight and that her fiancée [sic] does not get along well with one of her children and refuses to accept suggestions from the SCAN visitation supervisor that would assist him with his relationship and interactions with the child.

Evidence presented at trial revealed that the mother has demonstrated a history of poor decision making regarding the persons with whom she associates and regarding the persons she allows to reside in her home. Specifically, the mother was married to [Ex-husband] who was a convicted sex offender. Despite her knowledge of his criminal history, the mother permitted [Ex-husband] to live in her home and to have contact with her children. Additionally, evidence presented at trial revealed that during the CHINS proceedings, [one of the daughters] was molested by a married couple who were residing in the mother's home and that the DCS had to remove the children from the mother's home after the molestation in order to protect the children. Additionally, at trial, the SCAN supervisor testified that on one occasion, the mother permitted a man to live in her home after knowing him for only a few weeks. The SCAN supervisor testified that the

mother did not even know the gentleman's last name at the point that she permitted him to live with her. The Court concludes that the mother's failure to address issues such as her past sexual molestation and abuse in counseling has impacted her ability to protect her children from similar abuse and that the mother's failure to provide the children with a safe, stable home environment[,] which condition existed at the time of the initiation of the CHINS proceedings[,] continued to exist at the time of the Termination Hearing.

Evidence from the Department of Child Services case manager as well as SCAN revealed that the DCS and various service providers have made suggestions and offered assistance to the mother throughout the pendency of the CHINS proceedings and that the assistance and suggestions were designed to assist the mother in remedying the reasons for removal of the children from the home, but that the mother has often refused to accept the assistance and as a result has had difficulty with obtaining employment, obtaining appropriate and safe housing and obtaining her medications. At trial, the SCAN worker testified that the mother has not fully benefited from services provided and that her refusal to accept assistance and her hostility towards the workers has interfered with the ability to benefit from services and to remedy the reasons for removal of the child from the home.

* * * * *

Accordingly, the Magistrate finds that the Department of Child Services has proven by clear and convincing evidence that there is a reasonable probability that conditions that resulted in the child's removal from the home will not be remedied and/or that continuation of the parent/child relationship poses a threat to the well being of the child.

5. Termination of parental rights is in the best interests of the child . . . in that the mother . . . [has] shown over the course of the related CHINS cause, and in the fact of a treatment plan or plans, and numerous specific services made available and/or provided, that said parents continue to be unable, refuse, or neglect to provide for the basic necessities of a suitable home for the raising of said child.

Evidence presented at the termination hearing revealed that during the pendency of the CHINS proceedings, the Department of Child Services attempted to provide services to the mother which were designed to assist her in remedying the reasons for removal of the children from her home. The services included counseling, assistance with obtaining medication for her mental illness, assistance with obtaining employment and assistance with housing. However, the mother has failed to participate in and/or benefit from said services. . . .

Accordingly, the Court finds that the DCS has proven by clear and convincing evidence that the mother . . . [has] shown over the course of the related CHINS cause that [she continues] to be unable, refuse or neglect to provide for the basic necessities of a suitable home for raising of the child and that termination of parental rights is in the child's best interests.

(App. at 13-18, 20-25.)² Accordingly, the court terminated Mother's rights to the girls.

DISCUSSION AND DECISION

We are highly deferential when reviewing termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We do not reweigh evidence or judge the credibility of witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.*

The juvenile court made specific findings. When a court enters specific findings of fact, we apply a two-tiered standard of review. First, we determine whether the evidence supports the findings, and second, whether the findings support the judgment. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). In deference to the juvenile court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert denied* 534 U.S. 1161 (2002). A judgment is clearly erroneous only if the findings do not support the juvenile court's conclusions or the conclusions do not support the judgment thereon.

² The court entered separate orders for S.G and H.G. However, those orders were identical except where referencing the name of the girl at issue and her sister. Accordingly, we have generalized the portion we quoted to represent both orders.

Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996).

A petition to terminate a parent-child relationship must allege:

- (A) [o]ne (1) of the following exists:
 - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- * * * * *
- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and,
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). The State must establish each of these allegations by clear and convincing evidence. *Egley v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992).

Mother asserts DCS did not prove the conditions resulting in the children's removal and continued placement outside the home would not be remedied and that continuation of the parent-child relationship posed a threat to the children's well-being. Because Ind. Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, the juvenile court needed to find by clear and convincing evidence only one of the two requirements of subsection (B). *See L.S.*, 717 N.E.2d at 209. Where, as here, the juvenile court found both, we may affirm if the evidence supports either. *See In re B.J.*, 879 N.E.2d 7, 22 n.4 (Ind. Ct. App. 2008), *trans. denied*.

Mother asserts the girls were removed from her care "primarily due to concern about her ability to maintain suitable and appropriate housing." (Appellant's Br. at 11.)

Mother notes she had lived in her fully-subsidized apartment for the ten months prior to the termination hearing and testimony indicated that apartment was adequate and appropriate. Accordingly, Mother asserts she had appropriate housing and the court erred in terminating her parental rights.

Assuming *arguendo* Mother's housing was adequate and she did not lose it by allowing Fiancé to stay with her in violation of the lease, Mother has not demonstrated the court erred in terminating her parental rights. *See A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002) (if some valid findings support a trial court's conclusions, an erroneous finding will not prove fatal because findings of fact are not to be reviewed individually, but in their entirety, to determine whether they support the court's legal conclusions), *trans. denied*.

While a lack of heat and water in the home where Mother and the girls were residing in December of 2005 was the problem that brought Mother to the attention of DCS, it was not the only problem identified during the CHINS proceedings. In the termination order, the court found Mother "failed to participate in counseling which would have assisted her in addressing her mental health problems which problems interfere with her ability to appropriately parent her children," (App. at 15); Mother "was not regularly taking the medication that had been prescribed for her for her [sic] mental illness . . . [even though Mother] acknowledged that she does not function well when she does not take her medications," (*id.* at 15-16); Mother "has not had regular or steady employment and . . . she has had to rely on others in order to meet her financial needs," (*id.* at 16); and Mother "has demonstrated a history of poor decision making regarding

the persons with whom she associates and regarding the persons she allows to reside in her home,” (*id.*).

Because those conditions had not changed,³ and because the court found Mother has “often refused to accept the assistance” of caseworkers and has been hostile toward them, we cannot say the court erred in determining there was a reasonable probability those conditions would not be remedied. *See Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) (“[A] pattern of 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.”), *trans. denied*. Accordingly, we affirm.

Affirmed.

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

³ Mother does not challenge the validity of those findings by the trial court and the evidence supports them.