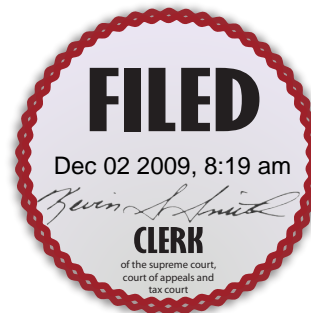


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP)
OF: C.V., D.V., and A.V., (Minor Children),)

PATTY A., (Mother),)
JOSE V., Sr., (Father),)

Appellants-Respondents,)

vs.)

No. 02A04-0908-JV-451

ALLEN COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner.)

APPEAL FROM THE ALLEN SUPERIOR COURT - FAMILY RELATIONS DIVISION
The Honorable Charles F. Pratt, Judge
Cause Nos. 02D07-0706-JT-100, 02D07-0706-JT-101 & 02D07-0706-JT-102

December 2, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Patty A. (“Mother”) and Jose V., Sr. (“Father”), appeal the involuntary termination of their respective parental rights to their children, C.V., D.V., and A.V., claiming there is insufficient evidence to support the trial court’s determination that termination of the parent-child relationships is in the children’s best interests.¹ Concluding the Indiana Department of Child Services, Allen County (“ACDCS”), presented clear and convincing evidence to support the trial court’s judgments, we affirm.

Facts and Procedural History

The evidence most favorable to the trial court’s judgments indicates that, on or about February 20, 2006, the ACDCS took Mother’s and Father’s four children, J.V., born on February 7, 1994, C.V., born on January 7, 1995, D.V., born on July 24, 1996, and A.V., born on June 12, 2000, into emergency protective custody after investigating a referral that Fort Wayne police officers had responded to a 911 call at the family home the night before.² The referral further indicated that the responding police officers saw “a silver digital camera containing pictures of Mother naked on the couch in the living room in sexual poses and pictures of Mother and Father engaged in sexual acts.” Appellant’s App. p. 3. The police officers had also discovered pictures of J.V. touching

¹ For clarification purposes, we note that the record indicates Mother has a previous history of involvement with the ACDCS dating back to 1987 and that a trial court terminated Mother’s parental rights to four older biological children in 1996. There is no indication that Father is the biological parent of Mother’s four older biological children.

² J.V. was not subject to the underlying involuntary termination proceedings. Instead, the ACDCS’s permanency plan for J.V. is that he be placed in a permanent independent living arrangement.

Mother's genital area as well as nude pictures of Mother with D.V. standing next to her giving a "thumbs up" sign. Tr. p. 210.

A preliminary inquiry hearing was held on February 22, 2006, and the trial court determined there was probable cause to believe the children were in need of services ("CHINS"). The children were ordered temporarily removed from their parents' care and placed in licensed foster care. The ACDCS subsequently filed three petitions under separate cause numbers alleging each to be a CHINS.

During the initial hearing on the ACDCS's CHINS petitions, both parents denied the allegations contained therein. The trial court therefore issued provisional orders for services for both parents, directed the children to remain in foster care, and set the matter for fact-finding. A two-day fact-finding hearing on the CHINS petitions was held in December 2006. The children were adjudicated CHINS on January 8, 2007, based on several facts, including (1) the parents' neglectful conduct in failing to provide appropriate supervision for the children by having sexual relations where the children could watch them, (2) the digital pictures of Mother, who was naked with her legs spread open and J.V. touching her vagina, (3) the pictures of Mother, who was naked with D.V. standing next to her giving the thumbs-up sign, and (4) the fact the parents engaged in inappropriate sexual activities with their children.

Following a dispositional hearing, the trial court entered an order containing a parent participation plan. The parent participation plan directed both parents to participate in a variety of services in order to achieve reunification with the children. Specifically, the parents were ordered to, among other things, (1) undergo psychological

evaluations and follow all resulting recommendations, (2) successfully complete parenting classes, (3) cooperate with the children's assessment and treatment plans, (4) enroll in and successfully complete home-based counseling through Park Center Home Based Services, (5) exercise regular visitation with the children, and (6) satisfactorily complete the Sexual Perpetrator's Group at Family and Child Services. The trial court's order also directed the children to remain in their current foster care placement. Another panel of this court affirmed the trial court's admission of evidence relating to the digital photographs into evidence as well as the trial court's ultimate decision to adjudicate the children CHINS in a published decision. *See In re J.V.*, 875 N.E.2d 395 (Ind. Ct. App. 2007), *trans. denied*.

Following the dispositional hearing, referrals for the court-ordered services set forth in the parent participation plan were made by the ACDCS. However, Mother's and Father's participation in services was sporadic and ultimately unsuccessful. Father submitted to a number of psychological tests which were evaluated by Dr. Jennifer Fray. These tests included an intelligence test, Personality Assessment Inventory, Parenting Stress Inventory, and a Child Abuse Potential Inventory. Father's responses to the Personality Assessment Inventory were skewed by his "defensive" responses and by his answering the questions in an "overly positive light in denying problems." Tr. p. 356. In addition, his scores were elevated in the areas of alcohol abuse, hostility, bitterness, and poor anger management. Consequently, Father was referred for an alcohol assessment and any resulting recommended treatment. Father was also referred to anger management classes at the Center for Non-Violence. Because he refused to acknowledge

any previous acts of violence, however, Father was ultimately not admitted to the Center for Non-Violence program.

Mother and Father continued to deny that they sexually abused their children throughout the duration of the underlying proceedings. Nevertheless, the ACDCS referred both parents to participate in the Sexual Offender Treatment Program with Family and Child Services. Mother met with Ruth Bract, a therapist with Family and Child Services. Bract works with sexual offenders by providing individual and group therapy. During the assessment, Mother denied any inappropriate sexual conduct with her children. Consequently, Bract was unable to provide therapy to Mother. Bract also met with Father for his assessment. Father also denied that he had ever acted inappropriately with any of his children and denied the need for sexual offender treatment. As a result, Father, too, was not admitted to the Sexual Offender Treatment Program.

Mother began working with therapist Dannette Hill from Park Center. The purpose of Mother's involvement with Hill was for Mother to receive individual counseling concerning sexual abuse and various types of sexual predators. Hill met with Mother on three separate occasions. Because Mother was unwilling to acknowledge her sexual misconduct with her children, however, Mother was not able to successfully complete this therapy program.

Throughout the duration of the underlying proceedings, several therapists worked with the children. Daniel Bishton, therapist with Neuropsychiatric Associates, provided therapy to D.V. During the course of therapy, D.V. disclosed to Bishton instances of

inappropriate sexual behavior that occurred in the family home before D.V.'s removal. D.V. also indicated that Mother and Father had directed him to not discuss these incidents with anyone.

Bishton attempted to include Mother and Father in D.V.'s treatment plan by offering individual therapy to each parent. Mother participated in one session with Bishton, but she consistently denied any wrongdoing and insisted there were no nude photographs of her with any of the children. Similarly, Father attended two therapy sessions during which he denied any wrongdoing and informed Bishton that he did not need any therapy. The parents subsequently refused to attend any additional therapy sessions with Bishton.

With regard to visitation, both parents regularly participated in weekly supervised visits with the children. The children seemed to enjoy these visits, and both parents acted appropriately during visits, oftentimes bringing food and personal items for the children such as soap, toothbrushes, undergarments, and socks. Although, overall, the family visits occurred without incident, due to the parents' lack of participation in services, the visits never progressed beyond weekly supervised visits.

In April 2008 the ACDCS filed separate petitions requesting the involuntary termination of Mother's and Father's parental rights to all three children. A multi-day consolidated fact-finding hearing on all three termination petitions was eventually held. At the conclusion of the termination hearing, the trial court took the matter under advisement and subsequently issued separate judgments terminating Mother's and Father's respective rights to all three children. Both parents now appeal.

Discussion and Decision

We begin our review by acknowledging that this court has long had a highly deferential standard of review in cases concerning the termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the 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 that are most favorable to the judgment. *Id.* Moreover, in deference to the trial 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*.

Here, in terminating Mother's and Father's parental rights, the trial court entered specific findings and conclusions. When a trial court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Id.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment thereon. *Id.* If the evidence and inferences support the trial court's decision, we must affirm. *L.S.*, 717 N.E.2d at 208.

“The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *K.S.*, 750 N.E.2d at 837. Termination of a parent-child relationship is proper where a child’s emotional and physical development is threatened. *Id.* Although the right to raise one’s own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

“The State’s burden of proof in termination of parental rights cases is one of ‘clear and convincing evidence.’” *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (citing Ind. Code § 31-37-14-2 (2008)). When seeking the involuntary termination of parental rights, the State is required to allege and prove, among other things, that termination is in the best interests of the child. Ind. Code § 31-35-2-4(b)(2)(C). If the court finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship. Ind. Code § 31-35-2-8 (2008).

Mother’s and Father’s sole allegation on appeal is that there is insufficient evidence to support the trial court’s determination that termination of their respective parental rights is in the children’s best interests. Specifically, Mother and Father claim the children are “very closely bonded with [Mother and Father] and each other” and that

“serious consideration” should be given to the likely negative effect termination of the parent-child relationships will have on the children. Appellant’s Br. p. 7.

When determining what is in a child’s best interests, a trial court is required to look beyond the factors identified by the Indiana Department of Child Services and to look to the totality of the evidence. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, however, the court must subordinate the interests of the parent to those of the child. *Id.* Moreover, we have previously explained that recommendations from the case manager and child advocate that parental rights should be terminated support a finding that termination is in the child’s best interests. *Id.*

Here, in deciding that termination of Mother’s and Father’s parental rights is in the children’s best interests, the trial court made specific findings as to the emotional needs of each child. In so doing, the court acknowledged in its termination order that all the children had been diagnosed with Adjustment Disorder. In addition, the court specifically found that C.V. “acts out behaviorally at school,” has “difficulty getting along with others,” and “demonstrates a lack of anger control.” Appellant’s App. p. 41. The court therefore found C.V. needs “continued therapy” and a “caretaker [who] can provide significant supervision” and who “possesses considerable patience.” *Id.*

Similarly, the trial court found D.V., who was also sexually victimized by his older brother J.V., had been diagnosed with Attention Deficit Disorder, primarily of the hyperactivity type, and requires “continued medication monitoring,” “on-going therapy,” and “a home environment that provides for clear consistent boundaries.” *Id.* With

regard to A.V., the court found she needs “on-going therapy” and a “home environment that has defined limits” and that provides “security and nurturance.” *Id.*

The trial court also referred to the testimony of various case workers and therapists when making specific findings regarding the children’s best interests. For example, the court specifically found that a parent’s “sexual involvement with a child creates significant boundary and trust issues” based on therapist Bishton’s testimony. *Id.* The court further found that a parent’s “refusal to admit” to his or her sexual involvement with a child “has a very negative effect on the child’s recovery,” while a parent’s admission to his or her misconduct can assist the child in ridding his or her “sense of culpability.” *Id.* Finally, the court found Bishton’s testimony that reunification was currently “not safe for the children” and that the children would be “at high risk of victimization” if they were reunited with Mother and Father before they completed the sexual perpetrators therapy to be true. *Id.*

With regard to the court-appointed special advocate’s (“CASA”) testimony, the trial court found that “notwithstanding the expressions of the children,” regarding their desire to be with Mother and Father, the CASA had recommended termination of Mother’s and Father’s parental rights to be in the children’s best interests. *Id.* at 42. The court further acknowledged the CASA’s testimony that “successful completion of the sexual perpetrators group therapy program is an imperative prerequisite” for reunification. *Id.*

Based on these and other findings, the trial court concluded as follows:

2. In this case, the parents have been offered rehabilitative services designed for reunification through several service providers. The parents refused to comply with prerequisites for entry into therapeutic services Despite the findings of this court, affirmation of the Court of Appeals, and the representations of the children to their therapists, the parents have refused to acknowledge their behaviors that led to the removal of the children from their care. They have created an impasse that precludes the provision of services designed to bring about reunification

3. From the testimony of the children's therapists, the [c]ourt has found and now concludes that the children cannot be safely reunited with the parents until they have completed and demonstrated an ability to benefit from sexual perpetrator's group therapy.

4. In addition, left unaddressed, the issues identified through Father's psychological evaluation gives rise to concern for his ability to provide the type of home environment described as necessary for the [children's] well-being. He did not complete anger management therapy . . . [and] [t]he children require a home environment with clear boundaries and consistency. For at least one of the children[,] a considerable amount of patience will be required for her continual care. Given [F]ather's elevated scores and "faking good" responses to the Child Abuse Potential Inventory (C.A.P.I.)[,], the [c]ourt concludes that the father is ill prepared to provide for children of special needs.

* * * * *

6. Termination must be in the child's best interests In this case[,] the Guardian ad Litem has determined that termination of the parent-child relationship and adoption is in the child[ren's] best interests. The court acknowledges that the parents profess their love for the [children] and that *supervised* visits have gone well. Nevertheless, the children have not been returned to the parents' care for almost three years. The parents' choices have precluded the [ACDCS's] ability to achieve a sustainable permanency within their former home. In viewing the totality of the circumstances, the court may consider the recommendations of the child's [c]ourt-appointed [s]pecial [a]dvocate. . . . The [children's] best interests are served by granting the petition[s] to terminate the parent-child relationship[s].

Id. at 42-44.³ Our review of the record reveals that the above-mentioned findings and conclusions are supported by the evidence.

The overwhelming evidence shows that the children have witnessed sexual activity between their parents and that at least one child has participated in sexual activities with Mother. Each of the children have been harmed by this exposure, as is evidenced by the testimony of the children's therapists. Moreover, Mother's and Father's continuous refusal to acknowledge the sexual abuse of their children precluded them from participating in essential services designed to address the problem and to facilitate reunification of the family. Consequently, by the time of the termination hearing, Mother and Father had failed to complete a majority of the court's dispositional goals.

Testimony from various service providers during the termination hearing further supports the trial court's determination regarding the children's best interests. For example, therapist Hill informed the trial court that she had attempted to provide Mother with individual counseling but that such attempts had been unsuccessful due to Mother's refusal to acknowledge any sexual misconduct had occurred and her "unwilling[ness] to explore that area any further," stating Mother had "closed that avenue." Tr. p. 65. When asked about the significance of Mother's refusal to acknowledge any wrongdoing, Hill indicated that the first step a client has to make in therapy is to acknowledge the misconduct, otherwise there is "no foundation to work with." *Id.* at 58.

³ We note that although the trial court entered three termination judgments under separate cause numbers in terminating Mother's and Father's parental rights to the children, the substantive language referred to herein is identical in each of the judgments. We therefore only cite to one judgment.

Hill also informed the court that she was not only unable to discuss the “core issues” of this particular case with Mother due to Mother’s denial that any sexual misconduct had occurred, but that Hill was also unable to “even get at issues of education on sexual perpetration or abuse.” *Id.* at 69. Specifically, Hill reported that although she was willing to provide Mother with general counseling on a variety of sexual abuse related topics such as the “cycle of abuse,” “the nature and prevalence of incest” and its “effects” on survivors, “traits and characteristics of perpetrators,” and “treatment options” regardless of whether Mother admitted to the specific allegations involved in the underlying proceedings, Mother had refused to discuss any of these issues and did not want “to answer or to address anything related to sexual abuse [or] incest . . . even if we were talking in general terms and trying to educate her . . . [as] to what it is and how it occurs.” *Id.* at 70. When questioned during the termination hearing how the future safety and protection of a child is affected if a parent does not “resolve sexual parent-child boundaries,” Bishton replied, “[I]f a parent has been sexually involved . . . with their children . . . that is a huge -- obviously a huge boundary violation and . . . very[,] very significant trust issues . . . emerge out of that.” *Id.* at 77. Bishton went on to explain that if a parent “maintains that [he or she] ha[s] not had any sexual contact and that nothing has happened and . . . something in fact did happen” that such a situation would have a “very negative effect” on the child. *Id.* However, Bishton also stated that if the parent “acknowledges the abuse . . . [and] admits the abuse took place,” such an admission is “often a really big . . . help in letting the child feel not responsible for what happened.” *Id.*

Also significant, the record reveals that both the ACDCS case manager and CASA recommended termination of Mother's and Father's parental rights. When asked why she had not recommended returning the children to Mother's and Father's care during the CHINS case, ACDCS case manager Andreyia Davis testified she could not recommend returning the children to Mother and Father due to their non-compliance with court-ordered services and overall lack of progress. Davis also informed the court that she currently recommended termination of Mother's and Father's parental rights based on the parents' unwillingness to admit to the allegations of sexual misconduct with the children and their failure to successfully complete a majority of the court-ordered services including individual counseling, the Sexual Perpetrators Group, and anger management classes.

Similarly, CASA Rex McFarren also recommended termination of Mother's and Father's parental rights as being in the children's best interests. In so doing, McFarren informed the court that he "concurred" with the ACDCS's recommendation made during the dispositional hearing that participation and completion of the Sexual Perpetrators Group was "imperative so that we could make efforts to reunite the family." *Id.* at 210. McFarren went on to explain that he felt the family had to "deal with this issue so the children could be safe" but that "unfortunately the parents have not . . . successfully . . . done anything in regard[] to the Sexual Perpetrators Group." *Id.* McFarren further testified: "[Father] has not complied with the recommendations of the psychological (sic) which was the violence counseling and the alcohol and [substance] abuse . . . counseling. Given the [parents'] non-compliance and the children's issues . . . I believe it is going to

be nearly impossible for the parents to provide the appropriate services needed” *Id.* at 210-11.

A trial court must judge a parent’s fitness to care for his or her children at the time of the termination hearing, taking into consideration the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the children. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. In addition, a court need not wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. *In re E.S.*, 762 N.E.2d 1287 (Ind. Ct. App. 2002). Here, the children were removed from their parents’ care because Mother and Father had engaged in inappropriate sexual activities not only in the presence of their children, but with at least one of their children. Evidence of these acts were recorded on a digital camera and testimony describing the pictures were subsequently introduced into evidence during the CHINS hearing. Although the admission of this evidence and the subsequent adjudication of the children as CHINS by the trial court was reviewed and affirmed by another panel of this court in an earlier appeal, both parents continued to deny any wrongdoing or to participate in essential court-ordered services designed to help remedy these conditions for the duration of the CHINS case, approximately three years.

Based on the totality of the evidence, including Mother’s and Father’s refusal to acknowledge any sexual wrongdoing or to successfully complete a majority of the trial court’s dispositional goals, the parents’ current inability to demonstrate they are capable of providing the children with a safe and stable home environment, and Davis’ and

McFarren's testimony recommending against reunification, we conclude that the trial court's finding that termination is in the children's best interests and its ultimate decision to terminate Mother's and Father's parental rights is not clearly erroneous.

Although it may be true that the children are bonded to their parents, this fact alone does not negate the overwhelming evidence supporting the trial court's determination that termination is in the children's best interests. This is especially true when the totality of the evidence makes clear, as it does in this case, that the parent-child relationships significantly threaten all three children's current and future safety and well-being. Mother's and Father's arguments on appeal, emphasizing their positive *supervised* visits with the children, as opposed to the evidence cited by the trial court in its termination order, amount to an invitation to reweigh the evidence, which we may not do. *D.D.*, 804 N.E.2d at 264. Accordingly, we find no error.

Affirmed.

BAILEY, J., and BRADFORD, J., concur.