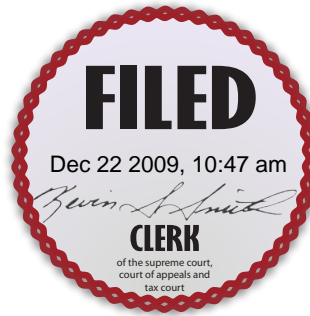


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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF Z.L. and L.L., Minor)
Children, and T.L., Mother,)

T.L., Mother,)
Appellant-Respondent,)

vs.)

INDIANA DEPARTMENT OF CHILD)
SERVICES,)

Appellee-Petitioner,)

CHILD ADVOCATES, INC.,)

Co-Appellee-Guardian ad Litem.)

No. 49A04-0904-JV-216

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Danielle Gaughan, Magistrate
Cause Nos. 49D09-0809-JT-41770, 49D09-0809-JT-41771

December 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

T.L. (“Mother”) appeals the termination of her parental rights to Z.L. and L.L. (“the children”). Mother asserts the judgment is clearly erroneous because she “successfully completed every service referred,” (Appellant’s Br. at 6), DCS should have ordered individual therapy earlier, she was unfairly denied in-home unsupervised visitation, and she “does exceptionally well as a parent when services are in place.” (*Id.* at 7.) Mother’s assertions amount to requests that we reweigh the evidence, which we may not do. Because the record contains evidence to support the court’s findings and conclusions, we affirm the judgment.

FACTS AND PROCEDURAL HISTORY

On September 15, 2008, the Marion County Department of Child Services (“DCS”) filed a petition to involuntarily terminate Mother’s rights to the children. The court held fact-finding hearings over five days in December 2008 and February 2009. On March 23, 2009, the court entered an order that found by clear and convincing evidence:

1. [Z.L.] is a minor child whose date of birth is July 1, 1994.
 2. [L.L.] is a minor child whose date of birth is April 11, 1997.
 3. [Mother] is the mother of [Z.L.] and [L.L.].
* * * * *
 7. [Z.L.] and [L.L.] have been removed from the care of [Mother] . . . for at least 6 months under a Child in Need of Services Dispositional Decree
 8. [Mother] has been involved with DCS many times over the last 15 years.
- § In October 1994, just months after [Z.L.] was born, [Mother]

had DCS involvement when she failed to address [Z.L.]’s medical needs. [Mother] entered into a service referral agreement in which she agreed to continue working with service providers and follow strict instructions regarding [Z.L.]’s care and feeding.

§ In May 1999, DCS filed a CHINS petition after substantiating neglect by [Mother]. The home was dirty, and in disarray with trash, spoiled food, dirty clothing and toys. [Z.L.] was observed to be hyper and darting into the street. [Mother] admitted to having difficulty controlling him and keeping him safe. [Mother] admitted to the allegations in the CHINS petition and participated in services. The CHINS case was closed in October 1999.

§ In February 2001, DCS became involved with [Mother] because [L.L.] went to school on several occasions with feces all over her clothing. [Mother] entered into an Informal Adjustment and participated in services.

§ Before the 2001 Informal Adjustment was closed, a CHINS petition was filed because [Mother] neglected to maintain a clean home and failed to seek medical care for [Z.L.]. [Z.L.] had fallen and sustained facial injuries. The injury occurred on a Friday and [Mother]’s home based counselor advised her to seek medical treatment. By the following Monday, [Mother] had still not taken [Z.L.] for medical treatment. By that time, [Z.L.]’s broken nose required surgery. The CHINS case closed in January 2002 after DCS had been involved for one year.

§ In November 2002, DCS filed a CHINS petition because the home was found in deplorable condition. There were holes and leaks in the ceiling and the home had roaches, debris and feces. On July 18, 2003, [Mother] was convicted of one count of Neglect of a Dependent as a D felony as a result of the circumstances that caused DCS to remove the children from the home of [Mother] in November 2002. The CHINS case was closed as to [L.L.] in October 2004 and as to [Z.L.] in April 2005.

§ In July 2006, DCS investigated allegations of neglect based on [Mother]’s failure to monitor [L.L.]’s diabetes properly. Upon investigation, DCS discovered an adult man under covers in bed with [L.L.] The home was dirty and cluttered. The children’s mattresses were soiled and without sheets. [Mother] agreed to participate in an Informal Adjustment; the Informal Adjustment closed after six months in February 2007.

9. [Mother]’s most recent involvement with DCS resulted in a CHINS petition being filed on July 5, 2007 because [Mother]’s home was unsafe

and unsanitary. There were feces throughout the house, areas that were impassable, and clothing and garbage covered the floor. The children were mentally and physically abused. [L.L.] was covered in bruises and scars and her mother had recently tied her up and left her tied up outside with the dogs. [Z.L.] was nonverbal and diagnosed with several illnesses including mental retardation. . . . [Mother] was arrested at the time of DCS's investigation and was still incarcerated when the CHINS petition was filed.

10. James Belk was a neighbor to [Mother] and when DCS removed the children in July 2007, James Belk told DCS investigators what he had witnessed. On one occasion he witnessed [Mother] calling [L.L.] a "stupid black whore." On another occasion he witnessed [Mother] and [L.L.] taunting [Z.L.] with a lit cigarette. On another occasion he witnessed [Mother] tying a dog chain around [L.L.]'s neck and leaving her out with the dogs for approximately 10 minutes.

11. On November 16, 2007 the CHINS court proceeded with the fact finding as to [Mother] and found the children to be children in need of services.

12. On December 21, 2007 the CHINS court proceeded to disposition as to [Mother] and ordered Parental Participation in services.

13. [Mother] was ordered by the CHINS court to stay in contact with her case manager, secure and maintain a legal and stable source of income, obtain and maintain suitable housing, participate in and successfully complete a home based counseling program and complete any recommendation of the home based counselor, complete a parenting assessment, participate in the DAWN Project, and participate in mental health counseling.

14. Katie Carlisle was the DCS case manager for the [L.] family from July 11, 2007 until September 2008; the case was then transferred to Amanda Ross who has been the case manager since that time.

15. Katie Carlisle made many service referrals for the [L.] family. Katie Carlisle referred [Mother] for a parenting assessment, a drug evaluation, parenting classes and home-based counseling. DCS paid for cab transportation so that [Mother] could visit [Z.L.] at Damar, paid some of her bills, paid an exterminator, replaced flooring in her home and also replaced items that had to be thrown away due to contamination. DCS provided a dumpster and the DAWN [P]roject provided a crew for the clean up [sic] of the [L.] home.

16. Dr. Mary Papandria is a psychologist at Psychological Laboratories of Indianapolis and did a psychological evaluation of [Mother] on November 20, 2007. Dr. Papandria diagnosed [Mother] with a cognitive disorder (intellectual impairment and impairment of academic abilities), a

mood disorder (paranoia and irritability), intermittent explosive disorder, and a personality disorder. [Mother]'s overall IQ is in the Mild Mental Retardation range.

17. Leann Bennett, from the DAWN Project worked with [Mother]. The DAWN Project works with severely disabled children and their families who are struggling to maintain in the community. The DAWN Project provided individual therapy for [L.L.] and individual therapy for [Mother].

18. The first issue that the DAWN Project undertook was the filth and clutter in the [L.] home. In August or September of 2007, an industrial dumpster was rented and a crew was hired to undertake the tedious process of cleaning the home. Many items in the home were unused or broken and the house was roach and mouse infested. There were feces throughout the home as well. [Mother] participated in the cleaning of the home but struggled with getting rid of some things. For example, it was difficult for her to part with a couch even though it was roach infested. Through out [sic] the cleaning process, [Mother] commented that she did not see why it was such a big deal that the house was a mess.

19. The DAWN Project contracted for some repair work to be completed around the house. Work was done on the foundation of the house and a plumber fixed a non-draining tub as well as some other plumbing repairs.

20. After working with [Mother], Leann Bennett believes that although [Mother] has tried very hard and participated in services, she does not have the insight or skills to parent [L.L.] and keep her safe.

21. [Mother] successfully completed parenting classes.

22. Babe Longnecker [sic] is the home based therapist that began working with the [L.] family in August 2007. [L.L.] was in individual therapy with Babe Longnecker [sic] and later Ms. Longnecker [sic] attempted to involve [Mother] in family therapy with [L.L.] Family therapy was discontinued because [Mother] could not exhibit empathy and validate [L.L.]'s feelings. At times, [Mother] said things during therapy that Babe Longnecker [sic] felt were emotionally damaging to [L.L.] [L.L.] was removed from a session for that reason. [Mother] was required to bring the meter for measuring [L.L.]'s blood sugar to some of the sessions to demonstrate her ability to responsibly care for [L.L.]'s diabetes. She failed to appear for one session and called indicating that she would be late for another. [Mother] wanted Ms. Longnecker [sic] and [L.L.] to wait and they waited 30 minutes. They could not wait longer, however, because of concern regarding [L.L.]'s blood sugar.

23. Babe Longnecker [sic] does not feel that [Mother] should be reunified with her children. Though [Mother] loves [L.L.], she is easily

frustrated and does not have the empathy to understand her.

24. Alexis Hire [sic] is a therapist for Hire [sic] Counseling and has worked with [Mother] individually for the last 14 months. Alexis feels that [Mother] has made some progress in that her house is clean but that she still requires a lot of therapy for her personality disorder. Because of [Mother]'s limited intellectual abilities, therapy could take several years.

25. Alexis Hire [sic] does not feel that [L.L.] should be reunified with her mother.

26. On August 11, 2008, [Mother] was convicted of two counts of Neglect of a Dependent as a D felony as a result of the July 2007 DCS removal of the children from her home. At the time of trial, [Mother] was on house arrest as a term of the sentence for this conviction.

27. There is a reasonable probability that the conditions that resulted in the removal of [Z.L.] and [L.L.] or the reasons for continued placement outside the home of their mother, [Mother], will not be remedied. [Mother] has impaired cognitive abilities, significant emotional impairment and two children with emotional, behavioral and intellectual problems. Though [Mother] has participated in services and made some progress, she has not benefited from the numerous services provided to the extent that she can effectively and appropriately parent [L.L.] and [Z.L.] Extensive services have not only been referred for [Mother] since the July 2007 CHINS petition was filed but also for years before that. DCS has been involved with [Mother] 7 times since 1994 and made continual efforts to remedy [Mother]'s repeated acts of neglect of her children. [Mother] complies with services and at times even makes progress, but she is clearly unable to maintain a safe, clean and stable environment for her children.

28. Continuation of the parent-child relationship between [Z.L.] and [L.L.] and their mother, [Mother], poses a threat to the well being of the children. [Mother] is not able to provide a safe, clean, stable environment for these children and her inability to do so is a threat to both their physical and emotional well being.

* * * * *

31. [Z.L.] is presently in residential treatment at Damar, a residential facility specializing in treating and housing children with special needs. [Z.L.] is 14 years old and has been diagnosed with autism and mental retardation. He is non-verbal and his functional age is between 2 and 3 years of age. [Z.L.] is generally happy and very loveable.

32. Termination of the parent-child relationship is in the best interests of [Z.L.] [Z.L.] needs consistency, stability and constant care and supervision. [Z.L.] will need supervision for the rest of his life. [Mother] is not able to provide [Z.L.] with a safe and stable home environment and provide the

care he requires. [Z.L.] needs to achieve permanency through adoption or residential care when he turns 18. SNAP, Special Needs Adoption Program, is a program committed to placing special needs children. DCS plans to refer him to SNAP and is hopeful that he can be placed in an adoptive home. In the alternative [Z.L.] can be placed in residential care at the age of 18. [Z.L.] has made progress at Damar and all of his needs are being met. Continued care in a long term residential care facility would also meet [Z.L.]'s needs.

33. [L.L.] is 11 years old and is placed in a foster home where she is being loved and all of her needs are being met. She has been in this placement since August 12, 2008. Sadly, [L.L.]'s prior foster placement was disrupted because the prior foster care provider was arrested. This transition was upsetting for [L.L.] but she has now bonded with her current foster mother and is considered part of the family.

34. [L.L.] has Type I diabetes and her blood sugar needs to be taken at breakfast, lunch, dinner and at night. [L.L.] receives an insulin doseage [sic] in the morning, at dinner and at night. The dosage of insulin depends on her blood sugars. [L.L.]'s diet needs to [be] monitored and her meals need to be planned. [L.L.]'s foster mother has received training from a Riley Hospital nurse hired by the DAWN Project to instruct the foster mother on [L.L.]'s medical needs.

35. Termination of the parent-child relationship is in the best interests of [L.L.] [L.L.] needs permanency in a safe and stable home; she needs a home where she knows she will be safe and clean. [L.L.] is doing well in her placement, she is bonded to her foster family and all of her physical, medical and emotional needs are being met.

36. There exists a satisfactory plan for the care and treatment of the children, that being adoption[.]

37. The Guardian ad Litem is in agreement that termination of the parent-child relationship is in the best interests of [Z.L.] and [L.L.] and believes that adoption is an appropriate plan.

(App. at 15-21.) Based thereon, the court concluded the children had been out of Mother's care for at least six months, the reasons for removal probably would not be remedied, continuation of the relationship was a threat to the children's well-being, termination was in the children's best interests, and adoption was a satisfactory plan. Therefore, the court terminated Mother's rights.

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 sub nom. Peterson v. Marion County OFC*, 822 N.E.2d 970 (Ind. 2004). Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.* In deference to the juvenile court's unique position to assess the evidence, we will set aside a 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 sub nom. Swope v. Noble County Office of Family & Children* 735 N.E.2d 226 (Ind. 2000), *cert. denied* 534 U.S. 1161 (2002).

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 challenges the trial court's conclusions on parts (B) and (C) of that statute. We note that part (B) of that statute is written in the in the disjunctive, such that the juvenile court needed to find by clear and convincing evidence only one of the two requirements thereof. *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*.

1. Well-being

When asked why it would not be safe for L.L. to return to her mother's care, former family case manager Katie Carlisle testified:

I think based on the previous history, we have reports back from when [Z.L.] was six (6) weeks old, he's now fourteen (14). And there's then [sic] service referral agreements put into place, informal adjustments and then a couple of CHINS adjudications. There's been many, many services put into place for mom and she does well while services are in place, completes the things that she needs to complete. My concern is that when the services are closed out, DCS is then gone from the family. Things go back to the way that they were before with the unsafe and unsanitary home.

(Tr. at 231.) Although Mother was "very good at complying with anything that we request of her," (*id.* at 411), she was not very good at recognizing problems and changing her behavior to eliminate them. Neither is Mother good at "applying what she learns to . . . what she's doing with her kids." (*Id.* at 507.) These issues are due in part to Mother's thinking being "very concrete," (*id.* at 239), or "very" rigid. (*Id.* at 447.) She sees things as "only black or white, there's no shades of grey." (*Id.* at 239.) Mother's ability to

understand and comprehend advice and instructions improved only “slightly” during the last year of services. (*Id.* at 245.) Carlisle did not believe Mother would ever be “able to track and adjust and be able to parent her children appropriately.” (*Id.* at 247.)

Mother’s personal therapist, Alexis Heir, believed Mother would need “[s]everal years” of therapy to successfully deal with her personality disorder. (*Id.* at 472.) Heir had not “seen enough progress” to recommend the children be returned to Mother’s care, because “I think you have to be pretty sure that things are going to go well and this kind of stuff’s not going to happen again because I don’t think we want to use kids as like guinea pigs.” (*Id.* at 475.)

Leann Bennett of The DAWN Project came ~~ee-out~~ to help mother clean the house. Mother fought getting rid of a roach-infested couch. Mother was unable to independently determine what needed to happen to clean ~~up~~ the home. The Department of Health sent a letter indicating the home would be condemned if improvements were not made; yet Mother “made comments as to not understanding why we were making such a big deal about the home as she thought it was ok and providers thought it wasn’t clean enough.” (*Id.* at 297).

Bennett does not believe L.L. should be reunited with Mother because:

Although . . . [Mother] has tried really hard to do what we’ve asked her to do . . . my opinion is that [Mother] does not have the insight and the skills necessary to parent [L.L.] and to keep [L.L.] safe. . . . [Mother] does not even today accept how her behaviors have gotten her children removed from her home. It’s always somebody else’s fault. A lot of times trying to process things with [Mother], she just I don’t know how to say it, she doesn’t get it. She doesn’t have insight to how her behaviors affect others

or how they affect her children.

(*Id.* at 304-05.)

The final team report for Mother, in November of 2008, indicated the following “needs and concerns”: “[Mother] needs to understand why it is inappropriate to ask your child to purchase you a gift. [Mother] has made limited progress on understanding her personality disorder which is to be expected due to the disorder itself and [Mother]’s intellectual functioning.” (*Id.* at 331-32.) Although Mother has “benefited” from services, she has not benefited to the point where she can safely and appropriately care for a child. (*Id.* at 342.) Mother will complete tasks because caseworkers tell her to complete them, but cannot explain why the tasks were appropriate. (*Id.* at 333.) Accordingly, Mother probably will not know what to do if a service provider is not giving instructions.

L.L.’s therapist, Babe Longanecker, testified family therapy had to be suspended because Mother “was unable to demonstrate empathy or validate [L.L.’s] feelings.” (*Id.* at 431.) Neither was Mother, during her individual therapy, engaging in the role plays that would allow her to learn the skills she needed to continue family therapy. Longanecker did not believe reunification should occur, because:

[Mother] has some deficits in her understanding and her ability to parent. I believe that if we were able to sit down and write down every rule that [Mother] would need to be able to parent [L.L.], like to tell her don’t call her this name, don’t do this, get her up at this time, clothe her this way. To cover every basic rule, I think that [Mother] may be able to function in that aspect but it’s not realistic to be able to cover everything. [Mother] just does not have, she doesn’t have the empathy to be able to understand [L.L.]

and where she's coming from and becomes easily frustrated when [L.L.] doesn't say or do things that she wants.

(*Id.*) Because of Mother's lack of understanding, Longanecker did not think Mother would "be able to have a healthy interaction with" L.L. (*Id.* at 439.)

Longanecker also believed a mother's lack of empathy could endanger a child: "If [children feel] that their thoughts or feelings are never going to be considered or never thought of, they're going to grow up beaten down. They're going to grow up without any feelings of self worth or anything." (*Id.* at 449.) A child would be in danger especially if he could not voice his own needs, whether for physical or emotional reasons, because the mother would never think about what the child needs. An autism specialist at Z.L.'s residential placement confirmed that Z.L.'s limited communication skills left Mother unable to understand what Z.L. was seeking from her. (*Id.* at 521.)

This evidence supports the trial court's findings, which support the conclusion that continuation of the parent-child relationship poses a threat to the well-being of the children.

2. Best Interest

In determining what is in the best interest of the child, the trial court must look beyond the factors identified by the Department of Child Services 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, the court must subordinate the interests of the parent to those of the children. *Id.* The recommendations of a caseworker and guardian ad litem

(“GAL”) that parental rights be terminated support a finding that termination is in the child’s best interest. *Id.*

Carlisle testified termination was in L.L.’s best interests in part based on L.L.’s own desires. Longanecker testified that although L.L. loves Mother and wants to continue to see Mother, she does not want to live with her mother. L.L. “is afraid to go back because once everybody leaves her mom becomes mean again.” (Tr. at 450.) Another family case manager, Amanda Ross, believed termination was in L.L.’s best interests

because I’ve looked, I’ve only been on the case I mean four (4) or five (5) months but from all the information I have received from the case throughout the history, we’ve been involved with the family several times over the past years. And every time we’re involved services are offered to [L.L.] and [Mother]. And then once we close out things go back to the way they are. I’m afraid that’s going to happen again if we do close out.

(*Id.* at 491.) The GAL, Gregg Ellis, testified reunification of L.L. with Mother was not in L.L.’s best interest because she “requires stability, she requires consistency, she requires nurturing. She’s a child that verbally doesn’t say a lot but has a lot of emotions. And her inability to have those needs met in mother’s home is not in her best interests.” (*Id.* at 598.) L.L. also told Ellis that she did not want to return to Mother’s care.

As to Z.L., Ross believed termination is in his best interest

[b]ecause he requires a lot of attention. All the times, she can’t be with him 24/7 and so he needs to be in a place or pre-adoptive home where they’re able to meet his needs. And also with the past history of DCS being involved at the same time we’ve offered services for [Mother] to help with [Z.L.] As soon as we close out it seems that things go back to the way they were.

(*Id.* at 491.) Ellis also believed termination was in Z.L.’s best interests due to Mother’s “inability to provide all of [Z.L.]’s needs. He requires consistency, he requires structure, someone that has the ability to monitor all of his physical and emotional needs. And I feel that any return home to mother would put [Z.L.]’s physical health in danger.” (*Id.* at 598-99.)

Finally, Ellis did not think the children’s interests would be served by giving Mother more time to improve because “there’s been a multitude of services offered. Though there may have been some progress in certain areas, there has never been enough progress made that any service provider has recommended reunification occur or unsupervised visits or even a discussion about putting those plans in place.” (*Id.* at 599.)

That evidence supports the finding it was in the best interest of L.L. and of Z.L. that Mother’s parental rights be terminated.

Because there was clear and convincing evidence that continuation of the parent-child relationship was a threat to the well-being of the children and that termination was in their best interests, we cannot say the trial court erred when it terminated Mother’s parental rights. Accordingly, we affirm.

Affirmed.

CRONE, J., and BROWN, J., concur.