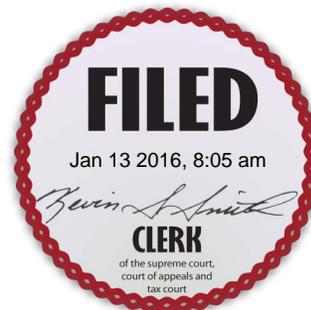


## MEMORANDUM DECISION

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

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In the Termination of the Parent-Child Relationship of K.E.W.  
(minor child)

and

S.W. (mother),

*Appellant-Respondent,*

v.

The Indiana Department of  
Child Services,

*Appellee-Petitioner.*

January 13, 2016

Court of Appeals Case No.  
02A04-1506-JT-735

Appeal from the Allen Superior  
Court

The Honorable Charles F. Pratt,  
Judge

The Honorable Lori K. Morgan,  
Magistrate

Trial Court Cause No.  
02D08-1408-JT-104

**Pyle, Judge.**

## Statement of the Case

[1] S.W. (“Mother”) appeals the involuntary termination of the parent-child relationship with her daughter, K.E.W.<sup>1</sup> On appeal, Mother argues that the Indiana Department of Child Services (“DCS”) did not present sufficient evidence proving there was a reasonable probability that the conditions that resulted in K.E.W.’s removal or the reasons for placement outside the home would not be remedied. Concluding that Mother has waived this argument and that, waiver notwithstanding, there was clear and convincing evidence to support the termination of Mother’s parental rights, we affirm the trial court’s judgment.

[2] We affirm.

## Issue

Whether there was clear and convincing evidence to support the termination of Mother’s parental rights to K.E.W.

## Facts

[3] Mother gave birth to K.E.W. in January 2012. In September 2012, Mother was unemployed and did not have housing; therefore, Mother and K.E.W. stayed at Mother’s sister’s house. While in Mother’s care, K.E.W. ingested mice feces and was subsequently taken to the hospital.

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<sup>1</sup> M.F.’s (“Father”) parental rights to K.E.W. were also terminated. He is not involved in this appeal.

- [4] Thereafter, DCS removed K.E.W. from Mother's care, placed her in foster care, and filed a petition alleging that K.E.W. was a child in need of services ("CHINS"), alleging that Mother was unemployed, homeless, and unable to provide stable housing and a stable living environment for her daughter. During the CHINS hearing held in October 2012, Mother admitted to the allegations set forth. The trial court determined that K.E.W. was a CHINS and appointed a guardian ad litem ("GAL"). The trial court ordered Mother to, among other things: obtain appropriate housing; cooperate and maintain contact with DCS and service providers; participate in supervised visitation; submit to a diagnostic or psychological assessment and follow all recommendations; attend all individual counseling sessions and successfully complete the counseling program; participate in and successfully complete a home-based services program; cooperate with the rules of the child's placement; and refrain from criminal activity.
- [5] In late 2012, Mother gave birth to another child, whom she put up for adoption.<sup>2</sup> Mother received money from the adoption and used some of it to rent a studio apartment. Mother also used some of the money to buy a car even though she had a suspended license at that time. In August 2013, Mother was evicted from the studio apartment for not paying her rent.
- [6] During the CHINS proceeding, Mother engaged in services, including supervised visitation, individual counseling, and home-based services with

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<sup>2</sup> This child was apparently conceived as a result of a sexual assault.

parenting lessons. However, Mother had difficulties actively participating in some services, such as claiming that she did not need some of the parenting classes, and she did not successfully complete some services due to a failure to attend.

[7] For example, Mother first participated in supervised visitation with K.E.W. at her studio apartment. The visitation supervisor was concerned about Mother's lack of discipline with the child and her failure to provide balanced meals to K.E.W. or to follow the required dietary restrictions that had been set for K.E.W. who had bowel problems. After Mother was evicted from her studio apartment, the supervised visitations occurred in a community setting, such as at a restaurant. In November 2013, Mother had a supervised visit scheduled at a Burger King restaurant that ended up with the police being called to the restaurant when Mother became upset and caused a scene. The visitation supervisor, who had picked up K.E.W. and had gotten stuck in traffic, arrived late to the visitation. After the supervisor and K.E.W. entered the restaurant, Mother grabbed K.E.W., yelled at the supervisor, and refused to give the child back to the supervisor. Following this incident, a new visitation supervisor was assigned to supervise Mother's visits. This visitation supervisor also had concerns about Mother's parenting skills and her lack of discipline or ability to set boundaries with K.E.W.

[8] In regard to home-based services, DCS made two referrals for Mother to engage in these services. In January 2013, Mother started the first session of home-based services, which included parenting-skills lessons. However, these services

were ultimately terminated in August 2013 because Mother was incarcerated for not appearing in court for a hearing on a charge of driving with a suspended license. After Mother's release, the home-based worker tried to contact Mother to resume services but was unable to make contact with Mother.

[9] Turning to Mother's participation in individual counseling, the record reveals that she had a counseling assessment and was initially diagnosed with having an adjustment disorder and was later diagnosed with post-traumatic stress disorder ("PTSD"). When Mother started individual counseling in May 2013, these counseling sessions were held in Mother's studio apartment. However, after Mother's eviction in August 2013, the counseling sessions were moved elsewhere. Mother's counseling sessions were eventually terminated in April 2014 due to her failure to attend four consecutive therapy sessions. During the eleven months of this individual counseling, Mother attended only eighteen out of forty-six potential counseling sessions.

[10] During the CHINS proceeding, Mother also had difficulties maintaining consistent employment and housing. Mother worked at various jobs—many of them on a part-time basis—for a temp agency, and she did not have a full-time, non-temporary employment. Mother was without housing from August 2013 to August 2014, and during this time, she stayed with either family or friends. When Mother rented an apartment in August 2014, she used her student financial aid money to pay for it.<sup>3</sup>

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<sup>3</sup> Mother was enrolled in classes at Ivy Tech.

- [11] On September 2, 2014, DCS filed a petition to terminate Mother's parental rights to K.E.W.
- [12] Subsequently, in an effort to get Mother back into individual counseling sessions, DCS referred her for a second diagnostic or psychological assessment. During this assessment, which was conducted in November 2014, Mother was diagnosed with depressive disorder (recurrent, moderate) and PTSD. Following the assessment, Mother's counselor initially scheduled five counseling sessions with Mother and scheduled an appointment for Mother to attend a psychiatric evaluation to determine whether medication would be helpful to Mother in conjunction with her counseling sessions. Mother attended three of these five counseling sessions and was a no-show for the other two. Additionally, Mother failed to attend the scheduled psychiatric evaluation.
- [13] In November 2014, DCS also made a second referral for Mother to engage in home-based services, which were to include parenting lessons. Mother attended some service sessions but was resistant to engage in the home-based counselor's parenting curriculum, which consisted of twenty-five chapters of parenting lessons. Mother completed only one and one-half chapters of lessons and claimed that she did not need the parenting lessons because she had already completed them.
- [14] On February 3, 17, 25, and 26, 2015, the trial court held termination hearings. At the time of the termination hearings, K.E.W. was three years old and had

been removed from Mother's care since she was almost ten months old. At the time of the termination hearing, Mother had housing, which she paid for with her financial aid funds. She did not have full-time employment but hoped to have a temporary, part-time assignment in the upcoming months. She was also enrolled in her second round of services, including supervised visitation, counseling, and home-based services.

[15] During these hearings, Mother's service providers testified regarding their concerns with Mother's lack of consistent employment and housing and its effect on Mother's ability to effectively parent K.E.W. They also testified regarding her failure to fully comply with services throughout the underlying proceedings. For example, Mother's visitation supervisors testified regarding their concern about Mother's parenting skills. They testified that Mother had failed to discipline K.E.W. and had a tendency to give into K.E.W.'s demands when she had a tantrum. One of the visitation supervisors also testified about Mother's failure to provide food for K.E.W. that met the requirements of her prescribed diet for her bowel problems. The supervisor testified that Mother had failed to provide K.E.W. with appropriate foods despite being provided a list of foods that would meet K.E.W.'s dietary needs.

[16] The therapist who started to work with Mother after her November 2014 assessment testified about Mother's failure to attend some of the initial counseling sessions and her failure to go to the scheduled psychiatric evaluation that was set up to determine whether medication would assist in Mother's

treatment. Additionally, Mother's most recent home-based counselor testified regarding Mother's resistance to engage in parenting lessons.

[17] Finally, the GAL testified that it was in K.E.W.'s best interest for Mother's parental rights to be terminated. The GAL expressed her concern about Mother's "underlying instability" in her obtaining stable housing and employment and her "sporadic" compliance with services. (Tr. 368, 369). The GAL testified that Mother had not been able to "work a job regularly for any length of time" and had a pattern during the two and one-half years of the proceedings of doing various temporary jobs and relying on her student loans to live. (Tr. 369).

[18] Following the hearing, the trial court entered an order involuntarily terminating Mother's parental rights to K.E.W. In relevant part, the trial court concluded that "there was a reasonable probability that the conditions that resulted in the child's removal and the reasons for the placement outside the parent's home w[ould] not be remedied, and/or that continuation of the parent/child relationship pose[d] a threat to the well-being of the child." (App. 12). The trial court provided numerous, detailed findings relating to this conclusion and then summarized these findings as follows:

At the time of the initiation of the proceedings in the underlying CHINS cause, the mother did not have stable housing or employment and was unable to provide for her child. Throughout the course of the proceedings in the underlying CHINS case, the mother has been unable to maintain employment. Although at the time of the hearing on the Petition for Termination, she had obtained housing, upon review of the

history of the proceedings, she has been unable to maintain the housing and has lived with friends and family members and was at one time, homeless. Referrals were made for her participation in services that were designed to assist her in remedying the reasons for removal of the child from the home and in remedying the continued placement of the child from the home, however, she has failed to regularly participate in and/or benefit from services provided. The mother has been diagnosed with Major Depressive Disorder-Recurrent Moderate which is likely having an impact on her ability to function and to appropriately parent and provide for her child, however, she has not participated in the therapy as recommended by her therapist and had refused to participate in a Psychiatric Evaluation which might have assisted her by providing her with medical intervention for her symptoms and diagnosis. She has been combative with service providers and lacks appropriate parenting skills. She has wholly failed to remedy the reasons for removal of the child from the home and the reasons for continued placement of the child from the home.

(App. 16). Mother now appeals.

## Decision

[19] Mother argues that the trial court erred by ordering the involuntary termination of her parent-child relationship with K.E.W.

[20] “Although parental rights are of a constitutional dimension, the law allows for termination of these rights when parties are unable or unwilling to meet their responsibility as parents.” *In re A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). *See also In re I.A.*, 934 N.E.2d 1127, 1132 (Ind. 2010). The purpose of termination of parental rights is not to punish parents but to protect children. *In*

*re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *reh'g denied, trans. denied, cert. denied.*

[21] In reviewing the termination of parental rights, we will neither reweigh the evidence nor judge the credibility of witnesses. *I.A.*, 934 N.E.2d at 1132. We consider only the evidence most favorable to the judgment. *Id.* Where the trial court has entered findings of fact and conclusions of law, we apply a two-tiered standard of review. *Id.* We must determine whether the evidence supports the findings and then whether the findings support the judgment. *Id.* We will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.* A judgment is clearly erroneous if the findings do not support the conclusions or the conclusions do not support the judgment. *Id.*

[22] When DCS seeks to terminate parental rights, it must plead and prove, in relevant part:

(B) that one (1) of the following is true:

(i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.

(ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.

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

I.C. § 31-35-2-4(b)(2)(B). These allegations must be established by clear and convincing evidence. *I.A.*, 934 N.E.2d at 1133. If the trial 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.” I.C. § 31-35-2-8(a) (emphasis added).

[23] On appeal, Mother does not challenge any of the trial court’s findings. Instead, she argues only that the DCS failed to prove that there was a reasonable probability that the conditions that resulted in K.E.W.’s removal or the reasons for placement outside the home will not be remedied. INDIANA CODE § 31-35-2-4(b)(2)(B), which is written in the disjunctive, required DCS to demonstrate, by clear and convincing evidence, a reasonable probability that one of the three conditions were met. *See Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 148 n.5 (Ind. 2005). Relevant to this case, DCS was required to prove *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. Here, the trial court determined that there was a reasonable probability that the conditions would not be remedied *and* that there was a threat to K.E.W.’s well-being, thus satisfying subsections (b)(2)(B)(i) and (ii). Mother, however, does not challenge the trial court’s determination that the continuation of the parent-child relationship would pose a threat to the well-being of the child under (b)(2)(B)(ii). Because she does not challenge both factors, she has implicitly conceded the sufficiency of (b)(2)(B)(ii) and has

effectively waived review of the trial court's determination under INDIANA CODE § 31-35-2-4(b)(2)(B).

[24] Waiver notwithstanding, the trial court did not err by concluding that there was a reasonable probability that the conditions that resulted in K.E.W.'s removal or the reasons for placement outside the home will not be remedied.

[25] 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. *A.N.J.*, 690 N.E.2d at 721. 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 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." *L.S.*, 717 N.E.2d at 210.

[26] When challenging the trial court’s “conditions remedied” determination, Mother does not challenge any of the trial court’s findings. Instead, she merely asserts that trial court’s termination of her parental rights was “premature” because she was not given an “appropriate opportunity” to participate in counseling upon her November 2014 diagnoses of PTSD and depression. (Mother’s Br. 7).

[27] The trial court, however, specifically addressed Mother’s November 2014 diagnoses and concluded:

The mother has been diagnosed with Major Depressive Disorder-Recurrent Moderate. During a Diagnostic Evaluation that was completed in November of 2014, the mother reported feeling hopeless and helpless, and reported being tearful, lacking motivation and reported lacking an interest in things. Additionally, she reported having panic attacks as well as disturbing sleep patterns. Treatment for her diagnoses requires regular participation in therapy. Professionals who have worked with the mother recommend that she obtains a Psychiatric Evaluation to assist her with some of the symptoms that she is experiencing as a result of her diagnosis. The mother has not regularly participated in counseling and has refused to submit to a Psychiatric Evaluation. Her behavior with some of the service providers has been combative. She has failed to complete many of the services that she was ordered to participate in, often stating that she was not in need of the service. However, based upon her interaction with the service providers as well as with the child, it is clear that she does, in fact, need the services that have been offered to her as those services were ordered so that she could remedy the reasons for removal of the child and for placement of the child outside of her home . . . .

(App. 17). Mother's argument is nothing more than a request to reweigh the evidence, which we will not do. *See I.A.*, 934 N.E.2d at 1132.

[28] We conclude there was clear and convincing evidence to support the trial court's decision to terminate Mother's parental rights to K.E.W. 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." *Egly 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.

[29] Affirmed.

Baker, J., and Bradford, J., concur.