

SC93677

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IN THE SUPREME COURT OF MISSOURI

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IN THE INTEREST OF: Q.A.H.,  
JUVENILE OFFICER AND C.W.M. & C.D.M.  
Respondents,

v.

M.H. (MOTHER),  
Appellant.

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**SUBSTITUTE BRIEF OF RESPONDENTS C.W.M. & C.D.M.**

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Appeal from the Circuit Court of Jackson County,  
The Honorable Justine E. Del Muro, Judge,  
Circuit Court Case No. 1116-FC08386

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## **STATEMENT OF THE FACTS**

On August 22, 2009, the birth mother brought Q.H., a five-month-old infant at the time, to Children's Mercy Hospital during a delusional episode in which she thought that there was a listening device in Q.H.'s vagina and stated that she would sew Q.H.'s vagina closed if no one at the hospital would do it. (*See* Trial Exhibit 14). During this same episode, the birth mother also requested for Q.H. to be circumcised. (*See* Trial Exhibit 14). Further, the birth mother believed that at five months. Q.H. was able to speak recognizable words. (*See* Trial Exhibit 5). She also stated that she believed that someone was drugging her and Q.H. through gas coming through air vents in order to sexually assault them both, a belief that she still held at the termination hearing. (Tr., p. 74:8 – 17).

Following the August 22, 2009 incident, Q.H. was removed from the birth mother's custody and she was diagnosed with Schizophrenia, Paranoid Type. (*See* Trial Exhibit 8). In September, 2009, the birth mother began having supervised weekly visits with Q.H. and the parent aide set out the following goals for the birth mother: 1. Understand the developmental stages of a child, 2. Gain and maintain stable employment, and 3. Provide for her daughter. (*See* November 9, 2009 Report in Trial Exhibit 7). These same goals were worked on throughout the birth mother's supervised visits

with other goals added which included obtaining her own mode of transportation, understanding consistent parenting, obtaining psychiatric help and taking any medication prescribed, looking out for the best interests of the child and keeping her safe. (*See* Trial Exhibit 7). These supervised visits continued until March, 2010 when custody of Q.H. was given back to the birth mother. (*See* October 11, 2010 Report in Trial Exhibit 7). The birth mother then refused the court's order to allow Q.H. to visit her birth father so Q.H. was again removed from the birth mother's care in July, 2010 and supervised visits resumed in August, 2010. (*See* October 11, 2010 Report in Trial Exhibit 7).

In her report dated June 5, 2011, the parent aide noted that the birth mother was still struggling with looking out for the best interests of Q.H., she was still concerned about the birth mother's mental state, she wasn't sure that the birth mother was taking her medication as directed and the birth mother comes across like she knows what is best and no one can tell her different. (*See* June 5, 2011 Report in Trial Exhibit 7). Likewise, Janee Ackerley noted on July 11, 2012 that the birth mother was still struggling to meet the established goals of maintaining a stable living environment and employment, and engaging her children in developmentally appropriate ways after nearly three years of treatment. (*See* July 11, 2012 Report in

Trial Exhibit 6). Ms. Ackerley also expressed concerns that the birth mother had recently moved in with someone given her history of moving in with other people and it not turning out well, is relying on a man for her sole support and not looking for employment to support herself and her children, has inappropriate conversations with Q.H. about adult situations, told Q.H. that she could read minds, fails to take into account the ages of both Q.H. and the birth mother's nine-month-old son when disciplining them for their behavior and is not certain that the birth mother is telling her the truth in their interactions. (*See* July 11, 2012 Report in Trial Exhibit 6).

The birth mother's treatment records with The Guidance Center also show that even after nearly three years of treatment, the birth mother was still working on the treatment goal of establishing and maintaining safe personal boundaries in relationships due to her history of engaging in unhealthy relationships with unclear boundaries and vulnerabilities which promote perceived violations and abuses. (*See* Treatment Plan Record Dated May 14, 2012 in Trial Exhibit 8). These same records also show that the birth mother was continuing to experience unstable mood and reactivity to life stressors. (*See* Treatment Plan Record Dated May 14, 2012 in Trial Exhibit 8).



Despite being told that Q.H. had an allergic reaction to strawberries, the birth mother intentionally gave Q.H. strawberries on at least three occasions. (Tr., p. 47:2 – 8; June 5, 2011 Report in Trial Exhibit 6 and October 7, 2011 Report in Trial Exhibit 7). In a progress report dated June 5, 2011, Blair Funk noted that the birth mother allowed Q.H. to eat yogurt with strawberries and told Ms. Funk that she didn't believe that Q.H. was allergic despite being told about a prior allergic reaction and doctor's orders not to give Q.H. any strawberries. (See June 5, 2011 Report in Trial Exhibit 7). On another occasion in April, 2011, the birth mother gave Q.H. a strawberry fruit smoothie despite being told not to give her strawberries. (See June 5, 2011 Report in Trial Exhibit 7). On October 7, 2011, Janee Ackerley reported that she observed the birth mother feeding strawberries to Q.H. again and when Ms. Ackerley confronted her about this, the birth mother stated that she didn't believe that Q.H. was allergic to strawberries. (See October 7, 2011 Report in Trial Exhibit 6). After this incident, Q.H. had some splotches on her face. (See October 7, 2011 Report in Trial Exhibit 6).

There was also evidence that Q.H. had nightmares after returning from unsupervised visits with the birth mother and that she acted differently when she returned from visits with the birth mother compared to how she

acted when she returned from visits with the birth father. (*See* March 27, 2011 Report in Trial Exhibit 7). When she returned from visits with the birth mother, she was not happy, very sensitive, would not listen and didn't talk about the birth mother, but when she returned from visits with the birth father, she was happy and talked all about her visit. (*See* March 27, 2011 Report in Trial Exhibit 7). There was also a visit on March 7, 2011 when the birth mother ended her visit with Q.H. early and Q.H. was unusually afraid of her bath that night. (*See* June 5, 2011 Report in Trial Exhibit 7). The parent aide felt that something was off about the day's events and did not believe the birth mother's account of what happened that day. (*See* June 5, 2011 Report in Trial Exhibit 7). Additionally, Q.H. would act relieved to see the parent aide after her unsupervised visits with the birth mother were over. (*See* June 5, 2011 Report in Trial Exhibit 7).

During her deposition, the birth mother testified that she could have potentially provided \$100 per month in child support and she currently held a gym membership that cost \$44 per month. (*See* Deposition Dated April 17, 2012, p. 25:2 – 22, in Trial Exhibit 3). She also testified that the man with whom she was living with at the time of trial gave her up to \$1,000 per month and part of that money could have been used as child support for Q.H. (*See* Deposition Dated April 17, 2012, p. 35:6 – 16, in Trial Exhibit 3).

Despite this testimony, the birth mother never paid child support for Q.H. (Tr., pp. 60:20 – 25). At trial, it was determined that the birth mother had custody of Q.H. during the same period of time when the birth mother claims she received a letter stating that she didn't need to pay child support. (Tr., pp. 64:10 – 65:22). Additionally, Brian Alexander, the Children's Services caseworker, refuted the birth mother's testimony that he told her she didn't need to provide support for Q.H. (Tr., p. 23:18 – 19). Respondent C.D.M. also testified at trial that she could only remember the birth mother giving Q.H. clothing on one occasion, several items of which were sized for a child much younger than Q.H. was at the time, and she could only remember the birth mother giving Q.H. a set of dominoes and a watch. (Tr., pp. 51:23 – 52:19).

### **ARGUMENT AND AUTHORITIES**

The determination of whether to terminate parental rights is a two-step process: 1.) the Court determines whether termination is justified under one of the grounds set out in R.S.Mo. §211.447; and 2.) the Court determines whether termination of parental rights is in the best interests of the child. *In the Interest of P.L.O.*, 131 S.W.3d 782, 788-89 (Mo. banc 2004). All of the birth mother's Points Relied On are directed towards the first step in the process: whether the trial court's decision to terminate the birth mother's

parental rights is justified under R.S.Mo. §211.447.5. The birth mother does not contest the trial court's determination that the termination of her parental rights was in Q.H.'s best interest. Therefore, the trial court's decision should be upheld if there is evidence to support termination on any one of the three grounds raised by the birth mother on appeal. Because Missouri Supreme Court Rule 84.04(e) limits arguments on appeal to the issues raised in Appellant's Points Relied On, this Court will not address whether the record supports findings that are not mentioned in the birth mother's Points Relied On. *See In the Interest of B.J.K.*, 197 S.W.3d 237 (Mo. App. 2006). Most pointedly, the birth mother does not dispute the trial court's findings that termination of the birth mother's parental rights are in Q.H.'s best interests in that she failed to provide for the cost of care and maintenance of the child even though she was able financially able to do so, additional services would not be likely to bring about lasting parental adjustment enabling a return of the child to the birth mother within an ascertainable period of time, the birth mother has at times expressed a desire to relinquish her parental rights rather than co-parent with the birth father, the birth mother failed to maintain custody of the child due to deliberate violations of court orders, the birth mother has maintained residence in the state of Kansas for the majority of the case knowing that would interfere with efforts at

reunification and then failed to notify the Children's Division when she relocated to Missouri, the Children's Division and Juvenile Officer have done everything they could do to assist the birth mother but the birth mother's conduct, statements and decisions have stymied those efforts and there are no other services or programs that could have been implemented that could have accomplished reunification at this time or in the reasonably foreseeable future.

**I. POINT 1: THE TRIAL COURT ERRED IN TERMINATING MOTHER'S PARENTAL RIGHTS TO Q.H. IN FINDING THAT CLEAR, COGENT, AND CONVINCING EVIDENCE SUPPORTED ITS DETERMINATION THAT MOTHER HAS A MENTAL CONDITION WHICH RENDERS HER UNABLE TO KNOWINGLY PROVIDE THE CHILD THE NECESSARY CARE, CUSTODY, AND CONTROL, AND THAT MOTHER FAILED TO RECTIFY THE CONDITIONS LEADING TO HER DAUGHTER'S REMOVAL FROM HER CUSTODY BECAUSE THE UNDERLYING COURT RELIED ON MOTHER'S PAST BEHAVIOR TO JUSTIFY ITS TERMINATION DECISION IN THAT THE UNDERLYING COURT DID NOT CONSIDER MOTHER'S CONDUCT AND FUNCTIONING**

**AT THE TIME OF THE TERMINATION HEARING, AND THIS  
FAILURE SUPPORTS A CLAIM OF REVERSIBLE ERROR.**

**A. Standard of Review**

The Court of Appeals will affirm the trial court's judgment terminating parental rights unless it is not supported by substantial evidence, is against the weight of the evidence or erroneously applies the law. *In Re Q.M.B.*, 85 S.W.3d 654, 657 (Mo. App. 2002). On review, the Court will consider all evidence and inferences in the light most favorable to the trial court's judgment and disregard all evidence to the contrary. *In Re J.D.*, 34 S.W.3d 432, 434 (Mo. App. 2000). Due regard is given to the trial court's opportunity to judge the credibility of witnesses and a greater deference is granted to a trial court's determination in adoption proceedings than in other types of cases. *In the Matter of I.D.*, 12 S.W.3d 375 (Mo. App. 2000). Additionally, if one of the grounds for termination is proven, then termination is sufficiently supported and should be upheld. *In the Interest of N.M.J.*, 24 S.W.3d 771, 777 (Mo. App. 2000). The standard of review for the trial court's finding on whether termination is in the best interests of the child is abuse of discretion. *In the Interest of R.S.L.*, 241 S.W.3d 346 (Mo. App. 2007). In that case, the Missouri Supreme Court noted that findings based on past behavior are relevant as long as they are updated to assess the

parent's current ability and willingness to parent along with an assessment of the potential for future harm to the child. *Id.* at 10.

**B. Discussion**

**1. The Birth Mother is Estopped From Arguing Improper Conduct by the Trial Judge.**

The birth mother first argues that the trial judge had improperly decided to terminate the birth mother's parental rights one year before the termination hearing was held. Despite this belief, the birth mother failed to file a request for a change of judge prior to trial and didn't raise the issue until closing arguments in the trial. (Tr., p. 243:16 – 25). Because the preferred procedure in Missouri is for a single judge to preside over all juvenile and family matters involving the same family, a request for a change of judge will not be considered unless it is timely filed. *See In Re S.M.H.*, 160 S.W.3d 355 (Mo. 2005). Since the birth mother failed to file a request for a change of judge despite her belief that the trial judge had already made a determination to terminate the birth mother's parental rights, she should not be able to argue on appeal that the trial judge's decision to terminate her rights was improperly made one year before the termination hearing.

## **2. The Trial Court Made the Necessary Findings Regarding the Birth Mother's Current Condition.**

The birth mother next argues that the trial court failed to consider her condition as it existed at the time of the termination hearing and instead relied solely on the birth mother's past behavior. In support of this argument, the birth mother cites *In Re K.A.W.*, 133 S.W.3d 1 (Mo. banc 2004). In that case, the Missouri Supreme Court held that past behavior can support a termination of parental rights as long as it is convincingly linked to the potential for future harm. *Id.* The Court also noted that a parent's reaction to any sort of a parenting plan, treatment plan or reunification plan can be highly relevant evidence as to future behavior. *Id.* This is because a parent's efforts to comply with such a plan can provide the court with an indication of the parent's likely efforts in the future to care for the child. *Id.*

The trial court properly followed the requirements set out in the *K.A.W.* case and determined that the birth mother continued to exhibit delusional behavior that presented a clear risk to the child, was not being truthful to the trial court and service providers regarding her current situation and was not able to provide stable housing and income for a child in the foreseeable future. (L.F. pp. 117 – 121). This determination regarding the birth mother's current condition was supported by substantial evidence.



This evidence includes an assessment by Family Support Specialist Janee Ackerley dated July 11, 2012 (less than two months before trial) in which she expresses concerns that the birth mother had recently moved in with someone given her history of moving in with other people and it not turning out well, is relying on a man for her sole support and not looking for employment to support herself and her children, has inappropriate conversations with Q.H. about adult situations, fails to take into account the ages of both Q.H. and the birth mother's nine-month-old son when disciplining them for their behavior and is not certain that the birth mother is telling her the truth in their interactions. (*See* July 11, 2012 Report in Trial Exhibit 6). In November, 2009, the birth mother's former parent aide set out the following goals for the birth mother: 1. Understand the developmental stages of a child, 2. Gain and maintain stable employment, and 3. Provide for her daughter. (*See* November 9, 2009 Report in Trial Exhibit 7). These same goals were worked on throughout the birth mother's supervised visits with other goals added which included obtaining her own mode of transportation, understanding consistent parenting, obtaining psychiatric help and taking any medication prescribed, looking out for the best interests of the child and keeping her safe. (*See* Trial Exhibit 7). The parent aide, Blair Funk, noted in her report dated June 5, 2011 that the birth mother was

still struggling with looking out for the best interests of Q.H. , she was still concerned about the birth mother's mental state, she wasn't sure that the birth mother was taking her medication as directed and the birth mother comes across like she knows what is best and no one can tell her different. (See June 5, 2011 Report in Trial Exhibit 7). Likewise, Janee Ackerley noted on July 11, 2012 that the birth mother was still struggling to meet the established goals of maintaining a stable living environment and employment, and engaging her children in developmentally appropriate ways after nearly three years of treatment. (See July 11, 2012 Report in Trial Exhibit 6).

The birth mother's treatment records with The Guidance Center also show that even after nearly three years of treatment, the birth mother was still working on the treatment goal of establishing and maintaining safe personal boundaries in relationships due to her history of engaging in unhealthy relationships with unclear boundaries and vulnerabilities which promote perceived violations and abuses. (See Treatment Plan Record Dated May 14, 2012 in Trial Exhibit 8). These same records also show that the birth mother was continuing to experience unstable mood and reactivity to life stressors. (See Treatment Plan Record Dated May 14, 2012 in Trial Exhibit 8).

As set out by the Missouri Supreme Court in *K.A.W.*, a parent's reaction to any sort of treatment or parenting plan can be indicative of their future abilities to parent a child. 133 S.W.3d 1 (Mo. banc 2004). The trial court had substantial evidence in front of it to conclude that based on the birth mother's continued struggle to support herself, engage her children in developmentally appropriate ways and understand the children's emotional development, maintain appropriate boundaries in relationships and maintain stable functioning, she would be unable to effectively parent Q.H. in the foreseeable future. Q.H. deserves to be in a stable, permanent environment and there was substantial evidence to support the trial court's determination that the birth mother could not provide Q.H. with a stable and permanent environment in the near future despite years of treatment. As such, the trial court's termination of the birth mother's parental rights should be upheld.

### **3. The Trial Court is in a Superior Position to Judge the Credibility of Witnesses' Testimony.**

The birth mother argues that the trial court should not have discarded testimony from her psychiatrist and therapist. The well-established rule in termination cases is that the trial court is in a superior position to judge the credibility of witnesses and it is free to believe all, part or none of the witnesses' testimony. *In Re B.C.K.*, 103 S.W.3d 319, 322 (Mo. App. 2003).

When there is conflicting evidence, this Court views the facts in the light most favorable to the trial court's judgment. *In Re C.A.M.*, 282 S.W.3d 398, 405 (Mo. App. 2009).

As noted by the trial court in its findings, it did not find Dr. Golon's or Ms. Kuykendall's testimony credible in part because their opinions were based solely on the self-report of the mother. (L.F., pp. 89-90). The trial court had the opportunity to assess the birth mother's demeanor in person during trial and did not find her to be a truthful person. (L.F., pp. 93, 97). There was also evidence from a different psychological exam that the birth mother is intelligent enough to adjust her statements when she feels others might find them to be pathological. (*See* Trial Exhibit 5). Additionally, one of her parent aides, Blair Funk, noted many inconsistencies in the birth mother's statements and her other parent aide, Janee Ackerley, noted that she is not sure that the birth mother is always telling her the truth. (*See* Trial Exhibits 6 and 7).

In support of her argument, the birth mother relied on the workers compensation case of *Angus v. Second Injury Fund* which is clearly distinguishable from this case. In *Angus*, the issue was whether the expert testimony proved the causation of the claimant's injury while in this case, the testimony by Dr. Golon was offered to prove that the birth mother was

capable of parenting Q.H. *See Angus v. Second Injury Fund*, 328 S.W.3d 294 (Mo. App. 2010). The causation of a physical injury is a much more narrow and technical issue than the issue presented here of whether the birth mother could be a capable parent given her history, her reaction to treatment and her current situation. As noted above, the trial court took issue with the method in which Dr. Golon came up with his opinions by relying solely on the statements made by the birth mother rather than looking at the whole picture and reviewing reports from service providers in Missouri. (L.F. p. 89). The trial court acted within the accepted boundaries of its role as fact-finder and as such, its judgment terminating the birth mother's parental rights should be upheld.

**II. POINT 2: THE COURT ERRED IN TERMINATING MOTHER'S PARENTAL RIGHTS TO Q.H. IN FINDING THAT CLEAR, COGENT, AND CONVINCING EVIDENCE SUPPORTED ITS DETERMINATION TO TERMINATE MOTHER'S PARENTAL RIGHTS, BECAUSE THE UNDERLYING COURT RELIED ON MOTHER'S PAST BEHAVIOR TO JUSTIFY ITS TERMINATION DECISION, IN THAT THE UNDERLYING COURT'S FAILURE TO EXPLICITLY CONSIDER WHETHER Q.H. HAD SUFFERED ANY HARM DUE TO MOTHER'S ACTIONS AND WHETHER MOTHER**

**HAD THE POTENTIAL TO CAUSE FUTURE HARM TO HER CHILD, THIS FAILURE SUPPORTS A CLAIM OF REVERSIBLE ERROR.**

**A. Standard of Review**

The Court of Appeals will affirm the trial court's judgment terminating parental rights unless it is not supported by substantial evidence, is against the weight of the evidence or erroneously applies the law. *In Re Q.M.B.*, 85 S.W.3d 654, 657 (Mo. App. 2002). On review, the Court will consider all evidence and inferences in the light most favorable to the trial court's judgment and disregard all evidence to the contrary. *In Re J.D.*, 34 S.W.3d 432, 434 (Mo. App. 2000). Due regard is given to the trial court's opportunity to judge the credibility of witnesses and a greater deference is granted to a trial court's determination in adoption proceedings than in other types of cases. *In the Matter of I.D.*, 12 S.W.3d 375 (Mo. App. 2000).

Additionally, if one of the grounds for termination is proven, then termination is sufficiently supported and should be upheld. *In the Interest of N.M.J.*, 24 S.W.3d 771, 777 (Mo. App. 2000). The standard of review for the trial court's finding on whether termination is in the best interests of the child is abuse of discretion. *In the Interest of R.S.L.*, 241 S.W.3d 346 (Mo. App. 2007).

## **B. Discussion**

### **1. There Was Convincing Evidence Supporting the Trial Court's Determination that the Birth Mother had the Potential to Cause Future Harm to Q.H.**

The birth mother next argues that her parental rights to Q.H. should not have been terminated because she didn't suffer any *actual* harm due to the birth mother's mental illness. While it is true that Q.H. did not seem to be physically harmed when the birth mother dropped her off at the hospital on August 22, 2009, there was certainly the *potential* for harm to Q.H. due to her mother's delusional episode in that she thought that there was a listening device in Q.H.'s vagina and stated that she would sew Q.H.'s vagina closed if no one at the hospital would do it. (See Trial Exhibit 14). During this same episode, the birth mother also requested for Q.H. to be circumcised. (See Trial Exhibit 14). There is no requirement under Missouri law that a parent *actually* harm a child before their parental rights can be terminated, but rather a *potential* for harm must be shown. See *In Re T.L.B.*, 376 S.W.3d 1 (Mo. App. 2011). In that case, the birth mother was diagnosed with mental illness and had threatened to commit suicide and harm her children. *Id.* at 12-13. As in the case at bar, the birth mother in that case also disputed the severity of her illness and its effect on the safety

of her children. *Id.* at 13. The trial court terminated her parental rights based in part on evidence that the birth mother continued to have the same issues and failed to accept any responsibility or show remorse. *Id.* at 12-13. Even though there was some evidence to the contrary, the appellate court upheld the trial court's determination and noted that it was "squarely within the trial court's discretion to believe all, none or some of the witnesses' testimony." *Id.* at 13.

The birth mother in the case at bar glosses over the fact that she intentionally gave Q.H. strawberries on at least three occasions even though she had been told that Q.H. was allergic to them. (Tr., p. 47:2 – 8; June 5, 2011 Report in Trial Exhibit 6 and October 7, 2011 Report in Trial Exhibit 7). In a progress report dated June 5, 2011, Blair Funk noted that the birth mother allowed Q.H. to eat yogurt with strawberries and told Ms. Funk that she didn't believe that Q.H. was allergic despite being told about a prior allergic reaction and doctor's orders not to give Q.H. any strawberries. (*See* June 5, 2011 Report in Trial Exhibit 7). On another occasion in April, 2011, the birth mother gave Q.H. a strawberry fruit smoothie despite being told not to give her strawberries. (*See* June 5, 2011 Report in Trial Exhibit 7). On October 7, 2011, Janee Ackerley reported that she observed the birth mother feeding strawberries to Q.H. again and when Ms. Ackerley confronted her



about this, the birth mother stated that she didn't believe that Q.H. was allergic to strawberries. (*See* October 7, 2011 Report in Trial Exhibit 6). After this incident, Q.H. had some splotches on her face. (*See* October 7, 2011 Report in Trial Exhibit 6). These incidents show the birth mother's disregard for medical advice regarding Q.H. and lack of concern for a potentially dangerous medical condition.

There was also evidence that Q.H. had nightmares after returning from unsupervised visits with the birth mother and that she acted differently when she returned from visits with the birth mother compared to how she acted when she returned from visits with the birth father. (*See* March 27, 2011 Report in Trial Exhibit 7). When she returned from visits with the birth mother, she was not happy, very sensitive, would not listen and didn't talk about the birth mother, but when she returned from visits with the birth father, she was happy and talked all about her visit. (*See* March 27, 2011 Report in Trial Exhibit 7). There was also a visit on March 7, 2011 when the birth mother ended her visit with Q.H. early and Q.H. was unusually afraid of her bath that night. (*See* June 5, 2011 Report in Trial Exhibit 7). The parent aide felt that something was off about the day's events and did not believe the birth mother's account of what happened that day. (*See* June 5, 2011 Report in Trial Exhibit 7). Additionally, Q.H. would act relieved to

see the parent aide after her unsupervised visits with the birth mother were over. (See June 5, 2011 Report in Trial Exhibit 7).

This evidence supports the trial court's finding that the birth mother had the potential to cause future harm to Q.H. and, therefore, the trial court's termination of the birth mother's parental rights should be affirmed.

## **2. The Trial Court's Findings Link the Birth Mother's Past Actions to Future Harm to Q.H.**

In its Findings and Recommendations, the trial court goes into depth regarding the birth mother's delusions regarding alleged sexual assaults of herself and her infant daughter, an electronic listening device implanted in her infant daughter's vagina, the drugging of herself and her infant daughter through air vents, the ability of Q.H. to form words and sentences while she was just five months old and the more recent reports by the birth mother that she is developing extra sensory perception and that her nine-month-old son can speak in sentences. (L.F., pp. 86 - 90). The trial court linked the birth mother's delusions regarding rape by Q.H.'s birth father to the potential for future emotional harm to Q.H. if she were told of this delusion. (L.F. p. 93). This conclusion is supported by observations made by two different parent aides who expressed concerns regarding the birth mother having "adult" conversations with Q.H. and sharing everything with her in detail and even

telling Q.H. that she thinks she can read minds. (*See* July 11, 2012 Report in Trial Exhibit 6 and March 27, 2011 Report in Trial Exhibit 7).

The trial court further noted that the birth mother's delusions become her reality which presents a danger to Q.H. and the fact that she is continuing to have delusions presents a clear risk to Q.H. (L.F., p. 93). This conclusion was based on testimony by Dr. Golon, the birth mother's psychiatrist. (*See* Trial Exhibit 15, p. 72:10-23). The trial court also noted the birth mother's history of incidents with domestically violent men, including the birth fathers of both of her children, and the risk of harm to her and her children by continuing to associate with these types of men. (L.F., p. 99). Despite being warned by her own therapist that it is not a good idea to move in with Bruce Birkinbine due to her history, the birth mother did so anyway and is relying on him for sole support. (*See* Deposition of Stanley Golon Dated August 27, 2012, pp. 60:24 – 61:11 in Trial Exhibit 15; July 11, 2012 Report in Trial Exhibit 6). As noted in her treatment records dated May 14, 2012, even after nearly three years of treatment, the birth mother was still working on the treatment goal of establishing and maintaining safe personal boundaries in relationships due to her history of engaging in unhealthy relationships with unclear boundaries and vulnerabilities which

promote perceived violations and abuses. (*See* Treatment Plan Record Dated May 14, 2012 in Trial Exhibit 8).

As noted by the Missouri Supreme Court in *K.A.W.*, a parent's reaction to any sort of treatment or parenting plan can be indicative of their future abilities to parent a child. 133 S.W.3d 1 (Mo. banc 2004). The fact that the birth mother continued to put herself and Q.H. in situations that could cause harm despite years of treatment is indicative of her future ability to parent and is a link to potential future harm to Q.H. As such, the trial court was correct in terminating the birth mother's parental rights to Q.H.

**III. POINT 3: THE COURT ERRED IN TERMINATING MOTHER'S PARENTAL RIGHTS TO Q.H. IN FINDING THAT CLEAR, COGENT, AND CONVINCING EVIDENCE SUPPORTED ITS DETERMINATION, BECAUSE THE TRIAL COURT'S FINDINGS WERE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, IN THAT THE UNDERLYING COURT'S FAILURE TO SUPPORT ITS DETERMINATION BY CLEAR, COGENT, AND CONVINCING EVIDENCE SUPPORTS A CLAIM OF REVERSIBLE ERROR.**

**A. Standard of Review**

The Court of Appeals will affirm the trial court's judgment terminating parental rights unless it is not supported by substantial evidence, is against the weight of the evidence or erroneously applies the law. *In Re Q.M.B.*, 85 S.W.3d 654, 657 (Mo. App. 2002). On review, the Court will consider all evidence and inferences in the light most favorable to the trial court's judgment and disregard all evidence to the contrary. *In Re J.D.*, 34 S.W.3d 432, 434 (Mo. App. 2000). Due regard is given to the trial court's opportunity to judge the credibility of witnesses and a greater deference is granted to a trial court's determination in adoption proceedings than in other types of cases. *In the Matter of I.D.*, 12 S.W.3d 375 (Mo. App. 2000).

Additionally, if one of the grounds for termination is proven, then termination is sufficiently supported and should be upheld. *In the Interest of N.M.J.*, 24 S.W.3d 771, 777 (Mo. App. 2000). The standard of review for the trial court's finding on whether termination is in the best interests of the child is abuse of discretion. *In the Interest of R.S.L.*, 241 S.W.3d 346 (Mo. App. 2007).

## **B. Discussion**

### **1. The Trial Court Acted Within its Discretion in Declining to Follow the Actions in the Kansas Case Concerning the Birth Mother's Other Child.**

The birth mother argues that the trial court did not properly consider the fact that the birth mother had custody of her other child at the time of the termination hearing for Q.H. Evidence of parental custody of a sibling by itself is not sufficient to rebut evidence supporting termination of parental rights. *See E.D.M. v. E.L.M.*, 126 S.W.3d 488 (Mo. App. 2004) (upholding the termination of the birth father's parental rights despite his argument that he can care for E.D.M. because he successfully participated in the reunification plan for E.D.M.'s sibling). There is no caselaw requiring a Missouri Court to follow the custody orders made by an out of state court. As noted by the trial court, it could not second guess the Kansas court's decision, but the Kansas services providers did not seem to have access to the same information as the Missouri service providers. (L.F., p. 93). As such, the trial court acted within its discretion in terminating the birth mother's parental rights based on the evidence presented to it by Missouri service providers.

**2. The Trial Court's Findings Regarding the Failure of the Birth Mother to Provide Support for Q.H., Although Financially Able to Do So, Was Supported by Clear, Cogent and Convincing Evidence.**

It is well settled that every parent has an obligation to support his or her child as fully as his or her means will allow. *In the Matter of B.S.R.*, 965 S.W.2d 444 (Mo. App. 1998). This support obligation is so fundamental that even if there is no child support order, a birth parent is still required to provide financial support to her child and the obligation to provide support “is not dependent upon the state informing [her] of that obligation.” *In the Interest of N.L.B.*, 145 S.W.3d 902 (Mo. App. 2004). The trial court determined that under Chapter 453, during the six (6) months prior to filing the Petition for Adoption, the birth mother “willfully, substantially and continuously failed and neglected to provide the child with necessary care and support.” (See Legal File, p. 115). The birth mother admits that she failed to provide financial support for Q.H. but she argues that this failure should be overlooked because she was allegedly told that she was not required to pay child support, she received a letter stating that she didn’t need to pay child support in May, 2010 and she provided some gifts and clothing during her visits with Q.H.

At trial, it was determined that the birth mother had custody of Q.H. during the same period of time when the birth mother received a letter stating that she didn't need to pay child support. (Tr., pp. 64:10 – 65:22). However, there was no evidence that the birth mother received any further letters stating that she didn't need to pay child support after Q.H. was removed from her custody the second time. Additionally, Brian Alexander, the Children's Services caseworker, refuted the birth mother's testimony that he told her she didn't need to provide support for Q.H. (Tr., p. 23:18 – 19). Respondent C.D.M. also testified at trial that she could only remember the birth mother giving Q.H. clothing on one occasion, several items of which were sized for a child much younger than Q.H. was at the time, and she could only remember the birth mother giving Q.H. a set of dominoes and a watch. (Tr., pp. 51:23 – 52:19).

As noted above, even if the birth mother had not been informed that she was required to provide financial support to Q.H., Missouri law still requires that she do so. *In the Interest of N.L.B.*, 145 S.W.3d 902 (Mo. App. 2004). During her deposition, the birth mother testified that she could have potentially provided \$100 per month in child support and she currently held a gym membership that cost \$44 per month. (See Deposition Dated April 17, 2012, p. 25:2 – 22, in Trial Exhibit 3). She also testified that the man



with whom she was living with at the time of trial gave her up to \$1,000 per month and part of that money could have been used as child support for Q.H. (*See* Deposition Dated April 17, 2012, p. 35:6 – 16, in Trial Exhibit 3).

On appellate review, deference should be given to the trial court's ability to determine the credibility of the witnesses at trial. *See In the Matter of I.D.*, 12 S.W.3d 375 (Mo. App. 2000). The trial court did not believe the birth mother's statements that she was told not to provide financial support, even after she lost custody of Q.H. the second time, and there was ample evidence to support its finding that the birth mother failed to provide support for Q.H. even though she was financially able to do so. As such, the trial court's termination of the birth mother's parental rights should be upheld.

### **CONCLUSION**

The birth mother has failed to overcome her burden of proving that the trial court's judgment terminating her parental rights was not supported by substantial evidence, is against the weight of the evidence or erroneously applies the law. When viewed in the light most favorable to the trial court's judgment on review, there is ample evidence to support the determination that the birth mother has a medical condition that renders her unable to properly care for Q.H. in the foreseeable future, the birth mother had the potential to cause future harm to Q.H. in the future and the birth mother

failed to support Q.H. even though she was financially able to do so. Since the birth mother did not appeal the holding that termination of her parental rights is in Q.H.'s best interests, then as long as the record supports at least one of the grounds for termination, the trial court's decision must be upheld. As such, the trial court's determination was supported by substantial evidence and should be affirmed.

WHEREFORE, Respondent respectfully requests this Court enter its Order affirming the trial court's decision to terminate the birth mother's parental rights to Q.H.

Respectfully submitted,

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#### **RULE 84.06(C) CERTIFICATION**

I hereby certify that Respondents' Brief contains 7,116 words and 767 lines of monospaced type. In determining this count, I relied on Microsoft

Word which was used to prepare the brief. I further certify that

Respondents' Brief complies with the limitations contained in Rule 84.06(c).

/s/ James A. Waits

James A. Waits

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 6th day of December, 2013, the above and foregoing was sent through the e-filing system to:

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