

STATE OF MISSOURI )  
 ) SS  
COUNTY OF ST. LOUIS )

IN THE FAMILY COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI

IN THE INTEREST OF:

	)	DIV. 16
D.W.	)	
Male, 10 years	)	No. 11SL-JU0269
Birthdate: XX/XX/01	)	
PID: XXXXXX	)	
MCID: XXXXX	)	
A.W.	)	DIV. 16
Female, 9 years	)	
Birthdate: XX/XX/02	)	No. 11SL-JU0270
PID: XXXXX	)	
MCID: XXXXX	)	

**FINDINGS AND RECOMMENDATIONS/ORDER,**  
**JUDGMENT AND DECREE OF COURT**

These matters were called and heard, pursuant to the St. Louis County Juvenile Officer's Petitions to Terminate Parental Rights as to both aforementioned juveniles. Both petitions were filed on or about March 10, 2011, in accordance with Sections 211.031 and 211.442 et seq., R.S. Mo.

Evidence was presented on January 13 and 19, 2012. This case was submitted on January 26, 2012.

**I. APPEARANCES**

The children appeared by Guardian ad Litem, Michael E. Myers. The Deputy Juvenile Officer, Julie Kezele, appeared in person and with her counsel, Allison Wolff. Mother A. D. W., appeared in person and with her attorney, Dennis Curland. Father R.L.W., failed to appear, although duly served. Father's attorney, John Bird, appeared. Christine Reeder, caseworker for the Missouri Children's Division, appeared.

## **II. LEGAL STANDARD**

Section 211.447 provides the grounds upon which a court may order the termination of parental rights. The court must find the existence of at least one ground and must find that the termination of parental rights is in each child's best interests. *In re A.S.W.*, 137 S.W.3d 448, 452 (Mo. banc 2003). The state (i.e., the juvenile officer) bears the burden of proof, which must be met by the presentation of "substantial" evidence, which is evidence that, if true, is probative of the issues in the case. *Id.* The court's findings must be supported by "clear, cogent and convincing evidence." Sec. 211.447.5, R.S. Mo. "Clear, cogent and convincing evidence" instantly tilts the scales in favor of termination when weighed against the evidence in opposition and the finder of facts is left with the abiding conviction that the evidence is true. *A.S.W.*, 137 S.W.3d at 453. *In re C.W.*, 211 S.W.3d 93, 99 (Mo. banc 2007).

A judgment terminating parental rights must be based upon more than past conditions. "Regardless of the past, [termination of parental rights] 'requires the trial court to determine that the parent is currently unfit...to be a party to the parent-child relationship.'" *In re K.A.W.*, 133 S.W.3d 1, 20-21 (Mo. Banc 2004), quoting *In re T.A.S.*, 32 S.W.3d 804, 815 (Mo. App. W.D. 2000). While past behavior is one component of finding grounds for termination, the trial court must also assess the extent to which past behavior is predictive of similar issues in the future. *K.A.W.*, at 10. Findings supporting earlier determinations must be updated to address both the parent's current ability and willingness to parent as well as the potential for future harm. *Id.* There must be a prospective analysis with some explicit consideration of whether past behaviors indicate future harm." *Id.* *C.W.* at 98-99.

Based on the evidence adduced, this court makes the following findings of fact by clear, cogent and convincing evidence:

## **III. JURISDICTION**

This court has jurisdiction as required under Sections 211.031, 211.041, 211.181 and 211, 442 et seq., R.S. Mo.

The children have been under the continuing jurisdiction of this court, pursuant to Sections 211.031, 211.041 and 211.181, R.S. Mo., since October 23, 2007.

## **IV. THE PARTIES**

A.D.W. (hereinafter "Mother") is the mother of D.W. (born on XXX, 2001) and A.W. (born on XXX, 2002). XXXXX XXXXX (hereinafter "Father") is the father of both children. The children were both born out of wedlock, when Mother was married to her first husband. (Throughout this Order/Judgment, Dustin and Ann Marie will be referred to as "Children.")

**V. JUVENILE OFFICER'S PETITION AND SECT. 211.455 MEETING WITH COURT**

In support of her petitions to terminate parental rights, the Juvenile Officer claimed the following:

- A. That A.W. had been abused or neglected. On February 15, 2008, the St. Louis County Family Court had adjudicated the child to have been abused by Father.
- B. That the children have been under the jurisdiction of the Family Court of St. Louis County, pursuant to Section 211.031, R.S. Mo., on a continuous basis for a period of at least one year and:
  - 1. the conditions which led to the assumption of jurisdiction still persist; or
  - 2. the conditions of a potentially harmful nature continue to exist, such that there is little likelihood that those conditions will be remedied at an early date so that the children can be returned to Mother or Father in the near future; or
  - 3. the continuation of the parent-child relationship greatly diminishes the children's prospects for early integration in a stable and permanent home.
- C. That Father is unfit to be a party to the parent-child relationship because specific conditions directly relating to the parent-child relationship are of a duration or nature that renders Father unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental or emotional needs of Children.

The petitions were filed on March 10, 2011. Within thirty days after the filing, on March 29, 2011, the juvenile officer met with the court to evaluate issues re summons of service, in accordance with Sect. 211.455.1, R.S. Mo. Furthermore, this court ordered the Children's Division to complete an investigation/social study and a written report to aid the court in determining whether or not termination of parental rights is in the children's best interests (pursuant to Sect. 211.455.3, R.S. Mo.).

**VI. MOTHER AND CONSENT**

On January 13, 2012, Mother, A.D.W, knowingly and freely consented both orally and in writing to the termination of parental rights in, to and over the children, D.W. and A.W. Termination of parental rights of Mother is, therefore, justified under Section 211.444, R.S. Mo. This court finds that the termination of parental rights of Mother is in the best interests of the children.

## **VII. GROUNDS/FINDINGS AGAINST FATHER**

### **A. Abuse and Neglect (Pursuant to Section 211.447 (2))**

On February 15, 2008, this court found that Father had abused or neglected A.W., finding that he had sexually abused her, by subjecting her to “sexual contact.” Father, D.W. and A.W. were members of the same household at the time of the sexual abuse.

According to Section 211.447(2), after a finding of abuse or neglect has been made, in determining whether to terminate parental rights, the court must consider and make findings on the following:

#### **1. Mental Condition**

*Does the parent have a mental condition which is “shown by competent evidence either to be permanent or such that there is no reasonable likelihood that the condition can be reversed and which renders the parent unable to knowingly provide the child(ren) the necessary care, custody and control”? (Section 211.447.5(2) (a), R.S. Mo.)*

There was no evidence presented at the hearing that established that Father suffers from any mental condition which cannot be reversed and which renders him unable to knowingly provide the children with the necessary care, custody and control.

#### **2. Chemical Dependency**

*Does the parent have a “chemical dependency, which prevents the parent from consistently providing the necessary care, custody and control of the children and which cannot be treated so as to enable the parent to consistently provide such care, custody and control”? (Section 211.447.5(2) (b), R.S. Mo.)*

There was no evidence presented at the hearing that established that Father has a chemical dependency that prevented him from consistently providing the necessary care, custody and control of the children and which cannot be treated so as to enable the parent to consistently provide such care, custody and control.

#### **3. Act(s) of Physical, Emotional or Sexual Abuse**

*Did the parent commit a “severe act or recurrent acts of physical, emotional or sexual abuse toward the child or any child in the family..., including an act of incest, or by another under circumstances that indicate that the person knew or should have known that such acts were being committed toward the child or any child in the family”? (Section 211.447.5(2) (c), R.S. Mo.)*

On February 15, 2008, this court found that Father had knowingly engaged in at least one, severe act of sexual abuse, by digitally penetrating A.W.'s vagina. This court found that this act of sexual contact was done for the sole sake of sexually arousing Father. At the time of this incident, D.W. lived in the same home with A.W. and Father.

4. Parental Support

*Did the parent repeatedly or continuously fail – while physically or financially able – to provide the children “with adequate food, clothing, shelter or education as defined by law, or other care and control necessary for the child’s physical, mental, or emotional health and development”?* (Section 211.447.5(2) (d), R.S. Mo.)

There was no evidence presented at the hearing to show that Father failed to provide support to his children. The Children’s Division case worker was unaware of any failure on Father’s part in this regard.

NOTE: This court also finds that the children have been in foster care for at least 15 of the past 22 months (in accordance with the requirements imposed by *In re K.M.*, 249 S.W.3d 265 (Mo. App. W.D. 2008).

B. Failure to Rectify (Pursuant to Section 211.447.5(3))

According to Section 211.447(3), R.S. Mo., if a child has been under the jurisdiction of the juvenile court for a period of one year, and the court finds that:

1. The conditions which led to the assumption of jurisdiction still persist; or
2. The conditions of a potentially harmful nature continue to exist; or
3. There is little likelihood that those conditions will be remedied at an early date so that the child can be returned to the parent in the near future; or
4. The continuation of the parent-child relationship greatly diminishes the child’s prospects for early integration into a stable or permanent home ...

The court must then make certain considerations and findings to determine whether or not to terminate parental rights pursuant to Section 211.447(3).

In making its findings under this allegation, this court incorporates the findings that were made in the previous section (“Abuse and Neglect”).

This court first finds that the children have been under the jurisdiction of the juvenile court for at least a period of one year. On February 15, 2008, this court found that Father had abused A.W. Both she and her brother have remained continuously under this court’s jurisdiction since October, 2007.

## 1. Conditions Still Persist

This court next finds by clear, cogent and convincing evidence that the conditions which led to the assumption of jurisdiction continue to exist. Father has not completed his sexual offenders' program, despite repeated efforts to get him to comply with all of the services offered to him. C.D. case workers and juvenile officers regularly attempted to encourage Father to participate in the court-ordered sexual offenders' program. Father has been on notice for years. Numerous court judgments ordered Father to participate in therapy and counseling, including the sex offenders' programs.

*A review of the underlying care and protection cases (cause numbers 07SL-JU841 and 842) reveals the following:*

This court originally ordered (on March 31, 2008) Father to initiate and/or continue participation in individual counseling, until successfully discharged. Father next signed a Service Plan on April 16, 2008, agreeing to attend and participate in psychological and psychiatric counseling. On that day, he also agreed to participate in any program or class that was recommended as a result of such evaluations.

At the following review hearing, on May 20, 2008, this court ordered Father to "continue participation in individual or group counseling as directed by therapeutic professionals." This included a "psycho-sexual" therapy group with therapist Susan McGuire.

This court continued to order Father to participate in individual or group counseling as directed by the therapeutic professionals at the following review hearings: July 24, 2008; October 21, 2008; January 13, 2009; April 3, 2009; June 16, 2009; October 20, 2009; March 9, 2010 and May 27, 2010. This court eventually started to specifically order Father to participate in "sex-offender counseling" on January, 13, 2009. This specific order was included in all future review judgments: April 3, 2009; June 16, 2009; October 20, 2009; March 9, 2010; May 27, 2010; August 2, 2010; October 21, 2010; February 8, 2011; and July 19, 2011. (This court regularly warned Father of the ramifications of his failure to comply with these court orders.)

This court also notes that Father had other related sexual allegations raised throughout the adjudication and review process. He and his wife would regularly walk around their residence with no clothing on at all – often in front of the children. Furthermore, the couple would occasionally engage in sexual intercourse in the presence of the children.

Due to Father's failure to complete the sexual offender's program, there is no reason for this court to believe that he has been treated. There is no reason to believe that he would not re-offend. Indeed, the conditions that led to the assumption of jurisdiction continue to exist. A letter written by the Children's Division case worker, Andrea Renshaw, on June 11, 2009, best summarizes the situation: Because of his refusal to address the concerns regarding A.W.'s sexual

abuse, “Mr. W. has not made any significant change that would alleviate any of these safety concerns that initially brought (the children) into care.”

## 2. Potentially Harmful Conditions Continue

An untreated Father clearly presents a risk of re-offending. This court finds by clear, cogent and convincing evidence that the conditions which led to the assumption of jurisdiction (as described in the previous paragraphs) are also of a “potentially harmful nature.” They clearly continue to exist.

## 3. Conditions Unlikely to Be Remedied Soon

One of the critical aspects of completing a sexual offenders’ program is obtaining the participant’s acceptance of responsibility, admitting that he engaged in the behavior that caused him to be referred to the program. Father has repeatedly refused to participate in the program, denying his culpability. His group therapist, Susan McGuire, indicated at the outset (on July 9, 2008) that “R.L.W.’s explanation of the events that led to his children’s removal is full of contradictions. He focuses on miniscule points versus the entire picture. This complete denial of any kind of (responsibility) other than the marital conflict issues may be somewhat of a smokescreen to avoid looking at more emotionally charged problems.” Progress was not being made a year later, as Father’s therapist, Mark Tobin, indicated on June 9, 2009: “It is noted that Mr. W. has vehemently denied all sexual abuse allegations and therefore is not a viable candidate for sexual abuse rehabilitation forms of therapy. Admission to perpetration is a primary requisite for such forms of therapy.” Two years later, there was still no progress made...

Given Father’s constant unwillingness to remedy the situation up to this date, this court finds by clear, cogent and convincing evidence that it is extremely unlikely that he will remedy the situation over the next few months (at an “early date”) so that the children can be returned to him in the near future. Father has had four years to address his problem. Circumstances have not changed to suggest that he may suddenly have a change of heart. (Moreover, he has clearly indicated his refusal to participate any further in the designated sexual offender programs...)

## 4. Children’s Prospects for Early Integration Will Be Greatly Diminished

Many years have passed since this court made a finding that Father committed a sexual act against his daughter, A.W. The termination proceedings were delayed considerably to see if Mother could provide the children with a safe nurturing environment; she was unable to do so (although at times, she showed signs of being able to care for her children). Any further delay would be futile: this court finds by clear, cogent and convincing evidence that to give Father another opportunity to complete the sexual offenders’ program would greatly diminish the children’s prospects of “early integration into a stable and permanent home.” As the children get older, there is obviously less of an opportunity for them to attain permanency. They have waited four years for their parents to comply with previous court orders. (In that period of time, the children have never been returned to the custody of either parent.)

This court also needs to consider that the children's therapist has never recommended that the children have any contact whatsoever with Father. In the nearly two and a half years that she had been providing therapy to the children, therapist Mary Jo Price never believed that A.W. was ready for any sort of visitation with Father. She simply had not made sufficient progress as of July, 2010. Father's unwillingness to accept responsibility caused this court to not allow visitation of any kind between Father and his children.

Having made the findings above, this court must now consider whether to terminate parental rights pursuant to this section. In determining whether to do so, this court must consider and make findings on the following:

1. "The terms of a social service plan entered into by the parent and the Children's Division and the extent to which the parties have made progress in complying with those terms."

Father entered into a service plan with Children's Division on April 16, 2008. Some of the terms of the plan included obtaining a psychological/psychiatric evaluation approved by the Children's Division; satisfactory attendance and participation in psychological/psychiatric counseling; and participation/completion of "any program, class or other course of action recommended as a result of an evaluation on conducted pursuant to" the aforementioned evaluations. As has been described, this court finds by clear, cogent and convincing evidence that Father has not made progress in complying with all terms of the service plan. Father clearly made progress on many (if not most) of the terms – but his failure to make progress in the sexual offender's program cannot be ignored or minimized.

2. "The success or failure of the efforts of the juvenile officer, the efforts of the juvenile officer, the division or other agency to aid the parent on a continuing basis in adjusting his circumstances or conduct to provide a proper home for the child."

This court finds by clear, cogent and convincing evidence that the deputy juvenile officer and Children's Division case worker certainly attempted to aid Father in adjusting his circumstances and/or conduct. There was no credible testimony presented to suggest otherwise. The C.D. case workers made all the necessary arrangements to connect Father with the counselors and therapists. Father clearly knew that his failure to cooperate with the service providers would be an obstacle to his chances of having even supervised contact with his children. He accordingly chose not to adjust his circumstances or conduct.

3. "A mental condition which is shown by competent evidence either to be permanent or such that there is no reasonable likelihood that the condition can be reversed and which renders the parent unable to knowingly provide the child the necessary care, custody and control."

The juvenile officer presented no evidence to suggest that Father suffers from a mental condition that rendered him unable to provide the children the necessary care, custody and control.

4. “Chemical dependency which prevents the parent from consistently providing the necessary care, custody and control over the child and which cannot be treated so as to enable the parent to consistently provide such care, custody and control.”

The juvenile officer presented no evidence to suggest that Father has a chemical dependency which prevents him from providing his children with the necessary care, custody and control.

C. Unfit to Parent (Pursuant to Section 211.477.5(6))

In making its findings under this allegation, this court incorporates the findings that were made in the previous two sections (i.e., “Abuse and Neglect” and “Failure to Rectify”).

As was indicated in these sections, Father is unwilling to comply with the directives of the court-ordered sex offender programs. This court finds by clear, cogent and convincing evidence that his failure to attain the treatment he needs renders him unable, for the reasonably foreseeable future to care appropriately for the ongoing mental or emotional needs of the children. (He does, however, have the ability to meet their physical needs.)

D. Best Interests Findings

Pursuant to Section 211.447.7, R.S. Mo, this court has evaluated and makes the following findings by a preponderance of the evidence (and by clear, cogent and convincing evidence as well) as to the following factors which are appropriate and applicable to this cause:

1. Emotional Ties (Section 211.447.7(1))

As the children were young at the time they were taken into protective custody, and because they have essentially not seen Father for more than four years, this court finds that the children’s emotional ties to Father are currently not substantial.

2. Regular Visits or Contact (Section 211.447.7(2))

Father has not completed his sex offender treatment. Furthermore, the children’s therapist has indicated that (in part, because of his lack of treatment) contact with Father would not be in their best interests. Consequently, Father has not been awarded any visitation (even supervised) with the children.

3. Financial Contributions or Support (Section 211.447.7(3))

The Children's Division provided no evidence to suggest that Father failed to provide financial support for his children.

4. Additional Services (Section 211.447.7(4))

There was no evidence presented to suggest that additional services for Father would be likely to bring about "lasting parental adjustment enabling a return of the child to the parent within an ascertainable period of time."

5. Parental Disinterest (Section 211.447.7(5))

Father's failure to obtain treatment (which, in turn, precludes him from seeing his children) suggests that he has some disinterest and questionable commitment to the children.

6. Felony Conviction(s) (Section 211.447.7(6))

There was no evidence presented that Father has been convicted of any felony offenses.

7. Risk of Physical or Mental Harm (Section 211.447.7(7))

Father has still not obtained treatment. Consequently Father's untreated issues subject both children to a substantial risk of physical and/or mental harm if the children were to be reunited with Father.

**VIII. BEST INTERESTS OF CHILDREN RE TERMINATION OF FATHER'S PARENTAL RIGHTS**

This court finds, based upon the evidence presented, that it is in the best interests and welfare of the children, D.W. and A.W., that the parental rights of Mother, A.D.W., and Father, R.L.W., be terminated.

**IX. ATTORNEYS' FEES**

- A. **John Bird**, the attorney for the father, has rendered services on behalf of the father in the reasonable value of \$ (To be determined, hereinafter referred to as "TBD"), to be paid by Missouri Children's Division.
- B. **Dennis Curland**, the attorney for the mother, has rendered services on behalf of the mother in the reasonable value of \$ TBD, to be paid by Missouri Children's Division.
- C. **Michael Myers**, the guardian ad litem for the minor children has rendered services on behalf of the minor children in the reasonable value of \$ TBD, to be paid by Missouri Children's Division.

**X. ORDERS, JUDGMENTS, DECREES**

- A. Wherefore, it is hereby Ordered, Adjudged and Decreed that the parental rights of the following persons to D.W. (born on XX, 2001) and A.W. (born on XX, 2002) are hereby terminated:
1. A.D.W., mother of the children; and
  2. R.L.W., father of the children.
- B. The court continues jurisdiction over D.W. and A.W., pursuant to Sections 211.021 and 211.041, RSMo., and orders that custody of said children be awarded to the Missouri Children’s Division for foster care and for recommendation to the court concerning transfer of lawful custody of the children, from foster care to the best available adoptive parents. The court, upon receipt of such recommendation, may transfer the lawful custody of the children for purposes of adoption to the best available adoptive home, subject to the right to supervise the care of the children and right to resume custody being retained by the Missouri Children’s Division, without cost to the County, and subject to the continuing jurisdiction of the court pursuant to Section 211.041, RSMo.
- C. Michael Myers, guardian ad litem for the children, is awarded a fee of \$TBD for services rendered. Said fee to be a judgment in favor of the attorney and guardian ad litem and against and against Missouri Children’s Division. Dennis Curland, attorney for the mother, is awarded a fee of \$ TBD for services rendered. Said fee to be a judgment in favor of the attorney and against Missouri Children’s Division. John Bird, attorney for the father, is awarded a fee of \$ TBD for services rendered. Said fee to be a judgment in favor of the attorney and against the Missouri Children’s Division. Additional costs are waived.
- D. The underlying care and protection cases remain set for permanency planning review hearings under the cause numbers 07SL-JU0641 and 07SL-JU0642. The next hearing is scheduled for May 14, 2011 at 9:00 a.m.

SO ORDERED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judge

NOTICE OF ENTRY OF FINDINGS/RECOMMENDATION,  
ORDER, JUDGMENT AND DECREE

The undersigned clerk hereby certifies that a true and complete copy of the foregoing Order, Judgment, and Decree of Court entered herein was served upon the following parties and attorneys of record by mailing same in the United States Mail, first class, postage prepaid to:

Mother

Father

Attorney for Mother, Dennis Curland, 225 S. Meramec, Ste. 1123T, St. Louis, Mo 63105

Attorney for Father, John Bird, 906 Olive St., Ste. 1115, St. Louis, Mo 63101

Guardian ad Litem, Michael Myers, 7777 Bonhomme Ave., Ste. 1300, St. Louis Mo 63105

Christine Reeder, Children's Division, 9900 Page Blvd., St. Louis, Mo 63132

Julie Kezele, Family Courts Center

Allison Wolff, Family Courts Center

On the \_\_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_  
Clerk