STATE OF IDAHO)
County of KOOTENAI)ss

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CLERK OF DISTRICT COURT

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Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

In the Matter of: **T.Y.** **DOB: 11/26/01** **A Child Under 18 Years of Age.**	)	Case No. **CV 2007 2226** **MEMORANDUM DECISION AND ORDER ON APPEAL FROM MAGISTRATE DIVISION (termination of parental rights)**

For the Appellant DyAnne Heinemeyer: Sarah L. Sears, Dep. Public Defender
For the Respondent Department of Health & Welfare: Denise L. Rosen, Dep. Atty. Gen.
For CASA: Daniel G. Cooper, Conflict Public Defender

I. PROCEDURAL HISTORY AND BACKGROUND.

On March 28, 2007, a child protective petition was filed by the Kootenai County Prosecuting Attorney alleging abuse and an unstable home environment as a result of T.Y.'s teacher having discovered bruising on him. Tr., p. 611. On March 29, 2007, a public defender was appointed to represent T.Y.'s mother, DyAnne Heinemeyer (Heinemeyer). Jurisdiction under the Child Protective Act was found based on abuse and an unstable home environment. *Id.;* Findings of Fact, Conclusions of Law for Legal Custody, filed May 4, 2007. The next week, on May 11, 2007, the Kootenai County Prosecuting Attorney withdrew from the case. On December 14, 2007, Brian Sturdy, T.Y.'s biological father, voluntarily terminated his parental rights. Tr., p. 611.

A petition to terminate the parental rights of the mother Heinemeyer, the appellant in this action, was filed by the State of Idaho Department of Health and Welfare (Department)

on June 19, 2008. In that petition the Department alleges Heinemeyer failed to comply with the applicable case plan, reunification with T.Y. had not occurred within the statutory time period, termination was in the best interest of T.Y., and Heinemeyer was unable to discharge her parental responsibilities.

Trial on the termination of Heinemeyer's parental rights was held on March 11, 2009, March 15, 2009, April 8, 2009, and April 22, 2009. On May 28, 2009, Magistrate Judge Barry Watson issued his decision finding T.Y. had been neglected by Heinemeyer, that reunification with Heinemeyer had not occurred within the statutory time period, and that termination was in the best interest of T.Y. Tr., p. 643. Heinemeyer filed her Notice of Appeal on June 3, 2009. Heinemeyer filed her "Brief of Appellant" on September 23, 2009. She raises two issues on appeal: 1) the trial Court erred in finding sufficient evidence to terminate her parental rights; and 2) the trial Court erred in not allowing T.Y. to testify during the trial. Brief of Appellant, p. 3. The Department filed "Respondent's Brief" on October 22, 2009. On November 10, 2009, Heinemeyer filed her "Reply Brief of Appellant." CASA has not filed any briefing.

This appeal was assigned to District Judge Charles Hosack. Upon Judge Josack's retirement on December 31, 2009, this case was administratively re-assigned to District Judge Benjamin Simposon. On March 1, 2010, Judge Simpson disqualified himself, and this appeal was administratively re-assigned to District Judge John Mitchell. On May 12, 2010, oral argument on appeal was held.

II. STANDARD OF REVIEW.

Ordinarily, setting forth the standard of review on appeal is perfunctory. In the present case, due to Heinemeyer's failure to recognize the standard of review, the standard of review itself is dispositive of this appeal. The Idaho Court of Appeals clarified

the standard of review in termination of parental rights cases in *Doe v. State of Idaho, Department of Health and Welfare,* 123 Idaho 502, 849 P.2d 963 (Ct.App. 1993):

> Our standard of review in actions to terminate parental rights encompasses several well recognized principles. We first note that the grounds for termination of a parent-child relationship must be shown by clear and convincing evidence. *Santosky v. Kramer,* 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed. 599 (1982); *In re Aragon,* 120 Idaho 606, 818 P.2d 310 (1991). In the instant case, the magistrate explicitly applied that burden to the factual and legal questions presented to him for resolution. Insofar as reviewing the factual findings made by the magistrate **we will not disturb any findings supported by substantial, competent evidence and we will draw all reasonable inferences in support of the magistrate's judgment.** *In re Aragon, supra.* With respect to the appellate decision of the district court, that determination will be given due regard but we will review the trial record independently from the district court's decision. *Doe v. State, Dep't. of Health and Welfare,* 122 Idaho 644, 837 P.2d 319 (Ct.App. 1992).

Doe, 123 Idaho 502, 502, 849 P.2d 963, 964. (bold added). Findings of the trial court will be upheld when they are supported by substantial and competent evidence, even if the evidence before the trial court is conflicting. *Doe v. Roe,* 133 Idaho 805, 807, 992 P.2d 1205, 1207 (1999). While Heinemeyer quoted this legal standard of review mandated upon *this Court* on appeal on one occasion in her briefing (Brief of Appellant, p. 3), she immediately thereafter spun the standard back on the trial Court by framing the issue as: "The [trial] Court erred in finding sufficient evidence to terminate Ms. Heinemeyer's parental rights." *Id.* Thus, the standard on appeal before this Court is not whether Magistrate Watson at trial found sufficient evidence to terminate Ms. Heinemeyer's parental rights, as Heinemeyer now claims, but rather, the standard on appeal before this Court is whether Magistrate Watson's findings were supported by substantial competent evidence. Additionally, when reviewing orders terminating parental rights, as the Court reviews findings, it will "indulge all reasonable inferences in support of the trial court's judgment." *In re Aragon,* 120 Idaho 606, 608, 818 P.2d 310, 312 (1991).

I

III. ANALYSIS.

A. THE TRIAL COURT'S FINDINGS THAT THERE WAS CLEAR AND CONVINCING EVIDENCE WHICH SUPPORTED THE TERMINATION OF HEINEMEYER'S PARENTAL RIGHTS IS SUPPORTED BY SUBSTANTIAL COMPETENT EVIDENCE FOUND IN THE RECORD.

Heinemeyer argues Magistrate Judge Watson erred in finding: she was not compliant with the case plan; finding the Department's efforts to reunite T.Y. with Heinemeyer had not "borne fruit"; and finding termination was in T.Y.'s best interest. Appellant's Brief, pp. 4-10. In response, the Department argues the findings made by Judge Watson were amply supported by substantial and competent evidence. Respondent's Brief, p. 4.

At issue here is the trial Court's finding of negligence, which in turn permits the Court to grant an Order of Termination where termination is in the best interest of the child. I.C. § 16-2005(1). The Idaho Supreme Court has held that *any* statutory grounds for termination under I.C. § 16-2005 are independent. That is, if *any one or more* of the grounds for termination are found, termination may be granted. Idaho Code § 16-2005 reads:

> The court may grant an order terminating the relationship where it finds that termination of parental rights is in the best interests of the child and one (1) or more of the following conditions exist:
>
> a) The parent has abandoned the child.
> b) The parent has neglected or abused the child.
> c) The presumptive parent is not the biological parent of the child.
> d) The parent is unable to discharge parental responsibilities and such inability will continue for a prolonged indeterminate period and will be injurious to the health, morals or well-being of the child.
> e) The parent has been incarcerated and is likely to remain incarcerated for a substantial period of time during the child's minority

I.C. § 16-2006(1)(a)-(e). The question for this Court is whether the findings of Magistrate Watson are supported by substantial and competent evidence.

I

1. The Trial Court's Finding That Heinemeyer Failed to Comply with the Case Plan is Supported by Substantial Competent Evidence.

Heinemeyer goes to some length to cite to the transcript of the trial and demonstrate her compliance with the case plan in this matter. Appellant's Brief, p. 4-6. However, the first discussion she engages in spells out the nine instances *where she did not comply* with the Department's case plan. *Id.,* p. 4. In doing so, Heinemeyer recites the very same substantial and competent evidence which supports the finding. Heinemeyer in her briefing acknowledges testimony was heard by the trial Court regarding: Heinemeyer's behaving uncooperatively and claiming to have completed the case plan before having done so; hostility and uncooperativeness Heinemeyer expressed toward the Department; Heinemeyer's living with her fiancée in Wallace, Idaho, but not having had a background check completed on the fiancée as required by the Department for risk-assessment purposes; Heinemeyer's not having participated in staffing or serviced for T.Y.; Heinemeyer's noncompliance with the case plan; Heinemeyer's not having taken initiative to contact T.Y.'s therapist; and Heinemeyer's own mental health diagnosis. Appellant's Brief, pp. 4-5. It is a mystery how Heinemeyer can engage in such a frank discussion with this Court about the very "substantial and competent evidence" which supported the trial Court's finding of lack of compliance with that Court's case plan, and yet completely ignore that "substantial competent evidence" standard to which this Court must hold itself to on appeal.

Heinemeyer goes on to point out the trial Court also heard evidence regarding: the stable and appropriate housing she provided (presumably Heinemeyer's father's home); the parenting classes she attended; her having sought continuous care from a psychosocial rehabilitation (PSR) worker and counselor [it is unclear whether Heinemeyer

actually ever received PSR services; while she received counseling services, she states only "Ms. Heinemeyer had been actively seeking services with a PSR worker since the start of the case" (Appellant's Brief, p. 5)]; her cooperation with regard to ensuring her home was fit for T.Y. to return; her agreeing to unannounced DHW visitation; and her asking for visitation with T.Y. each time she was contacted by a DHW employee. *Id.,* p. 5. Heinemeyer argues:

> There exists ample evidence that Ms. Heinemeyer complied with the Department's case plan to the best of her ability and, indeed, as testified to by her mental health counselor, has made progress in the area of stress management.

Id., p. 6. The only way for Heinemeyer to make that argument is for Heinemeyer to ignore the standard of review on appeal to this Court, because Heinemeyer makes that argument after she recited all the substantial and competent evidence to support the trial Court's finding that she did not comply with the case plan. In making this argument, Heinemeyer also misconstrues the standard before the trial Court. It is not whether "Heinemeyer complied with the Department's case plan to the best of her ability". The issue is whether the trial Court's finding that she did not comply with the case plan is supported by substantial and competent evidence.

The Department replies Heinemeyer "grossly understates the facts relied upon by the court in reaching its decision." Respondent's Brief, p. 4. The Department points out to this Court the testimony heard by the trial Court on Heinemeyer's minimal progress on the case plan; the detached mother-child relationship with T.Y.; T.Y.'s not wanting to see his mother; Heinemeyer's agitation, opposition and claims to have already complied with the case plan; and the improvement in T.Y.'s demeanor, behavior, and general well-being after visits with Heinemeyer were stopped, *inter alia. Id.,* pp. 4-7.

Even after being redirected as to the standard of review upon this Court by the

Department in its brief, counsel for Heinemeyer fails to recognize the standard of review to which this Court must be held on appeal. In her Reply Brief of Appellant, Heinemeyer's entire argument on this issue is as follows:

> As argued in the Appellant's Brief, there is evidence that demonstrates that Ms. Heinemeyer consistently maintained stable and appropriate housing for her children, she supplied the Department with certification that she had been attending the appropriate parenting classes, sought continuous care from a PSR worker and counselor, and cooperated with the Department to ensure her home was fit for the return of [T.Y.].
>
> Furthermore, Ms. Heinemeyer had actively been seeking services with a PSR worker since the start of the case and had been consistently receiving counseling services. (Tr., p. 51, ll. 14-21; p. 54, ll. 13-17; p. 97; ll. 6-10; pp. 100-01, ll. 2025, 1-7).

Reply Brief of Appellant, p. 1. That is it. Ignoring the standard of review will not make it magically disappear.

The problem now faced by Heinemeyer in this appeal is that the trial Court was faced with evidence both in support of and in opposition to her having properly complied with the case plan. The trial court's findings need only be supported by substantial and competent evidence, not uncontradicted or non-conflicting evidence. *See Doe v. Roe,* 133 Idaho 805, 807, 992 P.2d 1205, 1207. In *Department of Health & Welfare v. Doe,* 147 Idaho 353, 209 P.3d 650 (2009), the Idaho Supreme Court wrote:

> Although this case is not as clear-cut as most parental termination cases that come before this Court, there is substantial, competent evidence in the record supporting terminating Appellants' parental rights. Appellants failed to comply with the magistrate court's orders to complete their case plan, which meets the definition of neglect in I.C. § 16-2002(3).

147 Idaho 353, 356, 209 P.3d 650, 653. In *Doe,* the Supreme Court notes the parents only complied with a portion of the case plan created in that case; they tried to keep a clean home, installed locks and alarms, and tried to incorporate discipline. 147 Idaho 353, 354, 209 P.3d 650, 651.

> However, Appellants did not complete all of the case plan requirements. Specifically, the husband had trouble maintaining employment and did not feel that he or his wife needed counseling. Appellants did not follow Northstar's recommendations, they never set up daycare, and they did not follow the safety plan.

Id. The facts of *In re Doe,*142 Idaho 594, 597-98, 130 P.3d 1132, 1135-36 (2006), differ from those in the instant matter and those in *Doe. In re Doe* involved a mother who had violated conditions of her juvenile probation, served juvenile detention, and had a subsequent drug-related arrest, but at the termination trial, several witnesses testified to her recent successes and that termination was not in the child's best interest. 142 Idaho 594, 596-98, 130 P.3d 1132, 1134-36. There, the Supreme Court's held a termination case could not focus solely on past behavior while disregarding relevant and competent evidence. 142 Idaho 594, 597, 130 P.3d 1132, 1135.

In the present case, Heinemeyer does not argue that the evidence relied upon by the Court was not substantial or competent; she simply points the Court to what "the evidence also indicates." Appellant's Brief, p. 5. Indeed, that is all Heinemeyer does is point out the evidence going both ways. Heinemeyer not once mentions the "substantial competent evidence" standard as it applies to the evidence before the trial Court. Heinemeyer fails to make any argument that the trial Court's findings were not supported by "substantial competent evidence." Heinemeyer states ample evidence exists that she complied with the case plan. However, that is not sufficient to grant Heinemeyer the relief she seeks. In fact, *In re Aragon,* 120 Idaho 606, 608, 818 P.2d 310, 312, requires this Court to draw all reasonable inferences in favor of Judge Watson's finding that Heinemeyer failed to comply with the case plan. This Court cannot now disturb the trial court's findings, despite the evidence below arguably being conflicting, where such findings were based on relevant evidence in the record, evidence a reasonable person may accept to support a

conclusion. *See Lamar Corp. v. City of Twin Falls,* 133 Idaho 36, 43, 981 P.2d 1146, 1153 (1999) (defining substantial and competent evidence in a land use case).

This Court could not agree more with the Department's statement that Heinemeyer's *own brief* shows: "the evidence that Ms. Heinemeyer had not complied with her case plan is overwhelming." Respondent's Brief, p. 5.

2. The Trial Court''s Finding That the Department Took Reasonable Steps to Reunite T.Y. With Heinemeyer is Supported by Substantial Competent Evidence.

With regard to reunification efforts, the same arguments are set forth by both parties, each pointing to different portions of the record in support of their contention that Judge Watson based his decision on substantial, competent evidence, or not. Heinemeyer concedes the Court heard testimony that T.Y. did not want to return to her, that he wanted to be adopted, and that a Department employee found Heinemeyer unable to provide necessary care and the nurturing, stable home T.Y. needed. Appellant's Brief, p. 6. Heinemeyer then points to her own testimony indicating she made changes to her home to comply with the instructions of Department; she complied with all requests to supply forms and release information; she informed the Department she was on medication, was receiving counseling and PSR services, and had performed a psychological evaluation as requested by the Department; and she had completed numerous parenting classes, which had in turn improved her interactions with her daughter. *Id.* pp. 6-7. The Department replies the trial Court heard extensive testimony to support the Department's having taken reasonable efforts to reunite Heinemeyer and T.Y. Respondent's Brief, p. 7. The Department points out that the case plan itself, which Judge Watson determined Heinemeyer did not comply with as discussed *supra,* sets forth tasks for Heinemeyer to perform to properly address the Department's concerns regarding risks and safety issues;

the case plan also outlined services available to assist Heinemeyer in doing so. *Id.* The Department goes on to discuss the supervised visitation the Department facilitated as part of its "reasonable efforts to reunite Ms. Heinemeyer with [T.Y]." *Id.* The first of these interactions involved a physical altercation between T.Y. and his sister at Silverlake Mall, which Heinemeyer did not step in to resolve or stop. The second took place at the Department and amounted to an observer noting T.Y.'s not wanting to be picked up by Heinemeyer, and his only playing with Heinemeyer for ten to fifteen minutes and then asking his uncle to take Heinemeyer's place for the remainder of the visit. *Id.,* p. 8. Heinemeyer was also unofficially observed with T.Y. at the Silverlake Mall on a separate occasion during which she appeared to be "more on a mission than interested in interacting with T.Y.". *Id.,* pp. 7-8.

Heinemeyer replies:

> Ms. Heinemeyer has consistently sought to maintain a relationship with [T.Y.] and has complied significantly with the Department's case plan. [T.Y.] has been in three different foster homes and would benefit from contact with his mother, who remains committed to the idea of reuniting with her son.

Reply Brief of Appellant, p. 2.

Again, as discussed *supra*, this Court must draw all reasonable inferences in favor of Judge Watson's finding that the Department took reasonable efforts to try to reunite T.Y. with Heinemeyer. *In re Aragon,* 120 Idaho 606, 608, 818 P.2d 310, 312. This Court cannot disturb the trial court's findings, despite the evidence below arguably being conflicting, where such findings were based on relevant evidence in the record which a reasonable person might accept to support the conclusion reached.

Incredibly, as with the preceding section, all Heinemeyer does on this appeal is regurgitate the evidence going both ways which was presented to the trial Court. Never

once does Heinemeyer discuss the "substantial competent evidence standard" applicable to this Court on appeal. As with the preceding section, Heinemeyer fails to even argue how the trial Court's finding that the Department took reasonable steps to reunite T.Y with Heinemeyer is not supported by substantial competent evidence.

3. The Trial Court's Finding That Termination was in the Best Interest of T.Y. is Supported by Substantial Competent Evidence.

With regard to Judge Watson's finding termination in the best interest of the child, the same arguments are again set forth by both parties, and each party again points to different portions of the record in support of their contention that Judge Watson based his decision on substantial, competent evidence, or not. Heinemeyer readily concedes that testimony was introduced at trial that: T.Y.'s visits with Heinemeyer were uncomfortable, appeared forced and unnatural and generally did not go well; visits were suspended after the Department, T.Y.'s PSR worker, and his foster parents determined that continued visitation was not in T.Y.'s best interest; a CASA worker on the case also opined it was not in T.Y.'s best interest to return to Heinemeyer; according to his then foster mother, T.Y. acted out when he knew he was going to visit his Heinemeyer; T.Y. seemed more calm and obsessed less after visits with Heinemeyer were suspended; T.Y. seemed distant with Heinemeyer and did not initiate hugs, but T.Y. did initiate hugs with his foster parents; Heinemeyer seemed stand-offish when T.Y. was pushed down and hit by his sister; T.Y. changed foster families; and the Court reviewed a tape of a visit which took place at the Department's offices and concluded T.Y.'s sister bullied him and Heinemeyer failed to protect T.Y. Brief of Appellant, pp. 7-9. Heinemeyer argues the evidence also demonstrated: she received mental health treatment for her post-traumatic stress, was responding well to counseling, and was dealing better with stress; T.Y.'s being removed from one of the foster homes caused him to appear depressed, he stated he missed his

mother, “but did not express a desire to return to her home”; Heinemeyer was cooperative and communicative in weekly mental health sessions with T.Y. and a counselor from March 2006 to March 2007; and T.Y. had asked to visit with Heinemeyer. *Id.,* pp. 9-10.

The Department argues Heinemeyer’s counselor never observed her interactions with T.Y. as the professional relationship commenced after her move to Wallace, ID. Respondent’s Brief, p. 9. The Department also notes Judge Watson heard testimony from Heinemeyer’s counselor that Heinemeyer’s mental health diagnosis makes it difficult for her to manage demanding children and may impact her ability to reason, but that the support available through the Department and community health care agencies could help her, and, “Ms. Heinemeyer could probably do well with a lot of support.” *Id.,* p. 9. The Department argues Heinemeyer’s failure to comply with the case plan and her seeking counseling only after the permanency plan of termination of parental rights was ordered indicates “she is not able to follow through with what [her counselor] opines is required for her to be successful in managing her diagnosis.” *Id.*

Again, because this Court cannot disturb the trial court’s findings, despite the evidence below arguably being conflicting, findings based on relevant evidence in the record which a reasonable person might accept to support the conclusion reached must be upheld. Heinemeyer does not make the argument that the evidence relied upon by the Court was not substantial or competent. Again, as discussed *supra*, this Court must draw all reasonable inferences in favor of Judge Watson’s finding that termination was in T.Y.’s best interest. *In re Aragon,* 120 Idaho 606, 608, 818 P.2d 310, 312.

B. THE TRIAL COURT DID NOT ERR IN NOT ALLOWING T.Y. TO TESTIFY.

Heinemeyer’s final argument is that, based on Oregon case law, this Court should balance any possible probative value of T.Y.’s testimony against any possible risk of

severe emotional or psychological harm he may suffer and determine Judge Watson erred in not permitting T.Y. to testify during the trial. Brief of Appellant, pp. 10-11, citing *State ex rel. Juvenile Dept. of Tillamook County v. Beasley,* 840 P.2d 78, 84 (or. 1992). Heinemeyer asks this Court to consider the factors listed in *Beasley* including the probability of severe emotion or psychological injury to the child, the degree of the anticipated injury, the expected duration of the injury, and whether such injury would be greater than the reaction of an average child who testifies; only if these factors substantially outweigh the probative value of the child's testimony, may the trial court exclude the testimony. *Id.,* p. 11. Heinemeyer notes the DHW and CASA objected to T.Y.'s testifying and it was argued it was not in the best interest for T.Y. to testify; his testifying would be "overwhelming" to him; he was in a fragile mental state and it was unclear whether he was cognizant enough to provide helpful information. *Id.* Heinemeyer argues T.Y.'s testimony would have been extremely probative with regard to whether visits with Heinemeyer were uncomfortable and did not go well, whether he missed Heinemeyer or had a strong bond with her, and whether interactions with Heinemeyer were forced or unnatural. *Id.,* p. 12. Heinemeyer argues accommodations, such as an in chambers interview, were suggested to lessen any psychological impact.

> Ms. Heinemeyer's rights as a parent are on trial, as such she must have the opportunity to rebut the state's case to the maximum extent allowed by the evidentiary rules. Given the probative value of T.Y.'s testimony and the options available to minimize any ill emotion or psychological effect, it was err [sic] to exclude his testimony.

Id.

The Department argues Judge Watson carefully balanced the benefit of having T.Y. testify. The Department writes:

> The magistrate reviewed his notes from Ms. Holasek indicating that it would clearly not be in his best interest to testify; he balanced the need to qualify

> the witness as to competency to testify based upon his age and he balanced how much weight he would give to the testimony based upon all that he had heard.

Respondent's Brief, p. 10. This Court agrees. The record supports the fact that Judge Watson listened to all the arguments as to whether or not T.Y. should testify, and Judge Watson engaged in appropriate balancing of all competing interests. Tr. p. 574-82.

In Idaho, courts have broad discretion to interview, or not, children in both divorce and termination of parental rights cases; this includes the trial court's right to question a child witness, but not permit cross-examination by a parent's counsel. *State ex rel. Child v. Clouse,* 93 Idaho 893, 899, 477 P.2d 834, 840 (1970). In *Clouse,* the Court recognized the similarity in impact on a child testifying in a divorce case and in a termination of parental rights case and quoted *Krieger v. Krieger,* 59 Idaho 301, 306, 81 P.2d 1081, 1083 (1938):

> It should be observed just here with this kind of examination of an 8-year-old child, in the presence of its parents, is hardly fair to the child. If such an examination is thought proper at all, it should take place out of the presence and hearing of the parents so as to save the child the embarrassment and possible fear of expressing a preference between the father and mother.

The *Clouse* Court went on to state:

> It is a very similar sort of fear and embarrassment that needed to be avoided here, that which would almost certainly have been occasioned by requiring the children to express a preference between their natural mother and foster parents.

93 Idaho 893, 899, 477 P.2d 834, 840.

While *Clouse* is binding upon this Court, the Oregon case cited by Heinemeyer, *Beasley,* is not. Heinemeyer has not demonstrated for this Court that Judge Watson abused his discretion in excluding T.Y.'s testimony in this case. And, as made evident by *Clouse,* even if T.Y.'s testimony were permitted, it does not follow that Heinemeyer's counsel would have been permitted to examine him at all.

IV. CONCLUSION AND ORDER.

For the reasons set forth above, I believe the decision of Judge Watson is affirmed in all aspects.

IT IS HEREBY ORDERED the decision of Magistrate Judge Watson entered May 18, 2009, terminating Heinemeyer's parental rights is AFFIRMED as it is in all aspects supported by substantial competent evidence in the record.

Entered this 13th day of May, 2010.

_____
John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of May, 2010, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	Fax #	Lawyer	Fax #
Sarah L. Sears	446-1701	«Lawyer2»	666-6777
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_____
Jeanne Clausen, Deputy Clerk