

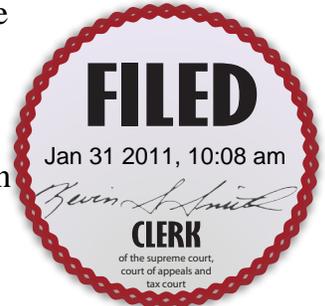
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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE INVOLUNTARY )  
TERMINATION OF THE PARENT-CHILD )  
RELATIONSHIP OF Ca.K. and Co.K., )  
Minor Children, )

J.S., Mother, )  
 )  
Appellant-Respondent, )

vs. )

INDIANA DEPARTMENT OF CHILD )  
SERVICES, )  
 )  
Appellee-Petitioner, )

MONROE COUNTY, Court Appointed Special )  
Advocate (CASA), )

Co-Appellee/Third Party Appellee. )

No. 53A05-1006-JT-345

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APPEAL FROM THE MONROE CIRCUIT COURT  
The Honorable Stephen R. Galvin, Judge  
Cause Nos. 53C07-0911-JT-818, 53C07-0911-JT-819

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**January 31, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

J. S. (Mother) appeals the involuntary termination of her parental rights to her children Ca.K. and Co.K. As the court was within its discretion to deny mother's motion for a continuance and there was ample evidence the conditions resulting in the children's removal will not be remedied, we affirm.

**FACTS AND PROCEDURAL HISTORY**

In 2007, the Monroe County Department of Child Services (DCS) commenced an Informal Adjustment after allegations the children were found playing with a steak knife while outside their house without supervision. Mother was asleep and could not be awakened when police arrived.

In 2008, DCS obtained custody of the children. Mother stipulated to the facts leading to the Informal Adjustment and to allegations she was diagnosed with paranoid schizophrenia and polysubstance abuse and was failing to supervise the children. The court declared the children in need of services (CHINS) and placed them in foster care.

In January 2009, the trial court's Order on Periodic Case Review noted Mother had

not complied with the children's case plan and had not cooperated with DCS, and the "cause of the child's out-of-home placement or supervision has not been alleviated." (App. at 46.) After an evaluation in January and February 2009, a psychologist determined Mother could not provide a safe and appropriate home for the children until her addictive behaviors were under control and until she was psychologically stable. In January of 2010, the court found Mother was "extremely impaired," (*id.* at 37), during parenting times in November of 2009, and that it was in the children's best interests to limit visits with Mother. In November 2009, DCS brought this action to terminate Mother's rights to the children. The trial court heard evidence and then granted the petition in May of 2010.

## **DISCUSSION AND DECISION**

### 1. Denial of Continuance

At the beginning of the termination hearing, Mother moved for a continuance on the ground the children's grandmother had petitioned for guardianship of the children and the hearing on that matter was not scheduled until two months later. The trial court denied the request after DCS noted it had determined placement with Grandmother was inappropriate and the CHINS case had been ongoing for two years.

A ruling on a non-statutory motion for a continuance is within the sound discretion of the trial court. *J.M. v. Marion County Office of Family and Children*, 802 N.E.2d 40, 43 (Ind. Ct. App. 2004), *trans. denied*. Discretion is a privilege afforded a trial court to act in accord with what is fair and equitable in each circumstance. *Id.* A decision on a motion for

continuance will be reversed only upon a showing of both an abuse of discretion and prejudice resulting from such an abuse. *Id.* In reviewing for abuse of discretion, we are concerned with the reasonableness of the action in light of the record. *Id.* at 44. While the facts and reasonable inferences in certain instances might permit a different conclusion, we will not substitute our judgment for that of the trial court. *Id.*

Mother offers no legal authority to support her apparent premise that a trial court is obliged to continue a termination of parental rights proceeding just because a relative has filed for guardianship, and we decline to so limit the trial court's discretion. Nor has she explained why the pending guardianship petition would be negatively affected by moving forward with the termination proceedings.<sup>1</sup>

The trial court heard testimony the children had previously been placed with Grandmother and had twice been removed from that placement. The first removal was because of Grandmother's housing issues. The record does not reflect the reason for the second removal, as the trial court sustained a hearsay objection to that question. After the second removal, the court placed the children in a "pre-adoptive home." (Tr. at 124.)

Delays in the adjudication of a case impose significant costs upon the functions of

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<sup>1</sup> Mother also asserts, without explanation or citation to authority, that the court "foreclosed the possibility of a familial guardianship" by denying the continuance. (Appellant's Br. at 9.) Mother has waived these allegations of error for appeal. Ind. Appellate Rule 46(A)(8)(a) provides: "The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22." When a party does not provide argument and citations, its allegations of error are waived for appellate review. *Watson v. Auto Advisors, Inc.*, 822 N.E.2d 1017, 1027-28 (Ind. Ct. App. 2005).

government as well as an intangible cost to the life of the child involved. *In re C.C.*, 788 N.E.2d 847, 852 (Ind. Ct. App. 2003). While continuances may be necessary to ensure the protection of a parent's due process rights, we must also be cognizant of the strain these delays place upon a child. On this record, we cannot find an abuse of discretion in the denial of the continuance.

2. Termination

We apply a highly deferential standard when reviewing a termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We do not reweigh the evidence or judge the credibility of the witnesses. *Id.* Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.*

Where, as here, the trial court enters findings of fact and conclusions of law in its termination of parental rights, our standard of review is two-tiered. First, we determine whether the evidence supports the findings, and second, whether the findings support the conclusions of law. *In re J.H.*, 911 N.E.2d 69, 73 (Ind. Ct. App. 2009), *trans. denied*. In deference to the trial court's unique position to assess the evidence, we set aside its findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id.* A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it. *Id.* A judgment is clearly erroneous only if the conclusions of law drawn by the trial court are not supported by its findings of fact or the conclusions of law do not support the judgment. *Id.*

“The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution,” *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*, but the law provides for termination of those rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). To terminate a parent-child relationship, the State must prove, in relevant part:

- (B) there is a reasonable probability that:
  - (i) the conditions that resulted in the child’s removal or the reasons for placement outside the home of the parents will not be remedied; or
  - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child; [and]
- (C) termination is in the best interests of the child . . . .

Ind. Code § 31-35-2-4(b)(2). Indiana Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, so DCS was required to establish, by clear and convincing evidence, only one of the two requirements of subsection (B).<sup>2</sup> *In re I.A.*, 903 N.E.2d 146, 153 (Ind. Ct. App. 2009). The State must establish each of these allegations by clear and convincing evidence. Ind. Code § 31-37-14-2; *see also Egly v. Blackford County Dep’t of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992).

The involuntary termination of parental rights is the most extreme sanction a court can impose on a parent because termination severs all rights of a parent to his or her children.

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<sup>2</sup> As explained below, there was ample evidence the conditions that resulted in the children’s removal will not be remedied. We therefore need not address whether the continuation of the parent-child relationship poses a threat to the children’s well-being.

*R.H.*, 892 N.E.2d at 149. Therefore, termination of parental rights is as a last resort, available only when all other reasonable efforts have failed. *Id.* The purpose of terminating parental rights is not to punish the parent but to protect the children involved. *K.S.*, 750 N.E.2d at 832.

A. Whether Conditions will not be Remedied

The conclusion that the conditions that resulted in the children's removal or the reasons for placement outside Mother's home will not be remedied has ample support in the record. To determine whether there is a reasonable probability that the reasons for placement outside the home of the parent will not be remedied, the trial court must judge a parent's fitness to care for her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re I.A.*, 903 N.E.2d at 154. The trial court must also evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. *Id.* Pursuant to this rule, courts have properly considered evidence of a parent's criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *Id.* The trial court may also properly consider the services offered to the parent by DCS and the parent's response to those services as evidence of whether conditions will be remedied. *Id.* Finally, DCS is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. *Id.*

There was evidence before the trial court that Mother was diagnosed with paranoid

schizophrenia, polysubstance abuse, depression, and anxiety. Mother did not believe she had a substance abuse problem or that she was schizophrenic. She told her case manager “many times that she has no problems and that this whole thing is completely and totally unnecessary and unfair.” (Tr. at 120.) She did not complete a substance abuse program and did not cooperate with a court-appointed special advocate (CASA) who was trying to obtain information about her mental health treatment. Some of her visits with the children were cancelled or cut short because of “bizarre behavior,” (*Id.* at 81), such as falling asleep at the dinner table, having trouble reaching her fork to her mouth, and falling asleep in her car after she was asked to leave a visitation. She has never acknowledged “the underlying issues that were in the home when the children were there.” (*Id.* at 131.) She was discharged from outpatient substance abuse treatment for poor attendance. While in the program, she reported a relapse and taking a stimulant drug without a prescription. Shortly before the factfinding hearing she refused a drug screen.

A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there is no reasonable probability that the conditions will change. *In re B.J.*, 879 N.E.2d 7, 18 (Ind. Ct. App. 2008), *trans. denied*. The evidence before the court supports its conclusion there was a reasonable probability that the conditions justifying the children’s removal and continued placement outside the home will not be remedied.

B. Best Interests

Nor did the trial court err in determining termination was in the best interest of the children. In determining what is in the best interests of a child, the court is required to look beyond the factors identified by DCS and look to the totality of the evidence. *In re G.H.*, 906 N.E.2d 248, 253-54 (Ind. Ct. App. 2009). In so doing, it must subordinate the interests of the parents to those of the children. *Id.* at 254. The juvenile court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* A parent's historical inability to provide adequate housing, stability and supervision coupled with a current inability to provide the same will support a finding that termination of the parent-child relationship is in the child's best interests. *Id.*

In *G.H.*, we found termination in the child's best interest because the mother was "unable to make choices to support G.H.'s well-being." *Id.* She demonstrated several troubling patterns of conduct, including failure to regularly take medication to treat her bipolar disorder, inconsistent exercise of visitation, non-compliance with individual and group counseling, and blackout episodes during which she exhibited violent behavior that she did not remember later. "These patterns contribute to Mother's continuing inability to provide a safe and stable environment for G.H. In sum, the record supports the juvenile court's conclusion that termination of Mother's parental rights is in G.H.'s best interests." *Id.*

In the case before us Mother has demonstrated similar “troubling patterns of conduct” that contribute to her continuing inability to provide a safe and stable environment for the children. The trial court did not err in finding termination was in the children’s best interest.

The evidence supports the finding there was no reasonable probability the circumstances leading to the children’s removal would be alleviated and termination was in the children’s best interest. Those findings support the termination of Mother’s parental rights, and we accordingly affirm.

Affirmed.

FRIEDLANDER, J., and MATHIAS, J., concur.