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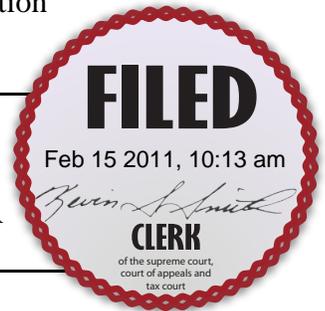
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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE INVOLUNTARY )  
TERMINATION OF: A.L., H.L., M.G.L., and )  
M.F.I. (Minor Children) and E.L. (Mother), )

Appellant, )

vs. )

THE INDIANA DEPARTMENT OF CHILD )  
SERVICES, )

Appellee. )

No. 29A04-1008-JT-540

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APPEAL FROM THE HAMILTON CIRCUIT COURT  
The Honorable Steven R. Nation, Judge  
The Honorable Todd L. Ruetz, Commissioner  
Cause Nos. 29D01-0806-JT-1062, 1063, 1064, and 1067

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February 15, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

E.L. (“Mother”) appeals the termination of her parental rights as to her minor children, M.F.L., M.L., H.L., and A.L. (collectively, the “Children”).<sup>1</sup>

We affirm.

ISSUE

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

FACTS

Mother and Father are the biological parents of M.F.L., born on September 19, 2001; M.L., born on February 16, 2005; and twins, A.L. and H.L., born on March 25, 2007. On or about April 28, 2007, the Children’s paternal grandmother, J.H., asked their maternal grandmother, T.K., to check on the Children because Mother had been drinking heavily, and Father was not home. When T.K. arrived at the home, she found Mother unconscious. T.K. reported the incident to police. T.K. also reported that Father had physically abused Mother in the past.

On April 30, 2007, Hamilton County’s office for the Indiana Department of Child Services (“DCS”) filed petitions, alleging the Children to be in need of services

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<sup>1</sup> The trial court also terminated the parental rights of J.L., the Children’s father (“Father”). He does not appeal the termination.

("CHINS") due to both parents' alcohol abuse and domestic violence. Following a detention hearing, the trial court appointed a guardian ad litem ("GAL"). DCS referred Mother to services, including an intensive outpatient program ("IOP") to address her abuse of alcohol.

On June 26, 2007, the trial court held an initial hearing on the CHINS petitions, during which Mother admitted to the allegations set forth in the petitions. Following a dispositional hearing on August 14, 2007, the trial court entered dispositional orders. The trial court ordered that M.F.L. and M.L. be placed with their paternal grandmother and A.L. and H.L. be placed with their maternal grandparents. The trial court also ordered Mother to complete a DCS-approved alcohol abuse after-care program; refrain from using alcohol; submit to random drug and alcohol tests; and complete home-based services through Family Works, Inc.

After Mother completed her IOP and began an after-care program, DCS returned the Children to their parents' care for a trial home placement on August 20, 2007. DCS, however, again removed the Children on December 6, 2007, after Mother relapsed and refused to submit to an alcohol test. The trial court placed A.L. and H.L. with their maternal grandparents and placed M.F.L. and M.L. with their paternal grandmother.

The trial court held a review hearing on May 13, 2008, after which it found that Mother had not cooperated with DCS and "missed appointments with service providers." (DCS's App. 1, 3, 5, 7). The trial court ordered Mother to refrain from the use of

alcohol; complete an after-care program; contact DCS weekly; and visit the Children once a week, at the discretion of the Children's guardians.

On June 16, 2008, DCS filed petitions to involuntarily terminate Mother's parental rights as to M.L., A.L., and H.L. DCS filed a petition to involuntarily terminate Mother's parental rights as to M.F.L. on June 17, 2008.

The trial court held a review hearing on November 7, 2008; Mother failed to appear. The trial court found that Mother "continued to abuse alcohol" and had inconsistent visitation with the Children. (DCS's App. 9, 12, 15, 18). Accordingly, the trial court ordered Mother to complete an IOP and to refrain from the use of alcohol.

Following a review hearing on January 30, 2009, at which Mother failed appear, the trial court found that Mother had failed to comply with the Children's case plans; continued to abuse alcohol; failed to complete the court-ordered IOP and after-care programs; and failed to maintain consistent visitation with the Children due to her alcohol use. The trial court again ordered Mother to complete an IOP and ordered her to submit to random alcohol tests.

On February 2, 2009, the State charged Mother with class A misdemeanor operating a vehicle while intoxicated, endangering a person; and class D felony operating a vehicle while intoxicated with a previous conviction. The State also alleged Mother to be an habitual substance offender.

On March 30, 2009, the trial court appointed Mother's parents as permanent guardians of A.L. and H.L. On April 1, 2009, the trial court appointed J.H. as permanent guardian of M.F.L. and M.L.

The trial court held a review hearing June 26, 2009, at which Mother failed to appear. The trial court found that Mother had failed to comply with the Children's case plans and continued to abuse alcohol. The trial court also found that Mother had failed to complete reunification services.

On October 22, 2009, Mother pleaded guilty to operating a vehicle while intoxicated with a previous conviction, a class D felony. Pursuant to the plea agreement, the trial court sentenced Mother to an executed sentence of 270 days.

The trial court held a fact-finding hearing on November 13, 2009, May 18, 2010, and June 1, 2010. Francis Austin, the family's case manager from June of 2007 until April of 2008, testified that after DCS returned the Children in August of 2007, Mother had a relapse "after a domestic violence incident with" Father in November of 2007. (Tr. 35). DCS did not remove the Children because "[a]t the time it appeared . . . [to be] an isolated incident." (Tr. 56).

Austin testified that DCS subsequently received reports that Mother was "consuming alcohol on a regular basis" and "had not been going to treatment . . . ." (Tr. 36). On or about December 6, 2007, Austin received a report that Mother "was intoxicated to the point of not being able to care for the [C]hildren." (Tr. 36). That same day, Austin went to the family home, where he found Mother. Although she denied

drinking, Austin observed alcohol in the home. Austin testified that Mother appeared to be intoxicated and refused to submit to an alcohol test. DCS therefore once again removed the Children. According to Austin, Mother did not comply with court-ordered services during the time Austin was the Children's case manager.

Jeremy Redding testified that he was assigned as the family's case manager in April of 2008. He testified that from May of 2008 through August of 2008, "Mother had difficulty again with maintaining a residence, did have jobs sporadically and really was not able to comply with any types of services." (Tr. 81). He further testified that during the time period from August of 2008 to November of 2008, Mother "continued to have problems with the alcohol abuse." (Tr. 85). DCS referred Mother to an IOP, but she failed to complete it.

Redding testified that during the period from November of 2008 until the review hearing on January 30, 2009, Mother participated in an IOP but again failed to complete it. Mother also failed to appear at the January review hearing. As of the review hearing on March 24, 2009, Mother "continued to have incomplete services through attempts for IOP . . . ." (Tr. 92). DCS again referred Mother to an IOP, which she failed to complete. Mother also failed to appear at the next review hearing, held on June 26, 2009.

Redding also testified that Mother exercised visitation inconsistently. He testified that "later on in the case," Mother's visitation ceased due to "multiple relapses and not being able to maintain sobriety . . . ." (Tr. 97). Mother also had difficulty maintaining employment due to her drinking.

Redding further testified that A.L. and H.L. were doing “extremely well” in their maternal grandparents’ home. (Tr. 140). He testified that the grandparents “have done an excellent job working with them and making sure their needs are met on an emotional basis, medical basis, and they have just done a terrific job with their grandchildren.” (Tr. 140). He also testified that M.L. and M.F.L. were doing “very well” with J.H., their paternal grandmother, and that she was doing “an excellent job caring for them . . . .” (Tr. 141). Finally, Redding testified that he believed it would be in the best interests of A.L. and H.L. to be adopted by their grandparents and for M.F.L. and M.L. to be adopted by J.H.

T.K. testified that since April of 2007, she had observed Mother in an intoxicated state approximately seven or eight times. She testified that on at least two occasions, she had to cancel Mother’s visitation with A.L. and H.L. due to Mother’s alcohol use. T.K. further testified that she and her husband would be willing to adopt A.L. and H.L. She also testified that they would be willing to allow both Mother and Father to have supervised visits with A.L. and H.L.

J.H. testified that she is willing to adopt M.F.L. and M.L. She also testified that she would allow the Children to have contact with their parents.

Amber Orr, a probation officer with the Hamilton County Probation Department, testified that Mother began serving probation in February of 2010. She testified that the terms of Mother’s probation included completion of a relapse prevention program and attendance at at least three Alcoholic Anonymous or Narcotics Anonymous meetings per

week until the end of her probation on February 24, 2012. Orr testified that Mother's two drug and alcohol screens "have come back clean." (Tr. 236). According to Orr, Mother has maintained employment as a condition of her probation. Orr testified that Mother has been working at the Bourbon Street Distillery, a bar and restaurant in Indianapolis; as a condition of probation, however, Mother is not allowed to serve alcoholic beverages.

Mother testified on June 1, 2010. Mother, who was thirty-nine years old at the time of the hearing, testified that she started drinking regularly in her early 20s, and it "escalated over the years." (Tr. 304). She testified that she had "tried rehab so many times," (tr. 311), in the past, but "[her] trigger always seemed to be [she]'d be sober for 30 days and right around a month something would happen, it could be nothing, but [she]'d start drinking again." (Tr. 312). She admitted that after the Children were removed the second time in December of 2007, she "relapsed frequently" until her incarceration in October of 2009. (Tr. 308). Mother further testified that she had not consumed alcohol since her incarceration; attends Alcoholics Anonymous meetings three times per week; and participates in a court-ordered "alcohol class . . . ." (Tr. 315).

The GAL testified that she believed it to be in the Children's best interests to "remain in relative care and that the permanency plan of adoption be pursued." (Tr. 258). As to M.F.L. and M.L., she opined that a continuation of the parent-child relationship would not pose a threat to their well-being. She testified that she did not know whether the conditions that led to the Children's removal had been remedied.

On July 20, 2009, the trial court issued an order as to each child, terminating Mother's parental rights.

### DECISION

Although parental rights are of a constitutional dimension, the law allows for termination of these rights when parties are unable or unwilling to meet their responsibility. *In re A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). The purpose of termination of parental rights is not to punish parents but to protect children. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied*, 534 U.S. 1161 (2002).

In reviewing the termination of parental rights, we will neither reweigh the evidence nor judge the credibility of witnesses. *Bester v. Lake County Office of Family and Children*, 839 N.E.2d 143, 147 (Ind. 2005). We consider only the evidence most favorable to the judgment. *Id.* Where the trial court has entered findings of fact and conclusions of law, we apply a two-tiered standard of review. *Id.* We must determine whether the evidence supports the findings and then whether the findings support the judgment. *Id.* We will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.* A judgment is clearly erroneous if the findings do not support the conclusions or the conclusions do not support the judgment. *Id.*

At the time DCS sought to terminate Mother's parental rights, it was required to plead and prove in relevant part that:

(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;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2).<sup>2</sup> These allegations must be established by clear and convincing evidence. *A.N.J.*, 690 N.E.2d at 720.

### 1. Conditions Remedied

Mother asserts that DCS failed to establish that the conditions resulting in the removal of the Children will not be remedied and that a continuation of her parent-child relationship with the Children poses a threat to their well-being. Because subsection (b)(2)(B) is written in the disjunctive, however, DCS need prove only one of the two elements by clear and convincing evidence. *See Bester*, 839 N.E.2d at 153 n.5. Thus, if we hold that the evidence sufficiently shows that the conditions resulting in removal will not be remedied, we need not address whether the continuation of the parent-child relationship poses a threat to the well-being of the Children. *See I.C. § 31-35-2-4(b)(2)(B); A.N.J.*, 690 N.E.2d at 721 n.2.

Mother argues that the evidence does not support the trial court's findings that the conditions that led to the Children's removal will not be remedied. To determine whether the conditions are likely to be remedied, the trial court must examine the parent's fitness

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<sup>2</sup> Effective March 12, 2010, Indiana Code section 31-35-2-4(B) was amended to include subsection (iii), which reads "The child has, on two (2) separate occasions, been adjudicated a child in need of services[.]" This change is inapplicable to the present case as it became effective subsequent to the filing of the petitions to terminate Mother's parental rights.

to care for the child “as of the time of the termination hearing and take into account any evidence of changed conditions.” *In re S.P.H.*, 806 N.E.2d 874, 881 (Ind. Ct. App. 2004). The trial court, however, also must determine whether there is a substantial probability of future neglect or deprivation. *Id.* In so doing, the trial court “may properly consider evidence of a parent’s prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment.” *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003).

The trial court may also consider the services offered to the parent and the parent’s response to those services. *Id.* “Finally, we must be ever mindful that parental rights, while constitutionally protected, are not absolute and must be subordinated to the best interests of the child when evaluating the circumstances surrounding termination.” *Id.* Thus, the trial court need not wait until a child is irreversibly harmed such that the child’s physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

Here, DCS initiated the CHINS proceedings in late April of 2007 after Mother consumed enough alcohol to render her unconscious, leaving the Children, including the then-one-month-old twins, unsupervised. Although Mother completed an initial IOP in July of 2007, she failed to complete the court-ordered after-care program.

The trial court heard testimony that DCS returned the Children in August of 2007, after which Mother admittedly violated court orders by consuming alcohol three months

later. After receiving reports that Mother had relapsed, DCS again removed the Children on December 6, 2007.

Redding testified that Mother failed to complete the court-ordered IOPs and failed to appear for review hearings. The family's case managers and the Children's guardians testified that Mother had visitations with the Children cancelled, due to her consumption of alcohol.

Furthermore, DCS presented evidence that two years after the initiation of the CHINS cases, the State charged Mother with two counts of operating a vehicle while intoxicated; Mother pleaded guilty to one count of operating a vehicle while intoxicated with a previous conviction. Mother admitted to consuming alcohol until her incarceration in October of 2009.

While we commend Mother for sustaining sobriety for the last eight months of these cases, we cannot overlook Mother's pattern of conduct during the other two and a half years. During that time, she regularly abused alcohol, despite repeated attempts at rehabilitation. Moreover, we cannot ignore that Mother presently works in a bar, risking a relapse. Accordingly, we find that DCS established by clear and convincing evidence that there is a reasonable probability that the conditions that resulted in the Children's removal from Mother's home will not be remedied.

## 2. Best Interests

Mother also challenges the trial court's finding and determination that termination of her parental rights is in the best interests of the Children. We note that Mother has

failed to develop a cogent argument or provide adequate citation to authority and portions of the record to support her position. Thus, this argument is waived. *See Smith v. State*, 822 N.E.2d 193, 202-03 (Ind. Ct. App. 2005) (“Generally, a party waives any issue raised on appeal where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record.”). Waiver notwithstanding, we shall address this issue.

For the “best interest of the child” statutory element, the trial court is required to consider the totality of the evidence and determine whether the custody by the parent is wholly inadequate for the child’s future physical, mental, and social growth. *In re A.K.*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010). In making this determination, the trial court must subordinate the interest of the parent to that of the child involved. *Id.* The recommendations of a child’s GAL and caseworker that parental rights be terminated support a finding that termination is in the child’s best interests. *See A.J. v. Marion County Office of Family and Children*, 881 N.E.2d 706, 718 (Ind. Ct. App. 2008).

Both Redding and the Children’s GAL testified that it would be in the Children’s best interests to terminate Mother’s parental rights. The trial court heard testimony that the Children had been in their grandparents’ care for more than three years; were thriving in their respective homes; and that the grandparents were willing to adopt them. The evidence also shows that the grandparents have given, and would continue to give, the Children a stable environment, while also allowing Mother to visit the Children in a supervised setting.

The recommendations and testimony, along with the evidence of Mother's alcoholism; failure to adequately care for the Children during her bouts of drinking; and failure to complete services support the trial court's finding that termination of Mother's parental rights is in the Children's best interests.

Upon review, we find that DCS established its allegations against Mother by clear and convincing evidence. Such evidence supports the trial court's findings that the conditions that resulted in the removal of the Children will not be remedied and that termination is in their best interests.

Affirmed.

NAJAM, J., and BAILEY, J., concur.