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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE TERMINATION OF THE )  
PARENT-CHILD RELATIONSHIPS OF J.J. AND )  
H.J., minor children, and )  
 )  
H.A., )  
Appellant-Respondent, )  
 )  
vs. ) No. 64A03-1007-JT-358  
 )  
INDIANA DEPARTMENT OF CHILD SERVICES, )  
Appellee-Petitioner. )

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APPEAL FROM THE PORTER CIRCUIT COURT  
The Honorable Mary R. Harper, Judge  
The Honorable Edward J. Nemeth, Magistrate  
Cause No. 64C01-0910-JT-001188; Cause No. 64C01-0910-JT-001189

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**February 21, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

H.A. (“Mother”) appeals the Porter Superior Court’s judgment terminating her parental rights to her children, J.J. and H.J. We affirm.

### **Issues**

Mother challenges the sufficiency of the evidence supporting the trial court’s judgment. In so doing, Mother presents the following consolidated issues for review:

- (1) Whether clear and convincing evidence supports the trial court’s determinations that there is a reasonable probability the conditions resulting in the children’s removal from her care will not be remedied and that continuation of the parent-child relationships poses a threat to J.J.’s and H.J.’s well-being;
- (2) Whether clear and convincing evidence supports the trial court’s determination that termination of the parent-child relationships is in the children’s respective best interests; and
- (3) Whether there is a satisfactory plan for the care and treatment of the children following termination of Mother’s parental rights.

### **Facts and Procedural History**

Mother is the biological parent of twins, J.J. and H.J., born in June 2003.<sup>1</sup> The facts most favorable to the trial court’s judgment reveal that at the time of the twins’ birth, the Indiana Department of Child Services, Porter County (“PCDCS”), received a referral that Mother and one of the babies had tested positive for cocaine. The children were taken into emergency protective custody and were later adjudicated children in need of services (“CHINS”). For approximately one-and-a-half years, Mother participated in court-ordered

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<sup>1</sup> The children’s biological father, J.C.J. (“Father”), voluntarily relinquished his parental rights to the children during the underlying proceedings and does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother’s appeal.

services, including an in-patient drug rehabilitation program for cocaine use. Although the children were wards of PCDCS during this time, they were returned to Mother's physical custody and the family lived with the maternal grandparents. The CHINS case was eventually closed in 2005.

PCDCS became involved with the family again after receiving a telephone call from local police on the morning of November 14, 2008, requesting PCDCS to send a case worker to the maternal grandparents' residence. Upon her arrival, PCDCS case manager Ellen Wilkerson ("Wilkerson") learned that heroin had been discovered in the home. Wilkerson also observed that the interior of the house was "dirty" and "[i]n disarray." Transcript p. 10. There were piles of soiled laundry and dirty wet towels scattered throughout the home, dirty dishes and trash piled in the kitchen, and "uncapped needles" and drugs strewn about the bathroom, hallway, kitchen, and "amongst the children's toys and things." *Id.* at 9; 51.

While talking with Wilkerson, Mother disclosed that she and a friend had driven to Illinois the day before to buy heroin. Mother also admitted that the children had been with her on the trip, that they had been in a car accident on the return trip, and that she and her friend had used the heroin after arriving home, despite the children's presence in the house. Mother was subsequently arrested and incarcerated on several drug-related charges, including possession of heroin, possession of paraphernalia, visiting a common nuisance, and child neglect.

PCDCS took the children into emergency protective custody and filed a new CHINS petition. Relative care placement with the maternal grandparents was not an option,

however, because of substantiated reports of neglect pertaining to both maternal grandparents. Several weeks later, the children were placed in relative care with the paternal grandparents.

In January 2009, Mother admitted to the allegations set forth in an amended CHINS petition, including the allegation that she had a serious substance abuse problem which interfered with her ability to provide the children with proper care and supervision. The trial court thereafter adjudicated the children CHINS, and Mother was offered voluntary services, including random drug screens and supervised visitation with the children. Mother declined to participate in any services offered by PCDCS.

In February 2009, the trial court issued a dispositional order formally removing J.J. and H.J. from Mother's care and adjudicating the children wards of PCDCS. The court further ordered Mother to participate in and successfully complete a variety of tasks and services in order to achieve reunification with the children. Specifically, Mother was ordered to, among other things: (1) submit to hair follicle and random urine drug screens; (2) consistently attend weekly supervised visits with the children; (3) participate in psychological and substance abuse evaluations and follow all resulting recommendations; (4) successfully complete recommended parenting classes; and (5) maintain regular contact with PCDCS and cooperate with all case workers and service providers.

Mother's participation in court-ordered services was sporadic from the beginning of the CHINS case and ultimately unsuccessful. Several days after the dispositional hearing, Mother refused PCDCS's first requests for both a urine drug screen and a hair follicle drug

screen. A second request for a hair follicle screen later the same month resulted in Mother testing positive for cocaine and heroin. Although Mother produced a negative urine drug screen in March 2009, Mother refused to submit to the requested screen for three days in violation of the twelve-hour time limit set by the trial court's dispositional order. Mother refused another requested drug screen in April 2009. Consequently, the trial court issued an order suspending Mother's visitation privileges with the children until such time as she could timely comply with PCDCS's requests and produce two consecutive negative screens. Mother refused to do so. Consequently, her last visit with J.J. and H.J. was in April 2009.

Regarding the remaining court-ordered services, Mother submitted to a substance abuse evaluation in February 2009, and, based on the results of said evaluation, was referred for individual counseling as well as an intensive out-patient substance abuse program ("IOP"). Mother refused to participate in the recommended individual counseling, and initiated but failed to complete an IOP. In addition, Mother attended only three of sixteen parenting classes, and continued to refuse to comply with requests for random drug screens.

In July 2009, Mother was arrested and incarcerated on several charges including operating while intoxicated, possession of a controlled substance, and false informing. Mother remained incarcerated until late-September 2009, after which she was released from incarceration and admitted to Women's Recovery Center, a transitional housing facility for women recovering from substance abuse, as a condition of her probation. Mother participated in the Women's Recovery Center program for approximately five to six weeks before she was arrested and incarcerated in Lake County on another operating while

intoxicated charge. As a result, Mother was unsuccessfully discharged from the Women's Recovery Center.

PCDCS filed a petition seeking the involuntarily termination of Mother's parental rights in October 2009. A three-day evidentiary hearing commenced in March 2010 and concluded in April 2010. At the time of the termination hearing, Mother still had multiple criminal charges pending against her and was facing up to fourteen years of incarceration. In addition, Mother had failed to successfully complete a majority of the trial court's dispositional orders, including individual counseling, parenting classes, and an IOP. She was also unemployed, had not visited with the children for over one year, and was again residing at the Women's Recovery Center.

At the conclusion of the evidentiary hearing, the trial court took the matter under advisement. On June 18, 2010, the trial court entered its judgment terminating Mother's parental rights to J.J. and H.J. Mother now appeals.

## **Discussion and Decision**

### **A. Standard of Review**

We begin our review by acknowledging that this court has long had a highly deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). When reviewing the termination of parental rights, we will neither reweigh the evidence nor judge witness credibility. In re D.D., 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. Id. Moreover, in deference to the

trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied.

In terminating Mother's parental rights, the trial court entered specific findings and conclusions. When a trial court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. Id. "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court's decision, we must affirm. L.S., 717 N.E.2d at 208.

### B. Analysis

"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. However, a trial court must subordinate the interests of the parent to those of the child when evaluating the circumstances surrounding a termination. K.S., 750 N.E.2d at 837. Termination of a parent-child relationship is proper where a child's emotional and physical development is threatened. Id. Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable

or unwilling to meet his or her parental responsibilities. Id. at 836.

Before an involuntary termination of parental rights can occur, the State is required to allege and prove, among other things:

- (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) (2008).<sup>2</sup> “The State’s burden of proof in termination of parental rights cases is one of ‘clear and convincing evidence.’” In re G.Y., 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code § 31-37-14-2). If the trial court finds the allegations in a petition described in section 4 of this chapter are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a). Mother challenges the sufficiency of the evidence supporting the trial court’s findings as to subsections (b)(2)(B) thru (D) of the termination statute cited above. See Ind. Code § 31-35-2-4.

#### 1. Conditions Remedied/Threat

Mother vehemently insists that her “past drug usage was not the product of an immature desire for selfish inebriation,” but rather a “misdirected effort to address the psychological havoc wreaked by the profound sexual abuse she endured” as a child.

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<sup>2</sup> Indiana Code section 31-35-2-4 was amended by Pub. L. No. 21-2010, § 8 (eff. March 12, 2010). The changes to the statute became effective after the filing of the termination petition involved herein and are not applicable to this case.

Appellant's Brief. p. 3. Mother further asserts that although PCDCS failed to offer her the "required and reasonable services" she needed to overcome her addiction to heroin, she nevertheless had "substantially addressed and remedied her heroin addiction" by the time of the termination hearing and that the trial court erroneously disregarded this evidence of improved conditions. Id. at 6, 12.

Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, the trial court needed to find only one of the requirements of subsection (b)(2)(B) had been established by clear and convincing evidence before terminating a parent-child relationship. See L.S., 717 N.E.2d at 209. Although the trial court determined that more than one of the elements of subsection (b)(2)(B) had been established, we find dispositive and, therefore, only discuss whether PCDCS established, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in the children's removal and/or continued placement outside Mother's care will not be remedied. See Ind. Code § 31-35-2-4(b)(2)(B)(i).

A trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. 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 prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. A.F. v. Marion County

Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied.

The trial court may also consider any services offered to the parent by the county department of child services, and the parent's response to those services, as evidence of whether conditions will be remedied. Id. at 1252.

In this case, the trial court made several pertinent and detailed findings pertaining to Mother's significant history of drug use, recurrent criminal activities, past involvement with PCDCS, and current inability to care for the children. Specifically, the trial court found that "[M]other continually struggled with her drug addiction and was unable to effectuate a life change in order to care for herself or her children." Appellant's Appendix. p. 37. The court also noted that Mother refused to submit to requested drug screens in January, February, and April of 2009, that she was "arrested on drug-related charges on three different occasions from November 2008 until December 2009," including charges of child neglect, possession of heroin and paraphernalia, possession of a controlled substance, false informing, and operating while intoxicated, and that Mother is "currently facing fourteen years of incarceration as a result of the charges pending against her." Id. at 37-38. In addition, the trial court found as follows:

32. [M]other is 24 years old and has admitted to an extensive history of substance abuse. Mother admitted being addicted to drugs since she was 13 years, switching from marijuana, ecstasy, and cocaine to heroin. [M]other's drug addiction is unlikely to be remedied in the future as drug addiction has been a continued problem with [Mother] since her early teen years.

33. The Court finds that services to address [Mother's] drug abuse have been provided since 2003. Mother has continued to struggle with her addiction and has admittedly relapsed over the years. Mother admitted to using up to \$250 worth of heroin a day from March 2009 to July 2009.

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35. The Court finds that the conditions that resulted in the children's removal and the reasons for placement outside of the home have not been remedied and are as follows: [M]other's continued drug use; . . . [M]other's inability to obtain and maintain suitable housing; [M]other's non-compliance with all service providers; and her multiple incarcerations.

36. The Court finds there is no evidence as to [M]other's long[-]term ability to parent these children, specifically children exposed to such extent of drug usage and neglect. [Mother] has failed to show any ability to consistently care for and provide a safe, stable, and nurturing environment to either of her children.

37. The best predictor of future behavior is past performance. This family has been offered services and opportunities to rehabilitate during the last seven (7) years without any positive result. Mother did not enroll in IOP, parenting classes, or [an] inpatient recovery program until pressured by either a plea agreement in her criminal charges or the filing of the Verified Petition for the Termination of the Parent-Child Relationship.

Id. at 38-39. A thorough review of the record reveals that these findings are supported by ample evidence.

The evidence indicates Mother had been sober during the four months leading up to the termination hearing and following her most recent release from incarceration and re-admission to the Women's Recovery Center program as part of the terms of her probation in December 2009. Nevertheless, testimony from various caseworkers and service providers makes clear that Mother's overall circumstances remained largely unchanged, and she remained incapable of demonstrating an ability to provide J.J. and H.J. with a safe and stable home environment. During the termination hearing, PCDCS case manager Amy Hilzley-Pittman ("Pittman"), court-appointed special advocate ("CASA") Regina Coulter

(“Coulter”), and multiple service providers testified concerning Mother’s significant history of drug abuse and relapse, as well as her current inability to care for the children.

In recommending termination of Mother’s parental rights, Pittman informed the court that although she believed Mother “wanted to participate” in the CHINS case plan, Mother had only “minimally” complied with court-orders. Tr. p. 226. Pittman confirmed that Mother had refused to submit to multiple requests for random drug screens, failed to successfully participate in and/or complete individual counseling, parenting classes, and an IOP, and had not visited with the children since April 2008. Id. When asked whether she had any “concerns” about continuing the parent-child relationships, Pittman answered in the affirmative and stated that although Mother was “taking her drug problem a little more seriously now” and that she “commend[s] Mother for that,” Pittman nevertheless felt Mother was “still struggling with her drug abuse” and remained unable to demonstrate an ability to care for herself or for the children. Id. at 247. Pittman also felt Mother’s “past history hasn’t indicated that her staying and remaining clean is very likely.” Id. at 272.

Pittman’s testimony was echoed by that of CASA Coulter. In recommending termination, Coulter testified that she believed Mother remained in essentially “the same situation” as when the children were removed. Id. at 390. Testimony from Mother’s own expert witness, licensed clinical psychologist and certified drug and alcohol abuse counselor Stanley P. Lelek (“Dr. Lelek”), further supports the trial court’s findings. Dr. Lelek described Mother as “24 going on 13,” stating that although Mother was twenty-four years old chronologically, her emotional development more closely resembled that of a thirteen-

year-old due to her significant substance abuse throughout most of her adolescence and early adulthood. Id. at 343. Dr. Lelek therefore stated that at least eleven months of emotional rehabilitation, in addition to chemical dependency rehabilitation, was needed. Dr. Lelek also characterized Mother's current once-a-week participation in an IOP as an "oxymoron," stating, "There's nothing intensive about a one[-] hour[-]a[-]week program. . . . Intensive [treatment] is more along the lines of four to nine hours [a week] . . . ." Id. at 345. Finally, when asked whether ninety days of treatment and sobriety provides any "guarantee" regarding future sobriety, Dr. Lelek informed the court that there "are no guarantees," that "most people that are working in a recovery program go through relapses," and that relapses are "expected[,] rather than the exception to the rule. . . ." Id. at 351-52.

As noted earlier, a trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. D.D., 804 N.E.2d at 266. Moreover, where there are only temporary improvements and a parent's "pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve." In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). Here, PCDCS presented substantial evidence demonstrating Mother's significant history of substance abuse and criminal activity, in addition to her current inability to provide a safe and stable home environment to the children. We therefore conclude that the trial court's findings and ultimate determination that there is a reasonable probability the conditions resulting in J.J.'s and H.J.'s removal and continued placement outside Mother's

care will not be remedied are supported by clear and convincing evidence. Mother's arguments to the contrary, emphasizing her recent sobriety and participation in self-help groups, rather than the evidence relied upon by the trial court, amount to an invitation to reweigh the evidence, and this we may not do. D.D., 804 N.E.2d at 265; See also Bergman v. Knox County Office of Family & Children, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding trial court permitted to give more weight to abundant evidence of mother's pattern of conduct in neglecting children during years prior to termination hearing than to mother's testimony of recently improved conditions).

## 2. Best Interests

We next consider Mother's assertion that PCDCS failed to prove that termination of her parental rights is in the children's best interests. In determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Indiana Department of Child Services and look to the totality of the evidence. McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the trial court must subordinate the interests of the parent to those of the child. Id. A trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. Id. at 199. Moreover, we have previously held that the recommendations of both the case manager and child advocate to terminate parental rights, coupled with evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. In re M.M., 733

N.E.2d 6, 13 (Ind. Ct. App. 2000).

In addition to the specific findings previously cited, the trial court also found that Mother's refusal to participate in services during the underlying CHINS proceeding inhibited her ability "to fulfill her parental obligations and provide a safe, stable, nurturing environment for the children." Appellant's App. p. 38. In addition, the trial court found that "the children have special needs related to mild cognitive disabilities and speech impairments" and that they have "exhibited obsessive and intrusive thoughts centering on law enforcement due to exposure . . . which resulted in the arrest of their mother." Id. at 37. Finally, the trial court found that "the children are in need of permanency that . . . [Mother] . . . is [un]able to provide." Id. at 39. The court thereafter concluded that the children have special needs that Mother is unable to adequately address and that termination of the parent-child relationships is in J.J.'s and H.J.'s best interests. These findings and conclusions are likewise supported by the evidence.

The record reveals that although the children were significantly delayed in their speech, "very immature[,] and environmentally deprived" at the time of their removal from Mother in 2008, they had been living and thriving in the "loving environment" of their paternal grandparents for approximately one-and-a-half years. Tr. p. 242; 295. Moreover, the paternal grandparents wish to adopt both children. Pittman also testified that both children had been removed from Mother for "an extended time" and needed "a stable environment" with "parents who can fulfill their basic needs." Id. at 252-53. Similarly, in recommending termination of Mother's parental rights as in the children's best interests,

Coulter confirmed that the children were progressing “wonderful[ly]” in their current placement with the paternal grandparents, and that the grandparents had “invested a substantial amount of time” in both children. Id. at 388.

Based on the totality of the evidence, including Mother’s failure to complete and/or benefit from a majority of the trial court’s dispositional orders, significant history of substance abuse and relapse, current inability to provide the children with a safe and stable home environment, and pending criminal charges, coupled with the testimony from Pittman and Coulter recommending termination of Mother’s parental rights, we conclude that clear and convincing evidence supports the trial court’s determination that termination of Mother’s parental rights is in J.J.’s and H.J.’s best interests.

### 3. Satisfactory Plan of Care

Finally, we consider whether sufficient evidence supports the trial court’s determination that PCDCS has a satisfactory plan for the care and treatment of the children. Indiana Code section 31-35-2-4(b)(2)(D) provides that before a trial court may terminate a parent-child relationship, it must find there is a satisfactory plan for the future care and treatment of the child. Id.; see also D.D., 804 N.E.2d at 268. PCDCS’s plan is for J.J. and H.J. to be adopted by their paternal grandparents, who have been serving as the children’s relative foster parents and in whose home the children have been living and thriving for well over one year. PCDCS’s plan is satisfactory. See Castro v. State Office of Family & Children, 842 N.E.2d 367, 378 (Ind. Ct. App. 2006) (stating adoption is generally a satisfactory plan for the care and treatment of children after termination of parental rights),

trans. denied.

## CONCLUSION

This Court will reverse a termination of parental rights “only upon a showing of ‘clear error’— that which leaves us with a definite and firm conviction that a mistake has been made.” In re A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting Egly v. Blackford County Dep’t of Public Welfare, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Affirmed.

NAJAM, J., and DARDEN, J., concur.