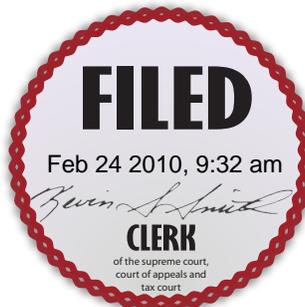


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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF T.M. and I.McD.,)
MINOR CHILDREN, AND THEIR MOTHER,)
B.M.,)

B.M.)
)
)
Appellant/Respondent,)

vs.)

No. 18A02-0907-JV-679

INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
)
Appellee/Petitioner.)

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Richard A. Dailey, Judge
The Honorable Brian M. Pierce, Master Commissioner
Cause Nos. 18C02-0901-JT-1, 18C02-0901-JT-2

February 24, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Respondent B.M. (“Mother”) appeals the juvenile court’s order terminating her parental rights to T.M. and I.McD. Mother alleges that the Indiana Department of Child Services (“DCS”) did not provide sufficient evidence to support the termination of her parental rights. Concluding that the evidence was sufficient to support the termination of Mother’s parental rights, we affirm.

FACTS AND PROCEDURAL HISTORY

Mother has two children, I.McD. and T.M. (collectively “the children”) at issue in this appeal. I.McD. was born on December 10, 2005. T.M. was born on November 3, 2006. The children were placed in protective custody by DCS in April of 2008 because of safety, home, and environmental concerns. At the time the children were placed in protective custody, Mother’s home was determined to be unsafe for the children because there were cigarette butts on the floor and exposed loose electrical wiring covered by colorful caps that might attract children. In addition, the home had no beds and there was no child-appropriate food in the home. Mother, who had multiple bruises from incidents of domestic abuse with her boyfriend, was also arrested on child neglect charges. The children have not been returned to Mother’s care since being placed in protective custody.

On April 16, 2008, DCS filed petitions alleging that the children were Children in Need of Services (“CHINS”). On April 22, 2008, Mother entered a general admission to the allegations contained in the CHINS petitions. The juvenile court accepted Mother’s admission, held a dispositional hearing, and ordered Mother to obtain stable employment and

housing. Mother was also ordered to participate in counseling and to engage in supervised visitation with the children. Since April 11, 2008, Mother has resided in at least ten separate residences and had at least five different jobs during a five-month period. Mother's participation with counseling, visitation with the children, and other services provided as a result of the CHINS proceedings has been sporadic.

On January 27, 2009, DCS filed a petition to involuntarily terminate Mother's parental rights because Mother had failed to complete services and had made no contact with DCS since October of 2008. On April 21, 2009, the juvenile court conducted a termination hearing at which Mother appeared and was represented by counsel. During the termination hearing, DCS provided evidence in support of its termination petition as well as a plan for the permanent care of the children. On June 30, 2009, the juvenile court issued an order terminating Mother's parental rights. Mother now appeals.

DISCUSSION AND DECISION

The Fourteenth Amendment to the United States Constitution protects the traditional right of a parent to establish a home and raise her children. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 145 (Ind. 2005). Further, we acknowledge that the parent-child relationship is "one of the most valued relationships of our culture." *Id.* However, although parental rights are of a constitutional dimension, the law allows for the termination of those rights when a parent is unable or unwilling to meet her responsibility as a parent. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Therefore, parental rights are not absolute and must be subordinated to the children's interest in determining the appropriate disposition of a petition to terminate the parent-child

relationship. *Id.*

The purpose of terminating parental rights is not to punish the parent but to protect the children. *Id.* Termination of parental rights is proper where the children's emotional and physical development is threatened. *Id.* The juvenile court need not wait until the children are irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

I. Sufficiency of the Evidence

Mother contends that the evidence presented at trial was insufficient to support the juvenile court's order terminating her parental rights. In reviewing termination proceedings on appeal, this court will not reweigh the evidence or assess the credibility of the witnesses. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We only consider the evidence that supports the juvenile court's decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the juvenile court includes findings of fact and conclusions thereon in its order terminating parental rights, our standard of review is two-tiered. *Id.* First, we must determine whether the evidence supports the findings, and, second, whether the findings support the legal conclusions. *Id.*

In deference to the juvenile court's unique position to assess the evidence, we set aside the juvenile court's 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 legal conclusions made by the juvenile court are not supported by its findings of fact, or the conclusions do not support the judgment. *Id.*

In order to involuntarily terminate the parents' parental rights, DCS must establish by clear and convincing evidence that:

- (A) one (1) of the following exists:
 - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
 - (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
 - (iii) the child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;
- (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). Specifically, Mother claims that DCS failed to establish that the conditions that resulted in the children's removal or the reasons for placement outside of Mother's home will not be remedied, that the continuation of the parent-child relationship posed a threat to the children's well-being, and that termination of Mother's parental rights is in the children's best interests.

A. Conditions Resulting in Removal Not Likely to be Remedied

Mother claims that DCS failed to establish by clear and convincing evidence that the conditions resulting in the children's removal from her home will not be remedied and that the continuation of the parent-child relationship poses a threat to the children. Although

Mother claims that DCS failed to establish both of the elements outlined in Indiana Code section 31-35-2-4(b)(2)(B), we note that because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, the juvenile court need only find either that the conditions resulting in removal will not be remedied or that the continuation of the parent-child relationship poses a threat to the children. *In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*. Therefore, “where, as here, the trial court specifically finds that there is a reasonable probability that the conditions which resulted in the removal of the child[ren] would not be remedied, and there is sufficient evidence in the record supporting the trial court’s conclusion, it is not necessary for [DCS] to prove or for the trial court to find that the continuation of the parent-child relationship poses a threat to the child[ren].” *In re S.P.H.*, 806 N.E.2d at 882. In order to determine that the conditions will not be remedied, the juvenile court should first determine what conditions led DCS to place the children outside their Mother’s home, and, second, whether there is a reasonable probability that those conditions will be remedied. *Id.*

When assessing whether a reasonable probability exists that the conditions justifying the children’s removal and continued placement outside the parent’s home will not be remedied, the juvenile court must judge the parent’s fitness to care for their children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re A.N.J.*, 690 N.E.2d 716, 721 (Ind. Ct. App. 1997). The juvenile court must also evaluate the parent’s habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* A juvenile court may properly consider

evidence of the parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate employment and housing. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). Moreover, a juvenile court ““ can reasonably consider the services offered by [DCS] to the parent and the parent's response to those services.”” *Id.* (quoting *In re A.C.C.*, 682 N.E.2d 542, 544 (Ind. Ct. App. 1997)).

Here, the juvenile court found that the children were removed from Mother's care because Mother's home lacked beds for the children and child-appropriate food and Mother's home contained child safety hazards. In support of its determination that these conditions would not likely be remedied, the juvenile court found as follows:

5. That [Mother] has been provided ample opportunity to complete reunification services ordered by this court and has failed to complete those services.
6. That [Mother] was convicted of Neglect of a Dependent, a Class “D” Felony, by order entered May 28, 2009 by Delaware Circuit Court No. 4 in cause number 18C04-0804-FD-39.
7. That the facts and circumstances that led to [Mother]'s conviction in her criminal case were the same as those that led to DCS's removal of [the children] on April 11, 2008.
8. That in [Mother]'s home at that time, there were no beds for the children, there was no child appropriate food, and there were child safety hazards such as cigarette butts on the floor and colorful caps on child reachable electrical wiring.
9. That [Mother] had bruising on her that she admitted was as a result of domestic violence between her and her boyfriend.
10. That [Mother] has demonstrated and [sic] inability to maintain stable housing necessary for the return of her children having resided at no fewer than ten different locations, including the Delaware County Jail, between April 11, 2008 and the date of the fact-finding hearing in this matter.
11. That [Mother] has demonstrated an inability and/or unwillingness to maintain employment, and therefore income, necessary for the return of her children in that she was employed with no fewer than five different employers

for a total of less than five months having quit or been fired from each.

12. That [Mother] failed to actively participate in court ordered services available to her to improve her parenting abilities and to provide education in the areas of structure, stability and safety for meeting the needs of her children in that she was dropped from the Open Door program due, in part, to her failure to attend scheduled visits with her children.

13. That in order to educate and assist [Mother] with money management, the Open Door case worker, Becky Brandon, helped [Mother] and her boyfriend to establish a budget and asked them to provide receipts, which they would not do.

14. That [Mother] refused to pursue subsidized housing, as recommended by Ms. Brandon.

15. That in March of 2009, [Mother] resumed services, with a new service provider, designed to assist her in stabilizing her housing situation and obtaining and maintaining employment.

16. That between March 19 and the date of the fact finding hearing in this matter, [Mother] was scheduled for seven appointments with Jennifer Powers, the Behavioral Clinician at Meridian Services.

17. Of those appointments, [Mother] kept five and was a no show/ no call to the other two.

18. That Ms. Powers believes that the greatest impediment to [Mother]'s progress toward the objectives is [Mother]'s poor decision-making and her inability to keep appointments, be organized, and prioritize appointments.

19. [Mother] failed to keep an appointment with the Salvation Army set the day before where she was to receive food assistance.

20. [Mother] was involved in an altercation at a bar as recently as March 2009 which indirectly led to her arrest for her failure to complete court ordered community service.

21. That after September of 2008, [Mother] attended less than fifty percent of her scheduled visits with [the children].

22. That court ordered visitation between [Mother] and [the children] never progressed beyond supervised visitation.

23. That no service provider ever recommended that visits not be supervised.

24. That [Mother]'s visits with [the children] were suspended by order of the court as recently as March of 2009 based on her failure to provide timely notice that she would not attend a visit.

25. That during a visit with [the children], [Mother] failed to notice that [I.McD.] placed a plastic bag over her head.

26. That during a visit with [the children], [Mother] failed to notice that [I.McD.] had taken something out of the trash and put it into her mouth.

27. That during a visit with [the children], [Mother] gave [I.McD.] so much

food that she choked, gagged and vomited.

28. That beginning in July of 2008, [Mother] was involved with both individual and couples counseling with therapist Amanda McKinley.

29. That in therapy [Mother] and her boyfriend repeatedly denied any domestic violence between them.

30. That at the end of September 2008, [Mother] finally admitted to Ms. McKinley that there was a domestic violence issue between her and her boyfriend.

31. That Ms. McKinley was encouraged that this acknowledgement could lead to progress in [Mother]'s treatment.

32. That despite her efforts to contact [Mother] by telephone and by letter, Ms. McKinley lost all contact with [Mother] after September of 2008.

33. That [Mother] had made little progress in therapy up to this point.

34. That [Mother] next contacted Ms. McKinley in January of 2009.

35. That due to the passage of time, it was difficult for Ms. McKinley to pick up therapy where it had been left at the end of September of 2008.

36. That, while Ms. McKinley believes that as of the date of the fact-finding hearing in this matter some progress has been made, she believes that there is much more to accomplish.

37. Ms. McKinley believes that [Mother] suffers from a depressive disorder that could be addressed in therapy if [Mother] would consistently attend her sessions.

38. Ms. McKinley believes that therapy attendance is a major concern as it not only inhibits [Mother]'s progress in her treatment, but it additionally translates to her ability to obtain and maintain employment and to parent her children.

39. That as recently as the day before the fact-finding hearing in this matter, [Mother] double booked appointments and failed to attend a scheduled therapy session.

40. That Ms. McKinley suggested that [Mother] pursue acquiring food from food banks in order to facilitate financial stability and [Mother] failed to follow through with that suggestion.

41. That [the children need] a safe, stable, secure and permanent environment in order to thrive. [Mother] has shown neither the inclination nor the ability to provide [the children] with such an environment.

...

44. That based on the foregoing, there is a reasonable probability that the conditions that resulted in [the children]'s removal will not be remedied.

45. That based on the foregoing, there is a reasonable probability that the continuation of the parent/child relationship herein poses a threat to the well being of [the children].

Appellant's App. pp. 28-31.

Upon review, we determine that each of the juvenile court's findings are supported by the record. The record reveals that Mother has failed to complete court-ordered services, has had inconsistent contact with the children, DCS case managers, and service providers, and has a history of being uncooperative with DCS case managers and services providers. Notably, Mother refused to accept the parenting suggestions or follow through with the recommendations made by the service providers because she "wanted to do things her way." Tr. p. 53. "A pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change." *In re L.S.*, 717 N.E.2d 204, 210 (Ind. Ct. App. 1999), *trans. denied*. In addition, the juvenile court noted that Mother has failed to accept responsibility for her actions concerning this matter.

When considered as a whole, the evidence is sufficient to demonstrate a reasonable probability that the conditions which resulted in the children's removal from Mother's home will not be remedied. It was within the province of the juvenile court, as the finder of fact, to minimize any contrary evidence of changed conditions in light of its determination that the conditions which resulted in the children's removal from Mother's home were unlikely to change. *See id.* Mother is effectively asking this court to reweigh the evidence on appeal, which, again, we will not do. *See In re S.P.H.*, 806 N.E.2d at 879.

Under these circumstances, we cannot say that the juvenile court erred in determining that DCS had established that it is unlikely that the conditions resulting in the children's

removal would not be remedied. *See In re C.M.*, 675 N.E.2d 1134, 1140 (Ind. Ct. App. 1997). We therefore conclude that the evidence was sufficient to support the juvenile court's determination that the conditions that resulted in the children's removal from Mother's care are unlikely to be remedied. Having concluded that the evidence was sufficient to support the juvenile court's determination, and finding no error by the juvenile court, we need not consider whether the continuation of the parent-child relationship poses a threat to the children's well-being because DCS has satisfied the requirements of Indiana Code section 31-35-2-4(b)(2)(B) by clear and convincing evidence.¹

B. The Children's Best Interests

Next, we address Mother's claim that DCS failed to prove by clear and convincing evidence that termination of her parental rights was in the children's best interests. We are mindful that in determining what is in the best interests of the children, the juvenile court is required to look beyond the factors identified by DCS and look to the totality of the evidence. *McBride*, 798 N.E.2d at 203. In doing so, the juvenile court must subordinate the interests of the parents to those of the child involved. *Id.*

It is well-established that one's parental rights should not be terminated solely because there is a better home available for the children. *In re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Our review of the evidence, however, does not reveal that the juvenile court's

¹ To the extent that Mother claims that the State was negligent in failing to tailor its services to her alleged mental illness, we observe that the record does not clearly establish that Mother suffered from any mental illness and to the extent that such alleged mental illness was discussed, the service providers indicated that Mother's inconsistent attendance at scheduled appointments hindered their ability to fully diagnose the seriousness of Mother's alleged mental illness or to tailor their services to treat the alleged mental illness.

termination of Mother's parental rights was based on who could provide a "better" home for the children, but instead was properly based on the inadequacy of Mother's custody. *In re V.A.*, 632 N.E.2d 752, 756 (Ind. Ct. App. 1994) (stating that it is the inadequacy of parental custody and not the superiority of an available alternative that determines whether parental rights should be terminated). Furthermore, this court has previously determined that the testimony of the DCS case worker and the Court Appointed Special Advocate ("CASA") regarding the children's need for permanency supports a finding that termination is in the child's best interests. *McBride*, 798 N.E.2d at 203.

Here, the testimony establishes that the children have a need for permanency and that the termination of Mother's parental rights would serve the children's best interests. The CASA, Rhonda Eckerty, discussed the children's need for permanency and stated that the children are doing well in foster care. The CASA also opined that while Mother is a great friend to the children, she has a lot to learn about being a parent. Likewise, the DCS case manager, Mary Revolt, testified that she believed that termination of Mother's parental rights was in the best interests of the children because Mother has failed to prove that she is capable of obtaining stable housing and employment. Revolt also testified that although Mother loves her children, she has not shown that she is capable of providing adequate care and supervision for the children. In addition, service provider Jennifer Powers, a behavioral clinician for Meridian Services, testified that she would not recommend that the children be returned to Mother's care at this time. Powers testified that Mother often makes poor decisions and her failure to consistently attend scheduled appointments impedes Mother's

progress. Mother's therapist Amanda McKinley also testified that she believes that Mother's inconsistent attendance at scheduled appointments creates a large concern about Mother's ability to adequately care for her children. The juvenile court did not have to wait until the children were irreversibly harmed such that their physical, mental, and social development was permanently impaired before terminating Mother's parental rights. *See In re C.M.*, 675 N.E.2d at 1140. In light of the testimony of the CASA, the DCS case manager, Powers, and McKinley, we conclude that the evidence is sufficient to satisfy DCS's burden of proving that termination of Mother's parental rights is in the children's best interests.

In sum, we conclude that the juvenile court did not err in terminating Mother's parental rights because the evidence provided by DCS was sufficient to support the juvenile court's termination order.

The judgment of the juvenile court is affirmed.

NAJAM., J., and FRIEDLANDER, J., concur.