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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 RELATIONSHIP OF: )  
C.D. AND K.D., Minor Children, )  
 )  
R.D., Mother, )  
 )  
Appellant-Respondent, )  
 )  
vs. )  
 )  
INDIANA DEPARTMENT OF CHILD )  
SEVICES, )  
 )  
Appellee-Petitioner. )

No. 79A02-1008-JT-943

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APPEAL FROM THE TIPPECANOE SUPERIOR COURT  
The Honorable Loretta H. Rush, Judge  
Cause Nos. 79D03-1005-JT-60, 79D03-1005-JT-62

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**March 14, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BROWN, Judge**

R.D. (“Mother”) appeals the involuntary termination of her parental rights to her children, C.D. and K.D. Concluding that there is sufficient evidence to support the trial court’s judgment, we affirm.

### **Facts and Procedural History**

Mother is the biological mother of C.D., born in April 2007, and K.D., born in August 2009.<sup>1</sup> The evidence most favorable to the trial court’s judgment reveals that in July 2009, the local Tippecanoe County office of the Indiana Department of Child Services (“TCDCS”) filed a petition alleging C.D. was a child in need of services (“CHINS”).<sup>2</sup> The Intake Officer’s Report that accompanied TCDCS’s CHINS petition indicates that there had been multiple substantiated incidents of domestic violence between Mother and Father in the family home and in the presence of C.D. during the six months leading up to the filing of the CHINS petition. The report further indicates that C.D. had received red marks and bruises on several occasions during these domestic disputes between the parents and that both parents used C.D. “as a pawn in their unhealthy relationship.” DCS Exhibit 3.<sup>3</sup> The Intake Officer’s Report further indicates that Mother tested positive for marijuana in May 2009 despite being pregnant with K.D.

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<sup>1</sup> The trial court terminated the parental rights of C.D.’s and K.D.’s biological father, J.D. (“Father”), in its July 2010 judgment. Father does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother’s appeal.

<sup>2</sup> During the six months preceding the filing of the CHINS petition, Mother also had custody of a prior born child who is not subject to this appeal. The prior born child lived in the family home until at least some time in April 2009, but began living with her own biological father prior to the filing of the July 2009 CHINS petition herein.

<sup>3</sup> Unfortunately, we are unable to provide a specific page number in this citation. The separately bound volumes of exhibits submitted on appeal were not consecutively enumerated. Nor was there an index placed in the front of the first volume of exhibits in accordance with Ind. Appellate Rule 29.

TCDCS did not immediately pursue an emergency detention order at the time of the filing of its CHINS petition. Instead, TCDCS provided in-home preservation services in an attempt to avoid removal of C.D. from the family home. K.D. was subsequently born in late August 2009. During a hearing in September 2009, both parents admitted to fighting that morning on the way to the courthouse over possession of K.D. and the baby stroller, during which Father called Mother a variety of obscenities and Mother hit Father in the face. Consequently, the court entered an emergency detention order and TCDCS took immediate emergency protective custody of both children. TCDCS thereafter filed a petition alleging K.D. was also a CHINS and both children were placed in relative foster care with their paternal grandmother.

A consolidated fact-finding hearing on the CHINS petitions was held several weeks later. The court found both children to be CHINS and proceeded to disposition. In September 2009, the court entered its dispositional order formally removing C.D. and K.D. from Mother's care and custody. The trial court also entered a Parental Participation Decree directing 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) obtain and maintain safe and suitable housing for the children; (2) refrain from the use of alcohol and any legend drug or controlled substance without a prescription and avoid being around individuals who use drugs; (3) submit to random drug screens; (4) obtain and maintain a legal source of income; (5) participate in individual therapy to focus on relationship choices and avoiding domestic violence situations; (6) participate in home-based case management

services through Homebuilders and follow all recommendations; and (7) exercise regular visitation with the children. In November 2009, the trial court issued a No Contact Order between Mother and Father because of their ongoing and unresolved domestic issues. In addition, in March 2010 Mother was ordered to participate in an in-patient substance abuse treatment program due to repeated positive drug and alcohol screens.

Throughout the CHINS case, Mother's participation in court-ordered services was inconsistent and ultimately unsuccessful. Although Mother participated in individual counseling through Wabash Valley Hospital beginning in September 2009, she no-showed or cancelled nine scheduled appointments and thereafter stopped attending all sessions in May 2010, despite the fact she continued to abuse her prescription medication, Klonopin, and remained unable to demonstrate an ability to appropriately cope with her anger. Mother was subsequently discharged from the program as unsuccessful.

Violence between Mother and Father also continued throughout the case. Despite Mother's participation in group therapy and intensive case management services designed to work on her anger issues and violence in the home, Mother continued to have significant verbal and physical altercations with Father and repeatedly threatened to commit suicide. Even after the trial court issued a no-contact order between the parents, Mother continued her relationship with Father and even resided with Father at various times during the case despite the no-contact order.

As for Mother's substance abuse issues, Mother continued to abuse drugs and alcohol sporadically throughout the case. She refused to submit to random drug screen

requests and/or produced diluted screens on multiple occasions, failed to take her prescription Klonopin medication as directed, was unable to account for missing Klonopin pills on a repeated basis, and refused to switch to a non-narcotic substitute medication recommended by her provider.

Eventually, TCDCS filed a petition seeking the involuntary termination of Mother's parental rights to the children in June 2010. A fact-finding hearing on the termination petition was held the following month. During the termination hearing, TCDCS presented evidence indicating Mother was unemployed, did not have independent housing, had failed to complete a majority of the court's dispositional goals, and continued to struggle with significant mental health and substance abuse issues. At the conclusion of the termination hearing, the trial court took the matter under advisement. On July 16, 2010, the trial court entered its judgment terminating Mother's parental rights to C.D. and K.D. Mother now appeals.

### **Discussion and Decision**

Initially, we note our standard of review. 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 not reweigh the evidence or judge the credibility of the witnesses. In re D.D., 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. Id.

In the instant case, the trial court made specific findings and conclusions in its termination order. When a trial court enters specific findings of fact and conclusions

thereon, we apply a two-tiered standard of review. First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. Bester v. Lake Cnty. Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). In deference to the trial court's unique position to assess the evidence, we will set aside the court's 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; see also Bester, 839 N.E.2d at 147.

“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. Although parental rights are of a constitutional dimension, the law provides for the termination of these 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). In Indiana, before parental rights may be involuntarily terminated, the State is required to allege and prove, among other things:

- (B) that one (1) of the following is true:
  - (i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.
  - (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.
  - (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services . . . .

Ind. Code § 31-35-2-4(b)(2).

The State's burden of proof for establishing these allegations in termination cases "is one of 'clear and convincing evidence.'" In re G.Y., 904 N.E.2d 1257, 1260-1261 (Ind. 2009) (quoting Ind. Code § 31-37-14-2 (2008)). "[I]f the State fails to prove any one of these statutory elements, then it is not entitled to a judgment terminating parental rights." Id. at 1261.

Mother challenges the sufficiency of the evidence supporting the trial court's findings as to subsection (b)(2)(B) of the termination statute cited above. See Ind. Code § 31-35-2-4(b)(2)(B). We pause to observe, however, that Ind. Code § 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, TCDCS was required to establish, by clear and convincing evidence, only one of the three requirements of subsection (b)(2)(B). See L.S., 717 N.E.2d at 209. The trial court found prongs b(2)(B)(i) and (ii) of this subsection were satisfied. Because we find it to be dispositive, however, we limit our review to Mother's allegations of error pertaining to subsection (b)(2)(B)(i) of Indiana's termination statute. See Ind. Code § 31-35-2-4.

### ***Remedy of Conditions***

In challenging the sufficiency of the evidence supporting the trial court's determination that there is a reasonable probability the conditions resulting in C.D.'s and K.D.'s removal and continued placement outside Mother's care will not be remedied, Mother claims that by "refusing to give [Mother] more time in the CHINS case and terminating her parental rights" the trial court made an impermissible "value judgment that there was a 'better' place for the children than [Mother's] home." Appellant's Brief

at 9-10. Mother also suggests that the trial court “glossed over, disregarded, or simply ignored a substantial amount of the evidence presented at trial.” Id. at 10.

A parent’s interest in the care, custody, and control of his or her children is arguably one of the oldest of our society’s fundamental liberty interests. Bester, 839 N.E.2d at 147. Hence, the traditional right of parents to establish a home and raise their children is sheltered by the Fourteenth Amendment of the United States Constitution “against the State’s unwarranted usurpation, disregard, or disrespect.” M.L.B. v. S.L.J., 519 U.S. 102, 116, 117 S. Ct. 555, 564 (1996). A case involving the State’s authority to permanently sever a parent-child bond therefore demands the close consideration the Supreme Court has long required when a family association so undeniably important is at stake. Id. at 116-117, 117 S. Ct. at 564.

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. Moreover, an 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. In re R.H., 892 N.E.2d at 149. Termination of parental rights is therefore intended as a last resort, available only when all other reasonable efforts have failed. Id.

In determining whether there exists a reasonable probability that the conditions resulting in a child’s removal or continued placement outside a parent’s care will not be remedied, 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 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 Cnty. Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. A trial court may also properly consider the services offered to the parent by a county department of child services and the parent’s response to those services as evidence of whether conditions will be remedied. Id.

Here, in terminating Mother’s parental rights to the children, the trial court found that in addition to family team meetings and numerous review hearings, four separate show cause hearings were held in an attempt to get Mother to comply with court-ordered services. The court also made multiple detailed findings regarding Mother’s “significant mental health challenges,” as well as her “long-term issues with anxiety, depression, and substance abuse.” Appellant’s Appendix at 812. Although the trial court acknowledged that Mother “was able to have short[-]term periods of taking her medication as prescribed, attending therapy, and appropriately parenting her children,” the court further found that Mother “acknowledges that she cannot care for her children today” and “states that she needs more time.” Id. at 813. In addition, the trial found that the “volatility of Mother’s and Father’s relationship has continued throughout the case, and altercations between them have occurred repeatedly, yet neither parent has demonstrated a willingness to address their relationship issues together or separate from one another.” Id. at 814. Moreover, the court noted that Mother had engaged in “unsafe relationships

with others” during the CHINS case as well, including a “reported friendship with a man in January 2010, who had been in criminal trouble and who had a previous CPS substantiation for child molest.” Id. The court also found as follows:

36. FCM Carmosin noted that the initial issues of substance abuse and violence, along with other issues of housing/financial instability, and untreated mental health issues still exist today . . . . Mother has demonstrated some willingness to comply with attending Court[-]ordered services but demonstrates little internalization of material. Mother did complete her drug treatment and YWCA CHOICES program.

37. CASA, Pat Wilkerson, supports the termination of parental rights. CASA does not believe that either parent can safely parent these children now or in the near future.

38. [TCDCS] and CASA have legitimate and substantial concerns regarding Mother’s . . . habitual pattern of substance abuse, violence, lack of compliance on addressing mental health issues, and the corresponding threat this poses to the physical, mental, and social development of the children.

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41. The Court finds, as a matter of law[,] that reasonable, appropriate, necessary services have been offered to Mother . . . over an extended period of time commencing with the filing of the CHINS petition in July of 2009 to date. The services have been exhaustive and have been designed to address the difficulties presented by the family in the initial CHINS petitions . . . and to address other difficulties that have come to light since [TCDCS] became involved with this family. The services have been aimed at alleviating the problems requiring the removal of the children from [the] parents’ care, permitting reunification, and minimizing safety, health, mental health, and emotional concerns.

42. The Court finds, as a matter of law, that after approximately twelve (12) months of rendering services of various kinds with different providers to this family that there is not a basis for any reasonable belief that the circumstances which resulted in the removal of the child[ren] from [Mother’s] care or the reasons for continued placement outside the home will be remedied. Mother . . . [has] demonstrated a continuing pattern of poor decision making, non-compliance and failure to participate

consistently in services, and an over-riding failure to place [her] children as a priority. Mother . . . [does] not indicate that [she has] a basic understanding or belief of the harm [her] children have suffered given [her] choices and instabilities in [her] own [life]. Mother . . . [is], therefore, unable to provide a minimally safe, secure[,] and stable home for these children.

Id. at 815-16. A thorough review of the record reveals that clear and convincing evidence supports the court's findings set forth above. These findings, in turn, support the court's ultimate decision to terminate Mother's parental rights to C.D. and K.D.

The children were initially removed from Mother's care amidst substantiated allegations of domestic violence and substance abuse in the family home. The children's continued placement outside of Mother's care was the direct result of Mother's refusal to consistently participate in court-ordered reunification services, ongoing substance abuse issues, and untreated mental health issues. Testimony from various witnesses during the termination hearing, including Mother herself, makes clear that, at the time of the termination hearing, these conditions remained largely unchanged.

During the termination hearing, Wabash Valley Hospital Out-Patient Therapist Angela Heinzman informed the court that she worked with Mother on "coping skills, anger management, relationship issues, and substance abuse" from September 2009 through May 2010 until Mother "stopped attending sessions." Transcript at 18-19. When asked if Mother had made any progress in developing her coping skills, Heinzman stated Mother's progress "went very back and forth" from week to week, and "as of May [2010] there wasn't any progress." Id. at 19, 21. Similarly, TCDCS case manager Kathleen Carmosin testified that Mother had made "limited progress" with her mental

health issues and had tested positive for drugs as recently as May 2010 despite Mother's completion of a relapse prevention program. Id. at 83-84. When asked if Mother showed any progress with her "understanding the domestic violence problems that led to this case," Carmosin answered in the negative, stating Mother blames TCDCS for removing the children and refuses to acknowledge how her actions "caused the children to be removed in the first place." Id. at 84.

Karen Hustadt-Warren, Homebuilders Home-based Family Specialist with the Community & Family Resource Center, testified that Mother "tested positive for alcohol and marijuana throughout the course of the case," and had "significant issues with Klonopin abuse." Id. at 31. When asked whether Mother had achieved any "sustained progress" regarding her substance abuse and "emotional containment" issues, Hustadt-Warren stated that although Mother had periods of time during which she "would do very well," she still frequently had "blow-ups" and her "emotional stability just didn't last for extended periods of time." Id. at 32-33. When asked if she believed that Mother could safely parent the children, Hustadt-Warren answered in the negative and explained that Mother "still has significant anger issues . . . and . . . significant mental health issues that affect her ability to safely parent the kids." Id. at 38. Mother's own testimony likewise confirmed that she had struggled with depression "all [her] life," and that she was not capable of caring for the children "today." Id. at 141, 147.

Regarding Mother's mental health issues, evidence presented during the termination hearing reveals that Mother participated in a psychological evaluation with Dr. Jeff Vanderwater-Percy in January 2010. Dr. Vanderwater-Percy found Mother had

diagnostic impressions of major depressive disorder, dysthymic disorder, generalized anxiety disorder, alcohol and marijuana abuse, Klonopin dependence, partner relational issues, and dependent personality disorder with passive aggressive and borderline traits. Despite these significant mental health issues, Mother refused to take her Klonopin as prescribed throughout the duration of the underlying proceedings. In addition, although Judith McEwen, Mother's current therapist with Seeds of Hope, testified that Mother's mood seemed "brighter" and she was "working better in therapy" during the three weeks leading up to the termination hearing, McEwin nevertheless acknowledged Mother was unable to safely parent a child "today," and that she would need "about six more months" of working with Mother before McEwin would know whether Mother's ability to appropriately raise the children sometime in the future "*might* be a possibility." *Id.* at 110, 116 (emphasis added).

A trial court must judge a parent's fitness to care for his or her children *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 children. *D.D.*, 804 N.E.2d at 266. Here, at the time of the termination hearing, Mother was unemployed, did not have independent housing, and her significant substance abuse and mental health issues remained unresolved. In addition, Mother had refused to participate in and successfully complete a majority of the court-ordered services designed to facilitate reunification with the children. Consequently, at the time of the termination hearing, the circumstances resulting in the children's removal remained largely unchanged, and Mother continued to be incapable of demonstrating she was capable of

providing C.D. and K.D. with a safe and stable home environment. “A pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, supports a finding that there exists no reasonable probability that the conditions will change.” Lang v. Starke Cnty. Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied. Based on the foregoing, we conclude that ample evidence supports the trial court’s determination that there is a reasonable probability the conditions resulting in C.D.’s and K.D.’s removal and continued placement outside Mother’s care will not be remedied. Mother’s arguments to the contrary emphasizing her self-serving testimony, rather than the evidence cited by the trial court in its termination order, amount to an invitation to reweigh the evidence, which we may not do. See D.D., 804 N.E.2d at 265.

### ***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 Cnty. Dep’t of Public Welfare, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Affirmed.

ROBB, C.J, and RILEY, J., concur.