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IN THE
COURT OF APPEALS OF INDIANA

IN RE: THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF C.R., the Child, and	)	
A.I.,	)	
Appellant-Respondent,	)	
vs.	)	No. 03A01-0901-JV-46
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE BARTHOLOMEW CIRCUIT COURT
The Honorable Stephen R. Heimann, Judge
Cause No. 03C01-0504-JT-672

April 15, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

A.I. ("Mother") appeals the termination of her parental rights as to her minor child, C.R.

We affirm.

ISSUE

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

FACTS

C.R. was born on February 22, 1996. The identity of C.R.'s father is unknown. Mother is married J.I. ("Stepfather"), with whom she has a child, S.I. Mother also has another child from a previous relationship, W.R.

On March 4, 2003, the Bartholomew Department of Child Services ("DCS") received a report that C.R. had been sexually abused. C.R. reported that her ten-year old cousin "wakes her up in the middle of the night so they can 'play sex.'" (DCS's Ex. D). Although the abuse was unsubstantiated, DCS referred C.R. to services through Quinco Behavioral Health Systems.

On May 22, 2003, DCS received a report that C.R. had physically attacked a teacher and counselor at her school. When Mother arrived at the school, she purportedly struck C.R.'s head with a metal key ring. School staff then heard her "screaming and cursing" at C.R. as they left the school. (DCS's App. 22).

While investigating the May incident, DCS received another report on July 18, 2003, that C.R. had exhibited violent behavior at a local mall. DCS arranged to have an

evaluation performed at Valle Vista Hospital. Due to an escalation of C.R.'s behavior, however, Mother had her admitted to Behavioral Healthcare Center ("BHC"). Upon C.R.'s discharge on August 11, 2003, BHC recommended in-home counseling.

In August of 2003, DCS received a report that Mother had struck C.R. and W.R. Both children denied the allegations. The next month, DCS received a report that C.R. had been "out of control" at school. (Tr. 103). According to the report, C.R. attacked the school staff and responding officers, requiring that she be restrained "three separate times . . . ." (Tr. 103). Mother took C.R. to BHC but refused to admit C.R. despite BHC's recommendation that she be admitted.

DCS received a second report in September that C.R. again had attacked school staff. At that point, DCS requested an emergency detention hearing in order to have C.R. admitted to BHC. On September 15, 2003, the juvenile court ordered that C.R. be placed in BHC pending admission to Evansville Psychiatric Children's Center ("EPCC"). On September 17, 2003, the juvenile court held a detention hearing and ordered C.R.'s continued detention.

On September 26, 2003, DCS filed a petition alleging C.R. to be a child in need of services ("CHINS") pursuant to Indiana Code sections 31-34-1-2[1] and 31-34-1-6.[2] The

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[1] Indiana Code section 31-34-1-2 provides:

> (a) A child is a child in need of services if before the child becomes eighteen (18) years of age:
> (1) the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian; and
> (2) the child needs care, treatment, or rehabilitation that:
> (A) the child is not receiving; and
> (B) is unlikely to be provided or accepted without the coercive intervention of the court.

juvenile court held an initial hearing, during which Mother denied the allegations of the CHINS petition. The juvenile court scheduled a fact-finding hearing and ordered that a Court Appointed Special Advocate ("CASA") be appointed for C.R. The juvenile court held a hearing on October 30, 2003, and determined C.R. to be a CHINS.

DCS filed a petition to terminate Mother's parental rights as to C.R. on April 8, 2005. The juvenile court held an evidentiary hearing on the petition on January 22, January 23, and March 18, 2008. Testimony regarding the following facts was presented.

Deanna Gamroth, a family case manager with DCS, testified that she first met with C.R. on February 3, 2004, when C.R. was at EPCC. Gamroth implemented a case plan, requesting, among other things, that Mother obtain and maintain housing and employment. The case plan also required Mother's participation in any treatments recommended by C.R.'s service providers as well as a psychological evaluation. It further recommended that Mother visit C.R. and "behave appropriately" during the visits. (Tr. 117). Gamroth testified that the juvenile court later incorporated the case plan into a dispositional decree.

According to Gamroth, Mother participated in "[a]bout half" of the services recommended by the DCS. *Id.* Mother refused to participate in family therapy until "well into 2005," and refused to submit to a psychological evaluation until the juvenile

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[2] Indiana Code section 31-34-1-6 provides:

> A child is a child in need of services if before the child becomes eighteen (18) years of age:
> (1) the child substantially endangers the child's own health or the health of another individual; and
> (2) the child needs care, treatment, or rehabilitation that:
> (A) the child is not receiving; and
> (B) is unlikely to be provided or accepted without the coercive intervention of the court.

court ordered her to do so. (Tr. 119). Mother also refused to participate in parenting classes because "she had parenting classes when [C.R.] was removed from her care in Florida and she felt like she knew everything she needed to know about parenting." (Tr. 119).[3]

Despite C.R.'s escalating erratic and violent behavior while at EPCC, Mother continued to insist that "all [C.R.] needed was to go home and be with her family and she didn't need anything else." (Tr. 121). According to Gamroth, Mother was "openly opposed to and unwilling to follow recommendations from EPCC," and "there didn't appear to be any optimism about change in how [C.R.] was going to be able to perform or that [Mother] was going to be able to deal with her appropriately." (Tr. 121).

Gamroth testified that on August 17, 2004, the juvenile court entered a parental participation order. The DCS requested a parental participation order because Mother refused to allow Gamroth inside her residence during home visits; "was not keeping appointments with the therapist that she selected to do her individual therapy"; "was not attending the day therapy groups that her therapist had referred her to"; and refused to "work with the public assistance people." (Tr. 122). According to Gamroth, Mother did not consistently comply with the parental participation order; she "never completed or even consistently attended" day therapy. (Tr. 123). She also discontinued her individual therapy sessions. She also refused to participate in EPCC's recommended family therapy until ordered by the juvenile court to do so.

[3] Florida Protective Services removed C.R. and W.R. from Mother's care in 1999 due to abuse and neglect. Mother received services, and Florida Protective Services closed the case in 2002.

Gamroth further testified that in April of 2004, DCS enlisted Ireland Home-Based Services, a third-party service provider, to provide visitation services for Mother and C.R. This change took place after a visit ended with C.R. having "a temper tantrum," requiring her to return to her dormitory. (Tr. 126). As a result, Mother telephoned Evansville law enforcement, reporting "that [C.R.] was being abused . . . ." (Tr. 126). Due to Mother's behavior, EPCC determined that Mother should not be allowed on its premises. Thus, DCS retained Ireland Home-Based Services to provide visitation services, including a visitation location.

Prior to retaining Ireland Home-Based Services, EPCC ceased visitation between Mother and C.R. because, among other things, "there [were] so many different types of incidences where [Mother] would be sabotaging or non-supportive of treatment recommendations at EPCC . . . ." (Tr. 127). C.R.'s "behavior improved significantly during the period of no contact," which lasted from April to July of 2004. (Tr. 127).

Gamroth testified that the juvenile court entered a parental participation order on August 17, 2004, at DCS's request due to Mother's failure to comply with the dispositional decree and case plan. According to Gamroth, Mother failed to keep her appointments for individual therapy; would not attend day therapy groups; and refused to work with Homebuilders, an in-home based service provider referred to her by DCS.

Despite the order, Mother "never completed or even consistently attended the treatment at Quinco for the day therapy." (Tr. 123). She also attended only "about forty-two percent (42%)" of her individual and day therapy appointments, despite being issued "a waiver of work requirement," allowing her "to participate in day therapy in lieu of

employment and that allowed her to continue to receive TANF benefits without the employment component being required." (Tr. 123). According to Gamroth, Mother refused to participate in day group therapy because the people "were crazy and she didn't have any use for being there, she didn't need to be there and didn't intend to go." (Tr. 123-24).

Mother also initially refused to participate in Homebuilders' services. After the juvenile court ordered her participation, Mother "wanted to limit the amount of contact that the Homebuilders' person was in the home." (Tr. 125). She also refused to allow them contact with W.R.

EPCC discharged C.R. on January 11, 2005. DCS then placed C.R. in Indiana United Methodist Children's Home [IUMCH] in Lebanon. DCS at first attempted to place C.R. closer to home. Despite EPCC repeatedly asking Mother not to "tell [C.R.] when there's going to be any significant changes" because it caused C.R. anxiety, Mother informed C.R. that she would be discharged from EPCC. According to Gamroth, this information caused C.R. "a lot of distress," causing her behavior "to deteriorate pretty markedly." (Tr. 128). The deterioration was "pretty significant" and included "sexualized behavior and . . . and having bowel movements and spreading feces . . . ." *Id.* Due to this behavior, the original home chosen for C.R.'s placement refused to take her. IUMCH, however, agreed to take C.R.

Gamroth testified that Mother "didn't support [C.R.'s] placement at IUMCH" and refused to attend family counseling, asserting it was too expensive despite receiving transportation assistance from DCS. (Tr. 129). Around this time, Mother began a

relationship with Stepfather and asked that he be included in the visitations. DCS refused as it was a new relationship and could be confusing to C.R. Nonetheless, after being allowed unsupervised visits off of IUMCH's premises, Mother, on two occasions and "contrary to [DCS]'s directive" and court order, included Stepfather in her visits. (Tr. 131). Accordingly, DCS ordered that future visits be fully supervised.

During C.R.'s stay at IUMCH, their staff psychologist opined that Mother "was not capable of raising [C.R.] based on [C.R.]'s behaviors . . . ." (Tr. 132-33). Given this assessment, the juvenile court ordered a psychiatric and custody evaluation of Mother.

On January 24, 2006, Dr. Richard Lawlor submitted his evaluation, in which he concluded as follows:

> The current evaluation suggests that both [Mother] and [C.R.] have significant psychiatric difficulties. Despite [Mother]'s confidence that she can manage [C.R.], my impression is that [C.R.] is an extremely psychiatrically disturbed young lady; and she needs far more structure than [Mother] would be able to provide. [Mother] presents as an extremely angry and impulsive person herself, and [C.R.] is developing these same characteristics, but to an even greater extent than they show in [Mother]'s personality functioning. I do not think that [Mother] has significant potential for being able to help [C.R.], if [C.R.] were placed in her care after discharge from the [IUMCH].
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> At this point, I would concur with the recommendation of [DCS] for termination of parental rights; and probably placement of [C.R.] in some type of therapeutic foster care arrangement. [C.R.] needs to remain on the medications she is on, and [Mother] would most likely take her off her medications if she had care and control of [C.R.] [C.R.] also needs to continue with outpatient treatment when she is placed in a setting such as a foster care program.

(DCS's Ex. I).

C.R. remained at IUMCH until March 14, 2006, when she began "having auditory and visual hallucinations." (Tr. 134). C.R. had become fixated on her grandfather's death, which was exacerbated by Mother "trying to give [her] pictures of the grandfather's grave . . . ." (Tr. 134). After exhibiting these psychotic behaviors and becoming physically aggressive, IUMCH had C.R. hospitalized at Methodist Hospital for two weeks.

Upon C.R.'s discharge, IUMCH determined that it could not provide adequate support and care for her and recommended a residential psychiatric setting. DCS therefore again placed C.R. in EPCC after determining that a closer facility in Indianapolis would be inappropriate due to its all-male residents and C.R.'s "sexualized behaviors." (Tr. 135).

Mother refused to "participate in family therapy until she was ordered by the Court," approximately one month after C.R.'s placement at EPCC. (Tr. 136). Mother also refused to visit C.R. on several occasions, citing lack of funds despite DCS reimbursing her for mileage and paying for her hotel stays in Evansville.

In the summer of 2006, DCS began preparations for C.R.'s reunification with Mother. It did so out of concern that "if she didn't go home that she might remain institutionalized throughout her life." (Tr. 159). DCS therefore instituted family therapy sessions and unsupervised visits between C.R. and Mother.

During this time, Mother and Stepfather relocated to Bloomington. DCS therefore again referred Mother to Ireland Home-Based Services for home-based services. Initially, Mother refused those services, and therefore, the juvenile court ordered her

participation. Ireland Home-Based Services provided services in Mother's home seven days a week and was on call twenty-four hours a day. Mother, however, tried "to limit how often people could come to her home." (Tr. 143). Ireland Home-Based Services appointed Shelly Patterson to act as a parent aide to Mother.

C.R. returned home on January 11, 2007, and EPCC officially discharged her on January 29, 2007. C.R. then began individual therapy with Emma Ford through the Center for Behavioral Health ("CBH") in Bloomington. DCS also made a referral for Mother to receive individual counseling at CBH. From January to May of 2007, however, Mother did not attend counseling.

In February of 2007, Mother requested that C.R. receive individual therapy "four (4) to five (5) times per week plus group therapy." (Tr. 149). Mother, however, refused to take advantage of other recommended services, including enrolling C.R. in a girls' group which would allow her to socially interact with other girls of her age. She also refused to arrange for extra-curricular activities for C.R., asserting that it was DCS's responsibility "to make sure these things happened." (Tr. 150). DCS therefore increased C.R.'s individual therapy to twice a week, arranged to have a juvenile mentor meet with C.R. twice a week and continued home-based services through Patterson, the parent aide. DCS also obtained a family pass for the YMCA, feeling that exercise and activity would help C.R.'s behavioral issues.

On May 10, 2007, Gamroth and Diane Bates, a family case manager, conducted a home visit, as required. Gamroth found the atmosphere in the home to be "very tense." (Tr. 155). Mother yelled at C.R., and "her manner with [C.R.] was very harsh and cold."

(Tr. 154). When asked if C.R. was still attending the YMCA, Mother stated that the pass had expired. Gamroth later informed Ford, C.R.'s therapist, about the visit and expressed concern with the conditions at the home.

On May 14, 2007, Gamroth received a telephone call from Ford. Ford explained that she had gotten "a panicked call from [Mother]"; Mother "was crying and saying that [C.R.] was trying to hit her and needed to go to placement." (Tr. 155). When Ford arrived at the home, Ford was told that during an altercation between C.R. and Stepfather, "[C.R.] had been pushed into the wall of the family home and had left a hole in the wall." (Tr. 155). The next day, however, C.R. reported to Ford that Mother "had pushed her into the wall during an argument." (Tr. 156). When Mother discovered that Ford had made a report to DCS, she became irate and threatened to leave the state with her children. At that point, DCS determined that removal of C.R. would be in her best interests.

Pursuant to a court order, DCS took C.R. into custody. Once in DCS's custody, C.R. reported that Stepfather had kicked her in the stomach; Mother had "hit her in [sic] the head"; and yelled at her. (Tr. 158). She also reported that Mother and Stepfather hit W.R. with a belt.

Upon her removal, C.R. was placed in Youth Shelter, a residential care facility, for one month and then transitioned into foster care. While in foster care, C.R. had supervised visits with Mother. These visits continued until Mother assaulted Gamroth in August of 2007, resulting in a court order suspending visitation between Mother and C.R.

Eventually, DCS placed C.R. at Options Treatment Center in Indianapolis. (Tr. 161). Initially, DCS considered placing C.R. with her maternal grandmother. Mother, however, objected to this placement. DCS also determined that placement with the grandmother would be inappropriate after it "pulled the file from when [Mother] had been removed from her mother's care and it was a fairly extensive file." (Tr. 160).

Gamroth testified that DCS's plan for C.R. is to identify an adoptive placement—"a family who could come in and work with the treatment providers either at Options, or possibly . . . something that's less restrictive than Options." (Tr. 161).

Gamroth testified that at the time of the final hearing, Mother had several criminal charges pending against her. One was for the assault on Gamroth, one was for perjury, and one was for welfare fraud. The welfare fraud charge stemmed from allegations that she failed to notify the U.S. Social Security Administration that the payee for C.R.'s disability payments should be changed as C.R. was no longer in her care. This failure was despite a 2003 court order that she do so. Thus, Mother "had accumulated about $25,000 of SSI benefits that she wasn't entitled to." (Tr. 163).

Gamroth testified that she did not believe that the conditions that had led to C.R.'s removal from Mother's care had been remedied. She also agreed that a continuation of the parent-child relationship would be detrimental to C.R. and that termination of Mother's parental rights were in C.R.'s best interests. She testified that DCS's plan for C.R. would be adoption, which would give C.R. "stability and get the chaos out of her life . . . ." (Tr. 161).

Julie Miller, a therapist and regional manager at Ireland Home-Based Services, testified that she began providing services to C.R. on December 2, 2006, after C.R.'s case was transferred from the Evansville office. Miller's "primary role was to assist in [C.R.]'s transition back into the home, addressing her behaviors as she went from a very structured residential program back into the home setting . . . ." (Tr. 9). She continued therapy with the entire family until April 30, 2007, when "[t]he transition was made to services in the community through [CBH]." (Tr. 20). She observed that "there were not any overall positive changes in the home." (Tr. 24). She testified that Mother "wanted to use corporal punishment on [C.R.], that she felt that would be the best thing for her." (Tr. 16). She also testified that Mother failed to implement consistent structure in the home environment. According to Miller, Mother made several threats to C.R. that she would go back into placement if she did not behave.

Shelly Patterson testified that she had worked for Ireland Home-Based Services as a parent aide to Mother. As a parent aide, Patterson helped parents "overcome any parenting obstacles that they have in their home." (Tr. 35).

She began working with C.R.'s family on November 1, 2006, to help prepare Mother for C.R.'s return home. Initially, Mother refused Patterson's services as she did not believe it necessary. Once the juvenile court ordered her participation, Mother complied. Patterson, however, described Mother as "very resistant, non-compliant." (Tr. 44). Mother failed to implement EPCC's recommended system for punishing C.R.; rather, she expressed a desire to use corporal punishment. Patterson testified that Mother reported that "she would use corporal punishment when everybody was gone." (Tr. 40).

According to Patterson, Mother failed to enroll C.R. in several suggested activities. Patterson further testified that Mother had commented that "if [C.R.] acted out and made problems with the family and there had to be a choice between [Stepfather] and [C.R.], [C.R.] would go and [Stepfather] would stay." (Tr. 53). During the period she worked with Mother, Patterson did not see any improvements in Mother's parenting skills.

Cassandra McConn, a social worker, testified that in June of 2007, she began supervising visits between C.R., Mother and Stepfather while C.R. was at the Youth Shelter and after C.R.'s placement in foster care. McConn testified that C.R. had reported to her that Mother pulled her hair and yelled at her. She testified that Mother often was unresponsive to C.R. and made inappropriate comments about C.R.'s foster family. She further testified that Mother had anger management issues; was resistant to counseling; and she refused to "accept responsibility for things that have happened and tends to speak in terms of not needing to do anything differently . . . ." (Tr. 69).

McConn conducted an extensive assessment of the family. McConn assessed that C.R. "was at very high risk for abuse if placed in the care of [Mother] and [Stepfather]." (Tr. 67). Among other things, McConn expressed a concern with Mother's reliance on corporal punishment; failure to accept responsibility; anger management issues; and lack of structure and consistency. She believed that a continuation of the parental-child relationship between C.R. and Mother would be "detrimental" to C.R.'s well-being and termination of Mother's parental rights would be in C.R.'s best interests. (Tr. 70).

Dawn Freeman, a family case manager with the Monroe County Department of Child Services, testified that W.R. and S.I. were removed from Mother's home in May of

2007 "due to physical abuse." (Tr. 88). She testified that Mother had been noncompliant with the services provided. She also testified that she has received several reports of Mother and Stepfather fighting.

Kevin Pollert, a therapist, testified that he began working with C.R. upon her admission into Options Treatment Center on October 5, 2007. He testified that her current diagnosis is Conduct Disorder[4] and Attention Deficit Hyperactivity Disorder ("ADHD"). Given this diagnosis, he testified that structure, routine and a calming environment are necessary for C.R. He further testified that corporal punishment would not be an effective means of disciplining C.R. He opined that C.R. would benefit from extra-curricular activities, which could "teach her to interact with other people that are her age as well as provide some structure . . . ." (Tr. 81-81). He concluded that C.R. "will probably need to be involved with a community health center as an adolescent and an adult and probably will be in an[d] out of in-patient facilities to work on stabilizing her behavior, medication adjustments and such, throughout her life." (Tr. 81).

Mother testified that it would "be difficult for anybody to maintain C.R." (Tr. 214). She testified that she did not believe C.R. had special needs because she was not physically or mentally handicapped but was "just really disrespectful for the most part." (Tr. 179). Mother asserted that DCS's interference made it difficult for her to parent C.R. She also testified that C.R. needed a lot of attention, which she could not provide due to

[4] "'Conduct disorder' refers to a group of behavioral and emotional problems" in children and adolescents. http://www.aacap.org/cs/root/facts_for_families/conduct_disorder (last visited Mar. 31, 2009). "Children and adolescents with this disorder have great difficulty following rules and behaving in a socially acceptable way." *Id.*

having two other children. Mother therefore testified that she would like C.R. placed with her maternal grandmother.

Mother testified that prior to DCS's involvement, C.R exhibited "typical seven, six, seven year old behaviors," and that she believed that C.R.'s school exaggerated C.R.'s behavior. (Tr. 218). Although Mother agreed that C.R. "has some mental health issues," she opined that C.R.'s issues stemmed from being "very disrespectful." (Tr. 220). She further testified that C.R. "is not just the main priority in [her] family." (Tr. 244). Mother admitted that she failed to complete services.

On September 4, 2008, the juvenile court terminated Mother's parental rights. In its order, the trial court made the following findings:

> 8. It was established by clear and convincing evidence that there is a reasonable probability that the conditions that resulted in [C.R.]'s removal and the reasons for placement outside the home will not be remedied and that the continuation of the parent-child relationship poses a threat to the well-being of the child.
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> 9. The events that lead to the filing of the CHINS petition began in May, 2003, when [DCS] received a report regarding [C.R.]'s deteriorating behavior at Smith School. . . . [Mother] was called to pick up her daughter from school. The principal found [M]other to be agitated upon arrival and observed [Mother] hitting [C.R.] with a large key ring. [Mother] was heard screaming and cursing at [C.R.] while driving away from school grounds. The school had been having many behavioral problems with [C.R.] and [Mother] was frequently being called to come get her daughter.
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> 10. [DCS] tried to work with the family through informal interventions. . . . [DCS] helped with housing and recognized that [Mother] was going through a very frustrating time. [DCS] tried to help with school issues by arranging for a school advocate.
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> 11. [DCS] received another report regarding [C.R.] in July, 2003. Patrons at the Columbus Mall reportedly witnessed [Mother] trying to restrain [C.R.] and viewed her actions as abuse. . . . Mother did take [C.R.]

to [BHC] for a mental health evaluation. [C.R.] remained in their care from July 21 through August 11, 2003. It was recommended that the child and family participate with in-home counseling services.

12. A third report was received by [DCS] in August, 2003 regarding another public incident. A patron again reported observing [Mother] striking [C.R.]

13. When school began in the fall, [DCS] received another school report on September 3, 2003. [C.R.] was reported as being out of control. She attacked staff and a police officer. . . . [C.R.] was again taken to [BHC]. She was admitted into acute care. [BHC] was strongly recommending in-patient care which [M]other was against. [BHC] was reporting that [Mother] was uncooperative and disruptive with her phone calls to the child. [Mother] wanted [C.R.] returned to her care. [DCS] believed that part of [Mother]'s motivation in seeking the return of [C.R.] was financial. If [C.R.] were removed from her care, assistance would stop and as a result, rent could not be paid.

14. [DCS] filed its CHINS petition on September 26, 2003. In bringing the petition, [DCS] acknowledged that [C.R.] had many behavioral issues. She was believed to be a manipulative, out of control child. However, [DCS] was having great difficulty in getting [Mother] to actively participate in a course of action. By this point, the school had assigned a counselor for the child. In addition, [BHC], another mental health agency, was providing individual counseling for [C.R.] and was prepared to provide home-based services. Despite these measures, there were continuing concerns for [C.R.]'s safety. Further, [DCS] was troubled by the amount of violence being reported with [Mother].

* * *

16. [DCS]'s predispositional report and the dispositional decree required [Mother] to complete a psychiatric evaluation, comply with any recommendations therein, participate in the program established by EPCC staff, maintain employment and housing, and remain free from a domestic violent relationship.

17. The court continued to monitor progress under the case plan through court reviews, which were held on February 14, 2004 and March 4, 2004. Improvements in behavior were noted for [C.R.] at each review. . . .On the other hand, [Mother] was very resistant to services or positive participation in the program at EPCC. She refused to complete a psychiatric evaluation

through any referral by [DCS]. She refused to participate in parenting classes, claiming to her case manager that she knew everything she needed to know. She was very displeased with her daughter's placement at EPCC and voiced her displeasure in anger and most often in the presence of C.R. She failed to abide by the parental protocol at EPCC. . . . Mother's behavior was having a negative effect on [C.R.] by causing a decline in her behavior after visits and undermining [C.R.]'s efforts to be successful at EPCC.

18. Parental participation orders were sought by [DCS] and a hearing was held in August, 2004. There were continuing compliance issues with [Mother].

* * *

21. A parental participation order was issued requiring [Mother] to essentially regularly attend individual counseling, regularly attend Day Treatment, attend family therapy at EPCC, cooperate with treatment recommendations established by EPCC, refrain from negative remarks in [C.R.]'s presence regarding EPCC, comply with EPCC rules, and cooperate with home-based services.

22. [Mother] continued to pick and choose which of the participation orders she would abide by. She refused to grant her case manager access into her home; she refused to sign the necessary release so that the results of a psychological [sic] could be shared with [DCS]. She eventually cooperated with some of the home-based services although she was unwilling to attend any of the parental support components. Individual counseling stopped and started as [Mother] moved through at least three therapists . . . . The court never received any evidence that Day Treatment was completed. At one point, [Mother] even admitted that she would not attend any of the Tuesday Day Treatment sessions as there were too many mentally ill people there.

23. While struggling to gain full compliance with [Mother], [C.R.] experienced many of her own difficulties. . . . IUMCH recommended that [C.R.] needed more intensive psychiatric therapy. [C.R.] did return to EPCC.

24. A trial home placement did occur which allowed [C.R.] to return to the home of [Mother]. . . . Although [Mother] was participating in therapy at this point, it was moving very slowly. Service providers were still reporting that they could only work on limited topics as [Mother] did not

believe she needed help in other areas. Further, service providers all noted that [Mother] minimized [C.R.]'s problems.

25. Cassandra McConn was one of the service providers that worked with [C.R.] and [Mother]. . . . She initially supervised visits between [C.R.] and her mother and step-father. She also completed an assessment with [Mother] that included a parenting assessment, family functioning assessment and a psycho-social assessment.

26. Ms. McConn noted anxiousness with [C.R.] as she was awaiting a visit with her mother and step-father. . . . After the visit, [C.R.] reported to Ms. McConn that her mother would pull her hair, yell at her and cuss at her.

27. Ms. McConn believes reunifying [C.R.] with her mother would be a disaster. She finds [Mother] to have a history of long-term instability, violence, and a resistance to affecting positive change even after a history of intensive family preservation services through all modalities. Through her assessment, she found [Mother] to have personality traits which could contribute to her resistance to effectuate positive change for her child. Ms. McConn concludes that [C.R.] would be at high risk for abuse if she were returned to [Mother]'s care.

28. Through the course of these proceedings, the parties also agreed that [Mother] would undergo a parenting assessment with Dr. Richard Lawlor. . . . [H]e was of the opinion that [Mother] would not be able or willing to provide the necessary level of structure that [C.R.] would require. He opined that [C.R.] would deteriorate further if returned to [Mother]'s care. Ongoing medication would be critical to [C.R.]'s care and Dr. Lawlor found it very likely that [Mother] would discontinue medication if [C.R.] were left in her care and control. Finally, Dr. Lawlor concurred with a termination of parental rights.

29. Kevin Pollert provided individual therapy for [C.R.] upon her return home, beginning October 2006. . . . To be maintained in a home environment, it would be essential for [C.R.] to have structure, routine and a calm atmosphere. Domestic violence would be detrimental to her. Corporal punishment would not be effective in controlling behavior. In Mr. Pollert's view, punishments would need to provide a learning experience. Further, [C.R.] will need to have continued mental health services throughout her life. Monitoring medication would be critical for her success. Last, pro-social activities would be very beneficial to [C.R.]

30. The home-based providers incorporated Mr. Pollert's findings into their treatment goals with [M]other upon [C.R.]'s return home. These services began in December, 2006. . . . [Mother] maintained that [C.R.] should be able to have self-control and believed strongly that corporal punishment would be effective with her daughter.

31. There were signs of stress in the home. . . . On March 23, 2007, bruises were noted on [W.R.]'s face at school. The child advised school officials that [Stepfather] had beat him. This incident was reported to child protective services in Monroe County for investigation. [Stepfather] and [Mother] maintained that these injuries were caused by [W.R.] falling at a sporting event . . . . It was concluded that the injuries were inconsistent with a fall. [W.R.] was observed to have a swollen face, two black eyes, fingerprint bruises on his cheeks, bruises on his neck and petechiae under his right eye and neck, indicating the application of pressure. [W.R.] ultimately was removed from his mother's care for physical abuse in May, 2007 by Monroe County Department of Child Services. [S.I.] was also removed . . . .

32. On March 26, 2007, [DCS] received a report from Monroe County DCS concerning [C.R.]. [C.R.] had reported to her mentor that she had been hit in the stomach and had her hair pulled by [Stepfather].

33. On April 9, 2007, police were called to [Mother's] home due to domestic violence. . . . [Mother] left the home with the children and stayed overnight elsewhere.

34. DCS made their monthly contact with [C.R.] at her home on May 10, 2007. [DCS] found tension in the home. . . . Later on that evening, [Mother] placed a panicked call to Emma Ford, [C.R.]'s therapist. . . . [Mother] reported that [C.R.] had tried to advance on [Stepfather] while he was holding [S.I.] [C.R.] reportedly tripped on her shoelaces, fell backwards and hit her head, putting a hole in the kitchen wall. Ms. Ford observed the hole in the wall.

35. [C.R.] attended therapy with Ms. Ford on May 16, 2007. [C.R.] reported that on May 10, 2008 [sic], her mother had physically pushed her into the wall in anger. . . . Ms. Ford attempted to discuss this conflicting information with [Mother]. Her response was one of anger, refusal to continue working with services, and a refusal to cooperate in any investigation. Further, [Mother] stated that if DCS were to come to her home, she would leave the state with her family.

> 36. [C.R.] was removed from [Mother]'s home on May 16, 2007. After removal, [C.R.] began reporting further incidents of physical abuse during her most recent trial home placement. She reported that her mother would pull her hair, hit her head, smack her and curse at her. She reported that her step-father had kicked her in the stomach. Further, she reported being concerned for [W.R.]'s safety . . . .
>
> * * *
>
> 38. Case manager De Gamroth believes a termination of the parent-child relationship . . . is in [C.R.]'s best interests. Despite the many interventions and services, [Mother] has been unwilling to change her parenting, household or attitudes to safely meet [C.R.]'s needs in the home. [C.R.] needs permanency. If the parent-child relationship is terminated, the plan would be adoption of [C.R.]
>
> 39. Richard Nipper served as [CASA] for the child. He also believes that termination of the parent-child relationship is in the child's best interest. . . . He agreed that [C.R.] should be placed for adoption if parental rights are terminated.
>
> 40. Termination of the parent-child relationship between [Mother] and her child, [C.R.], born February 22, 1996, is in the best interest of the child.

(App. 7-14).

DECISION

Mother asserts that the juvenile court erred in terminating her parental rights. We disagree.

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).

When a county office of family and children seeks to terminate parental rights, the office must 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). These allegations must be established by clear and convincing evidence. *A.N.J.*, 690 N.E.2d at 720.

Because subsection (b)(2)(B) is written in the disjunctive, however, the OFC need prove only one of the two elements by clear and convincing evidence. *See Bester v. Lake County Office of Family and Children*, 839 N.E.2d 143, 153 n.5 (Ind. 2005). 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.

In reviewing the termination of parental rights, we will neither reweigh the evidence nor judge the credibility of witnesses. *A.N.J.*, 690 N.E.2d at 720. We consider only the evidence most favorable to the judgment. *Id*. 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. *L.S.*, 717 N.E.2d at 208.

1. <u>Conditions Remedied</u>

To determine whether the conditions are likely to be remedied, the trial court must examine the parent's fitness 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.*

In this case, Mother's first referral to DCS regarding C.R. was in March of 2003, and on October 30, 2003, the juvenile court determined C.R. to be a CHINS. For the next four years, DCS offered numerous services to Mother, including parenting classes, individual therapy, group therapy, family therapy, and home-based services. Many of these services were available to Mother twenty-four hours a day, seven days a week.

Mother, however, consistently refused to cooperate with the service providers or take part in therapy. She continued to deny C.R.'s mental health condition, insinuating that C.R. was entirely at fault for her behavior. Contrary to numerous warnings by experts regarding discipline of C.R., Mother insisted that corporal punishment would be the most effective disciplinary measure and physically abused C.R. Mother also sabotaged C.R.'s treatment, berating service providers in front of C.R. as well as flouting rules and regulations. Given Mother's pattern of conduct, we find overwhelming evidence that the conditions, which resulted in C.R.'s removal, will not be remedied.

2. Best Interests

Mother appears to assert that termination of her parental rights are not in C.R.'s best interests as she will no longer receive "the continued love of [Mother]" and her family. Mother's Br. at 5. Mother argues that "placing C.R. home with [her] was an untenable situation and had C.R. remained in a more structured environment, the parent-child relationship could have been preserved." Mother's Br. at 3.

For the "best interest of the child" statutory element, the trial court is required to consider the totality of the evidence. *In re B.J.*, 879 N.E.2d 7, 22 (Ind. Ct. App. 2008), *trans. denied*. "[I]n determining the best interests of the children, the trial court must subordinate the interests of the parents to those of the children." *Id.*

Here, the evidence shows that Mother often threatened to send C.R. away if her behavior did not improve and even admitted that she would choose Stepfather over C.R. The evidence further shows that Mother failed to complete her court-ordered services; physically abused C.R.; and failed to support C.R.'s treatment.

Furthermore, C.R. has been in some form of institutionalized care for approximately four years. Mother would have her remain in such care as a ward of DCS indefinitely rather than returning home. DCS, however, has a plan for adoption, which would give C.R. permanency and stability. Thus, termination of Mother's parental rights would be in C.R.'s best interests. *See A.J. v. Marion County Office of Family and Children*, 881 N.E.2d 706, 718 (Ind. Ct. App. 2008) (finding that the testimony of the child's caseworker regarding the child's need for permanency supports a finding that termination is in the child's best interests), *trans. denied*.

Based on the totality of the evidence, we find that there is sufficient evidence that termination of Mother's parental rights is in the best interests of C.R. Thus, the elements necessary to sustain the termination of Mother's parental relationship with C.R. were established by clear and convincing evidence.

Affirmed.

BAILEY, J., and ROBB, J., concur.