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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: )  
 K.B., C.H., D.H., and D.D.H., (Minors) )  
 )  
 and, )  
 )  
 K.H. (Mother), )  
 S.H. (Father), )  
 )  
 Appellants-Respondents, )  
 )  
 vs. )  
 )  
 INDIANA DEPARTMENT OF CHILD )  
 SERVICES, )  
 )  
 Appellee-Petitioner. )

No. 45A03-1009-JT-480

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**April 26, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BARNES, Judge**

**Case Summary**

S.H. (“Father”) appeals the termination of his parental rights to C.H., D.H., and D.D.H. K.H. (“Mother”) appeals the termination of her parental rights to K.B., C.H., D.H., and D.D.H. We affirm.<sup>1</sup>

**Issues**

Father raises one issue, which we restate as whether the evidence is sufficient to sustain the termination of his parental rights to C.H., D.H., and D.D.H. Mother raises several issues, which we consolidate and restate as whether the evidence is sufficient to sustain the termination of her parental rights to K.B., C.H., D.H., and D.D.H.

**Facts**

On August 24, 2007, the Department of Child Services (“DCS”) investigated a report of several burns on one-year-old D.H., who was born in June 2006. A family friend was arrested for burning D.H. with a cigarette. During a follow-up visit on August 28, 2007, DCS Family Case Manager Shanell Manuel learned that the family had moved to Indiana from Illinois five months earlier, that Father was not living in the house, that

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<sup>1</sup> We acknowledge that the CASA submitted appellee’s briefs in this matter. However, the briefs were not filed because they contained technical defects. The CASA did not cure the defects, and the briefs were mailed back to CASA on April 6, 2011.

Mother did not have enough beds for all of the children, that the children were not attending school, and that the utilities had been turned off. Mother has chronic obstructive pulmonary disease (“COPD”) and sarcoidosis. Mother is disabled and receives Supplemental Security Income (“SSI”). When Manuel visited the family, Mother needed an oxygen tank, but she did not have one.

At that time, Father was incarcerated in Illinois for failure to register as a sex offender. Father has several Illinois convictions, including a 1996 conviction for burglary, a 1998 conviction for felony possession of a firearm, a 2000 conviction for possession of a controlled substance, a 2002 conviction for attempted predatory criminal sexual assault,<sup>2</sup> a 2005 conviction for failure to register as a sex offender, and a 2007 conviction for failure to register as a sex offender.

DCS took legal custody of K.B., who was born in September 1999,<sup>3</sup> C.H., who was born in October 2001, and D.H., and they were made in-home children in need of services (“CHINS”). Mother and Father were ordered to participate in intensive home based counseling, therapy, and random drug screening.

In December 2007, D.H. sustained severe burns to his face, neck, and chest from a cup of hot tea spilling on him. Mother did not address the wounds, and Mother’s oldest daughter took D.H. to his paternal grandmother, who called 911 after seeing the severity

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<sup>2</sup> The offense of predatory criminal sexual assault occurs if “the accused was 17 years of age or over and commits an act of sexual penetration with a victim who was under 13 years of age when the act was committed.” 720 Ill. Comp. Stat. 5/12-14.1. DCS presented no evidence regarding the circumstances of Father’s conviction for attempted predatory criminal sexual assault.

<sup>3</sup> K.B.’s father does not appeal the termination of his parental rights. Mother and Father also have older children who are not subjects of this termination proceeding.

of the burns. D.H. was in the hospital for at least a week as a result of the burns. After learning of the burns, DCS removed the children from Mother's care and placed them in foster care.

In February 2008, D.D.H. was born prematurely to Mother. Mother had not informed DCS that she was pregnant, and she had registered at the hospital under her maiden name. D.D.H. weighed three pounds and three ounces at her birth and has cerebral palsy. DCS immediately filed a petition alleging that D.D.H. was a CHINS. The trial court granted the petition, and D.D.H. was placed in foster care, where she has remained.

DCS provided numerous services to Mother. In September 2007, DCS relocated Mother to a different residence and paid her rent and utilities for a few months. DCS also purchased new appliances and furniture for Mother. However, Mother failed to pay her rent and was evicted in August 2008. Mother's possessions, including furniture purchased by DCS, were placed in the yard of the residence and taken by people passing by. Mother then moved to Chicago and refused to give service providers her new address.

Mother was provided with transportation services, parenting classes, therapy, home based counseling, and supervised visitation. Although service providers attempted to help Mother obtain township assistance funds, Mother always had "an excuse as to why she couldn't go." Tr. p. 110. Service providers also attempted to help Mother obtain public assistance in Indiana, but Mother was uncooperative. Service providers also asked Mother to provide medical documentation from her physicians that she was

medically stable enough to care for the children. Although Mother provided some documentation, she did not provide it “on a consistent basis.” Id. at 111.

Mother was compliant with random drug screens and never had a positive drug screen. Mother successfully completed parenting classes in July 2008. Mother frequently cancelled sessions with home based services, therapy, and supervised visitations. Supervised visitation was suspended on September 25, 2008, after Mother missed a month of visitations. The service provider continued talking to Mother weekly until Mother “finally said she wasn’t going to do anything else.” Id. at 120.

On March 18, 2009, DCS filed a petition to terminate Mother’s and Father’s parental rights, and a hearing on the termination petition was held on August 11, 2010. Evidence was presented that Father had completed a parenting class while incarcerated, and he was released from prison in January or February 2010. Mother returned to Indiana during the summer of 2010. As of date of the hearing, Mother had not visited the children since August 2008, and Father had not seen the children since August 2007. The trial court granted DCS’s petition to terminate Mother’s and Father’s parental rights. They now appeal.

### **Analysis**

Father and Mother argue that the evidence is insufficient to sustain the termination of their parental rights. The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. In re I.A., 934 N.E.2d 1127, 1132 (Ind. 2010). “A parent’s interest in the care, custody, and control of his or her children is ‘perhaps the oldest of the fundamental liberty interests.’”

Id. (quoting Troxel v. Granville, 530 U.S. 57, 65, 120 S. Ct. 2054 (2000)). “Indeed the parent-child relationship is ‘one of the most valued relationships in our culture.’” Id. (quoting Neal v. DeKalb County Div. of Family & Children, 796 N.E.2d 280, 285 (Ind. 2003)). We recognize of course that parental interests are not absolute and must be subordinated to the child’s interests when determining the proper disposition of a petition to terminate parental rights. Id. (citing In re D.D., 804 N.E.2d 258, 264-65 (Ind. Ct. App. 2004), trans. denied). Thus, “[p]arental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities.” Id. (quoting D.D., 804 N.E.2d at 265).

When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. Id. We consider only the evidence and reasonable inferences that are most favorable to the judgment. Id. We must also give “due regard” to the trial court’s unique opportunity to judge the credibility of the witnesses. Id. (quoting Ind. Trial Rule 52(A)). Here, the trial court entered findings of fact and conclusions thereon in granting DCS’s petition to terminate Mother and Father’s parental rights. When reviewing findings of fact and conclusions thereon entered in a case involving a termination of parental rights, 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. Id. We will set aside the trial court’s judgment only if it is clearly erroneous. Id. A judgment is clearly erroneous if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment. Id.

Indiana Code Section 31-35-2-8(a) provides that “if the court finds that the allegations in a petition described in [Indiana Code Section 31-35-2-4] are true, the court shall terminate the parent-child relationship.” Indiana Code Section 31-35-2-4(b)(2)<sup>4</sup> provides that a petition to terminate a parent-child relationship involving a child in need of services must allege, in 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.

The State must establish these allegations by clear and convincing evidence. Egly v. Blackford County Dep’t of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

Both Mother and Father argue that the trial court’s findings and conclusions are clearly erroneous regarding whether the conditions that resulted in the children’s removal or the reasons for placement outside the home of the parents will not be remedied.<sup>5</sup> In

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<sup>4</sup> Indiana Code Section 31-35-2-4 was amended effective March 12, 2010, by Pub. L. No. 21-2010, § 8. However, the amendment is not applicable here.

<sup>5</sup> There appears to be a typographical error in the trial court’s order, which provides:

There is a reasonable probability that the conditions resulting in the removal of the child from their parents’ home will not be remedied in that:

making this determination, the trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing and take into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. However, the trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." Id. The trial court can properly consider the services that the State offered to the parent and the parent's response to those services. In re C.C., 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), trans. denied.

### *I. Father's Arguments*

Father argues that the trial court's findings and conclusions are clearly erroneous regarding whether the conditions that resulted in the children's removal or the reasons for placement outside his home will not be remedied.<sup>6</sup> According to Father, the trial court

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There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of that child in that: ....

App. p. ii. The trial court's order then details findings of fact regarding this case. We interpret those facts as applying to both the reasonable probability of conditions resulting in removal being remedied and the reasonable probability that continuation of the parent-child relationship poses a threat.

Moreover, Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. Consequently, the DCS was required to demonstrate by clear and convincing evidence a reasonable probability that either: (1) 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 (2) the continuation of the parent-child relationship poses a threat to the well-being of the child. The trial court found a reasonable probability that the conditions that resulted in the children's removal and continued placement outside Mother and Father's home would not be remedied, and there is sufficient evidence in the record to support the trial court's conclusion. Thus, we need not determine whether the trial court's conclusion that there was a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the children is clearly erroneous. See, e.g., Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 148 n.5 (Ind. 2005); In re T.F., 743 N.E.2d 766, 774 (Ind. Ct. App. 2001), trans. denied.

<sup>6</sup> Father also seems to contest DCS's plan to have K.B., C.H., and D.H. adopted by their foster parents and D.D.H., who has cerebral palsy, adopted by her separate foster parent. Father claims that the adoption of the children by two separate foster families is "egregious." Father's Br. at 12. Father has

failed to take into account changed conditions, and the trial court merely relied upon his criminal history.

DCS presented evidence that Father was incarcerated at the time the children were removed. Father has a substantial criminal history, including a 1996 conviction for burglary, a 1998 conviction for felony possession of a firearm, a 2000 conviction for possession of a controlled substance, a 2002 conviction for attempted predatory criminal sexual assault, a 2005 conviction for failure to register as a sex offender, and a 2007 conviction for failure to register as a sex offender. As a result of his conviction for attempted predatory criminal sexual assault, Father is required to register as a sex offender. While incarcerated, Father did complete a parenting class. Father was released from prison in January or February 2010. As of the August 2010 termination hearing, Father presented no evidence that he had requested or completed any additional services. He had not seen C.H. or D.H. since August 2007, and he had never seen D.D.H. Father testified that he was planning to change his sex offender registration and move to Indiana with Mother<sup>7</sup> and that he was working as “a freelance carpenter.” Tr. p. 173.

Although Father had been out of prison for several months at the time of the termination hearing, Father had not pursued any services with DCS, visited with the

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waived this issue by failing to make a cogent argument. See Ind. Appellate Rule 46(A)(8). Waiver notwithstanding, DCS was required to prove that it had “a satisfactory plan for the care and treatment of the child.” Ind. Code § 31-35-2-4(b)(2)(D). “This plan need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated.” In re A.J., 881 N.E.2d 706, 719 (Ind. Ct. App. 2008), trans. denied. DCS presented plans for the children to be adopted by their foster parents, and the trial court found that DCS’s plan was satisfactory. The trial court’s finding is not clearly erroneous.

<sup>7</sup> The DCS case manager testified that Father told her in June or July 2010 that he had already moved to Indiana.

children, or secured stable employment. Although Father claims that his circumstances have changed, the trial court properly relied upon Father's habitual patterns of conduct. The trial court concluded that there was a reasonable probability that the conditions resulting in the removal of the children would not be remedied, and there is sufficient evidence to support that decision.

## *II. Mother's Arguments*

Mother also argues that the trial court's findings and conclusions are clearly erroneous regarding whether the conditions that resulted in the children's removal or the reasons for placement outside her home will not be remedied because the trial court did not adequately consider her health issues. According to Mother, DCS "failed to offer or provide Mother any medical services, failed to conduct any type of evaluation of the progress in the treatment of Mother's serious and constant medical and mental ailments, encouraged Mother to seek medical care outside the State of Indiana, and failed to provide appropriate transportation for out-of-state medical care." Appellant's Br. p. 8.

DCS presented evidence that, while the children were CHINS and placed with Mother, D.H. was severely burned, and Mother did not seek medical attention for him. D.H.'s older sister took him to his grandmother's residence several hours after the burns occurred, and the grandmother called 911. D.H. spent several days in a hospital as a result of the burns. The children were then removed from Mother's care.

DCS offered numerous services to Mother, including intensive home based counseling, therapy, transportation, and supervised visitation. However, Mother's participation in the services was inconsistent. Although the service providers attempted

to get public assistance, including medical assistance, for Mother in Indiana, she resisted because she did not want to change doctors and her current doctors were in Illinois. In August 2008, Mother moved back to Chicago and refused to give service providers her new address. The service provider continued talking to Mother weekly until Mother “finally said she wasn’t going to do anything else.” Tr. p. 120. At the time of the August 2010 termination hearing, Mother had recently moved back to Indiana and had not seen the children since August 2008.

Mother’s argument is merely a request that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. The service providers were aware of Mother’s health issues and offered services to assist her. Despite extensive services offered by a DCS service provider, Mother was uncooperative. The trial court concluded that there was a reasonable probability that the conditions resulting in the removal of the children would not be remedied, and there is sufficient evidence to support that decision.

### **Conclusion**

The trial court’s termination of Mother’s and Father’s parental rights is not clearly erroneous. We affirm.

Affirmed.

RILEY, J., and DARDEN, J., concur.