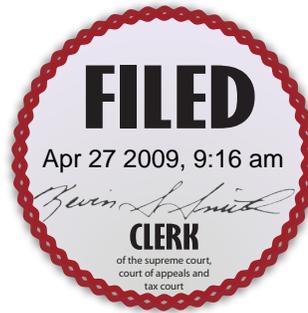


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**IN THE
COURT OF APPEALS OF INDIANA**

In the Matter of the Termination of the)
Parent-Child Relationship of T.D., the Minor)
Child, and S.D., His Mother)
)
S.D.,)
)
Appellant-Respondent,)
)
vs.)
)
STATE OF INDIANA, DEPARTMENT OF)
CHILD SERVICES, OFFICE IN JOHNSON)
COUNTY,)
)
Appellee-Petitioner.)

No. 41A01-0810-JV-476

APPEAL FROM THE JOHNSON CIRCUIT COURT
The Honorable K. Mark Loyd, Judge
Cause No. 41C01-0712-JT-28

April 27, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

S.D. (“Mother”) appeals the involuntary termination of her parental rights, in Johnson Circuit Court, to her son T.D. Mother challenges the sufficiency of the evidence supporting the trial court’s termination order.

We affirm.

FACTS AND PROCEDURAL HISTORY

Mother is the biological mother of T.D., born on December 11, 1998. The facts most favorable to the trial court’s judgment reveal that in September 2005, Mother entered into an “Informal Adjustment” with the Johnson County Department of Child Services (“JCDCS”). Mother had recently been released from jail and was homeless and without a job. As a result of the Informal Adjustment, JCDCS referred home-based services for Mother to help her obtain stable housing and employment, improve her parenting skills, and address her emotional instability. Within two weeks, however, Mother had stopped cooperating with service providers, and by the end of the first month, Mother refused to meet with her home-based counselor, Rebecca Bickel.

During this time of Informal Adjustment, Mother was granted unsupervised visitation privileges with T.D. Bickel recommended that Mother’s unsupervised visitation be switched to supervised visitation, however, after one particular visit when Mother, who became angry because T.D. said he was bored, called the foster mother “screaming” and “crying hysterically” and insisted that T.D. be picked up early from the visit. *Tr.* at 79. When the foster parent arrived, Mother threw T.D.’s hat and clothes at him as he was leaving, saying she was “done with him” and that she “didn’t want to see him again.” *Id.*

Due to growing concerns regarding Mother's inappropriate behaviors and their effects on T.D., coupled with the facts Mother was refusing to participate in services and had informed the JCDCS she no longer wished to comply with the terms of the Informal Adjustment, the JCDCS requested that the trial court convert the Informal Adjustment to a Child in Need of Services ("CHINS") case on November 1, 2005. An initial hearing on the JCDCS's CHINS petition was held on November 15, 2005. During this hearing, the trial court accepted Mother's general admission to the CHINS petition and adjudicated T.D. to be a CHINS.

A Dispositional Order was entered on January 17, 2006, wherein Mother was directed to participate in and successfully complete a variety of services and programs in order to achieve reunification with T.D. Specifically, Mother was ordered to, among other things: (1) submit to a psychological assessment and to follow all resulting recommendations to address all mental health and parenting needs; (2) participate in individual counseling; (3) provide proof of sufficient financial resources to provide for T.D.'s basic needs; (4) obtain safe and appropriate housing; (5) visit regularly with T.D.; and (6) cooperate with service providers.

Mother initially cooperated and submitted to a psychological evaluation. As a result of this evaluation, it was recommended that Mother participate in individual counseling, that she complete age-appropriate parenting classes, and that she participate in supervised visits with T.D. Although Mother began attending individual counseling and parenting classes through Cummins Behavioral Health Systems, Inc.'s Adult and Child Mental Health Program

(“Cummins”),¹ she soon began to refuse to see certain counselors and ultimately discontinued participating in individual counseling altogether. Mother also failed to complete her parenting classes. Mother’s court-ordered supervised visitation with T.D. was also not successful. During visits, Mother oftentimes treated T.D. like a baby, which angered T.D. and resulted in T.D. acting out during their visits. At times, Mother would get in verbal, as well as physical, confrontations with T.D. and service providers. The JCDCS’s contract with Cummins expired in May 2006.

In late 2006, Mother began participating in supervised visitation and family therapy with T.D. through the Adult & Child Center, Inc. (“Adult & Child”).² These sessions frequently resulted in verbal or physical altercations between T.D. and Mother. Visitation supervisor and counselor Amanda Stropes was assigned to the family. Stropes attempted to educate Mother on how to interact with T.D. appropriately, but Mother was unable to consistently incorporate these parenting techniques into her interactions with T.D. during their visits. Eventually, in April 2007, Stropes recommended that family therapy be discontinued and replaced with therapeutic visits due to Mother’s lack of progress and the negative impact visits were having on T.D. Mother, who was angered by this change, threatened Stropes personally, causing Stropes to be in fear for her own safety. Mother also

¹ Cummins is a health care facility that provides its clients with mental health and substance abuse out-patient treatment programs.

² Adult & Child is a private, not-for-profit, behavioral health care facility that provides both residential and community-based services.

threatened to burn down the foster home. As a result of Mother's threats, Adult & Child refused to continue to provide services to Mother.

In July 2007, a new JCDCS case manager, Teddi Adams, took over Mother's case. Mother requested that family therapy be put into place. Adams located a provider, but Mother refused to make an appointment. Supervised visitation services were provided by Family Interventions, Inc., and supervised by Jennifer Hammons. In November 2007, in an attempt to expedite reunification, the trial court ordered visits to be increased and to be unsupervised. Court Appointed Special Advocate ("CASA") Tammi Hickman, however, soon became concerned for T.D.'s safety based on her conversations with T.D. following his unsupervised visits with Mother. On December 10, 2007, Hickman, who was transporting Mother and T.D. following an unsupervised visit, observed them arguing when she arrived. Mother and T.D. continued to argue after entering Hickman's car, and shortly thereafter, Mother was observed drawing her fist back as if to strike T.D. Mother later admitted to hitting T.D. during their unsupervised visit earlier that day. As a result of this incident, visits were again ordered to be supervised.

Subsequent supervised visits between Mother and T.D. continued to be volatile, resulting in T.D. being visibly upset. In addition, Hammons had to request the presence of a second supervisor to protect both her safety, as well as T.D.'s safety. Visits were eventually stopped by court order in February 2008.

Meanwhile, on December 27, 2007, the JCDCS filed a petition seeking the involuntary termination of Mother's parental rights to T.D. A three-day fact-finding hearing

on the termination petition later commenced on June 4, 2008, was continued on June 5, and concluded on June 10, 2008. At the conclusion of the hearing, the trial court took the matter under advisement. On August 15, 2008, the trial court issued its judgment terminating Mother's parental rights to T.D. Mother now appeals.

DISCUSSION AND DECISION

Mother asserts on appeal that there is insufficient evidence supporting the trial court's judgment. Specifically, Mother claims the JCDCS failed to prove that there is a reasonable probability the conditions resulting in T.D.'s removal from her care will not be remedied. In making this assertion, Mother argues that the "reason for her failure comes from lack of support and lack of efforts by the [JCDCS] to help her overcome her mental health issues." *Appellant's Br.* at 6. Mother further argues that had the JCDCS "provided adequate services[,] there is a high likelihood [her] mental health issues could have been managed and reunification could have occurred." *Id.*

We begin our review by acknowledging that this Court has long had a highly deferential standard of review in cases concerning the termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). Thus, when reviewing the termination of parental rights, we will neither reweigh the evidence nor judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. We consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.*

Here, the trial court made specific findings and conclusions in terminating Mother's parental rights. Where the trial court enters specific findings of fact and conclusions thereon, we must first determine whether the evidence supports the findings. *Id.* Then, we determine whether the findings support the judgment. *Id.* We will not set aside the trial court's judgment terminating parental rights unless it is clearly erroneous. *Rowlett v. Vanderburgh County Office of Family & Children*, 841

N.E.2d 615, 620 (Ind. Ct. App. 2006), *trans. denied*. A finding is clearly erroneous when there are no facts or inferences drawn therefrom from that support it. *D.D.*, 804 N.E.2d at 264. A judgment is clearly erroneous only if the findings of fact do not support the trial court's conclusions thereon, or the conclusions do not support the judgment. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

“The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, these parental rights are not absolute and must be subordinated to the children's interests when determining the proper disposition of a petition to terminate parental rights. *Id.* Parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *K.S.*, 750 N.E.2d at 836.

To effect the involuntary termination of a parent-child relationship, the State is required to allege, among other things, 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) continuation of the parent-child relationship poses a threat to the well-being of the child[.]

Ind. Code § 31-35-2-4(b)(2)(B). The State must establish these allegations by clear and convincing evidence. *Egley v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992).

Mother's sole contention on appeal is that the JCDCS failed to prove by clear and convincing evidence that there is a reasonable probability the conditions resulting in removal will not be remedied. Mother supports this assertion by arguing that the JCDCS “gave up on [her] long before her parental rights were terminated and failed to provide her with the help she needed in order to reunify with her child.” *Appellant's Br.* at 4. Thus, Mother claims the JCDCS failed to prove that

termination of Mother's rights is "appropriate." *Id.*

We pause to note that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, the JCDCS was required to establish, by clear and convincing evidence, only one of the two requirements of subsection (B). *See In re L.S.*, 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), *trans. denied*. Here, the trial court found both prongs of subsection (B) were satisfied. Mother, however, does not challenge the trial court's finding that continuation of the parent-child relationship poses a threat to T.D.'s well-being. In failing to do so, Mother has waived review of this issue. *See Davis v. State*, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005) (concluding that failure to present a cogent argument or citation to authority constitutes waiver of issue for appellate review), *trans. denied* (2006). Waiver notwithstanding, given our preference for resolving a case on its merits, we will nonetheless review Mother's allegation of error.

When determining whether a reasonable probability exists that the conditions justifying a child's removal from the family home will not be remedied, the trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. The trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.* Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. The trial court may also 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.* Finally, we point out that a county Department of Child Services (here, the

JCDCS) is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In its judgment terminating Mother's parental rights to T.D., the trial court specifically found that during the underlying CHINS case, Mother had been ordered to participate in a variety of services in order to achieve reunification with T.D., including, among other things, a psychological assessment and any resulting recommended treatment designed to identify and address Mother's parenting needs and mental health issues, individual therapy and any resulting recommendations by the therapist, and regular visitation with T.D. Mother was also directed to cooperate with service providers, to obtain clean, safe, and appropriate housing, and to provide proof of financial resources sufficient to allow Mother to provide for T.D.'s basic needs. The trial court then determined that Mother had failed to comply with these dispositional orders. In so doing, the trial court made the following pertinent findings:

75. [JCDCS] case manager Adams observed that [T.D.] and [Mother] occasionally demonstrated a bond between each other in their interactions. However, the majority of their visits were chaotic and volatile, often resulting in verbal and sometime[s] physical confrontation.
76. [Mother] has not demonstrated an ability to appropriately parent [T.D.]. He continues to display physical aggressiveness, and [Mother] has not demonstrated that she is capable of managing his behavior.

* * *

84. [JCDCS] has repeatedly attempted to provide [Mother] with [the] tools she needs to appropriately parent. In the time that [JCDCS] has been involved with the family, [Mother] has not been able to demonstrate in any meaningful way that she is able to appropriately parent [T.D.], or that she is making any significant progress on formulating the skills necessary to appropriately parent [T.D.], or to protect [T.D.] and control his behavior.

85. [Mother] continues to demonstrate bizarre and immature behavior toward most of the individuals involved in providing services to her or [T.D.].

* * *

90. After over two (2) years of intensive family/individual counseling, assistance, and services, [Mother] has not progressed in any significant manner toward learning to utilize those tools or skills offered to develop appropriate parenting skills.

91. Other than completing some initial assessments, [Mother][,] in over two (2) years[,] has failed to achieve any long-term success or mastery of any goals established for her.

92. The Court finds no benefit to be gained for [T.D.] or [Mother] in continuing a process that has no reasonable chance of succeeding prior to [T.D.] reaching the age of majority, if at all.

Appellant's App. at 14-15.³ The evidence most favorable to the judgment supports these findings, which in turn support the trial court's conclusion that there is a reasonable probability the conditions resulting in T.D.'s removal will not be remedied, as well as its ultimate decision to terminate Mother's parental rights to T.D.

The record before us reveals that the JCDCS first became involved with Mother and T.D. in 2005 because Mother, who had recently been released from prison, was homeless and had no means of financial support. At the time of the termination hearing, Mother was again incarcerated. Thus, Mother was unavailable to parent T.D. and was without sufficient means of financial support. In addition, at the time of the termination hearing, approximately two years had passed since the time of T.D.'s removal from Mother's care, yet Mother had failed to successfully complete a majority of the court's dispositional goals. For example, home-based service provider Bickel testified that there was

³ We commend the trial court for its extensive and detailed findings.

no progress made on the Informal Adjustment goals due to the “erratic behaviors” which took place during Mother’s counseling sessions, including Mother’s screaming, crying, and sometimes threatening behaviors. *Tr.* at 76-77. Although Mother did undergo an initial psychological evaluation, she failed to successfully complete the resulting recommendations, including parenting classes and individual therapy. In addition, although Mother, at times, was able to obtain appropriate housing and employment, she was unable to maintain stable housing and employment. For example, from October 2005 through June 2006, Mother lived in two or three different locations and she repeatedly refused to allow JCDCS personnel to investigate her then-current living environment. Mother also periodically obtained employment, including jobs with McDonalds, TeleServices, and Affordable Hearing. Her employment, however, was not enduring, and following her termination from Affordable Hearing in 2007, her sole employment consisted of seasonal employment at Macy’s. Finally, Mother’s participation in visitation with T.D. was chaotic, oftentimes volatile, and included many instances of verbal and/or physical violence.

At the termination hearing, Adult & Child case manager Stropes testified that she did not believe Mother could “appropriately parent” T.D. *Id.* at 179. JCDCS case manager Adams testified that Mother’s housing instability had been an ongoing concern. Adams further testified that Mother had been unable to maintain financial stability by keeping a job throughout the duration of the CHINS case. When asked whether Mother had ever been able to demonstrate permanency and stability, Adams answered in the negative, recounting that Mother had been “let go” by an employer, had been “evicted from apartments[,]” and had been arrested. *Id.* at 326. In addition, when questioned whether permanency and stability are important issues for a child, Adams responded in the affirmative and explained that permanency and stability allows a child “to feel safe” and to just “be a child and [to] not have to worry about where they are going to lay their head or have their next

meal, who they can trust, who they can't trust[,] and if they are in danger[.]” *Id.* Finally, when asked whether she had formed an opinion as to whether T.D.’s relationship with Mother should be allowed to continue, Adams responded, “I believe it would be in [T.D.’s] best interest to have [Mother’s] parental rights terminated.” *Id.* at 237. CASA Hickman also recommended termination of Mother’s parental rights.

“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 County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. In addition, although county departments of public welfare routinely offer services to assist parents in regaining custody of their children, as the JCDCS did in this particular case for Mother, this Court has previously explained that the law concerning termination of parental rights does *not* require the Department of Child Services to offer such services. As long as the elements of Indiana Code section 31-35-2-4 are proven by clear and convincing evidence, termination of parental rights may occur. *In re B.D.J.*, 728 N.E.2d 195, 201 (Ind. Ct. App. 2000); *see also In re A.P.*, 734 N.E.2d 1107, 1118 (Ind. Ct. App. 2000) (stating elements required for termination of parental rights set forth in Indiana Code section 31-35-2-4 are exclusive), *trans. denied*.

Based on the foregoing, we conclude that the trial court’s findings are supported by ample evidence. These findings, in turn, support the court’s conclusion that there is a reasonable probability the conditions resulting in T.D.’s removal from Mother’s care will not be remedied, as well as its ultimate decision to terminate Mother’s parental rights to T.D. As previously explained, a trial court must judge a parent’s fitness to care for his or her child at the time of the termination hearing, taking into consideration the parent’s *habitual patterns of conduct* to determine the

probability of future neglect or deprivation of the child. *D.D.*, 804 N.E.2d at 266. Despite being offered extensive services, Mother has failed to make any significant improvement in her ability to care for her son in over two years. Moreover, Mother's pattern of conduct indicates that there is a substantial probability of future neglect and deprivation of T.D. should he be returned to her care and custody.

Mother's arguments on appeal amount to an invitation to reweigh the evidence, and this we may not do. *Id.* at 264. In addition, it would be unfair to ask T.D. to continue to wait until Mother is willing to obtain, and benefit from, the help that she needs. See *In re Campbell*, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (stating that the court was unwilling to put the children "on a shelf" until their mother was capable of caring for them). 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.'" *Matter of A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting *Egly*, 592 N.E.2d at 1235). We find no such error here.

Affirmed.

RILEY, J., and MATHIAS, J., concur.