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**IN THE
COURT OF APPEALS OF INDIANA**

In the Matter of the Termination of the)
Parent-Child Relationship of Z.S.L.W., the)
Minor Child, and A.W., His Mother)
)
A.W.,)
)
Appellant-Respondent,)
)
vs.)
)
STATE OF INDIANA, DEPARTMENT OF)
CHILD SERVICES, MADISON COUNTY,)
)
Appellee-Petitioner.)

No. 48A04-0807-JV-439

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Jack Brinkman, Judge
Cause No. 48D02-0712-JT-560

April 27, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Angela W. (“Mother”) appeals the involuntary termination of her parental rights, in Madison Superior Court, to her daughter Z.S.L.W. 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 Z.S.L.W., born on July 30, 2005. The facts most favorable to the trial court’s judgment reveal that on or about September 8, 2006, the Madison County Department of Child Services (“MCDCS”) filed a petition alleging Z.S.L.W. was a child in need of services (“CHINS”). Then one-year-old Z.S.L.W. had been taken into protective custody several days earlier when she was discovered in the care of Sherry F., an acquaintance of Mother’s, who was under criminal investigation and who had been charged with battering her own four-year-old son. In addition, Z.S.L.W., whose clothing was “too small, ragged, and dirty,” had a large naval hernia that appeared to need medical attention. *Appellant’s App.* at 13. Mother’s whereabouts at the time of Z.S.L.W.’s removal were unknown to Mother’s parents, and there was an outstanding warrant for Mother’s arrest by the Juvenile Probation Department.¹ Additionally, the MCDCS had already received a referral pertaining to Mother and Z.S.L.W. on August 22, 2006, and its initial investigation revealed that the family residence, described by the investigating case manager as “grossly filthy[,]” was unfit for a small child because there were roaches crawling on the kitchen counter and walls, food and trash were scattered throughout the house, and there was no baby bed in the home. *Appellant’s App.* at 13.

¹ Mother and Z.S.L.W. were living with Mother’s parents at the time of Z.S.L.W.’s removal.

On November 8, 2006, following a hearing, the trial court adjudicated Z.S.L.W. to be a CHINS and ordered her to remain in foster care. On December 14, 2006, the trial court issued its dispositional order directing Mother to participate in a variety of services in order to achieve reunification with Z.S.L.W. Mother's participation in services and supervised visitation was inconsistent throughout the duration of the CHINS case. Although occasionally reporting she had obtained a job, Mother never provided MCDCS caseworkers with proof of stable employment. Mother also never attained safe and clean housing. In addition, Mother was so uncooperative during her drug and alcohol assessment that the provider was unable to make a diagnosis or to recommend treatment. Moreover, due to her repeated failure to attend scheduled visits with Z.S.L.W., Mother's visitation privileges were suspended at least two times. Mother also failed to submit to a psychological examination, despite requesting such an appointment only days before the termination hearing.

On December 18, 2007, the MCDCS filed a petition seeking the involuntary termination of Mother's parental rights to Z.S.L.W. A fact-finding hearing on the termination petition was held on April 29, 2008. At the conclusion of the hearing, the trial court took the matter under advisement. On June 3, 2008, the trial court issued its judgment terminating Mother's parental rights to Z.S.L.W. This appeal ensued.²

² This appeal has been delayed by the trial court's failure to enter specific findings of fact and conclusions. See *In re Involuntary Termination of Parent Child Relationship of A.T.*, 868 N.E.2d 924 (Ind. Ct. Ap. 2007). This Court issued an order on December 23, 2008, vacating the final termination order of the trial court and directing the court to produce a new final order that included specific findings of fact and conclusions of law. The trial court submitted its new final order on January 21, 2009. The new final order fails to set out the primary facts upon which the trial court based its decision; rather, it contains only its conclusions that Mother failed to comply with the services ordered, that she failed to maintain consistent visitation with the child, that there is a reasonable probability that the conditions that resulted in removal will not be remedied, and that the continuation of the parent-child relationship

DISCUSSION AND DECISION

Mother asserts on appeal that there is insufficient evidence supporting the trial court's judgment. Specifically, Mother claims the MCDCS failed to prove (1) that there is a reasonable probability the conditions resulting in Z.S.L.W.'s removal from her care will not be remedied and that continuation of the parent-child relationship poses a threat to Z.S.L.W.'s well-being, and (2) that termination of the parent-child relationship is in Z.S.L.W.'s best interests.

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.*

Upon our request, 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,

poses a threat to the well-being of the child. Such conclusionary statements do not promote meaningful review. To avoid further delay, we have elected to decide this matter on the merits, rather than again remanding for additional findings. This election should not be construed to indicate either that such conclusionary findings are sufficient or will be accepted in future cases.

620 (Ind. Ct. App. 2006), *trans. denied*. A finding is clearly erroneous when there are no facts or inferences drawn therefrom 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;
- (C) termination is in the best interests of the child[.]

Ind. Code § 31-35-2-4(b)(2). The State must establish each of these allegations by clear and convincing evidence. *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992). We point out, however, that Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, the MCDCS 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*.

I. Reasonable Probability Conditions Will Not Be Remedied

In her Appellant's Brief, Mother argues that the MCDCS "simply gave up" on reunifying her family. *Appellant's Br.* at 12. Mother further asserts that she has "not demonstrated that she is unwilling to cooperate with the [MCDCS,]" and that there has been "no showing that the programs which [M]other has been continually engaged in would fail to remedy the situation." *Id.* Mother therefore claims the trial court committed reversible error in finding there is a reasonable probability the conditions resulting in the children's removal from her care will not be remedied.

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 MCDCS) 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, the trial court specifically found that during the underlying CHINS case, Mother had been ordered to participate in a number of services in order to achieve reunification with Z.S.L.W., including, among other things, a parenting assessment and any resulting recommendations, a substance abuse evaluation and treatment program, and a psychological evaluation and any resulting recommended treatment. The trial court also found that Mother was directed to participate in weekly supervised visits with Z.S.L.W., obtain clean and appropriate housing, find stable employment, submit to random drug screens, pay child support for Z.S.L.W., and cooperate with home-based services once Z.S.L.W. was returned to her care. The trial court then determined that Mother had “failed to comply with the services ordered by this Court under the Dispositional Decree” and that Mother had “failed to maintain consistent visitation with her child.” *Judgment, findings nos. 8 and 9.*³ The evidence most favorable to the judgment supports these findings, which in turn support the trial court's ultimate decision to terminate Mother's parental rights to Z.S.L.W.

The record reveals that, at the time of the termination hearing, Mother had failed to successfully complete each program she was directed to participate in so as to achieve

³ Because the trial court's judgment cited to herein, which does not contain page numbers, was not included in the original record on appeal, we cite directly to the findings themselves.

reunification with Z.S.L.W., except for a parenting assessment. For example, although Mother failed to show for a scheduled substance abuse evaluation in February 2008, Susan Grey, addictions counselor at the Center for Mental Health, testified that she “was not able to make a diagnosis” at the conclusion of the evaluation because Mother had been “uncooperative as far as sharing information and . . . was unwilling to give a urine drug screen[.]” Tr. at 15. Grey further explained that she was unable to make a diagnosis or to recommend treatment for Mother because there “just was not enough information” provided by Mother. *Id.* In addition, Grey stated she “felt that [Mother] lacked the insight into doing what she needed to do to regain custody of her child[,] which is [to] follow through with . . . being open and honest in the evaluation[,] providing[] a urine screen[,] and [participating in] services.” *Id.* at 17. Finally, Grey informed the court that the week before the termination hearing, Mother failed to attend a scheduled appointment to undergo a mental health evaluation.

Similarly, Leah Green, supervised visitation worker at Family Resource Center, testified that she had been assigned to Mother’s case in June of 2007. When asked whether Mother’s visitation with Z.S.L.W. had been consistent, Green responded, “No.” *Id.* at 21. Green also informed the court that Mother’s visitation privileges had to be suspended on at least two separate occasions due to numerous missed visits and the Family Resource Center’s policy of cancelling visitation privileges if a parent missed three scheduled visits in a row.

MCDCS case worker Nellie Elsten, who was assigned to Mother’s case in September 2006, and then again from December 2006 through April 2007, testified that

Mother “was never consistent” with visitation. *Id.* at 32. When asked why Z.S.L.W. had never been returned to Mother’s care, Elsten replied, “There was not a suitable place and [Mother] would not do the things necessary to provide a safe home for [Z.S.L.W.]” *Id.* at 29. Elsten also informed the court that she did not believe the conditions resulting in Z.S.L.W.’s removal and continued placement outside Mother’s care will be remedied in the future, stating, “I don’t believe things will change.” *Id.* at 34. Similarly, Mother’s current MCDCS case worker, Lance Hart, described Mother’s visitation with Z.S.L.W. as “very erratic[,]” and stated that he, too, did not believe that the conditions resulting in Z.S.L.W.’s removal will be remedied. *Id.* at 45. Finally, Mother admitted during the fact-finding hearing that her life “had not been stable over the last two years.” *Id.* at 70. When asked why she had failed to complete the programs ordered by the court, Mother responded, “I don’t have a reason.” *Id.* at 63.

“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, the failure to exercise the right to visit one’s child demonstrates a “lack of commitment to complete the actions necessary to preserve the parent-child relationship.” *Id.* 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 Z.S.L.W.’s removal from Mother’s care will not be remedied.

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. Thus, the trial court had the responsibility of judging Mother's credibility and of weighing her testimony of changed conditions against the evidence demonstrating Mother's habitual pattern of conduct in failing to obtain stable housing and employment, and in failing to provide a consistently safe, clean, and nurturing home environment for Z.S.L.W. It is clear that the trial court gave more weight to evidence of the latter, rather than to evidence of the former, which it was permitted to do. *See Bergman v. Knox County Office of Family & Children*, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding trial court was permitted to and in fact gave more weight to abundant evidence of mother's pattern of conduct in neglecting her children during several years prior to termination hearing than to mother's testimony that she had changed her life to better accommodate children's needs). Mother's arguments on appeal amount to an invitation to reweigh the evidence, and this we may not do. *D.D.*, 804 N.E.2d at 264; *see also In re L.V.N.*, 799 N.E.2d 63, 68-71 (Ind. Ct. App. 2003) (concluding that mother's argument that conditions had changed and that she was now drug-free constituted an impermissible invitation to reweigh the evidence).⁴

⁴ Having concluded the trial court's determination that there is a reasonable probability the conditions resulting in Z.S.L.W.'s removal from Mother's care will not be remedied is supported by sufficient evidence, we need not address Mother's argument regarding the sufficiency of the evidence supporting the trial court's determination that continuation of the parent-child relationship poses a threat to Z.S.L.W.'s well-being. *See L.S.*, 717 N.E.2d at 209 (explaining that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive).

II. Best Interests

We next address Mother's assertion that the MCDCS failed to provide sufficient evidence to prove that the termination of her parental rights is in Z.S.L.W.'s best interests. We are mindful that, in determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Department of Child Services and look to the totality of the evidence. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the trial court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* Moreover, we have previously held that the recommendations of both the case manager and child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

Esten and Hart both testified that they believed termination of Mother's parental rights is in Z.S.L.W.'s best interests. In so doing, Esten explained, "[Z.S.L.W.] was picked up right at, just past a year old. She's two[-]and[-a-]half, she'll be three in July, [and] her little life needs to be settled. . . . This child needs permanency. . . . [S]he needs . . . [to] be loved and cared for and supported." *Id.* at 34-35. In addition, Court-Appointed Special Advocate ("CASA") Susan Stamper explained in her report to the trial court that she felt termination of Mother's parental rights is in Z.S.L.W.'s best interests as follows:

At this time[,] other than visitation, [Mother] has not participated in services. [Mother] has not maintained employment or housing. The results are that [Mother] has not enhanced her parenting nor is she able to establish that she has rectified the circumstances that led to [Z.S.L.W.'s] removal. In addition, due to the limited contact that [Mother] has with [Z.S.L.W.][,] there does not appear to be a parent[-]child bond. [Z.S.L.W.] has now spent nineteen months in foster care - meaning she has been out of the home for more than half her life. This child deserves a permanent and loving home[,] and I believe it is in her best interest[s] for the mother[-]child relationship to be terminated

Appellee's App. at 100.

Based on the totality of the evidence, including Mother's failure to obtain stable employment and safe housing, as well as her failure to complete or benefit from the services available to her throughout the duration of the CHINS proceedings, coupled with the testimony from the CASA, Esten, and Hart recommending termination, we conclude that there is sufficient evidence to support the trial court's determination that termination of Mother's parental rights is in Z.S.L.W.'s best interests. *See, e.g., In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding that testimony of CASA and family case manager, coupled with evidence that conditions resulting in continued placement outside home will not be remedied, is sufficient to prove by clear and convincing evidence termination is in child's best interests), *trans. denied*.

Conclusion

A thorough review of the record leaves us convinced that the trial court's judgment terminating Mother's parental rights to Z.S.L.W. is supported by clear and convincing evidence. Since the time of Z.S.L.W.'s removal, Mother has failed to make any significant improvement in her ability to care for her daughter. It is unfair to ask Z.S.L.W. 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 court was unwilling to put 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.

BAKER, C.J., and NAJAM, J., concur.