

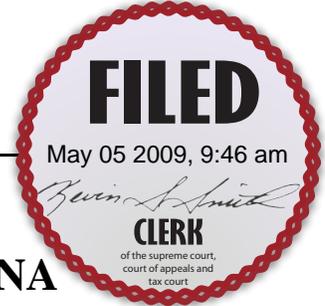
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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIPS OF)
S.S., M.H., and D.C., Minor Children, and)
SHARON C., Mother, and DAVID S., ALBERT)
H. and RICK C., Fathers.)

SHARON C.,)
Appellant-Respondent,)

vs.)

INDIANA DEPARTMENT OF CHILD)
SERVICES, KNOX COUNTY)
Appellee-Petitioner.)

No. 42A02-0810-JV-876

APPEAL FROM THE KNOX SUPERIOR COURT
The Honorable W. Timothy Crowley, Judge
Cause Nos. 42D01-0710-JT-10, 42D01-0710-JT-11 and 42D01-0710-JT-12

May 5, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Appellant Sharon C. (“Mother”) appeals the involuntary termination of her parental rights to her children S.S., M.H., and D.C. (collectively, “the children”). Mother challenges the sufficiency of the evidence supporting the trial court’s judgment. We affirm.

Mother is the biological mother of four children, including S.S., born on August 7, 1996, D.C., born on November 3, 1999, and M.H., born on October 31, 2001.¹ On July 26, 2005, S.S., M.H., and D.C. were removed from Mother’s care when the Knox County Department of Child Services (“KCDCS”) received a report that Mother, who was homeless, had left the children in the care of a friend for several days and the friend could no longer care for them. Mother’s whereabouts at the time the children taken into custody were unknown. This incident was not the first time the KCDCS had been involved with Mother and the children.

In November 2003, the KCDCS began receiving reports concerning “life and health endangering” due to the cleanliness of the children and lack of supervision. Tr. at 86. The children were removed from Mother’s care in February 2004 and later found to be in need of services (“CHINS”) after authorities found the children alone at home while both parents were working. At the time, the oldest child, S.S., was seven years old. The parents participated in services, and the CHINS case was successfully closed in January 2005. In February and March of 2005, however, the KCDCS began to receive reports alleging the children were not being appropriately supervised and that there was no heat in the family

¹ Mother’s fourth child, R.S., Jr., is not subject to these proceedings. Additionally, we observe that S.S., M.H., and D.C. have different biological fathers. The parental rights of each of the children’s respective biological fathers have been involuntarily terminated, and none of the fathers participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother’s appeal.

home. The KCDCS subsequently entered into an informal adjustment² with Mother, and services were again provided to assist Mother in caring for the children. This informal adjustment was terminated as unsuccessful, and the current CHINS case was initiated in July 2005.

Returning to the facts of the underlying case, following the children's emergency removal, a detention hearing was held on July 27, 2005. The children were made temporary wards of the KCDCS and were placed in foster care. On August 10, 2005, the KCDCS filed a petition alleging the children were CHINS, and, following a dispositional hearing held on November 16, 2005, the trial court issued an order formally removing the children from Mother's care and ordering her to successfully complete a number of services in order to achieve reunification with the children. Specifically, Mother was ordered to, among other things: (1) obtain and maintain safe and adequate housing; (2) participate in individual and family counseling; (3) cooperate with the KCDCS and follow all recommendations made by KCDCS staff; (4) participate in visitation as directed by the KCDCS; and (5) participate in counseling at the Samaritan Center and comply with all recommendations made by her therapist.

Mother's participation in court-ordered services was inconsistent throughout the duration of the CHINS case. Initially, Mother obtained employment and housing with functioning utilities. Additionally, Mother regularly participated in supervised visitation,

² An informal adjustment is a negotiated agreement between the family and a county Department of Child Services (here, KCDCS) wherein the family agrees to participate in various services, provided by the county, in an effort to prevent the children from being formally deemed CHINS.

and, as a result of this progress, her visitation privileges were increased to unsupervised weekend visits. On or about December 16, 2005, visitation reverted to supervised office visits because the gas in Mother's home was shut off. Mother did not visit with the children again until January 20, 2006.

During supervised visits, Mother's interactions with the children, at times, would go well. Oftentimes, however, Mother seemed unaware of what was going on around her, and supervisors had to repeatedly prompt Mother to redirect the children's behavior. Mother was also unable to successfully demonstrate the parenting techniques she had learned during parenting classes without coaxing from the visitation supervisors.

Notwithstanding Mother's inconsistencies, by March 2007, Mother had again progressed to unsupervised visits with the children. Visitation privileges reverted to supervised visits in August 2007, however, after the KCDCS received multiple reports from neighbors that the children had been observed roaming around the neighborhood unsupervised and after Mother admitted she had recently taken the children to a nearby gravel pit to swim, even though swimming in the gravel pit was prohibited, neither she nor any of the children could swim, and no one was wearing life vests.

Mother's housing, employment, participation in drug screens, and attendance at substance abuse counseling were also inconsistent. Throughout the CHINS case, Mother lived in several residences, including a house, a rented trailer, and in friends' homes. Mother's employment included a five-month employment stint with Perdue, four months at Pizza Hut, six months with Excell, three months with Westaff, a temporary job-placement

agency, as well as several seasonal farm-related jobs. Mother began treatment for substance abuse at Samaritan Center on January 30, 2006, but failed to complete all sessions and was discharged from the program as unsuccessful. Mother also failed to regularly meet with her parent aide and to maintain contact with her KCDCS case manager.

Due to Mother's continuing refusal to comply with court-ordered services and to maintain contact with the KCDCS, the KCDCS eventually filed a petition requesting the involuntary termination of Mother's parental rights to the children on October 22, 2007. A factfinding hearing on the termination petition was held on July 31, 2008, after which the trial court took the matter under advisement. On August 29, 2008, the trial court entered judgments terminating Mother's parental rights to S.S., M.H., and D.C. under three separate cause numbers. This appeal ensued.

Mother asserts that the trial court's judgments ordering the involuntary termination of her parental rights to S.S., M.H., and D.C. are not supported by clear and convincing evidence. Specifically, Mother claims the KCDCS failed to prove by clear and convincing evidence that there is a reasonable probability the conditions resulting in the children's removal will not be remedied and that continuation of the parent-child relationship poses a threat to the children's well-being.

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*. Instead, 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 its judgments 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 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 if 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*. These parental interests, however, 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.* Thus, 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.

In order to terminate 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) 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). 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).

In the present case, Mother's sole allegation is that the KCDCS failed to establish, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in the children's removal from her care will not be remedied and that continuation of the parental relationship poses a threat to the children's well-being. Specifically, Mother asserts "there was sufficient evidence to the contrary which would have kept the parent/child relationship intact[,]” and, in so doing, claims she had obtained housing, was employed, and posed no threat to the physical or emotional well-being of the children at the time of the termination hearing. Appellant's Brief p. 3, 11.

We pause to note that Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, the KCDCS 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* (2000), *cert. denied* (2002). Here, the trial court found that

there is a reasonable probability the conditions resulting in the children's removal from Mother's care will not be remedied.

In making this determination, a trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. The 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 KCDACS) 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 terminating Mother's parental rights to S.S., M.H., and D.C., the trial court specifically found that Mother had failed either to participate in or to complete a number of the court-ordered dispositional goals and services, including individual and substance abuse counseling. The court further found that Mother had missed twelve of the most recent thirty

scheduled visits with the children, had failed to submit to forty-five consecutively scheduled drug screens, and had failed to secure stable housing and employment. The trial court also made the following pertinent findings and conclusions:

6. That in the Dispositional Decree of November 16, 2005, ... Mother ... was Ordered to obtain and maintain adequate housing that was safe for the child[ren]. The evidence at the termination hearing indicated that ... Mother has been evicted on multiple occasions since the commencement of the CHINS case due to her failure to maintain rent and utility bill obligations.
7. That ... Mother was Ordered in the Dispositional Decree to participate in services with Children and Family Services Corporation and comply with the recommendations of this service provider. The evidence at the termination hearing indicated that ... Mother failed to work with her CFS Caseworker, Jeff Kimmel, on the issues of housing, employment and discipline.

....

9. That ... Mother failed to adequately provide for the child[ren's] safety and security during an unsupervised visit ... taking [the children] for a swim in a local strip pit where swimming is not allowed and where no lifeguard was present. Although the child[ren] [were] not injured, [Mother] participated in this activity knowing that neither she nor the child[ren] [were] able to swim.
10. That at a post-dispositional hearing, [Mother] was Ordered to take two (2) urine drug screens per week. The evidence at the termination hearing indicated that [Mother] had failed to take the last forty-five (45) scheduled drug screens ... [and] was frequently positive for THC (marijuana) on the drug screens that were taken.

....

12. That the [KCDCS] has proven by clear and convincing evidence that termination of parental rights is in the best interest[s] of the child[ren]. The Court acknowledges that [Mother] loves her child[ren], but she has failed to comply with the Court Orders in the CHINS proceeding and has shown little motivation to do the things that are necessary to have

her child[ren] returned to her. [Mother] has failed to provide a safe and stable home for her child[ren]. Her actions have, on occasion, put her child[ren] at risk.

Appellant's App. at 11-13.³ The evidence most favorable to the trial court's judgments supports these findings, which in turn support the trial court's ultimate decision to terminate Mother's parental rights to the children.

The record reveals that Mother has had a lengthy history of involvement with the KCDCS. The KCDCS first began receiving reports on the family in November 2003, and by February 2004, the children were removed from Mother's care and determined to be CHINS. This initial CHINS case was closed after Mother completed services in January 2005. However, approximately one month later, the KCDCS began receiving new reports involving Mother and the children, and by March 2005, had entered into an informal adjustment with the family. The KCDCS again offered services to Mother to assist her with her housing and parenting needs; however, the informal adjustment was unsuccessfully dismissed in order to open the underlying CHINS case in July 2005.

Regarding the underlying facts of the current case, S.S., M.H., and D.C. were removed from Mother's care on July 26, 2005, due to Mother's neglectful conduct in both leaving the children with a friend who could no longer care for them and in failing to provide the children with a clean and stable living environment. At the time of the termination hearing held approximately three years later, Mother was still unable to provide the children with the

³ We note that although the trial court issued separate judgments under different cause numbers for each child, the language quoted in this opinion is identical in each judgment.

minimal necessities of life, including a safe and stable home environment.

A thorough review of the record reveals that, despite a wealth of services available to her, Mother failed to successfully accomplish a majority of the dispositional goals by the time of the termination hearing. For example, although Mother completed parenting classes and obtained several jobs throughout the underlying CHINS case, she was never able to sustain her employment and was repeatedly fired or laid off, or simply quit. Mother also failed to successfully participate in individual counseling, was terminated as unsuccessful from a court-ordered substance abuse program offered through Samaritan Center, and repeatedly failed to submit to regularly scheduled drug screens.

With regard to Mother's visitation with the children, although she regularly attended visits, Mother was never able to successfully progress past short periods of unsupervised visits. Moreover, at the time of the termination hearing, Mother's visitation privileges had again reverted to supervised visits only, and she had failed to show for twelve out of the thirty most recently scheduled visits.

Testimony from various service providers also supports the trial court's determination that the conditions resulting in the children's removal from Mother's care will not be remedied. When asked during the termination hearing to describe her concerns regarding Mother's current ability to parent the children, KCDCS case manager Sheree Russell replied:

[Mother] almost sees herself on [the children's] level, a buddy, a friend, not a parent. She has poor parenting skills. She does not maintain housing. They would never be in a secure stable place for an extended period of time. Her housekeeping has historically been pretty poor. Employment, they would never know from one week to the next whether she's going to have a job or an income because although she finds jobs, she'll lose them. She has the same

pattern with relationships with men as she does with her home and her employment.... She is very lucky that ... [she and the children did not] drown at the incident whenever she took them to the stripper (sic) pit. She continues to this day to minimize how dangerous that was.

Tr. at 97-98. When further questioned by counsel as to whether she felt that, based on her observations during the past three years, there was “any way that [Mother] is going to be able to become more stable in her housing situation[,]” Russell answered, “No. I predict that five years from now [Mother’s] going to be doing what [she’s] doing now.” *Id.* at 102.

Similarly, home-based counselor Jeff Kimmell, of Children and Family Services Corporation, informed the trial court that the goals he established with Mother, beginning in September 2005, included, among other things, improving Mother’s parenting and budgeting skills, maintaining utilities in the home, obtaining public assistance for the family, finding and retaining employment, transportation, and other housing if needed, and complying with Samaritan Center drug screens. When asked what concerns he would have if the children were returned to Mother’s care, Kimmell replied:

I don’t see anything as any different than from when this case started[,] as far as the concerns have been[,] till now. I would fear ... she wouldn’t maintain utilities, she wouldn’t get public assistance, employment, income, transportation. Housing would be off and on as it has been. I haven’t seen a change where she would discipline consistently, so I figure [the children] would just be able to run and do whatever they chose.

Id. at 58. Finally, when asked during the termination hearing if she believed she was ready for the children to be returned to her home, Mother answered “Not right this second[,]” acknowledging that her house was too small and that she did not have a job earning sufficient money to support the children. *Id.* at 143.

“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*. Moreover, as previously explained, a trial court must judge a parent’s fitness to care for his or her children *at the time of the termination hearing*, taking into consideration the parent’s *habitual patterns of conduct* to determine the probability of future neglect or deprivation of the children. *D.D.*, 804 N.E.2d at 266. Here, the trial court was responsible for judging Mother’s credibility and weighing her testimony of improved conditions against the evidence demonstrating Mother’s habitual pattern of neglectful conduct in failing to provide a safe, clean, and nurturing home environment for the children. It is clear from the language of the judgment that the trial court considered the evidence of the former, but gave more weight to the evidence of the latter, which it was entitled to do. *See Bergman v. Knox County Office of Family & Children*, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding that 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).

A thorough review of the record leaves us convinced that the trial court's judgments terminating Mother's parental rights to S.S., M.H., and D.C. are supported by clear and convincing evidence. Mother has failed to make any significant improvement in her ability to care for her children despite having received approximately three years of extensive services designed to facilitate reunification. It is unfair to ask the children to continue to wait until Mother is willing and able 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). We 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.

BRADFORD, J., and BROWN, J., concur.