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**IN THE
COURT OF APPEALS OF INDIANA**

In the Matter of the Termination of the)
Parent-Child Relationship of H.A. and R.H.,)
Minor Children and K.H., Their Mother,)
)
K.H.,)
)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES and LAKE COUNTY COURT)
APPOINTED SPECIAL ADVOCATE,)
)
Appellees-Petitioner.)

No. 45A05-1008-JT-550

APPEAL FROM THE LAKE SUPERIOR COURT, JUVENILE DIVISION
The Honorable Mary Beth Bonaventura, Senior Judge
Cause No. 45D06-0905-JT-131 and 45D06-0905-JT-132

May 10, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

K.H. (“Mother”) appeals the involuntary termination of her parental rights to her children, H.A. and R.H. In so doing, Mother challenges the sufficiency of the evidence supporting the juvenile court’s judgment.

We affirm.

FACTS AND PROCEDURAL HISTORY

Mother is the biological mother of H.A., born in April 2001, and R.H., born in April 2006. On July 1, 2008, the local Lake County office of the Indiana Department of Child Services (“LCDCS”) was notified that local law enforcement officers had responded to a domestic disturbance call at the family home. When officers arrived at the scene, Mother’s husband, R.H., Jr. (“Father”),¹ was observed as being “heavily intoxicated” while caring for the children, and H.A. told police officers that Father had sexually molested her. *Pet’r’s Ex. A*. After admitting to having let then seven-year-old H.A. and one of her friends touch his penis, Father was arrested on charges of child neglect and child molestation, and R.A. and H.A. were taken into emergency protective custody. At the time of the children’s removal, Mother was incarcerated at Lake County Jail on battery charges after stabbing Father in a prior, unrelated domestic dispute. Several weeks later, Mother was released from incarceration on bail.

Meanwhile, LCDCS filed petitions, under separate cause numbers, alleging that H.A. and R.H. were children in need of services (“CHINS”), and a hearing on the

¹ For clarification purposes, we note that R.H., Jr. is the alleged biological father of R.H., but not H.A. At the time of the children’s removal, the whereabouts of H.A.’s alleged biological father, K.D., were unknown, and K.D. did not participate in any of the underlying proceedings. Both alleged fathers’ parental rights were terminated in the court’s July 2010 termination order, and neither father participates in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother’s appeal.

petitions was held in August 2008. Mother appeared at the hearing and admitted to the allegations of the CHINS petition. The children were adjudicated CHINS, and the juvenile court proceeded to disposition. At the conclusion of the dispositional hearing, the juvenile court issued an order formally removing the children from Mother's care, retroactive to July 1, 2008. The court also directed Mother to participate in a variety of services designed to enhance her parenting abilities and to facilitate reunification. Specifically, Mother was ordered to, among other things: (1) submit to a psychological evaluation and follow through with any recommended treatment; (2) participate in and successfully complete parenting classes, anger management counseling, and/or an anger management program; (3) obtain and maintain stable housing and employment; (4) exercise regular supervised visitation with the children as directed by LCDCS; and (5) successfully complete family and home-based counseling.

Although Mother initially seemed "confused and upset" over the removal of the children, she began participating in the court-ordered services as directed by the juvenile court. *Tr.* at 79. Mother consistently visited with the children and participated in parenting classes, but was unable to internalize the information she was learning and failed to make any significant progress in her ability to care for the children. Mother's housing situation was also unstable throughout the CHINS case, and she bounced between living with friends and living in trailers with men she had recently met over the internet. Although Mother participated in individual and home-based counseling, her participation in counseling services during the CHINS case was not always consistent and included periods during which Mother refused to participate altogether. In addition, the

results of Mother's psychological evaluation indicated Mother was "low functioning," and had only received a fourth-grade education. *Id.* at 67. As a result, it was recommended that Mother participate in a literacy training program and obtain her GED, which Mother failed to do.

In May 2009, LCDCS filed a petition seeking the involuntary termination of Mother's parental rights to the children. A two-day consolidated hearing on the termination petitions was held in June and July 2010. During the termination hearing, LCDCS presented evidence indicating that although Mother had completed a majority of the court-ordered reunification services and had recently begun working on her GED, she nevertheless had failed to benefit from said services and remained unable to provide the children with a safe and stable home environment.

At the conclusion of the termination hearing, the juvenile court took the matter under advisement. On July 7, 2010, the juvenile court entered its judgment terminating Mother's parental rights to both children. Mother now appeals.

DISCUSSION AND DECISION

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). When reviewing a termination of parental rights case, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* Moreover, in deference to the juvenile court's unique position to assess the

evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

Here, in terminating Mother's parental rights, the juvenile court entered specific findings and conclusions. When a juvenile court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Id.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court's decision, we must affirm. *L.S.*, 717 N.E.2d at 208.

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 child's interests when determining the proper disposition of a petition to terminate parental rights. *Id.* In addition, although the right to raise one's own child should not be terminated solely because there is a better home available for the child, 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.

Before an involuntary termination of parental rights may occur, the State is required to allege and prove, 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; [and]
- (C) termination is in the best interests of the child. . . .

Ind. Code § 31-35-2-4(b)(2) (2008).² The State’s burden of proof for establishing these allegations in termination cases “is one of ‘clear and convincing evidence.’” *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code § 31-37-14-2 (2008)). Moreover, if the court finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

Mother challenges the sufficiency of the evidence supporting the juvenile court’s findings as to subsection (b)(2)(B) of the termination statute cited above, asserting that the juvenile court “failed to give any weight to the fact that [Mother] had complied in totality with her case plan,” and that she is a “young woman who has changed her life.”

Appellant’s Br. at 11; *see also* Ind. Code § 31-35-2-4(b)(2)(B).³

² Indiana Code section 31-35-2-4 was amended by Pub. L. No. 21-2010, § 8 (eff. Mar. 12, 2010). Because the changes to the statute became effective after the filing of the termination petition herein, they are not applicable to this case.

³ We acknowledge that Mother also asserts on appeal that the juvenile court committed reversible error when it “failed to address the pain and suffering that these children will have to endure if visitation with their mother is stopped” in finding that termination of her parental rights is in the children’s best interests. *Appellant’s Br.* at 12. Mother fails, however, to support this assertion with cogent reasoning and citation to authority. 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). Moreover, Mother’s additional, unsupported assertion that she is entitled to reversal because she was “never

Initially, we observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, to properly effectuate the termination of parental rights, the juvenile court need only find that one of the two requirements of subsection (b)(2)(B) has been established by clear and convincing evidence. *See L.S.*, 717 N.E.2d at 209. Here, the juvenile court determined that both elements had been established. Because we find it to be dispositive under the facts of this case, however, we shall only discuss whether LCDCS established, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in the children’s removal or continued placement outside of Mother’s care will not be remedied. *See Ind. Code* § 31-35-2-4(b)(2)(B)(i).

When making such a determination, a juvenile 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 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 Cnty. Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. The juvenile court may also consider any services offered to the parent by the county department of child services

appointed legal counsel or a Guardian ad Litem” during the CHINS despite the fact she was “illiterate” and had a “low IQ” is likewise deemed waived. *Appellant’s App.* at 1. Mother failed to raise this issue during both the underlying CHINS and termination cases, even after she asked for and received the appointment of counsel during the initial hearing in the termination proceedings. A party’s constitutional claim may be considered waived when it is raised for the first time on appeal. *Hite v. Vanderburgh Cnty. Office of Family & Children*, 845 N.E.2d 175, 180 (Ind. Ct. App. 2006).

(here, LCDCS) and the parent's response to those services, as evidence of whether conditions will be remedied. *Id.* Moreover, LCDCS 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).

Here, the juvenile court's judgment contained multiple findings regarding Mother's unresolved parenting and mental health issues. In so doing, the juvenile court detailed Mother's history of making poor parenting and relationship decisions, such as choosing to return to Indiana (and later marrying Father) after having moved to Arkansas prior to R.H.'s birth specifically to evade Father due to "numerous incidents of drunkenness and abuse" and the fact Father "shook [H.A.] on several occasions" when she was a baby. *Appellant's App.* at 2. The court also found that "[s]ince Mother's release from jail, she has met three different men on the internet, has moved in with all of them, at different times, and is engaged [and living with] the third one" who is "unfamiliar to the children and the Court." *Id.* In addition, the juvenile court noted that during the CHINS case Mother had "appeared at visitations with her children announcing that she has a new dad for them after a short relationship with one of her internet boyfriends," and also had a "sexual device attached to her keychain which was taken from her during the visitations." *Id.*

Although the juvenile court recognized Mother had been "compliant to some degree with her case plan and services," it nevertheless found that Mother "is low functioning and exercises very poor judgment with regard to her children's needs and

safety.” *Id.* The court also noted that despite Mother’s participation in “numerous services” offered by LCDCS, she “ha[d] not progressed,” and further found:

Mother would not fully invest in the services and would do just enough to get by. Mother did not take full advantage of the services offered. Mother was inconsistent with the visitations. Mother’s home continued to be in disarray. Mother could not maintain a safe home for herself or the children. Mother would meet men on the internet and move in with various men with no regard for the future safety of her children. Mother moved four times in a year with different men that she barely knew. . . . Mother would have her utilities turned off numerous times. Mother continued to make poor choices in regards to the safety of her children. Mother was offered literacy training and G.E.D. classes which she failed to take advantage of. . . . Services were offered for two years and [M]other has not progressed toward reunification.

* * * *

None of the parents are providing any emotional or financial support for the children. . . . The children were exposed to domestic violence and sexual abuse in [Mother’s] home. None of the parents have fully complied with any case plan regarding the children. The parents are unlikely to ever be in a position to properly parent these children.

Id. at 2-3. Our review of the record reveals that there is ample evidence to support the juvenile court’s findings cited above, which in turn support the court’s ultimate decision to terminate Mother’s parental rights to H.A. and R.H.

At the time of the termination hearing, Mother’s circumstances remained largely unchanged. Although Mother had participated in a majority of the court-ordered reunification services, such as parenting classes, visitation with the children, and a psychological evaluation, she nevertheless failed to progress in those services and/or apply the parenting skills she had been taught when interacting with the children during supervised visits. In addition, Mother never enrolled in a literacy program and refused to take GED classes until approximately one week before trial.

As for housing, although the evidence reveals that Mother now has her own trailer home, testimony conflicted as to whether Mother was actually living in her home or living with her boyfriend in his trailer. Finally, testimony from various caseworkers and service providers makes clear that Mother remained incapable of providing the children with a safe and stable home environment.

During the termination hearing, LCDCS case managers Danisha Barnes (“Barnes”) and Joseph Kelley (“Kelley”) both recommended termination of Mother’s parental rights to the children. In so doing, Barnes testified that although Mother had participated in many services, “she was doing them just minimally, just to say that she was doing them.” *Tr.* at 54. Barnes also reported that Mother did not have a job and had lived in four separate trailer homes in little over one year. Barnes thereafter described these homes as consistently “dirty” and “unkempt,” stating that, at times, Mother did not have a bed, one home had a hole in the floor and “the sink was rotted,” and a third home did not have a stove. *Id.* at 50. When questioned as to how Mother could afford these various residences without being employed, Barnes explained that in addition to receiving social security income due to her mental health issues, several of the trailer homes had been purchased for Mother by men she had met on the internet. When further asked how long Mother had known these individuals before she moved in with them, Barnes answered, “I would say[,] like a weekend. I think one she may have known for a week, and then the other one -- one guy she met on a Friday and she moved in his house by the weekend, like Saturday or Sunday.” *Id.* at 53.

As for visits with the children, Barnes described Mother's participation as "sporadic," stating there were "some periods where she would go to every visit, then she would . . . have a lag in -- not going to visits, then she would pick it back up again" *Id.* at 56. In addition, although Barnes testified that Mother's visits with the children "were good for the most part," she also stated that Mother occasionally came to visits dressed inappropriately, engaged in "grown up conversations" with H.A. that were not age-appropriate, and was observed with a "sexual toy on her keychain" during one visit. *Id.* at 57. When asked to describe Mother's overall participation and progress in services throughout the CHINS case, Barnes answered, "[Mother] was doing the services, but the problem was that she wasn't stable, didn't have a place to stay. And when she did have a place to stay, it was with a random person that she had just met." *Id.* at 58. When later questioned as to why she had never recommended reunification during the fourteen months she was assigned to Mother's case, Barnes referred to Mother's instability throughout the CHINS case and further reported that, as a result of Mother's psychological evaluation, it was recommended she "receive medication for epilepsy, diabetes, major depression, post traumatic stress syndrome or flashbacks, aggressive acting out, and nightmares," but that Mother was not receiving medication for any of her medical conditions. *Id.* at 65.

Current LCDCS case manager Kelley's testimony echoed Barnes's testimony. Kelley informed the juvenile court that, as of the termination hearing, Mother's home remained "stuffy" and "cluttered," that Mother had informed Kelley she was currently living with her boyfriend in his trailer rather than in her own home, and that Mother

remained unprepared to care for the children “as far as [Mother’s] parenting skills” were concerned. *Id.* at 142, 144, 149. In addition, Kelley acknowledged that completion of reunification services does not automatically “guarantee” that a child will be returned to the family home, but rather are “offered to help a parent get in a position” to be reunified with his or her children. *Id.* at 161-62. When asked whether he believed that Mother had made “sufficient progress to the point where you would no longer have any concerns about returning the children to [Mother’s care],” Kelley replied, “I don’t believe she has, no.” *Id.* at 162.

Where a parent’s “pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve.” *In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). Moreover, we have previously explained that “the time for parents to rehabilitate themselves is during the CHINS process, prior to the filing of the termination petition.” *Prince v. Dep’t of Child Servs.*, 861 N.E.2d 1223, 1230 (Ind. Ct. App. 2007). Here, Mother has demonstrated a persistent unwillingness and/or inability to take the actions necessary to show she is capable of providing the children with the safe and stable home environment they need. The juvenile court was responsible for judging Mother’s credibility and for weighing her self-serving testimony, which emphasized her participation in services and her counselor’s testimony that Mother had finally “reached a starting point” to begin to “move forward” toward stability, rather than the abundant evidence of Mother’s habitual and neglectful conduct in caring for the children relied upon by the juvenile court. *Tr.* at 96, 97. It is clear from the language of the judgment that the juvenile court gave more weight to

evidence of the latter, rather than the former, which it was permitted to do. *See Bergman v. Knox Cnty. Office of Family & Children*, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding trial court was permitted 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 she had changed her life to better accommodate children’s needs). Mother’s arguments on appeal amount to an impermissible invitation to reweigh the evidence. *D.D.*, 804 N.E.2d at 265.

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.” *In re A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting *Egley v. Blackford Cnty. Dep’t of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Affirmed.

MATHIAS, J., and VAIDIK, J., concur.