Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

NANCY A. McCASLIN
McCaslin & McCaslin
Elkhart, Indiana

ATTORNEYS FOR APPELLEE:

COURTNEY GRIER WILLIAMS
DCS Elkhart County
Elkhart, Indiana

ROBERT J. HENKE
DCS Central Administration
Indianapolis, Indiana

FILED
Jun 13 2011, 9:17 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

IN RE THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF: D.D., D.D., and D.D., Minor Children	)	
S.D., Appellant-Respondent,	)	
vs.	)	No. 20A03-1010-JT-506
INDIANA DEPARTMENT OF CHILD SERVICES, Appellee-Petitioner.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
The Honorable Deborah Domine, Juevenile Magistrate
Cause Nos. 20C01-1003-JT-30, 20C01-1003-JT-31 and 20C01-1003-JT-32

June 13, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, S.D. (Mother), appeals the trial court's Order terminating her parental rights to her minor children. Do.D., Dy.D., and Di.D.

We affirm.

ISSUE

Mother raises one issue for our review, which we restate as follows: Whether the evidence was sufficient to support the termination of her parental rights.

FACTS AND PROCEDURAL HISTORY

Mother is the biological mother of one boy and two girls. Do.D, the oldest child, a boy, was born on August 19, 1997, followed by a girl, Dy.D., born on August 15, 1999, and the youngest girl, Di.D., born on November 12, 2000. J.T. is the father of the two girls and D.S. is the alleged father of the boy.

On July 2, 2008, the Department of Child Services, Division of Elkhart County (DCS), received a report that the minor children were children in need of services (CHINS). Two of the children were staying with a neighbor because Mother had been arrested the previous day for committing domestic battery in front of the children and the neighbor was no longer able to care for the children. Do.D. was staying with a relative at the time.

On July 3, 2008, a hearing was held on the CHINS petition. Mother admitted the allegations, as she was incarcerated and unable to care for the children, and the children were adjudicated CHINS. On August 7, 2008, the trial court entered a dispositional Order, directing Mother to complete psychological parenting and substance abuse assessments and

to follow all resulting recommendations. The Order further provided that Mother must cooperate with the DCS and all court-ordered service providers.

On March 31, 2010, the State filed a petition to terminate Mother's parental rights because Mother failed to participate in court-ordered assessments. On September 3, 2010, an evidentiary hearing was held on the State's petition. During the hearing, the DCS family case manager, Lolita McNeal (McNeal), testified that the conditions that led to the removal of the children had not been remedied and recommended termination. That same day, the trial court issued two identical termination Orders, one for the children of J.T., and the other for D.S.'s child, finding, in relevant part:

> 3. [The children] were removed from the care of their parents on July 3, 2008, and they were adjudicated [] CHINS on July 10, 2008. Dispositional Hearing was held and orders entered on August 7, 2008. The children have been out of the home since their removal from the parents and have never been returned to the care of either parent; they have been out of the home for twenty-six months.
>
> 4. The case manager, Lolita McNeal, testified that the conditions that resulted in the removal of the children from the home have not, and are not likely to be remedied. She described that after twenty-six months of DCS supervision and services, the conditions that lead (sic) to removal from the home are unchanged. She explained the reason for the conclusion that conditions will not be remedied is that the parents have failed to take advantage of services offered through the open CHINS case.
>
> 5. Case manager McNeal described that the children were removed from the care of the mother because of alcohol use and domestic violence. She testified that the mother has continued to drink alcohol and has failed to attend court ordered substance abuse classes. []
>
> 6. The CASA and case manager each testified that termination is in the children's best interest, the [c]ourt's findings reflect that conclusion. Specifically, the children need permanency, consistency, and

> predictability, and neither of the parents can provide for such needs. The CASA, Justin Allen, testified that the children have stated that they want to be with their mother or grandmother, but reported that the children are doing well out of the home of the parents. The children have been waiting twenty-six months for parents, who are still unable to provide for their needs.
>
> 7. The [DCS] has a satisfactory plan for the care and treatment of the children. That plan is for adoption.

(Appellant's App. pp. 18-19). Relying on these findings and conclusions, the trial court terminated Mother's parental rights.[1]

Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

In reviewing termination proceedings on appeal, this court will not reweigh the evidence nor assess the credibility of the witnesses. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We consider only the evidence that supports the trial court's decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the trial court enters findings of fact and conclusions of law in its termination of parental rights, our standard of review is two-tiered. *Id.* First, we determine whether the evidence supports the findings, and second, whether the findings support the conclusions of law. *Id.*

In deference to the trial court's unique position to assess the evidence, we set aside the trial court's findings and judgment terminating a parent-child relationship only if they are

[1] The trial court also terminated D.S. and J.T.'s parental rights; however, they have not joined this appeal.

clearly erroneous. *Id.* A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it. *Id.* A judgment is clearly erroneous only if the conclusions of law drawn by the trial court are not supported by its findings of fact or the conclusions of law do not support the judgment. *Id.*

II. *Termination*

The Fourteenth Amendment of the United States Constitution protects the traditional right of parents to establish a home and raise their children. *Bester v. Lake Cnty. Office of Family and Children*, 839 N.E.2d 143, 147 (Ind. 2005). Our supreme court has acknowledged that the parent-child relationship is "one of the most valued relationships in our culture." *Id.* (quoting *Neal v. DeKalb County Div. of Family and Children*, 796 N.E.2d 280, 285 (Ind. 2003)). That being said, parental interests are not absolute and must be subordinated to the child's interest in determining the proper disposition of a petition to terminate parental rights. *Id.*

To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing that:

> (A) one (1) of the following exists:
>
> > (i) The child has been removed from the parent for at least six (6) months under a dispositional decree.
> >
> > (ii) A court has entered a finding under I.C. § 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made.
> >
> > (iii) The child has been removed from the parent and had been under the supervision of a county officer of family and children for at least fifteen (15) months of the most recent twenty-two (22) months,

> beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;
>
> (B) that one (1) of the following is true:
>
> (i) There is a reasonable probably that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.
>
> (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.
>
> (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services;
>
> (C) that termination is in the best interests of the child; and
>
> (D) that there is a satisfactory plan for the care and treatment of the child.

I.C. § 31-35-2-4(b)(2).

Here, Mother argues that the evidence was insufficient to support the termination of her parental rights. Specifically, she contends that the DCS failed to prove that the conditions that resulted in the children's removal would not be remedied; the continuation of the parent-child relationship poses a threat to the children's well-being; that termination is in the children's best interest; and that adoption is a satisfactory plan for the care and treatment of the children.[2]

[2] Indiana Code section 31-35-2-4(b)(2)(B) is written so that the DCS need prove only one of the three elements by clear and convincing evidence. Thus, if we hold that the evidence sufficiently shows that the conditions resulting in removal will not be remedied, we need not address whether the continuation of the parent-child relationship poses a threat to the well-being of the child.

A. *Remedy of Conditions*

In determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the trial court must judge the parent's fitness to care for the children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re D.J.*, 755 N.E.2d 679, 684 (Ind. Ct. App. 2001). A parent's habitual patterns of conduct must also be evaluated to determine the probability of future negative behavior. *Id.* The trial court may properly consider the services offered by the DCS, and the parent's response to those services, as evidence of whether the conditions that resulted in the child's removal from the home will or will not be remedied. *R.W., Sr. v. Marion Cnty. Dep't of Child Serv.*, 892 N.E.2d 239, 248 (Ind. Ct. App. 2008). The DCS need not rule out all possibilities of change; rather, it must establish that there is a reasonable possibility that the parent's behavior will not change. *In re B.J.*, 879 N.E.2d 7, 18-19 (Ind. Ct. App. 2008), *trans. denied*.

Mother contends that the record does not reflect that the testimony of the CASA or McNeal "was supported by facts or exhibits introduced into evidence identifying instances of non-compliance." (Appellant's Br. p. 16).

Here, in finding that there is a reasonable probability that the conditions resulting in the children's removal and continued placement out of Mother's care will not be remedied, the trial court relied on McNeal's uncontroverted testimony that in the 26 months in which the children have been in foster care, Mother has failed to comply with court-ordered services and substance abuse classes provided to her. Additionally, the evidence demonstrates that

Mother continued to engage in the same behavior that resulted in the removal of her children; *i.e.*, alcohol abuse. In fact, she was terminated from Women's Journey, a court-ordered program, because of drinking. It is clear that Mother has not responded well to court-ordered services and has a pattern of noncompliance even though she has had over two years to improve herself, but unfortunately, has not done so. Because the trial court can consider Mother's response to services as evidence of whether the conditions will be remedied, the evidence was sufficient for the trial court to find by clear and convincing evidence that the conditions that resulted in the removal of the children will not be remedied.

B. *Best Interests*

When determining whether termination of parental rights is in the best interest of the child, the trial court need not wait until the child is irreversibly harmed such that his or her physical, mental, and social development are permanently impaired before terminating the parent-child relationship. *In re D.J.*, 755 N.E.2d 679, 684 (Ind. Ct. App. 2001). In determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the DCS and to consider the totality of the evidence. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In doing so, the trial court must subordinate the interests of the parent to those of the child. *Id.* Moreover, we have previously held that the recommendations of the case manager and court-appointed 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 interest. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

The trial court made specific findings of fact pertaining to the best interest of the children by citing to the testimony of the CASA, who testified that the children were doing well in their placement in foster care. Additionally, the trial court found that the children have been waiting for 26 months for their Mother to abide by court-ordered services and because she has failed to do so, termination is in the children's best interest. The trial court also considered the testimony of McNeal, who agreed that termination is in the best interest of the children.

Based on the testimony of the CASA, McNeal, and the length of time the children have been in foster care, it is clear that it is in the children's best interest to have permanency and consistency in their lives—something Mother is unable to provide. "It is undisputed that children require secure, stable, long-term continuous relationships with their parents or foster parents. There is little that can be as detrimental to a child's sound development as uncertainty." *Baker v. Marion Cnty. Office of Family & Children*, 810 N.E.2d 1035, 1040 (Ind. 2004). We need not require the children to wait indefinitely until Mother can demonstrate that she is responsible enough to attend court-ordered classes and change the behavior that led to her children's removal. Thus, we find sufficient evidentiary support for the trial court's conclusion that termination of Mother's parental rights is in the best interests of the children.

C. *Satisfactory Permanency Plan*

Finally, we consider whether there is sufficient evidence to support the trial court's determination that DCS has a satisfactory plan for the future care and control of the children. I.C. § 31-35-2-4(b)(2)(D) provides that before a trial court may terminate a parent-child relationship, the court must find that there is a satisfactory plan for the care and treatment of the child. It is well-established, however, that this plan need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated. *In re D.D.*, 804 N.E.2d 258, 268 (Ind. Ct. App. 2004), *trans. denied.* In this case, McNeal and the CASA testified that the permanency plan for the children is adoption. This plan provides the trial court with a general sense of the direction of the children's future care and treatment and is therefore satisfactory.

CONCLUSION

Based on the foregoing, we conclude that the evidence was sufficient to support the termination of Mother's parental rights.

Affirmed.

DARDEN, J., and BARNES, J., concur.