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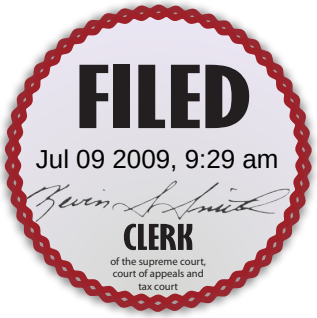

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF A.K., (Child),	)	
	)	
D.M.L., (Mother),	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 45A05-0901-JV-31
	)	
INDIANA DEPARTMENT OF	)	
CHILD SERVICES,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Judge
Cause No. 45D06-0804-JT-288

July 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Dawn Loesch appeals the termination of her parental rights. We affirm.

Issue

Loesch raises two issues, which we consolidate and restate as whether there is clear and convincing evidence to support the termination of her parental rights.

Facts

On June 12, 2007, the Lake County Department of Child Services ("DCS") received the first of two referrals concerning A.K.'s well-being. DCS case manager and assessment worker Shanel Manuel investigated the referral but found no evidence to substantiate its allegations. On June 24, 2007, the DCS received the second referral stating a general concern for A.K. The referral indicated that Loesch failed a probation administered drug test, testing positive for cocaine, marijuana, and benzodiazepines. Upon investigation, Manuel found that Loesch had been arrested, and A.K.'s father admitted to past drug use and participation in a drug rehabilitation program. Concerned for A.K.'s safety, Manuel removed A.K. and her sibling from the home.

At the Initial Hearing on July 5, 2007, the trial court declared A.K. a child in need of services ("CHINS") and ordered the temporary removal of A.K. from the home. The trial court ordered Loesch to submit to a substance abuse evaluation, comply with any

treatment recommendations, complete an inpatient drug treatment program, maintain clean drug screens for six months, and complete parenting classes. Loesch was given visitation rights. After the July hearing, Loesch submitted to a drug and alcohol screen and tested positive for cocaine.

Although Loesch completed her substance abuse evaluation and a ten day inpatient drug treatment program, between July 2007 and January 2008, Loesch failed several drug screens, testing positive for cocaine and marijuana, and failed to complete her parenting classes. Moreover, the trial court suspended visitation in December 2007, after Loesch failed to appear for visitations for three consecutive weeks. On January 16, 2008, the day of her review hearing, Loesch was arrested for probation fee violations after she called 911 when she and A.K.'s father passed out from carbon monoxide poisoning while allegedly doing cocaine in a running car inside a closed garage. As a result, Loesch was incarcerated in a work release program from January 2008 to June 2008. All services ordered by the court were stopped due to Loesch's incarceration. During the January 16, 2008 review hearing, the court found that Loesch failed to comply with her case plan, and ordered the DCS to file a petition to terminate the parent-child relationship if Loesch was not in compliance with the case plan by February 22, 2008.

On April 23, 2008, the DCS filed its petition to terminate Loesch's parental rights, and on April 24, 2008, the trial court authorized the petition. On November 5, 2008, and November 10, 2008, the trial court held the termination hearing, and on November 12,

2008, the trial court granted the DCS's petition to terminate and issued an order that provides in part:

> There is a reasonable probability that the conditions resulting in the removal of the child from her parents' home will not be remedied . . . . The Court finds the child was removed from her home on July 2, 2007, and has not been returned to parental care since that date. The Court will further find that child was removed because of deplorable conditions in the home after having two referrals made to the Department of Child Services and that the mother was testing positive for cocaine. There was drug paraphernalia in the home as well as marijuana and benzodiazapines [sic].
>
> The Court will find that there is a reasonable probability that the conditions that resulted in removal or reason for placement outside the home of the parents will not be remedied and that the continuation of the parent-child relationship poses a threat their well being in that the mother and father have extensive drug histories. . . . Recently, the Court found he was in drug treatment - In-patient treatment and out-patient treatment as was the mother. As of today, the mother is still using drugs and admitted to smoking marijuana as recent as four weeks ago.
>
> The Court will find during the pendency of the case, the parents were using drugs in an enclosed garage, in a car that was running. They suffered carbon monoxide poisoning. . . . The mother was arrested that day on warrants as well as other charges. The mother was released late June of this year, 2008, from jail . . . . Court finds the mother admitted today in court that she is still using marijuana and it's sixteen months after the removal of the child. So there has not been any significant improvement nor have the parents made any progress towards sobriety and being in compliance with the caseplan [sic].
>
> The Court finds the parents missed three consecutive visits with their daughter. They had not finished their parenting classes and were continuing to test positive – the father for

> cocaine and the mother, cocaine and marijuana. So, the Court stopped visitation and the parents have not visited their child since December of 2007.
>
> There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child in that: for the reasons stated above.
>
> It is in the best interest of the child and her health, welfare and future that the parent-child relationship between the child and her parents be forever fully and absolutely terminated.
>
> The Lake County Division of Family and Children has a satisfactory plan for the care and treatment of the child which is Placement in a permanent adoptive home environment and supervision in placement pending granting of an adoption.

Appellant's App. pp. i-ii. Loesch now appeals.[1]

Analysis

This Court employs a highly deferential standard of review in cases involving the termination of parental rights. In re Termination of Parent-Child Relationship of A.B., 888 N.E.2d 231, 235 (Ind. Ct. App. 2008) trans. denied. When reviewing the termination of parental rights, we do not reweigh the evidence or judge the credibility of witnesses. Id. Rather, "we consider only the evidence and reasonable inferences that are most favorable to the judgment." Id. Where a trial court enters findings of fact and conclusions of law granting a petition to terminate parental rights, we apply a two-tiered standard of review. Bester v. Lake County Office of Family and Children, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings. Id.

[1] A.K.'s father is not involved in this appeal.

Second, we determine whether the findings support the judgment. Id. "In deference to the [trial] 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." A.B, 888 N.E.2d at 235. "A judgment is clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment." In re G.Y., 904 N.E.2d 1257, 1260 (Ind. 2009).

In order to terminate the parent-child relationship, the DCS must allege and prove 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 IC 31-34-21-5.6 that reasonable efforts for family preservation and 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; or
> >
> > (iii) the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
>
> (B) there is 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 DCS must prove these allegations by clear and convincing evidence. In re R.J., 829 N.E.2d 1032, 1035 (Ind. Ct. App. 2005). "Clear and convincing evidence need not reveal that the continued custody of the parents is wholly inadequate for the child's very survival." Bester, 839 N.E.2d at 148. Rather, it is sufficient to show that the child's emotional and physical development is threatened by the parent's custody. Id.

I. Conditions Resulting in Removal Will Not Be Remedied

On appeal, Loesch contends the DCS failed to establish by clear and convincing evidence that the conditions resulting in A.K.'s removal would not be remedied or that that the continuation of the parent-child relationship posed a threat to A.K.'s well-being. We note that I.C. § 31-34-2-4(b)(2)(B) is written in the disjunctive. Therefore, "a trial court need only find by clear and convincing evidence that one of the two requirements of subsection (B) have been met in order to terminate a parent-child relationship." R.W., Sr. v. Marion County Dept. of Child Servs., 892 N.E.2d 239, 246 (Ind. Ct. App. 2008).

Loesch contends the trial court erred in determining that the conditions leading to A.K.'s removal would not be remedied. "To determine whether there is a reasonable probability that the conditions which resulted in the removal of the [child] will not be remedied, the trial court should judge a parent's fitness to care for his children at the time

of the termination hearing, taking into consideration evidence of changed conditions." In re L.S., 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), trans. denied, cert. denied, 534 U.S. 1161, 122 S. Ct. 1197 (2002). Moreover, "the trial court also must evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child." Id.

Specifically, Loesch contends there was insufficient evidence to support the trial court's findings that there were deplorable conditions in the home, and that drug paraphernalia as well as marijuana and benzodiazepines were present in the home. We agree there was no evidence to support these two findings. However, to warrant reversal, the erroneous findings must have constituted the sole support for any conclusion of law necessary to sustain the trial court's judgment. See In re B.J., 879 N.E.2d 7, 20 (Ind. Ct. App. 2008) trans. denied. Because there is evidence supporting the remainder of the trial court's findings on the elements necessary to sustain the judgment, we conclude that the erroneous findings did not constitute the sole support necessary to sustain the trial court's judgment. Thus, the error was harmless. See id.

In support of its judgment to terminate the parent-child relationship, the trial court found that Loesch had an extensive drug history. At the time Loesch entered herself into the inpatient treatment center, she testified she had been using drugs for three to four years. After the initial hearing, Loesch tested positive for cocaine and continued to test positive for cocaine and marijuana between July 2007 and December 2007, despite the trial court's order that she maintain clean drug screens for six months. On January 16,

2008, the day of her review hearing, Loesch was arrested after she passed out from carbon monoxide poisoning while allegedly doing cocaine in a running car while in an enclosed garage. The trial court also found that Loesch failed to complete her parenting classes and that she had not seen A.K. since December 2007. Moreover, despite completing the inpatient treatment program and subsequent substance abuse counseling programs, for which she received certificates, the trial court found that Loesch used marijuana within four weeks of the November 2008 hearings, over a year after A.K. was removed.

Loesch does not argue that these findings are not supported by clear and convincing evidence. Rather, she asserts the trial court did not give due consideration to the excuses she proffered. For instance, Loesch contends the trial court failed to give any credence to her completion of an inpatient drug treatment program and participation in individual counseling. This is an invitation for us to reweigh the evidence, which we will not do. A.B., 888 N.E.2d at 235. The trial court's judgment was supported by its findings, and its findings were supported by clear and convincing evidence. Given Loesch's habitual drug pattern, we can hardly say that the trial court's determination regarding the remedy of conditions was clearly erroneous.[2]

II. Best Interests of the Child

[2] Having determined that the trial court's judgment regarding the remedy of conditions is not clearly erroneous, we need not address whether DCS proved by clear and convincing evidence that the continuation of the parent-child relationship poses a threat to A.K.'s well-being. See R.W., 892 N.E2d at 249 n.5.

In her statement of the issues, Loesch contends there was insufficient evidence presented that the termination of the parent-child relationship was in A.K.'s best interests. However, Loesch failed to make cogent arguments supported by citations to authorities, statutes, and the record on appeal as required by Indiana Appellate Rule 46(A)(8)(a) in the argument section of her brief. Accordingly, we find this argument waived. Johnson v. State, 832 N.E.2d 985, 994 n.3 (Ind. Ct. App. 2005), trans denied.

Waiver notwithstanding, given the trial court's findings regarding Loesch's past and continued drug use, and her failure to complete her required parenting courses, we conclude that the trial court's judgment was supported by clear and convincing evidence. See In re T.F., 743 N.E.2d 766, 776 (Ind. Ct. App. 2001) (concluding that in determining what is in the best interests of a child, the court is required to look at the totality of the evidence), trans. denied. Moreover, DCS case manager Rachael Taylor testified that A.K.'s pre-adoptive home could provide the permanency and stability A.K. needs, and that termination of the parent-child relationship was in A.K.'s best interest. See Tr. p. 79. Thus, the trial court's judgment was supported by clear and convincing evidence and was not clearly erroneous.

Conclusion

The trial court's judgment terminating Loesch's parental rights to A.K. was supported by clear and convincing evidence. We affirm.

Affirmed.

BAKER, C.J., and MAY, J., concur.