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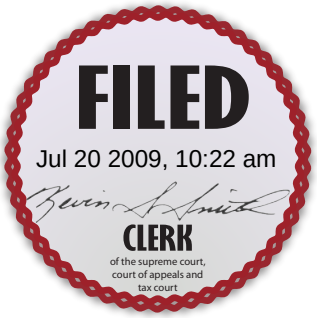

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IN THE
COURT OF APPEALS OF INDIANA

In The Matter Of The Termination Of The Parent-Child Relationship Of D.B., Minor child and W.B. and E. B., Parents,	)	
W.B. and E.B.,	)	
Appellants-Respondents,	)	
vs.	)	No. 16A01-0812-JV-592
DECATUR COUNTY OFFICE OF FAMILY AND CHILDREN,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE DECATUR CIRCUIT COURT
The Honorable John A. Westhafer, Judge
Cause No. 16C01-0807-JT-177

July 20, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

W.B. and E.B. ("the Parents") appeal the involuntary termination of their parental rights to D.B. The Parents present the following restated issue for our review: whether there was sufficient evidence to support the trial court's decision to terminate their parental rights because there was a reasonable probability that the conditions resulting in D.B.'s placement outside the home would not be remedied and that termination of their parental rights was in D.B.'s best interest.

We affirm.

FACTS AND PROCEDURAL HISTORY

D.B. was born on January 21, 2007, at twenty-eight weeks gestation. As a result of her premature birth, D.B. has severe health and development issues including an increased susceptibility to respiratory infections and was diagnosed with Perivintricular Leukomalacia, which can lead to cerebral palsy or other mental and physical development problems. After D.B.'s birth, she was placed in the Neonatal Intensive Care Unit at St. Vincent Women's Hospital for approximately three months before she was placed in a therapeutic foster home.

On February 21, 2007, the trial court held a hearing on the Decatur County Department of Child Services' ("DCS") petition for emergency removal for D.B. and her brother, L.B. The petition alleged that the Parents' home was not in a sanitary condition, and that D.B.'s medical issues would require that she live in an extremely clean home. On April 7, 2007, the Parents admitted that both children were in need of services because the home was in an unsanitary condition on the date alleged in the petition.

The trial court entered a dispositional order that allowed L.B. to live at home with the

Parents, but D.B. remained in the foster home because of her medical problems. At a subsequent permanency hearing, the parties agreed that D.B. would remain out of the Parents' home. A petition to terminate the parental rights of the Parents as to D.B. was filed, a fact-finding hearing was held, and the trial court issued an order terminating the parental rights of the Parents as to D.B. The Parents now appeal.

DISCUSSION AND DECISION

The Parents challenge the sufficiency of the evidence supporting the trial court's decision to terminate their parental rights as to D.B. More specifically, the Parents argue that the DCS did not prove by clear and convincing evidence that there was a reasonable probability that the conditions resulting in D.B.'s placement outside the home would not be remedied and that termination of their parental rights was in D.B.'s best interest.

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.*

Here, the trial court made specific findings and conclusions in terminating the Parents' 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 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)(B), (C). The State must establish these allegations by clear and convincing evidence. *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232,

1234 (Ind. 1992).

The evidence reveals that on February 21, 2007, the Parents' home was found to be in an unsanitary and unsafe condition. Family Case Manager, Scott Ogden, testified that there was a hole in the bathroom floor large enough for a foot to pass through it and the toilet was filled to the brim with fecal matter. There were cockroaches crawling on the ceiling and the floor of Parents' home. He further testified that the home was in this condition even after DCS had provided home-based services to the Parents including obtaining a trash bin and storage shed for the Parents.

Family Case Manager, Evan Casey, worked with the Parents for a year. He observed that the home had a lot of clutter, holes in the floor of a bedroom, no working toilets, and a possible infestation of roaches. The Parents would make some progress in achieving a sanitary and clean home, but then conditions would begin to decline. As of the week prior to the termination hearing, the conditions in the home had begun to decline, and Casey was denied access to parts of the Parents' home during his inspection. Casey also testified that both of the Parents had personal hygiene issues.

Lisa Hill, a clinical social worker, provided services for the Parents while D.B. was in the Neonatal Intensive Care Unit at St. Vincent Women's Hospital. The Parents received transportation and lodging so they could visit D.B. while she was in the hospital because the Parents lived quite a distance away from the hospital. Hill testified that she reviewed the importance of hygiene and environmental cleanliness with the Parents because of D.B.'s susceptibility to illness. However, the Parents' personal hygiene remained an issue.

Furthermore, Hill testified that the Parents did not seem to comprehend the significance of D.B.'s present or future needs.

The Parents received assistance from Registered Nurse Gwen Demkovich. The nurse was provided to teach the Parents how to feed D.B. and administer D.B.'s medication through D.B.'s feeding tube. Nurse Demkovich testified that with most parents it takes two educational sessions to learn how to care for a child with those or similar needs. She testified that she believed that the Parents should have been able to learn to care for D.B. by their fourth session. However, after eight educational sessions, the Parents could not provide care for D.B. Additionally, Nurse Demkovich testified that when the Parents arrived for their educational sessions they would say that they just rolled out of bed and appeared to be wearing the same clothes they had worn on the previous day.

During the time that DCS was providing services to the Parents, W.B. was charged with confining E.B. in the bedroom of their home for weeks threatening to beat her if she left the room. W.B. was also charged with using physical force and objects to beat E.B. W.B. pleaded guilty to battery as a Class D felony on February 11, 2008. E.B. moved out of the Parents' home for a period of time, but then moved back into the home.

W.B. would not cooperate with Pam Meyer, the court-appointed special advocate ("CASA"). E.B. admitted to Meyer that she could not care for the child. Meyer testified that when she visited the Parents' home the week before the termination hearing, she found it to be dirty and unkempt with garbage piled high in the kitchen and overflowing onto the floor and that there were cockroaches on the couch.

The Parents refused to attend parenting classes offered by DCS in an attempt to educate them about maintaining a house and proper hygiene. D.B.'s foster parents did not testify at the hearing; however, Evan Casey, the family case manager, testified that D.B. was happy in her foster parents' home and that they had agreed to adopt D.B.

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.* 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. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. Finally, we note that a county Department of Child Services 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 trial court specifically found in relevant part as follows:

1. The parents admitted that the child was a CHINS on April 3, 2007.

2. [D.B.] was removed from her parents under a Dispositional Order on September 7, 2007. [D.B.] had medical problems including a feeding tube. The parents were unable to properly care for the child.

4. The parents were unable or unwilling to provide the necessary care for [D.B.'s] special needs, at the time [D.B.] was released from the hospital after the birth of [D.B.].

5. DCS arranged for Registered Nurse, Gwen Demkovich, to provide instruction and educate the parents on the proper care of [D.B.]. The parents were unwilling or unable to develop the skills and knowledge necessary to properly and effectively care for the child.

6. The parents were unable to feed [D.B.] and administer medication to [D.B.] in the proper amounts. The instruction provided by Nurse Demkovich was discontinued because the parents were not making any progress.

7. The parent's[sic] home has been found to be in an unsanitary condition as recently as February 21, 2007. DCS has provided numerous services to assist the parents, including referral to Harcourt for parenting classes, and financially assisting the family with cleaning up their property by purchasing a storage shed, tote boxes and renting a large dumpster.

8. Domestic violence has been a problem in the parent's [sic] home. [W.B.] plead [sic] guilty to battery on [E.B.], on February 11, 2008 for a battery that occurred in the home on October 12, 2007.

9. [W.B.] refused services at times and was hostile to those attempting to provide services.

11. CASA, Pam Meyer, believes that termination is in the best interest of the child.

Appellant's App. at 4-5. The evidence most favorable to the judgment supports these findings, which in turn support the trial court's conclusions: 1) that there is a reasonable probability the conditions resulting in D.B.'s removal will not be remedied, and 2) that termination of the Parents' parental rights is in D.B.'s best interest. The trial court's ultimate decision to terminate the Parents' parental rights as to D.B. is also supported by this evidence and the findings.

"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*. Furthermore, 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 (emphasis added). Despite being offered services, the Parents have failed to make any significant improvement in their ability to care for D.B.

The Parents' arguments: 1) that the DCS failed to present testimony that D.B. would always require a feeding tube or that feeding and caring for D.B. would continue to be beyond the Parents' ability as D.B. developed; and 2) that the DCS and the trial court failed to take into consideration that D.B. would lose her potential relationship with her brother, L.B., in addition to losing her relationship with her parents, are invitations to reweigh the evidence, and this we may not do. *Id*. at 264. The Parents had exhibited the inability to maintain basic cleanliness and hygiene, let alone the level required given D.B.'s special needs. Furthermore, there was no evidence that D.B. had a relationship with L.B. which could be lost by the termination of parental rights. It would be unfair to D.B. to continue to wait until the Parents are willing to obtain, and benefit from, the help they need. *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.'" *In re 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.

RILEY, J., and MATHIAS, J., concur.