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:

MARK EVERETT WATSON
Terre Haute, Indiana

ATTORNEY FOR APPELLEE:

ELIZABETH A. LEWIS
Indiana Department of Child Services
Terre Haute, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN MATTER OF TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF K.B., Minor Child,	)	
Jennifer J., Appellant-Respondent,	)	
vs.	)	No. 84A01-0901-JV-41
VIGO COUNTY DEPARTMENT OF CHILD SERVICES, Appellee-Petitioner.	)	

APPEAL FROM THE VIGO CIRCUIT COURT
The Honorable David R. Bolk, Judge
The Honorable R. Paulette Stagg, Magistrate
Cause No. 84C01-0804-JT-401

August 5, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Jennifer J. ("Mother") appeals the order of the Vigo Circuit Court terminating her parental rights to her daughter, K.B. On appeal, Mother presents three issues for our review, which we restate as the following two: (1) whether Mother was denied procedural due process, and (2) whether the evidence is sufficient to support the trial court's judgment.

We affirm.

Facts and Procedural History

Mother has been diagnosed with schizoaffective disorder and bipolar disorder. Mother also has a history of abusing alcohol and using methamphetamine and marijuana. On May 9, 2007, when K.B. was only five days old, Mother went to a physician's office but was unable to respond to any questions regarding K.B. Mother was also treating K.B.'s diaper rash with eye cream. As a result of Mother's behavior, the staff at the physician's office called the Vigo County Department of Child Services ("DCS"), who sent its personnel to the scene. When Mother would not give her child to the DCS workers, the police were called and had to forcibly remove K.B. from Mother's arms. Mother was taken to the hospital, where she tested positive for methamphetamine use. While Mother remained hospitalized as a result of her mental health and the amount of methamphetamine she had taken, K.B. was placed in foster care.

On May 10, 2007, the DCS filed a petition alleging that K.B. was a child in need of services ("CHINS"). On May 25, 2007, the trial court granted a motion filed by DCS requesting an order that Mother have no visitation due to mother's mental health and concerns for K.B.'s safety. On June 5, 2008, the DCS filed a pre-dispositional report and

case plan which requested that the Mother comply with the DCS, obtain a stable residence which was safe for K.B., enter a drug treatment program and abstain from illicit drugs, meet the medical needs of K.B., and "participate in services that will assist [her] with parenting, anger management, dealing with past and present emotional issues and mental health issues." Appellant's App. p. 18. K.B.'s maternal aunt and uncle filed a motion to intervene on July 2, 2007, requesting that K.B. be placed in their care, which the trial court subsequently granted. At a hearing held on July 23, 2007, the trial court approved the DCS case plan and found K.B. to be a CHINS.

On July 25, 2007, Mother began to have supervised visitation with K.B. However, Mother's behavior did not improve. Mother failed to acknowledge the severity of her mental illness, claiming that she suffers only from depression. Therefore, Mother repeatedly refused to take her psychotropic medications. As a result, Mother's behavior would vary wildly. When she was on her medication, her behavior would improve. However, when she stopped taking her medication, her behavior would change for the worse. Her brain would "shut down," and she would stare into space during visits with K.B. Indeed, during one visit, Mother was so inattentive to K.B. that the child almost fell out of her lap. Even though Mother completed a parenting class, she demonstrated few parenting skills.

Mother was repeatedly hospitalized due to her mental illness and drug problems. One of these hospitalizations was for a drug overdose. Still, Mother denied any drug problem. Mother repeatedly failed to appear for mandatory drug screens and tested positive at others. Further, Mother had a volatile relationship with K.B.'s father

("Father"), with whom she was romantically involved. The couple would repeatedly argue and physically fight. Two witnesses saw Mother with a severe black eye, described as one of the worst they had seen. Mother was unable to go to a woman's shelter, however, because of pending charges against her for domestic battery against Father. Despite this, Mother attempted to downplay her violent relationship, claiming that her injuries were not that bad.

On April 10, 2008, the DCS filed a petition to terminate Mother's parental rights to K.B. At a hearing held on April 14, 2008, the DCS recommended continued wardship of K.B. with a permanency plan of termination of Mother's parental rights due to her lack of progress. The petition specifically mentioned the continued violence between Mother and Father, the fact that Mother did not consistently take her medication, and that she refused to cooperate with drug testing. At this point, K.B. had been a ward of the DCS for eleven months.

On April 22, 2008, the trial court held a hearing on the petition to terminate the parental rights of Mother and Father. Following a recess, Father's counsel informed the trial court that he had to be at another hearing and had asked another attorney, Jeff Kohr, to represent Father at the remainder of the hearing. Father, however, objected to Mr. Kohr's representation. Mr. Kohr therefore requested a continuance until Father's original counsel could resume his representation of Father. Mother too objected to Mr. Kohr, accusing him of "losing a case," for her previously.[1] Tr. Vol. I, p. 109. The trial court

[1] Apparently, Mr. Kohr had previously been Mother's counsel in an involuntary psychiatric commitment case.

warned that any continuance would violate the applicable statutory time constraints. During a heated discussion between the trial court, the parties, and their counsel, Mother went so far as to accuse the trial court of wrongdoing. Finally, the trial court stated:

> So guys, everything is going to be delayed. Sorry. . . .
>
> * * *
>
> Why? Because nothing I say here is ever going to be accepted by [Mother and Father]. Nothing. Nothing. Nothing. Mr. Kohr's not going to be accepted. [T]hey have found a way to delay the case. Please note that the . . . parents themselves are responsible for delaying this case beyond the statutory time limit. The good news is that there's nothing built into the statute that says what the consequences are other than it delays any permanency hearing for the child at issue.

Tr. Vol. I, pp. 117-18. The trial court then asked, "So, [Mother], do I understand . . . and [Father], that you each want a continuance, no matter how long it takes, and that, therefore, you are both going to blow the time limits which are required for these sorts of cases to be heard?" Id. at 118. Mother replied, "Correct." Id. at 119. The trial court then continued the hearing over the DCS's objection.

The termination hearing was resumed on November 17, 2008.[2] At the hearing, Mother repeatedly made outbursts, accusing the DCS of lying. Mother testified that her medication was "useless," that her mental health records were "a lie," and that she was not mentally ill. Tr. Vol. II. p. 69-70. Mother testified that the reason she did not take her medication was that "they keep harassing me about taking my medication." Id. at 71. Mother testified that, when she did take her medication, she did so because "it gives me something to do." Id. at 80. When asked about her failure to take one of the random

[2] Immediately prior to the hearing, Father agreed to voluntarily terminate his parental rights to K.B.

drug screens, Mother stated, "I already said I didn't want to and I don't like doing things I don't want to do." Id. at 85. She also testified, "I don't have a drug problem." Id. at 68. She also claimed that her caseworker told her that she did not have to comply with drug treatment and mental health treatment even though she admitted that "it was on paper" that she did have to comply with such treatment. Id. at 86.

Mother also accused one of the social workers of trying to "ruin[] her life" by lying and said that any problems between her and Father were "none of [the DCS's] business." Id. at 72-73. Mother admitted that Father was still living with her, but claimed that she could keep K.B. safe. Mother accused the DCS workers of being negligent parents. She admitted that she had been fired from her job but denied needing another job. Mother did not remember the incident in which K.B. was taken from her and claimed instead that K.B. had been taken from her because the DCS attorney "ha[d] a problem" with her. Id. at 88.

On November 21, 2008, the trial court entered an order terminating Mother's parental rights to K.B. Mother now appeals.

I. Procedural Due Process

Mother first claims that she was deprived of procedural due process when the trial court continued the termination hearing, which Mother now claims violated Indiana Code section 31-35-2-6 (2008) ("Section 6"). This statute provides:

> Except when a hearing is required after June 30, 1999, under section 4.5 of this chapter, the person filing the petition may request the court to set the petition for a hearing. Whenever a hearing is requested under this chapter, the court shall:

(1) commence a hearing on the petition not more than ninety (90) days after a petition is filed under this chapter; and
(2) complete a hearing on the petition not more than one hundred eighty (180) days after a petition is filed under this chapter.

Mother now claims that the November 17, 2008 hearing date violated subsection (2) of Section 6 in that the hearing on the termination petition was not completed within 180 days after the petition had been filed.

On appeal, however, Mother does not even claim to have requested a hearing on the petition. Where the parties do not request a hearing, the time limits of Section 6 are inapplicable. See In re L.V.N., 799 N.E.2d 63, 67 (Ind. Ct. App. 2003). Assuming that Section 6 is applicable here, there is no reversible error. As noted above, the trial court recognized that the parents' request for a continuance would require the court to set a hearing outside the time limits specified in Section 6. The trial court informed Mother of this and asked if she nevertheless wanted a continuance, to which Mother replied, "Correct." Tr. Vol. I, pp. 118-19. Mother therefore invited any error in this regard. See In re A.D., 737 N.E.2d 1214, 1216-17 (Ind. Ct. App. 2000) (holding that any error in trial court's failing to schedule termination hearing within time limits of Section 6 was invited by appellant).[3]

[3] Because the court in A.D. held that any violation of Section 6 was invited error, it did not address the question of whether the time limits in Section 6 were mandatory or merely directive. Id. at 1217 n. 3. Similarly, we need not address this question. Still, we note that in Parmeter v. Cass County Department of Child Services, 878 N.E.2d 444, 448 (Ind. Ct. App. 2007), we held that the failure to conduct a fact-finding hearing in a CHINS proceeding within the statutorily-prescribed time limitations did not require reversal because the use of the word "shall," while normally mandatory, was merely directory where the statute failed to specify any adverse consequences.

II. Sufficiency of the Evidence

A. *Standard of Review*

In reviewing Mother's challenge to the sufficiency of the evidence supporting the trial court's decision, we note that we have 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 the trial court's order terminating a parent-child relationship, we will not set it aside unless it is clearly erroneous. Castro v. State Office of Family & Children, 842 N.E.2d 367, 372 (Ind. Ct. App. 2006), trans. denied. We will neither reweigh the evidence nor 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 therefrom that are most favorable to the judgment. Id.

"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. Moreover, because termination severs all rights of a parent to his or her child, the involuntary termination of parental rights is arguably one of the most extreme sanctions a court can impose. In re T.F., 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), trans. denied. Thus, such a sanction is intended as a last resort, available only when all other reasonable efforts have failed. Id. Nevertheless, parental rights are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate a parent-child relationship. Id. Because the purpose of terminating parental rights is to protect the

child, not to punish the parent, parental rights may be properly 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 DCS is required to 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 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; or
> (iii) after July 1, 1999, 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 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) (2008); see also Ind. Code § 31-35-2-8 (2008). The DCS must establish each of these allegations by clear and convincing evidence. Ind. Code § 31-37-14-2 (2008); Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

B. *Conditions Which Led to Child's Removal*

Mother first claims that the trial court erroneously concluded that the conditions which led to K.B.'s removal would not be remedied, arguing that the court improperly

failed to consider the change in circumstances that existed at the time of the termination hearing. Mother specifically claims that there was evidence that she was improving, and that the record is replete with evidence that she was taking steps to improve the conditions which led to K.B.'s removal. We are unable to agree.

We have previously recognized that a trial court should examine not only the parent's fitness at the time of the termination hearing, but also consider the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). A court may properly consider 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. Id. Moreover, a trial court can reasonably consider the services offered to the parent and the parent's response to those services. Id.

Here, Mother refers almost exclusively to the evidence which does not favor the trial court's decision. On appeal, we are constrained to consider only the evidence which favors the trial court's decision. D.D., 804 N.E.2d at 265. Applying this standard of review, we can say that the trial court correctly concluded that the conditions which led to K.B.'s removal were not remedied.

K.B. was removed from Mother's care after Mother, in an apparent psychotic episode, was unable to answer any questions about K.B.'s care. After the police forcibly removed K.B. from Mother's arms, Mother was taken to the hospital, where she tested positive for methamphetamine use. Mother remained hospitalized while K.B. was placed

in foster care. Subsequent to this removal, Mother consistently skipped drug screens, which the DCS considers equivalent to a "positive" test, and also tested positive for drug use. That Mother occasionally tested negative for drug use is not dispositive.

Mother also refused to acknowledge her mental illness. She denied the efficacy of her medications and repeatedly stopped using them. When Mother was not on her medication, her behavior worsened dramatically, and she was hospitalized on more than one occasion due to her mental health and substance abuse problems. Although Mother did complete her parenting skills classes, the DCS case manager testified that Mother had not put any of these skills into effect. The DCS case manager further testified that the conditions which led to K.B.'s removal had not been remedied and that the reason that Mother still had only supervised visits with K.B. was fears for the child's safety. From this evidence, the trial court could reasonably conclude that the DCS had established by clear and convincing evidence that the conditions which led to K.B.'s removal had not been remedied.

C. *Threat to Child's Well-being*

Mother next claims that the evidence was insufficient to support the trial court's conclusion that the continuation of the parent-child relationship posed a threat to K.B.'s well-being. We first observe that the DCS was not required to prove both that the conditions which led to K.D.'s removal had not been remedied *and* that the continuation of the parent-child relationship posed a threat to K.B.'s well-being. The applicable statute requires the DCS to establish only one *or* the other of these to requirements, not

both. See McBride, 798 N.E.2d at 202 n. 13. Regardless, the DCS presented evidence sufficient to establish both.

As explained in detail above, Mother has mental health conditions which she consistently refuses to recognize or treat. She also has substance abuse problems but failed to comply with drug treatment, repeatedly failed to show for drug screens, and tested positive for drug usage. Even though she completed parenting skills training, she showed little improvement in her parenting skills. Indeed, Mother's main accomplishment was to be able to diaper her child without assistance. Mother had been fired from her job and refused to see why it was important for her to have one. Mother was also in a physically violent relationship with Father and seemed to think that this violence was not a serious problem. Due to the concerns for K.B.'s safety, Mother was initially denied visitation with her child, eventually receiving supervised visitation.

Although Mother claims that there is no evidence that she abused or harmed the child, there was evidence that she is unable to properly care for K.B. without addressing her mental illness, her substance abuse problems, and her violent relationship with Father, all of which Mother was either unable or unwilling to properly address. A court need not wait until a child is irreversibly harmed such that her physical, mental, and social development are permanently impaired before terminating the parent-child relation. In re D.J., 755 N.E.2d 679, 684 (Ind. Ct. App. 2001), trans. denied.

In short, the DCS presented evidence sufficient to support the trial court's conclusion that the continuation of the parent-child relationship posed a threat to K.B.'s well-being.

D. *Best Interests of the Child*

Mother claims that the DCS failed to prove that termination of her parental relationship with K.B. was in the best interests of the child. In determining what is in the best interests of the children, the court is required to look beyond the factors identified by the office of family and children, and look to the totality of the evidence. McBride, 798 N.E.2d at 203. Again, looking to the evidence favorable to the trial court's decision, we cannot say that the trial court erred.

Multiple witnesses, including the Court Appointed Special Advocate ("CASA"), and the DCS case manager testified that, in their opinion, termination of Mother's parental relationship with K.B. was in the child's best interest. Mother has not shown that she can take care of herself or take responsibility for her own actions. Mother has also demonstrated that she is unable to provide a safe and stable environment in which to raise K.B. The case manager even testified that there was little bond between Mother and K.B. Therefore, we cannot say that the trial court erred in concluding that termination of the parent-child relationship was in the best interests of K.B.

E. *Independent Evidence Regarding Mother*

Mother lastly claims that she was prejudiced by the actions of Father and there was therefore insufficient evidence regarding the required elements vis-à-vis Mother alone. Mother is correct that it is improper to base termination of one parent's rights solely upon the behavior of the other parent. See Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 148-49 (Ind. 2005). But this is not what happened here. Although some of the evidence regarding Mother did necessarily involve Father as

well—such as the physically violent nature of their relationship—there was ample evidence establishing Mother's own shortcomings. The majority of the evidence presented concerned Mother. In fact, the November 17 hearing concerned only Mother's parental rights, as Father had previously relinquished his parental rights voluntarily. We therefore reject Mother's contention that the trial court improperly based the termination of her rights on Father's behavior.

Conclusion

Mother invited any error with regard to the time limits imposed by Indiana Code section 31-35-2-6, and the evidence is sufficient to support the trial court's order terminating Mother's parental rights to K.B.

Affirmed.

DARDEN, J., and ROBB, J., concur.