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ATTORNEY FOR APPELLANT:

MARK SMALL
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

ALEXANDRA D. A. THOMAS
DCS Montgomery County Office
Crawfordsville, Indiana

ROBERT J. HENKE
DCS Central Administration
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF:	)	
Kt.W. & Kb.W., (Minor Children)	)	
And	)	
A.W., (Mother)	)	
Appellant-Respondent,	)	
vs.	)	No. 54A01-1102-JT-77
THE INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MONTGOMERY CIRCUIT COURT
The Honorable Rebecca McClure, Special Judge
Cause Nos. 54C01-1006-JT-163 & 54C01-1006-JT-164

August 25, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

A.W. ("Mother") appeals the involuntary termination of her parental rights to her children, Kt.W. and Kb.W. Concluding that the Indiana Department of Child Services, local office in Montgomery County ("MCDCS"), presented clear and convincing evidence to support the trial court's judgment, we affirm.

Facts and Procedural History

Mother is the biological mother of Kt.W., born in October 2007, and Kb.W., born in October 2008.[1] The facts most favorable to the trial court's judgment reveal that in October 2007, MCDCS received and substantiated a referral for neglect after Kt.W. was born testing positive for marijuana or its metabolites. No formal action was taken by MCDCS at that time. In February 2008, MCDCS became involved with this family again after receiving a report that Mother was using marijuana in the home and that the conditions of the home were unsanitary, with trash and dog feces on the floor. MCDCS initiated an investigation, and although no animal feces were found in the home at that time, the investigating case manager determined that the home met only a "minimal[ly]

[1] The parental rights of the children's biological father, M.W. ("Father"), were also involuntarily terminated by the trial court's judgment. Because Father does not participate in this appeal, we limit our recitation of the facts to those pertinent solely to Mother's appeal.

sufficient level of care for the time being." Petitioner's Ex. 3, Preliminary Inquiry.[2] In addition, Mother was advised that had Kt.W. been old enough to be "mobile," the condition of the home "would not have been appropriate." *Id.*

Following MCDCS's investigation, Mother entered into a Program of Informal Adjustment ("IA"),[3] and it was recommended that she participate in individual and group therapy. It was also recommended that Mother participate in an intensive outpatient substance abuse program ("IOP"). Mother never began the recommended services. In addition, Mother tested positive for THC in March 2008, and the dirty condition of the family home did not improve.

During a home visit in April 2008, a MCDCS caseworker observed Mother's home to be "filthy" with "ground-in dirt and animal feces in the carpet." *Id.* Also during the visit, the case manager observed several dogs in the home urinate on the floor three times, but the mess was never cleaned up. Small bits of trash, food, dirty clothing, and other debris littered the floors, seats, and other surfaces throughout the home, and numerous ants, flies, and other unidentified bugs were also observed. In the kitchen, animal urine and feces from the five adult dogs and five puppies present in the home were observed on the floor, the sink was filled with dirty dishes, and the bottom shelf of the refrigerator was layered with food debris and other dried liquids. Although Mother

[2] Unfortunately, we are unable to provide a pinpoint citation to the record, as the volume of exhibits submitted on appeal does not contain page numbers.

[3] A Program of Informal Adjustment is a negotiated agreement between a family and the Indiana Department of Child Services whereby the family agrees to participate in various services in an effort to prevent the child/children from being formally deemed children in need of services. *See* Ind. Code ch. 31-34-8.

advised the case manager that she and Kt.W. could stay with her mother ("Grandmother") who lived across the street, the case manager determined that Grandmother's home, which was likewise littered with dirt and debris, did not meet a minimally sufficient level of care either.

As for Kt.W., the visiting MCDCS case manager noticed the baby had "reddish, purplish raw skin in the creases of her legs and on her pubic area, consistent with untreated diaper rash." *Id.* Kt.W. also had "open sores in the creases of her neck, consistent with poor hygiene." *Id.* Based on the conditions of the home, Mother's refusal to participate in family preservation services under the IA, and Kt.W.'s state of health, MCDCS took Kt.W. into emergency protective custody. MCDCS thereafter filed a petition with the trial court alleging Kt.W. to be a child in need of services ("CHINS").

Mother admitted to the allegations of the CHINS petition as to Kt.W. in May 2008, and the trial court issued a dispositional order the following month requiring Mother to successfully complete a variety of tasks and services designed to facilitate reunification of the family, including substance abuse treatment, individual counseling, supervised visitation with Kt.W., and other family preservation services. In late September 2008, Kt.W. was returned to Mother's physical care after the case manager determined the conditions of the family home were minimally acceptable. Kb.W. was born several days later.

For the next several months, both children remained in Mother's care while Mother continued to participate in court-ordered services. Reports from service providers, however, indicated that Mother was not benefitting from services. In addition,

the sanitary conditions of the home remained an ongoing concern, and Mother was not taking Kb.W. to her scheduled doctor appointments. Kb.W. also began developing open sores on her neck that were attributed to poor hygiene. By May 2009, Kb.W. had developed a diaper rash so severe that the oozing sores bled. Recurrent lice infestations in the family home were also a cause of great concern.

In July 2009, MCDCS filed a petition alleging Kb.W. was a CHINS and requesting that both children be removed from Mother's care. The trial court adjudicated Kb.W. to be a CHINS in August 2009 based on Mother's failure to appropriately treat Kb.W.'s rash as well as the recurrent safety and health risks associated with the conditions of the family home, but the children were not removed from the family home. A dispositional order pertaining to Kb.W. and requiring Mother to participate in substantially the same services as ordered in Kt.W.'s case was entered in September 2009.

In November 2009, the children were removed from Mother's care when Mother was arrested on intimidation charges arising from an incident at the family home during which she threatened an animal control officer with a knife. Mother spent two weeks incarcerated in the county jail and later pled guilty to the intimidation charge. Following her release from incarceration, Mother's participation in reunification services continued to be inconsistent and ultimately unsuccessful. Mother failed to obtain stable employment, never completed the recommended IOP, and was unable to demonstrate the parenting techniques service providers taught her. In addition, Mother lost her public housing assistance and continued to bounce between living with her father or

Grandmother. In March 2010, Mother's visitation privileges were suspended due to the severity of the unresolved lice problems.

In June 2010, MCDCS filed petitions seeking the involuntary termination of Mother's parental rights to both children. A consolidated, two-day evidentiary hearing on the termination petitions commenced in October 2010 and concluded in January 2011. During the hearing, MCDCS presented evidence concerning Mother's unresolved substance abuse issues, ongoing housing and employment instability, unimproved parenting concerns, and current inability to provide Kt.W. and Kb.W. with a safe and stable home environment. In addition, MCDCS introduced evidence establishing that both children were living and thriving together in their current, pre-adoptive relative foster care placement with Mother's paternal aunt.

At the conclusion of the termination hearing, the trial court took the matter under advisement. The court thereafter issued its judgment terminating Mother's parental rights to both children in February 2011. Mother now appeals.

Discussion and Decision

When reviewing the termination of parental rights, we will neither reweigh the evidence nor judge witness credibility. *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 most favorable to the judgment. *Id.* Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside a 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 trial court entered specific findings and conclusions. When a trial 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. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001).

In Indiana, before an involuntary termination of parental rights may occur, the State is required to allege and prove, among other things:

(B) that one (1) of the following is true:

> (i) There is a reasonable probability 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 . . . .

Ind. Code § 31-35-2-4(b)(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). If the trial 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. Mother challenges the sufficiency of the evidence supporting the trial court's findings as to subsections (b)(2)(B) & (C) of Indiana's termination statute. *See id.* § 31-35-2-4.

At the outset, we point out that Indiana Code section 31-35-2-4(b)(2)(B) provides that MCDCS need establish only one of the three requirements of subsection (b)(2)(B) by clear and convincing evidence before the trial court may terminate parental tights. Here, the trial court found MCDCS presented sufficient evidence to satisfy subsection (b)(2)(B)(i) of the termination statute, namely, that there is a reasonable probability the conditions resulting in the children's removal and continued placement outside of Mother's care will not be remedied. In challenging this conclusion, Mother does not dispute any of the trial court's specific findings as unsupported by the evidence. Rather,

Mother simply asserts that the trial court's judgment is not supported by the evidence and directs our attention to her self-serving testimony during the termination hearing that she had achieved stable housing by moving in with Grandmother, she did not finish the IOP because she could not afford to pay for the remaining classes, and she promised to keep the house clean in the future if the children were returned to her care.

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 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.* 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*. Moreover, a county department of child services is not required to provide evidence ruling out all possibilities of change; rather, it need only establish 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). Finally, we have previously explained that Indiana's termination statute makes clear that "it is not just the basis for the initial removal of the child that may be considered for purposes of determining whether a parent's rights should be terminated, but also those bases resulting in the continued placement outside of the home." *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*.

In determining there is a reasonable probability that the conditions leading to Kt.W.'s and Kb.W.'s removal and/or continued placement outside of Mother's care will not be remedied, the trial court made numerous, detailed findings regarding Mother's past and present inability to provide the children with a safe, sanitary, and stable home environment. In so doing, the trial court noted the recurrent "unsanitary" conditions of Mother's home throughout the underlying CHINS and termination proceedings, including the presence of "trash," "bugs," and animal "feces" on the floors and carpet which "did not improve with any consistency while the children were in her care." Appellant's App. p. 19-21. The court also found Mother (1) failed to "adhere to a regime designed to eradicate th[e] ongoing lice problem;" (2) "pled guilty to intimidation" and served two weeks incarceration in the Montgomery County Jail; (3) did not maintain full-time employment or secure a residence for herself; (4) had taken no steps to obtain her GED despite testifying that she "really wants to get her GED;" (5) maintained her use of marijuana throughout the underlying proceedings; and (6) failed to "successfully complete the terms of the Court's Parental Participation Order" directing Mother to pursue full-time employment, miss no additional therapy sessions, and participate in a drug and alcohol evaluation. *Id.* at 21-23, 25. The trial court also found as follows:

> 35. It was the consensus of those who testified for [MCDCS] at the termination of parental rights hearing that [Mother] could verbalize the recommendations made by her service providers, but was never engaged in implementing the suggestions made even when told that compliance with those recommendations would be required prior to the return of [the children].
>
> 36. In the course of the termination hearings, MCDCS Case Manager Elizabeth Bricker, Rainbow Recovery Resources owner, Marilyn

> Richardson, Family Preservation Advocate Tara Ellis, and Jennifer Green Stanyard, [Mother's] home[-]based mental health therapist, testified that they saw no consistent progress by [Mother] in correcting the problems that had precipitated her children's removal from her home.
>
> 37. Each testified that she believed that her agency had exhausted the resources that the agency believed could have helped [Mother] regain custody of her children.
>
> 38. The Court heard testimony that at review hearings . . . from November 2009, to the summer of 2010, [Mother's] service providers repeatedly addressed [Mother's] lack of progress in maintaining a safe and sanitary home . . . .
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> * * *
>
> 40. [A]lthough [Mother] professed to have no money for substance abuse treatment during this period of time, she did have money to buy cigarettes . . . .

Appellant's App. p. 23-24. A thorough review of the record reveals that the trial court's findings are supported by abundant evidence.

Testimony from various caseworkers and service providers makes clear that Mother was afforded numerous programs and counseling opportunities in an effort to reunite her with her children, but all of Mother's counselors, case managers, and service providers testified that Mother failed to implement the techniques she was being taught and was never able to achieve any significant progress. During the termination hearing, Family Preservation Advocate Tara Ellis testified that although she worked with Mother for approximately two years on housing and employment instability, Mother never made any real progress stating, "[Mother] didn't consistently meet with me and she didn't consistently do the things that needed to be done to make progress." Tr. p. 36. Ellis further informed the trial court that the ongoing unsanitary conditions of the home

resulted in the children having diaper rash with "oozing sores," there were recurrent and unresolved lice infestations for months at a time, and Kt.W. had "actually contracted MRSA from one of the animals that had been in the house" causing the child to become "very sick." *Id.* at 44-45. When asked to describe the longest period she had ever observed Mother maintain any sort of change or improvement, Ellis answered, "two week increments or less." *Id.* at 46.

Similarly, when asked to describe Mother's progress in counseling services, home-based mental health therapist Jennifer Green Stanyard explained:

> Essentially[,] from a therapeutic standpoint[,] I felt like over the course of almost two and a half years of therapeutic treatment[,] [Mother] had moments of progress in her insight and her ability to identify the barriers that were keeping her from being a safe, secure, consistent parent, but behaviorally there [w]as no consistent change. . . . There was no consistent change in her ability to implement the things that we talked about . . . . [T]here were also issues with consistency of attendance too . . . .

Id. at 73-74. MCDCS case manager Elizabeth Bricker likewise agreed that although Mother participated in some services throughout the CHINS case, she did not appear to be "implementing the necessary changes to provide a safe environment" for the children and that MCDCS had received "many reports that [Mother] was not engaged during the therapy sessions" thereby calling into question whether or not she was "actually getting the full benefit of the services." *Id.* at 208. Bricker also reported that Mother's therapist and family preservation officer both had even tried using different techniques to try to "engage" Mother and "get her to cooperate more" in services, but that they found it was "very hard to get [Mother] to change" because Mother did not "believe that the environment the children were living in was detrimental to their health." *Id.* at 209.

As previously explained, a trial court must judge a parent's fitness to care for his or her children 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 children. *See D.D.*, 804 N.E.2d at 266. In addition, "[w]here there are only temporary improvements and the 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). Based on the foregoing, we conclude that MCDCS presented clear and convincing evidence to support the trial court's findings and ultimate determination that there is a reasonable probability the conditions resulting in Kt.W.'s and Kb.W.'s removal and continued placement outside Mother's care will not be remedied. Mother's arguments to the contrary amount to an invitation to reweigh the evidence, which we may not do. *See D.D.*, 804 N.E.2d at 264.

We now turn to Mother's additional assertion that MCDCS failed to prove termination of her parental rights is in the children's best interests. In determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Indiana Department of Child Services and look to the totality of the evidence. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* Moreover, we have previously held that the recommendations of the case manager and child 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 interests. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

Beyond the factual findings already discussed, the trial court also found that case manager Bricker and court-appointed special advocate ("CASA") Janet Brown recommended termination of Mother's parental rights to be in the children's best interests. The record supports this finding. During the termination hearing, case manager Bricker testified that both of the children were "doing very well" and that some of the "aggressive" and "self[-]harming behaviors" Kt.W. had previously exhibited had improved. Tr. p. 226-27. Bricker also indicated that both children appeared to be "very happy and loved" in their current environment. *Id.* at 227. CASA Brown likewise informed the trial court that Kt.W. and Kb.W. were doing "very well" and seemed "very, very happy" in their current, pre-adoptive relative foster placement. *Id.* at 186-87. Brown also remained concerned that Mother "hasn't gotten her life situated where she even has a home to provide [the children]" and that she believed the children were "better off . . . where they have a routine and are happy in their environment." *Id.* at 188-89.

Based on the totality of the evidence, including Mother's historic and current inability to provide the children with a safe and stable home environment and her unresolved substance abuse issues, coupled with the testimony of Bricker and Brown, we conclude that clear and convincing evidence supports the trial court's determination that termination of Mother's parental rights is in Kt.W.'s and Kb.W.'s best interests.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.