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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF PARENT-CHILD RELATIONSHIP OF R.C., R.C., AND R.C., MINOR CHILDREN, AND THEIR MOTHER, T.C.,	)	
T.C. (MOTHER),	)	
Appellant-Respondent,	)	
vs.	)	No. 49A02-0904-JV-291
MARION COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner,	)	
and	)	
CHILD ADVOCATES, INC.,	)	
Co-Appellee (Guardian ad Litem).	)	

APPEAL FROM THE MARION SUPERIOR COURT - JUVENILE DIVISION
The Honorable Danielle Gaughan, Magistrate
Cause No. 49D09-0804-JT-19452

October 6, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

T.C. ("Mother") appeals the involuntary termination of her parental rights to her children, R.C., Ro.C., and Re.C., claiming there is insufficient evidence to support the juvenile court's judgment. Concluding that the Indiana Department of Child Services, Marion County ("MCDCS"), presented clear and convincing evidence to support the juvenile court's judgment terminating Mother's parental rights to all three children, we affirm.

Facts and Procedural History

Mother is the natural mother of R.C., born on May 12, 2004, and twins Ro.C. and Re.C., born on January 28, 2006.[1] The evidence most favorable to the juvenile court's judgment reveals that on August 28 and 30, 2006, the MCDCS received separate referrals of neglect involving Mother and the children.[2] The referrals indicated that Mother was using marijuana and alcohol and that she and the children were moving from house to house and sleeping on the floor. MCDCS intake caseworker Rachelle Grimes initiated an investigation on or about September 2, 2006, by placing a telephone call to Mother's last

[1] Paternity for R.C. was established during the underlying proceedings, and the parental rights of R.C.'s biological father, Rufus C., were terminated by the juvenile court in its February 10, 2009, judgment. The parental rights of the twins' alleged fathers, Jeffery H. and Jeremiah J., were also terminated in the court's February 10, 2009, judgment. None of the children's biological or alleged fathers mentioned herein participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother's appeal.

[2] This was not Mother's first encounter with the MCDCS. Mother has two older biological children who were removed from her care in a prior CHINS case after Mother tested positive for marijuana while being pregnant with one of the children. Mother's parental rights to the two older children were eventually terminated, and the children were adopted by Mother's maternal cousin.

known address at an apartment complex located on Broadway. During this call, Grimes was informed that Mother's maternal grandmother lived at the Broadway address, but that Mother did not. Grimes was, however, provided with an alternate address for Mother on Ruckle Street. Grimes thereafter sent letters to Mother at both the Broadway and Ruckle residences, but she received no response.

On September 22, 2006, Grimes received another report alleging Mother had been leaving R.C., Ro.C, and Re.C. with Mother's grandmother at the residence on Broadway, but that the grandmother, who was recovering from a recent stroke, was unable to properly care for the children. Grimes made an unannounced visit to the Broadway residence on the same day and spoke directly with Mother. Mother informed Grimes that she was simply visiting with her grandmother and that she actually lived at the Ruckle Street residence with her father and step-mother. Grimes informed Mother that Grimes would need to visit the residence in which Mother and the children were actually living within three days.

When Grimes visited Mother and the children at the residence on Ruckle Street, she observed two cribs for the children and a bed for Mother in one of the bedrooms. Mother's personal items were also present. Grimes therefore asked, and was granted permission by Mother's father, to "put services in the home." Tr. p. 21.

On September 23, 2006, Grimes received a fifth referral which indicated that Mother's whereabouts were unknown, so her relatives had taken all three children to Youth Emergency Services. Grimes located Mother and informed her of the children's

whereabouts. Grimes also referred Mother for a drug screen. Mother submitted to the drug screen and later admitted to Grimes that she had been using marijuana.

On September 26, 2006, Mother signed a service referral agreement wherein Mother agreed to participate in random drug screens and home-based counseling, supervise the children at all times, provide the children with proper medical care, and allow MCDCS caseworkers to make unannounced visits at the family home. Mother also agreed to maintain regular contact with the MCDCS and to notify caseworkers of any change in residence. The children were thereafter returned to Mother's care.

On October 6, 2006, Grimes was notified that local police had been called to the Broadway address because the children had been observed sleeping in the hallway of the apartment building. Grimes was initially unable to locate Mother and the children. Approximately one week later, however, Grimes found Mother and the children at the Broadway residence. After speaking with Mother, the children were taken into protective custody and placed in foster care due to Mother's failure to maintain contact with the MCDCS and her refusal to comply with the terms of the service referral agreement. The children were eventually placed in relative foster care with Mother's maternal cousin, who had previously adopted Mother's two older biological children.

On October 16, 2006, the MCDCS filed three petitions, under separate cause numbers, alleging R.C., Ro.C., and Re.C. were children in need of services ("CHINS"). Mother denied the allegations in the CHINS petitions during an initial hearing on the matter. However, she later admitted to the allegations in the MCDCS's amended CHINS

petitions following a hearing held on February 1, 2007. R.C., Ro.C, and Re.C. were therefore adjudicated CHINS, and the juvenile court proceeded to disposition.

As part of its dispositional order, the juvenile court entered a Participation Decree directing Mother to participate in a variety of services in order to achieve reunification with her children. Specifically, Mother was ordered to, among other things: (1) obtain and maintain a stable source of income and suitable housing, (2) participate in a drug and alcohol assessment and follow all resulting treatment recommendations, (3) submit to random drug testing, (4) undergo a parenting assessment and follow any resulting recommendations, (5) successfully complete home-based counseling, (6) establish paternity and exercise regular visitation with the children, and (7) maintain regular contact with MCDCS caseworkers and notify them of any change in address.

Mother's participation in services was inconsistent throughout the duration of the underlying CHINS and termination proceedings. For example, Mother participated in a parenting assessment. However, it took approximately nine months and two referrals by the MCDCS before Mother actually complied. In addition, although Mother completed the in-home interview and standardized testing portions of the parenting assessment, she refused to participate in the bonding observation portion of the evaluation, despite at least three separately scheduled visitation appointments to do so. Likewise, Mother's failure to keep regularly scheduled appointments to visit with the children resulted in repeated suspensions of her visitation privileges. Mother also failed to secure stable employment and housing, and she refused to participate in home-based counseling.

In 2007 Mother tested positive for marijuana and cocaine on several different occasions. After two referrals, Mother eventually completed an intensive out-patient drug treatment program ("IOP") in January 2008. Mother refused, however, to participate in the court-ordered IOP aftercare program. Apart from one drug screen conducted in March 2008, Mother also refused to submit to any random drug screens following her completion of the IOP despite over twenty formal requests to do so in 2008.

On April 30, 2008, the MCDCS filed petitions seeking the involuntary termination of Mother's parental rights to all three children. A consolidated fact-finding hearing on the MCDCS's petitions was held on January 9, 2009. Mother did not appear for the termination hearing but was represented by counsel. On February 10, 2009, the juvenile court issued its judgment involuntarily terminating Mother's parental rights to R.C., Ro.C., and Re.C. Mother now appeals.

Discussion and Decision

Initially, we note 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 not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id*.

In deference to the juvenile 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. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or if the conclusions do not support the judgment thereon. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the juvenile court's decision, we must affirm. *L.S.*, 717 N.E.2d at 208.

Here, at the request of the parties, the juvenile court made specific findings and conclusions in its order terminating Mother's parental rights. Where the juvenile court enters specific findings and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake County 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.*

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *Id.* A parent's interest in the care, custody, and control of his or her children is arguably one of the oldest of our fundamental liberty interests. *Id.* However, these parental interests are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied.* Parental rights may therefore be terminated when the parents are unable or unwilling to meet their parental responsibilities. *K.S.*, 750 N.E.2d at 836.

In order to terminate 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) the continuation of the parent-child relationship poses a threat to the well-being of the child . . . .

Ind. Code § 31-35-2-4(b)(2). 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). "[I]f the 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 asserts on appeal that the juvenile court's findings pertaining to subsection (B) of Indiana's termination statute cited above are insufficient to support its judgment terminating her parental rights to the children. Specifically, Mother asserts she "completed, in whole or in part, over half of the matters to which she was referred." Appellant's Br. p. 13. Mother goes on to assert, "Some of the matters were not relevant to her. Consequently, [Mother] should be seen as having significantly complied with services." *Id.*

When determining whether a reasonable probability exists that the conditions justifying a child's removal or continued placement outside the home will not be remedied, the juvenile 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 juvenile 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 County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. A juvenile 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. *Id.* Finally, we point out that a county department of child services (here, the MCDCS) 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).

In determining that there is a reasonable probability the conditions resulting in the children's removal or continued placement outside of Mother's care will not be remedied, the juvenile court made the following pertinent findings:

> 16. The first part of the parenting assessment was completed on June 25, 2007. The bonding assessment, however, was never completed because [Mother] failed to show up for scheduled visits with her children.
> 17. Because of her sporadic participation, [Mother] was referred several times for random drug screens. [Mother] never completed a whole set of ten screens. The last completed drug screen by [Mother] was at the end of 2007 or the beginning of 2008.
> 18. [Mother] did complete an intensive out-patient drug treatment program but did not complete aftercare.
> 19. [Mother] was referred in January 2008, May 2008[,] and June 2008 for home[-]based counseling. [Mother] did not successfully complete home[-]based counseling. In each instance, the home[-]based counselor could not locate her.
> 20. [Mother] did not visit consistently with her children.
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> * * * * *

> 23. On October 16, 2006, . . . the CHINS court authorized visitation between [Mother] and her children. Visitation was suspended by the CHINS court on May 17, 2007[,] because [Mother] was not compliant with services. On July 6, 2007[,] visitation was reinstated[,] but at a September 12, 2007[,] CHINS hearing, [the MCDCS] reported that [Mother] was not visiting with her children. [Mother's] visitation was again suspended by the CHINS court on August 14, 2008.
> 24. On November 20, 2007, [Mother] requested that the CHINS court allow her to visit with her children . . . .
> 25. The visit was scheduled for December 27, 2008 . . . . [R.C.], who was approximately 4½ at the time[,] made and wrapped presents for [Mother] in anticipation of the visit. [Mother] did not show for the visit and [R.C.] was sad and confused.
> 26. There is a reasonable probability that the conditions that resulted in [the children's] removal or the reasons for placement outside the home of [Mother] will not be remedied. [Mother] has failed to stay in contact with [the MCDCS], failed to complete services[,] and failed to maintain contact with her children. [Mother] has had over two years to complete services and [to] demonstrate the ability to parent her children[,] and she has been unable to do so.

Appellant's App. p. 13-14. Our review of the record reveals that the evidence most favorable to the juvenile court's judgment supports these findings, which in turn support the court's ultimate decision to terminate Mother's parental rights to R.C., Ro.C., and Re.C.

Although Mother did complete some of the juvenile court's dispositional orders, including an IOP and a portion of the parenting assessment, Mother's overall participation in services was extremely inconsistent. Throughout the duration of the underlying proceedings, Mother refused to cooperate with service providers and to successfully complete important court-ordered services, thereby preventing the MCDCS from being able to recommend that the children be returned to her care. Moreover, at the time of the termination hearing, Mother's ability to care for her children had not

improved. Mother remained unemployed, her current housing status was unknown, and she still had not completed a majority of the court's dispositional goals, including a drug treatment aftercare program, random drug screens, a bonding assessment, or home-based counseling. Also significant, Mother had not visited with her children since August 14, 2007, and her visitation privileges had been suspended as a result of her repeated failure to attend scheduled visits and the negative impact these missed visits had on the children's emotional well-being, especially R.C.

Although Mother failed to appear for the termination hearing, the record contains ample testimony from various service providers and caseworkers which further supports the juvenile court's findings. Licensed clinical social worker Terrence Lovejoy conducted the parenting assessment of Mother and testified that during the in-home interview, Mother conceded that she struggles with anger management issues. Lovejoy further testified that Mother had reported that every time she became angry she would "explode" and would "yell" and "curse." Tr. p. 66. Mother had also expressed "anger and even some homicidal ideation" during the interview due to her experiences during a recent home invasion and attack. *Id.* at 65.

When asked whether he had noted any progress made by Mother during the initial months of the CHINS case, Lovejoy replied, "During those nine (9) months there had been very little progress made. That was the observation I noted." *Id.* at 67. When further questioned as to whether he felt Mother had exhibited any insight as to how her marijuana use could affect her relationship with her children, especially with regard to the CHINS matter, Lovejoy answered:

> [Mother] acknowledged her marijuana use. She did not see that as a problem for herself or for her parenting. . . . And she acknowledged that she had continued to smoke marijuana despite the CHINS case in October of 2006. She had continued to smoke marijuana and did not see that as a problem. She knew that she needed to be drug free to get her children back. But it would be my opinion that there'd be a low level of motivation to continue to stay clean.

Id. at 68.

Similarly, MCDCS case manager Elisa Suarez testified that her primary concern at the beginning of the CHINS case was Mother's homelessness and use of illegal drugs. Suarez confirmed that Mother had failed to successfully complete court-ordered services designed to help remedy these conditions, including home-based counseling and a drug treatment aftercare program. She also described Mother's participation in visitation with the children as "sporadic." *Id.* at 104.

Regarding Mother's compliance with court-ordered drug screens, Suarez acknowledged that Mother had failed to participate in drug screens "basically throughout 2008." *Id.* at 100. Suarez went on to explain that she had clearly informed Mother that failure to report for scheduled drug screens would result in those screens being deemed to have a positive result. When asked whether she felt Mother had demonstrated any interest in parenting her children, beyond simply stating her belief that the children should be with their mother, Suarez answered, "It doesn't appear to me that her actions and her behavior is that of a parent who is trying to get her children back." *Id.* at 101.

Finally, in recommending termination of Mother's parental rights, the guardian ad litem, Adrienne Reed, testified that she had recommended Mother's visitation privileges be suspended in August 2007 because "there had been multiple missed visits

consecutively. And that was very disruptive to the children." *Id.* at 173. Reed went on to explain that it had been "extremely disappointing each week that the kids got dressed up, they knew when they pulled in the parking lot at Giant Steps, or at least [R.C.] did, what the expectation was and . . . [that] she was there to see [Mother]. And then when [Mother] failed to make those last visits[,] it was just hard on [R.C.]." *Id.* When asked whether she would have any concerns if Mother were to "come back into the picture with reunification of the children at this particular time," Reed answered, "Absolutely, yes." *Id.* at 180. Reed further explained, "My main concern is I've received no documentation [that] [Mother] is not using. So[,] substance abuse would be a concern for me, whether or not [Mother] is sober and not using illegal drugs, as well as housing, and the commitment . . . to parent the children, all three (3) of them, as well as meet their individual needs. . . ." *Id.*

"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*. In addition, the failure to exercise the right to visit one's child demonstrates a "lack of commitment to complete the actions necessary to preserve the parent-child relationship." *Id.* Based on the foregoing, we conclude that the juvenile court's findings are supported by ample evidence. These findings, in turn, support the court's determination that there is a reasonable probability the conditions resulting in the children's removal from Mother's care will not be remedied.

As previously explained, a juvenile 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. Thus, the juvenile court was responsible for judging witness credibility and for weighing Mother's evidence of changed conditions against the evidence demonstrating Mother's habitual pattern of neglectful conduct in failing to (1) obtain stable housing and employment, (2) complete court-ordered services designed to improve her parenting abilities and remedy her addiction to illegal drugs, and (3) demonstrate she is capable of providing a consistently safe, stable, and drug-free home environment for the children. It is clear from the language of the judgment that the juvenile court gave more weight to the evidence of Mother's current inability to parent the children and habitual pattern of neglectful conduct rather than Mother's purported change in circumstances, which it was permitted to do. *See Bergman v. Knox County Office of Family & Children*, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding trial court was permitted to and in fact gave more weight to abundant evidence of mother's pattern of conduct in neglecting her children during several years before the termination hearing than to mother's testimony that she had changed her life to better accommodate the children's needs). Mother's arguments on appeal, emphasizing the few services she completed as opposed to the evidence cited by the juvenile court in its termination order, amount to an invitation to reweigh the evidence, which we may not do. *D.D.*, 804 N.E.2d at 264; s*ee also In re L.V.N.*, 799 N.E.2d 63, 68-71 (Ind. Ct. App. 2003) (concluding that mother's argument that

conditions had changed and that she was now drug-free constituted an impermissible invitation to reweigh the evidence).[3]

A thorough review of the record leaves this Court convinced that the juvenile court's judgment terminating Mother's parental rights to R.C., Ro.C, and Re.C. is supported by clear and convincing evidence. Since the time of the children's removal, Mother has failed to make any significant or sustained improvement in her ability to care for her children. 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.'" *Matter of 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.

BAILEY, J., and BRADFORD, J., concur.

[3] In her brief to this Court, Mother asserts that "[b]ecause she had significantly complied with the services to which she was referred, and because she had addressed the reasons for which the children originally were removed, there was no credible evidence that continuation of the parent-child relationship poses a threat to the children." Appellant's Br. p. 14. In failing to support her argument with cogent reasoning or citation to authority, as is required by our appellate rules, Mother has waived appellate review of this issue. *See* Ind. Appellate Rule 46(A)(8)(a). Waiver notwithstanding, even if Mother had properly supported her argument, having already concluded that clear and convincing evidence supports the juvenile court's determination that there is a reasonable probability the conditions resulting in the children's removal from Mother's care will not be remedied, consideration of Mother's additional assertion that insufficient evidence supports the juvenile's determination that continuation of the parent-child relationship poses a threat to the children's well-being is unnecessary. *See L.S.*, 717 N.E.2d at 209 (explaining that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive).