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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF J.W., M.Y., P.S., J.H. and M.S., Minor Children,	)	
R. W.-S., Mother,	)	
Appellant-Respondent,	)	
vs.	)	No. 45A04-1001-JT-217
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner,	)	
THE LAKE COUNTY COURT-APPOINTED SPECIAL ADVOCATE,	)	
Co-Appellee/Child Advocate.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Judge
Cause Nos. 45D06-0807-JT-351, 45D06-0807-JT-352, 45D06-0807-JT-353, 45D06-0807-JT-354, 45D06-0807-JT-355

(Handdown Date)

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

R. W.-S. (Mother) appeals the involuntary termination of her parental rights to L.W., M.Y., P.S., J.H., and M.S. (the children). As there was ample evidence the conditions resulting in the children's removal would not be remedied and termination was in the best interest of the children, we affirm.

FACTS AND PROCEDURAL HISTORY

In 2002, Mother's four oldest children were removed and adjudicated in need of services after Mother admitted she choked one of them as punishment for whining. After that incident Mother received parent education, anger management, and therapy services. When she completed those services, the Department of Child Services (DCS) returned the children to her.

In March of 2007, one of Mother's children, M.S., was hospitalized with burns to his feet and buttocks. He also had welts on his back. Mother admitted she "popped him four times" with a belt because he had soiled himself, (Tr. at 125), and then placed him in scalding bathwater. She did not immediately take M.S. to a hospital because she was afraid

DCS would take the children from her.

Mother eventually agreed to plead guilty to neglect of a dependent and was incarcerated. The court placed the children with their maternal grandmother. DCS did not offer services to Mother at that time because she was imprisoned.

Mother was released in October 2008, and contacted a Family Case Manager about services in an effort to regain custody of the children. The case manager advised Mother to seek services on her own because Mother had completed services after the first incident and the case manager felt additional services would not help. She felt Mother's parental rights should be terminated because it "would be a risk for the children to be returned back to mother's care given her history of physical abuse against her children." (*Id.* at 75.)

DCS petitioned for termination of Mother's parental rights and, after a hearing, the trial court issued an order to that effect.

DISCUSSION AND DECISION

We apply a highly deferential standard when reviewing a termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We do 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 therefrom that are most favorable to the judgment. *Id.*

Where, as here, the trial court enters findings of fact and conclusions of law, our standard of review is two-tiered. First, we determine whether the evidence supports the

findings, and second, whether the findings support the conclusions of law. *In re J.H.*, 911 N.E.2d 69, 73 (Ind. Ct. App. 2009), *trans. denied*. In deference to the trial court's unique position to assess the evidence, we set aside its findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id.* A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it. *Id.* A judgment is clearly erroneous only if the court's conclusions of law are not supported by its findings of fact or if the conclusions of law do not support the judgment. *Id.*

"The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment to the United States Constitution," *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*, but the law provides for termination of those rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). The statute in effect at the time of the court's order provided that to terminate a parent-child relationship, the State must prove:

> (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 . . . .

Ind. Code § 31-35-2-4(b)(2). As that section was written in the disjunctive, DCS was required to establish, by clear and convincing evidence, only one of the two requirements of subsection (B). *In re I.A.*, 903 N.E.2d 146, 153 (Ind. Ct. App. 2009). The State must

establish each of these allegations by clear and convincing evidence. Ind. Code § 31-37-14-2; *see also Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992).

The involuntary termination of parental rights is the most extreme sanction a court can impose on a parent, because termination severs all rights of a parent to his or her children. *R.H.*, 892 N.E.2d at 149. Therefore, termination of parental rights is a last resort, available only when all other reasonable efforts have failed. *Id.* The purpose of terminating parental rights is not to punish the parent, but to protect the children involved. *K.S.*, 750 N.E.2d at 832.

Mother asserts the judgment terminating her parental rights is not supported by clear and convincing evidence. Specifically, Mother claims DCS did not prove a reasonable probability the conditions resulting in the children's removal or continued placement outside her care will not be remedied or that termination was in the children's best interests.

1. Conditions Resulting in Removal

To determine whether there is a reasonable probability the conditions that resulted in removal of the children will be remedied, the trial court should judge a parent's fitness to care for her children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re D.J.*, 755 N.E.2d 679, 684 (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 children. *Id.* The trial court

may consider the services offered to the parent by DCS and the parent's response to those services. *Id.* A court need not wait until a child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating a parent-child relationship. *Id.* Nor is DCS obliged to rule out all possibilities of change; rather, DCS need establish only that there is a reasonable probability that the parent's behavior will not change. *In re Involuntary Termination of Parent-Child Relationship of Kay. L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

Where there are only temporary improvements and the pattern of conduct shows no overall progress, the court reasonably might find that, under the circumstances, the problematic situation will not improve. *In re Involuntary Termination of Parent Child Relationship of A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). "Put another way, the historic inability to provide adequate housing, stability, and supervision, coupled with the current inability to provide the same, will support a finding that continuation of the parent-child relationship is contrary to the child's best interests." *Id.*

The evidence most favorable to the judgment was that children have been removed twice because of Mother's abuse; services provided to Mother after the first incident did not prevent future abuse; the abuse progressively worsened; and Mother waited nine months after her release from incarceration to seek services. Mother asserts the first incident of abuse never happened and the second incident is inexplicable as she tested the bath water and determined it was not too hot. However, we may not reweigh the evidence or judge the

credibility of the witnesses. There was ample evidence the conditions that resulted in the removal of the children will not be remedied.[1]

2. 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 DCS and consider the totality of the evidence. *In re J.S.*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009). In so doing, the trial court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is harmed irreversibly before terminating the parent-child relationship. *Id.* Recommendations of the case manager and court-appointed advocate to terminate parental rights, in addition to evidence the conditions resulting in removal will not be remedied, may be sufficient to show by clear and convincing evidence that termination is in the child's best interests. *Id.*

A parent's historical inability to provide a suitable environment along with the parent's current inability to do the same supports a finding that termination of parental rights is in the best interests of the children. *Lang v. Starke County Office of Family and Children*, 861 N.E.2d 366, 373 (Ind. Ct. App. 2007), *trans. denied*. The trial court had evidence before it that termination was in the children's best interests because Mother had been involved in two incidents of child abuse since 2001; treatment and rehabilitation had not been successful;

[1] As there was ample evidence the conditions resulting in removal will not be remedied, we need not address whether the continuation of the parent-child relationship poses a threat to the children's well-being. *See In re I.A.*, 903 N.E.2d 146, 153-54 (Ind. Ct. App. 2009) (declining to address second prong of Ind. Code § 31-35-2-4(b)(2)(B), when evidence established first prong).

Mother was released from prison in October 2008 but did not request services toward reunification with the children until June of 2009; Mother is unemployed; Mother lives with an uncle; Mother had just had another child; and Mother has no ability to provide for the children. There was sufficient evidence the children's best interests would be served by termination of Mother's parental rights.

The trial court also heard testimony the DCS plan for the children would provide stability and permanency. "Permanency is a central consideration in determining the best interests of a child." *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009), *reh'g denied*. The children's maternal grandmother plans to adopt the children, the children want to stay with her, and she had been providing the children with "a caring and stable home." (Tr. at 79.) This evidence also supports the finding termination was in the children's best interests. *See, e.g.*, *In re A.D.W.*, 907 N.E.2d 533, 540 (Ind. Ct. App. 2008) (supporting termination through evidence that children were comfortable and relaxed living with their aunt and uncle, the family case manager testified that she believed terminating Mother's parental rights was in the best interest of the children because children's grades had improved since being placed with their aunt and uncle, and the children had stability for the first time in their lives).

There was ample evidence supporting the conclusions the conditions resulting in the removal of the children will not be remedied and termination of Mother's parental rights was in the children's best interests. Those conclusions support the judgment terminating Mother's parental rights to the children, and we accordingly affirm.

Affirmed.

ROBB, J., and VAIDIK, J., concur.