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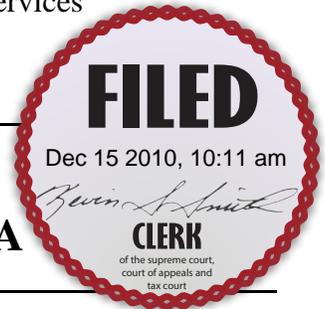
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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD REALTIONSHIP OF M.D,)
B.C., AND H.C.,)

T.D.)
)
)
Appellant-Respondent,)

vs.)

THE INDIANAPOLIS DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner.)

No. 71A03-1006-JT-347

APPEAL FROM THE SAINT JOSEPH PROBATE COURT

The Honorable Peter J. Nemeth, Judge

Cause No. 71J01-0910-JT-192

Cause No. 71J01-0910-JT-193

Cause No. 71J01-0910-JT-194

December 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

T.D. (Mother) appeals the involuntary termination of her parental rights to her children. In so doing, Mother challenges the sufficiency of the evidence supporting the trial court's termination order.

We affirm.

Mother is the biological mother of M.D., born in August 2002, H.C., born in December 2005, and B.C., born in July 2008. The facts most favorable to the trial court's judgment reveal that Mother appeared in court for a truancy hearing pertaining to then five-year-old M.D. when the trial court became concerned with Mother's erratic behavior and ordered her to submit to a drug screen. Mother tested positive for cocaine and Tetrahydrocannabinol (THC). During a subsequent investigation by Indiana Department of Child Services (DCS) St. Joseph County, assessment worker Tim Endicott learned that M.D. had observed Mother and the child's maternal grandmother using a "crack pipe" in the family home and that the grandmother had been observed giving then two-year-old H.C. beer to drink. *Hearing Exhibits* at 42. In addition, police had been called to the family home approximately twenty-four times since December 2007.

As a result of DCS's investigation, all three children were taken into protective custody and later placed in foster care.¹ DCS then filed petitions under separate cause

¹ The biological father of M.D. was deceased by the time the children were detained. In addition, D.C. (Father), the biological father of H.C. and B.C., was incarcerated at the time the children were taken into custody and thus was unavailable to parent the children. Father's parental rights to H.C. and B.C. were later terminated by the trial court in its May 2010 termination order. Father timely filed his Notice of Appeal, but

numbers alleging M.D., H.C., and B.C. were children in need of services (CHINS). During a hearing in August 2008, Mother admitted the allegations contained in the CHINS petition and the trial court adjudicated all three children CHINS. Following a dispositional hearing in September 2008, the trial court issued an order formally removing all three children from Mother's care and custody and 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) participate in both individual and family counseling; (2) submit to random drug screens; (3) remain drug free; (4) successfully complete a parenting assessment, parenting classes, and follow all resulting recommendations; (5) maintain stable housing and employment; (6) visit with the children on a regular basis; (7) maintain consistent contact with DCS; and (8) cooperate with home-based service providers.

Mother delayed her initial participation in court-ordered reunification services and ultimately was unsuccessful. Although Mother began to show some improvement toward meeting her goals in February 2009, by March of the same year, DCS's CHINS Progress Report indicated Mother was "not cooperating with services," had tested positive for methadone and cocaine on several occasions in January 2009, had "not been consistent with her drug treatment," and her visitation privileges with the children had been suspended due to Mother's ongoing drug use. Ex. pp. 31-32. In addition, the report indicated Mother was struggling to find stable housing and employment.

Mother's visits with the children were reinstated in May 2009 after she was able to

he failed to file an Appellant's Brief and does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother's appeal.

produce several successive negative drug screens. By June 2009, however, Mother again tested positive for methadone, and by mid-July she had cancelled two scheduled visits with the children and was thirty-five minutes late for yet another visit. Mother also had moved to Elkhart County to live with her boyfriend, who had an extensive criminal record including several drug-related convictions and was under house arrest for failing to pay child support.

During the next several months, Mother participated in some of the court-ordered services, such as parenting classes and individual counseling, but her attendance was inconsistent. In addition, Mother continued to struggle with her addiction to illegal and prescription drugs and tested positive for methadone and/or cocaine on at least two separate occasions in August 2009 and positive for benzodiazepines and/or methadone on two occasions in September 2009.

In October 2009, DCS filed a motion seeking modification of the trial court's dispositional order and specifically requesting that it no longer be required to provide Mother with reunification services, including visitation privileges with the children. DCS also filed petitions seeking the involuntary termination of Mother's parental rights to all three children. In November 2009, the trial court granted DCS's request for modification and issued a new dispositional order suspending all services and visitation privileges for Mother.

A consolidated evidentiary hearing on DCS's termination petitions as to all three children commenced in April 2010. At the conclusion of the hearing, the trial court took the matter under advisement. On May 6, 2010, the trial court entered its judgment terminating Mother's parental rights to M.D., H.C., and B.C. This appeal ensued.

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 (Ind. Ct. App. 2001). 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 (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 trial 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 (Ind. Ct. App. 1999), *trans. denied*. Thus, if the evidence and inferences support the trial court's decision, we must affirm. *Id.*

Here, the trial court made specific findings in its order terminating Mother's parental rights. Where the 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 (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). A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment thereon. *Id.* We will reverse a judgment as clearly erroneous only if, after reviewing the record, we have a "firm conviction that a mistake has been made." *Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 371 (Ind. Ct. App. 2007), *trans. denied*.

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*. Although parental rights are of a constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144 (Ind. Ct. App. 2008). In addition, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In re K.S.*, 750 N.E.2d 832.

To terminate a parent-child relationship, the State is required to allege and prove, among other things:

- (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; [and]
- (C) termination is in the best interests of the child[.]

Ind. Code Ann. § 31-35-2-4(b)(2)(B) & (C) (West, Westlaw through 2009 1st Special Sess.).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 Ann. § 31-37-14-2 (West, Westlaw through 2010 2nd Regular Sess.)). If the court finds that the allegations in a petition described in section 4 of this chapter are true, the court

² I.C. § 31-35-2-4 was amended by Pub. L. No. 21-2010, § 8 (eff. March 12, 2010). The changes became effective after the filing of the termination petition involved herein and are not applicable to this case.

shall terminate the parent-child relationship. I.C. § 31-35-2-8 (West, Westlaw through 2010 2nd Regular Sess.). Mother challenges the sufficiency of the evidence supporting the trial court's findings as to subsections 2(B) and (C) of the termination statute cited above. *See* I.C. § 31-35-2-4(b)(2). We shall address each argument in turn.

Initially we observe that the trial court found DCS presented sufficient evidence to satisfy both elements of I.C. § 31-35-2-4(b)(2)(B). This statute, however, is written in the disjunctive. Thus, DCS was required to establish by clear and convincing evidence only one of the two requirements of subsection 2(B). *See In re L.S.*, 717 N.E.2d 204. Because we find it dispositive under the facts of this particular case, we shall consider only whether clear and convincing evidence supports the trial court's findings regarding I.C. § 31-35-2-4(b)(2)(B)(i).

In determining whether there is a reasonable probability the conditions resulting in a child's removal or continued placement outside the family home will be remedied, 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 (Ind. Ct. App. 2001), *trans. denied*. The court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. *In re M.M.*, 733 N.E.2d 6 (Ind. Ct. App. 2000). 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 (Ind. Ct. App. 2002), *trans. denied*. 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. *Id.* Finally, a trial court need not wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. *In re E.S.*, 762 N.E.2d 1287 (Ind. Ct. App. 2002).

In finding that there is a reasonable probability the conditions resulting in the children's removal and continued placement outside Mother's care will not be remedied, the trial court specifically referenced Mother's continued use of illegal substances, failure to appear for requested drug screens, and failure to complete intensive outpatient drug therapy. These findings are supported by clear and convincing evidence.

During the termination hearing, multiple caseworkers and service providers confirmed that Mother tested positive for cocaine, THC, benzodiazepines, and/or methadone repeatedly throughout the underlying CHINS and termination cases, even during and after her participation in an intensive outpatient drug rehabilitation program (IOP). When asked to describe Mother's progress and attendance with regard to the IOP, DCS case manager Renaldo Wilmoth stated he considered Mother to be "non-compliant with treatment" in light of the facts she missed sixteen sessions, was "obviously intoxicated" on prescription medications during approximately one-third of the twenty session she did attend, and continued to test positive on drug screens administered both during and after her completion of the educational portion of the IOP. *Transcript* at 55, 63.

Wilmoth also informed the trial court that from July 2008 to approximately July 2009, Mother either tested positive for drugs or refused to show for requested drug screens on seventeen separate occasions. Wilmoth then explained that after December 2009 it "became

very difficult for [Wilmoth] to get [Mother] for a drug screen” because Mother’s phone number “constantly changed,” and Mother refused to maintain consistent contact with DCS. *Id.* at 24. When asked whether he believed that the conditions resulting in M.D.’s, H.C.’s, and B.C.’s removal from Mother’s care will be remedied in the future, Wilmoth answered, “The conditions have not been remedied up until this point. . . . [And] given the opportunities that [Mother] was presented [with] by [DCS] and [the] services offered, if she has not done it by now, I don’t see that she’ll do it in the future.” *Id.* at 40-41.

Addictions counselor Marlene Villecco likewise testified that, despite Mother’s completion of the educational portion of the IOP, she did not believe Mother had successfully completed the IOP due to Mother’s “inconsistency” in attendance, refusal to participate in the IOP aftercare program, and failure to maintain her sobriety. *Id.* at 71, 73. Moreover, court-appointed special advocate (CASA) Jill Spencer confirmed that the children had been removed from Mother’s care due to Mother’s “pattern of drug use” and “instability” in the home, and that Mother’s visitation privileges had been suspended during the underlying proceedings due to Mother’s “positive drug screens.” *Id.* at 88. When asked to describe Mother’s “compliance with the order to remain drug[-]free,” Spencer characterized Mother’s participation as “[n]on-compliant.” *Id.* at 89.

Finally, Mother’s own testimony supports the trial court’s decision to terminate her parental rights to M.D., H.C., and B.C. Mother admitted during the termination hearing that she tested positive for drugs on multiple occasions and even tested positive for methadone three separate times after the trial court issued two court orders prohibiting her use of said prescription drug. In addition, Mother acknowledged that she was currently unemployed and

living with her boyfriend in Elkhart County despite the fact DCS had informed her said living arrangement was viewed by DCS as an obstacle to Mother's reunification with the children due to the boyfriend's extensive history of criminal activity and drug use.

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. *In re D.D.*, 804 N.E.2d 258. Where there are only temporary improvements and the parent's pattern of conduct shows no overall progress, the court might reasonably infer that, under the circumstances, the problematic situation will not improve. *In re A.H.*, 832 N.E.2d 563 (Ind. Ct. App. 2005). Since the time of the children's removal, Mother has been unable to achieve sobriety and a stable home environment for any significant period of time. Moreover, by the time of the termination hearing, Mother had failed to successfully complete a majority of the trial court's dispositional goals. Although at times Mother appeared to be making some progress in services, she nevertheless was unable to demonstrate an ability to sustain that progress and consistently provide the children with a safe, stable, and drug-free home environment. Consequently, the conditions that resulted in the children's removal and continued placement outside Mother's care have remained largely unchanged.

"A pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, support[s] 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 at 372. Based on the foregoing, we conclude that clear and convincing evidence supports the trial court's determination that

there is a reasonable probability the conditions leading to the children's removal or continued placement outside Mother's care will not be remedied. Mother's arguments on appeal amount to an invitation to reweigh the evidence, which we may not do. *In re D.D.*, 804 N.E.2d 258.

We next consider Mother's assertion that DCS 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 County Office of Family & Children*, 798 N.E.2d 185 (Ind. Ct. App. 2003). 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 irreversibly harmed before terminating the parent-child relationship. *Id.* Moreover, we have previously held that the recommendations of both 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.

Both DCS case manager Wilmoth and CASA Spencer testified that termination of Mother's parental rights was in all three children's best interests. In so doing, Wilmoth testified that the children had bonded with their pre-adoptive foster family. Wilmoth further stated that the children had "flourished" under the care of their foster parents and had overcome most of their respective developmental deficiencies since being placed in foster care. *Transcript* at 42. Similarly, Spencer indicated she felt termination of Mother's parental

rights to the children and adoption by the foster parents was in the children's best interests due to Mother's "pattern of drug use, the very long time line that's elapsed since the children were removed . . . [Mother's] lack of motivation in completing [her] services, [and Mother's] lack of focus on the children's welfare." *Id.* at 95.

Based on the totality of the evidence, including Mother's failure to comply with a majority of the trial court's dispositional orders and current inability to provide the children with a safe, stable, and drug-free home environment, coupled with the testimony from Wilmoth and Spencer, we conclude that clear and convincing evidence supports the trial court's determination that termination of Mother's parental rights is in M.D.'s, H.C.'s, and B.C.'s best interests.

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 v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Judgment affirmed.

MAY, J., and MATHIAS, J., concur.