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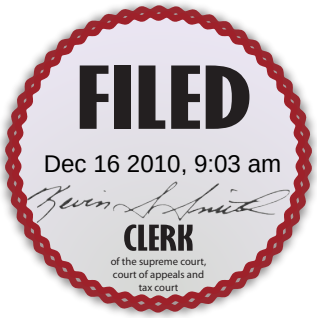

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF K.R., MINOR CHILD, AND HIS MOTHER, C.P.R.,	)	
C.P.R.	)	
Appellant/Respondent,	)	
vs.	)	No. 47A04-1007-JT-458
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee/Petitioner	)	
and	)	

GUARDIAN AD LITEM PROGRAM,)
)
Co-Appellee (Guardian Ad Litem).)

APPEAL FROM THE LAWRENCE CIRCUIT COURT
The Honorable Andrea K. McCord, Judge
Cause No. 47C01-0912-JT-479

December 16, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Respondent C.P.R. ("Mother") appeals the juvenile court's order terminating her parental rights to K.R. Mother alleges that the Indiana Department of Child Services ("DCS") did not provide sufficient evidence to support the termination of her parental rights. Concluding that the evidence was sufficient to support the termination of Mother's parental rights, we affirm.

FACTS AND PROCEDURAL HISTORY

K.R. was born in June 5, 2008, to Mother and S.R. ("Father").[1] K.R. was removed from Mother's care on September 30, 2008, due to unsafe and unstable living conditions and Mother's ongoing participation with DCS in relation to a different child. In February of 2009, Mother admitted that K.R. was a child in need of services ("CHINS"). Mother and DCS entered into an Agreed Entry in which the parties "c[a]me up with a common ground of services and things that needed to happen in the case." Tr. p. 12. Pursuant to the terms of the

[1] The termination of Father's parental rights is not at issue in this appeal.

Agreed Entry, Mother was required to "maintain suitable housing with adequate bedding, functional utilities, adequate supplies of food and food preparation facilities," to keep her housing "clean and safe for all those residing therein," and to "actively participate in, and successfully complete," certain services, including home based counseling, personal and family counseling, parenting classes, and visitation. DCS Ex. B pp. 2-4. By signing the Agreed Entry, Mother agreed to complete services within six months or face possible termination of her parental rights to K.R.[2]

Following review hearings in April and July of 2009, and a permanency hearing in October of 2009, DCS filed a petition seeking the termination of Mother's parental rights on December 15, 2009. On March 30, 2010, the juvenile court conducted a termination hearing at which Mother appeared and was represented by counsel. During the termination hearing, DCS provided a plan for the permanent care and adoption of K.R. On June 28, 2010, the juvenile court issued an order terminating Mother's parental rights. Mother now appeals.

DISCUSSION AND DECISION

The Fourteenth Amendment to the United States Constitution protects the traditional right of a parent to establish a home and raise her children. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 145 (Ind. 2005). Further, we acknowledge that the parent-child relationship is "one of the most valued relationships of our culture." *Id.* However, although parental rights are of a constitutional dimension, the law allows for the termination of those rights when a parent is unable or unwilling to meet her responsibility as

[2] In all, Mother was granted approximately fifteen months to complete the services required pursuant to the terms of the Agreed Entry before her parental rights were terminated.

a parent. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Therefore, parental rights are not absolute and must be subordinated to the child's interest in determining the appropriate disposition of a petition to terminate the parent-child relationship. *Id*.

The purpose of terminating parental rights is not to punish the parent but to protect the child. *Id*. Termination of parental rights is proper where the child's emotional and physical development is threatened. *Id*. The juvenile court need not wait until the child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id*.

I. Sufficiency of the Evidence

Mother contends that the evidence presented at trial was insufficient to support the juvenile court's order terminating her parental rights. In reviewing termination proceedings on appeal, this court will not reweigh the evidence or assess the credibility of the witnesses. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We only consider the evidence that supports the juvenile court's decision and reasonable inferences drawn therefrom. *Id*. Where, as here, the juvenile court includes findings of fact and conclusions thereon in its order terminating parental rights, our standard of review is two-tiered. *Id*. First, we must determine whether the evidence supports the findings, and, second, whether the findings support the legal conclusions. *Id*.

In deference to the juvenile court's unique position to assess the evidence, we set aside the juvenile court's 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 legal conclusions made by the juvenile court are not supported by its findings of fact, or the conclusions do not support the judgment. *Id*.

In order to involuntarily terminate a parent's parental rights, DCS must establish by clear and convincing evidence 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) the child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;
> (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) (2008). Specifically, Mother claims that DCS failed to establish that either (1) the conditions that resulted in K.R.'s removal or the reasons for his placement outside of Mother's care will not be remedied; or (2) the continuation of the parent-child relationship posed a threat to K.R.'s well-being.

A. Conditions Resulting in Removal Not Likely to be Remedied

Mother claims that DCS failed to establish by clear and convincing evidence that the conditions resulting in K.R.'s removal from her care will not be remedied or that the continuation of the parent-child relationship poses a threat to K.R. Mother acknowledges that because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, the juvenile court need only find either that the conditions resulting in removal will not be remedied or that the continuation of the parent-child relationship poses a threat to K.R. *In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*. Therefore, "where, as here, the trial court specifically finds that there is a reasonable probability that the conditions which resulted in the removal of the child would not be remedied, and there is sufficient evidence in the record supporting the trial court's conclusion, it is not necessary for [DCS] to prove or for the trial court to find that the continuation of the parent-child relationship poses a threat to the child." *In re S.P.H.*, 806 N.E.2d at 882. In order to determine that the conditions will not be remedied, the juvenile court should first determine what conditions led DCS to place the child outside his Mother's care, and, second, whether there is a reasonable probability that those conditions will be remedied. *Id.*

When assessing whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the parent's care will not be remedied, the juvenile court must judge the parent's fitness to care for her children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re A.N.J.*, 690 N.E.2d 716, 721 (Ind. Ct. App. 1997). The juvenile court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future

neglect or deprivation. *Id*. A juvenile court may properly consider evidence of the parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate employment and housing. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). Moreover, a juvenile court "'can reasonably consider the services offered by [DCS] to the parent and the parent's response to those services.'" *Id*. (quoting *In re A.C.C.*, 682 N.E.2d 542, 544 (Ind. Ct. App. 1997)).

Here, the juvenile court found that DCS presented sufficient evidence to prove that the conditions that resulted in K.R.'s removal from Mother's home were not likely to be remedied, and upon review, we conclude that the juvenile court's finding to this effect is supported by the record. The record reveals that Mother has failed to maintain safe and stable housing pursuant to the terms of the Agreed Entry, and that, at the time of the termination hearing, Mother had resided in eight different residences since K.R. was born in June of 2008. Both Debbie Wessell, the DCS case manager assigned to K.R.'s case, and Sherry Hillenburg, the guardian ad litem ("GAL") assigned to K.R.'s case, testified that Mother had recently moved into different housing, but that Mother refused to provide either Wessell or the GAL with her current address and the names of the individuals with whom she resided. In addition, both Wessell and the GAL testified that they believed that Mother was, at the time of the termination hearing, unable to provide a safe and stable home for K.R. The GAL testified that she believes that K.R. needs a stable home and that, based off of her observations, there is a reasonable probability that Mother will be unable to provide a stable

home for K.R. for the foreseeable future. Accordingly, the GAL testified that she believed that the termination of Mother's parental rights was in K.R.'s best interest.

The record also reveals that Mother was unable to maintain stable employment during the duration of the CHINS and termination proceedings, and, as a result, was unable to financially obtain and maintain suitable housing without relying on others to pay the costs associated with stable housing, including rent and utilities. Moreover, the record further reveals that Mother had essentially been receiving the same services since April of 2007, and that she had failed to make satisfactory progress in most, if not all, of these services. "A pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change." *In re L.S.*, 717 N.E.2d 204, 210 (Ind. Ct. App. 1999), *trans. denied*.

When considered as a whole, the evidence is sufficient to demonstrate a reasonable probability that the conditions which resulted in K.R.'s removal from Mother's home will not be remedied. It was within the province of the juvenile court, as the finder of fact, to minimize any contrary evidence of changed conditions in light of its determination that Mother's failure to provide stable housing and an adequate level of care and supervision which led to K.R.'s removal were unlikely to change. *See id*. Mother is effectively asking this court to reweigh the evidence on appeal, which, again, we will not do. *See In re S.P.H.*, 806 N.E.2d at 879.

Under these circumstances, we cannot say that the juvenile court erred in determining that DCS has established that it is unlikely that the conditions resulting in K.R.'s removal will be remedied. *See In re C.M.*, 675 N.E.2d 1134, 1140 (Ind. Ct. App. 1997). Having concluded that the evidence was sufficient to support the juvenile court's determination, and finding no error by the juvenile court, we need not consider whether the continuation of the parent-child relationship poses a threat to the children's well-being because DCS has satisfied the requirements of Indiana Code section 31-35-2-4(b)(2)(B) by clear and convincing evidence.

The judgment of the juvenile court is affirmed.

KIRSCH, J., and CRONE, J., concur.