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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE )  
INVOLUNTARY TERMINATION OF )  
THE PARENT-CHILD RELATIONSHIP )  
OF: )  
 )  
M.R. and A.M. (Minor Children), )  
 )  
and )  
 )  
A.M. and B.M., )  
 )  
Appellants-Respondents, )  
 )  
vs. )  
 )  
THE INDIANA DEPARTMENT OF )  
CHILD SERVICES, )  
 )  
Appellee-Petitioner. )

No. 79A02-1008-JT-1191

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APPEAL FROM THE TIPPECANOE SUPERIOR COURT  
The Honorable Loretta H. Rush, Judge

**May 20, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Chief Judge**

Case Summary and Issue

The trial court issued an order terminating the parental rights of An.M. (“Mother”) as to her daughters M.R. and A.M. and terminating the parental rights of B.M. (“Father”) as to A.M. Mother and Father (together “Parents”) appeal the involuntary termination of their parental rights, arguing that insufficient evidence was presented to support the terminations. Concluding that the record contains sufficient clear and convincing evidence, we affirm.

Facts and Procedural History<sup>1</sup>

M.R. was born to Mother in June 2008, and A.M. was born to Mother and Father in July 2009. At both these times and subsequently, Father was Mother’s boyfriend with whom

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<sup>1</sup> We note that of the 428-page Appellant’s Appendix, approximately 360 pages consist of the entire transcript of the termination hearing. As the transcript has been provided to us in separate volumes by the court reporter, it was unnecessary for counsel to include the entire transcript in the Appendix, and we advise counsel to avoid doing so in the future. See Ind. Appellate Rule 50(A)(2)(h) (providing the appellant’s Appendix shall contain, inter alia, “any record material relied on in the brief unless the material is already included in the Transcript”); cf. App. R. 50(A)(2)(g) (amended effective January 1, 2011, to delete provision for including “brief portions of the Transcript”).

she lived, and Mother and Father married around February of 2010. The biological father of M.R. does not participate in this appeal, so we omit facts related to his involvement in the proceedings.

On July 9, 2008, one-month-old M.R. was admitted to the hospital for failure to thrive. M.R. weighed only 6 pounds, 10 ounces, had loose and peeling skin and little body fat, and her temperature was dangerously low. After her admission to the hospital, M.R. gained weight quickly; she was diagnosed with malnourishment due to inadequate feeding by Parents while at home.

Following the hospitalization, M.R. was adjudicated a child in need of services (“CHINS”). Father was made a party to the CHINS case (“CHINS 1”) at his own request, and Father and Mother were each offered parenting classes, individual therapy, and other services. M.R. was placed in foster care, where she remained until June of 2009 when CHINS 1 was dismissed and M.R. was returned to Parents’ care.

On August 25, 2009, M.R. and one-month-old A.M. were admitted to the hospital, each with multiple bruises. Medical providers suspected abuse, and the trial court later found that the injuries to M.R. were not consistent with Father’s explanation of playing with her admittedly too roughly. Following treatment, the Department of Child Services (“DCS”) took protective custody of the children and placed them in foster care.

Both children were adjudicated CHINS in a new case (“CHINS 2”). The trial court issued a parental participation order that required Parents to, among other things: maintain housing safe for the children with appropriate bedding, functional utilities, and adequate

food; obtain and maintain a safe and legal source of income; participate in supervised visitation; and participate in parenting classes and follow all recommendations.

On April 16, 2010, DCS filed petitions for the involuntary termination of Parents' parental rights as to the children. On June 21, 2010, an evidentiary hearing was held.

On July 29, 2010, the trial court issued its order terminating Parents' parental rights. The trial court issued specific findings of fact, including the following which Parents do not challenge on appeal:

8. During CHINS 1, Mother . . . and [Father] were offered extensive parenting services through Babies Can't Wait, "BCW", that included: therapy, anger management, peaceful conflict resolution, parenting, supervised visitation, couples counseling, co-parenting, cooking/nutrition services, and case management. BCW parenting included information regarding child developmental stages, modeling, DENVER II and ASQ assessments and advice, visitation curriculums, choking hazards, age appropriate discipline, children's routines, and proper discipline. . . . Mother and [Father] worked with BCW up to twenty to thirty (20-30) hours a week for approximately ten (10) months along with their other court ordered services.

9. During CHINS 1, Mother became pregnant with AM. Mother and [Father] continued to smoke throughout the case, and Mother smoked throughout her pregnancy. Mother struggled with finding and maintaining employment. Both parents showed signs of aggression during CHINS 1. [Father] had outbursts during case management. [Father] had referred to MR as a 'little fucker', kicked furniture, and threw objects during visitation. Anger management services were provided during CHINS 1 as to Mother and [Father].

10. Parents were educated on "redirection" as to disciplining MR given her age. Parents were clearly instructed in the first CHINS case as to physical discipline being inappropriate for MR.

\* \* \*

14. Mother and [Father] were given instructions on what to do following the closing of the first CHINS case if they were to become overwhelmed. A safety plan was developed prior to the dismissal, and [P]arents were given emergency contact numbers for the Counseling Center and BCW providers. Parents were given extensive written information on discipline, money management, nutrition, and child development. Mother agreed to continue in individual

therapy. Mother failed to follow up with any of the recommendations made at the end of the first CHINS.

\* \* \*

16. [DCS] took protective custody of AM and MR on August 25, 2009. Mother had dropped MR off at a babysitter's home and told the sitter that MR was being bad, they needed a break from her, and MR needed to be away from her boyfriend, [Father]. The sitter noted MR had bruising on her face, fingerprint marks on her chest, and she was limping. EMS was called and MR was taken to Home Hospital. A CPS investigator went to the home of Mother and [Father] and transported AM to the hospital. [Father] reported the bruising was from him playing too hard with MR, including head butting her, and not realizing his own strength. [Father] reported the bruising on AM's arm were [sic] from him catching her when she fell out of his arms. When a friend of Mother's saw the bruising, she advised Mother to take the children to the hospital. Mother did not want to seek medical attention for the girls. Mother told her friend that [Father] had caused the bruising.

\* \* \*

20. Father [] has struggled with anger through both the original and current CHINS cases. MR and AM have suffered harm because of [Father]'s anger.  
21. Father [] was offered individual therapy again in CHINS 2. He did not like his first therapist . . . and asked that DCS provide him with a different therapist. Dr. James Toth, psychologist, worked with Father on individual therapy and anger management. Father has failed to attend services since April 14, 2010 when the permanency plan changed from reunification to termination of parental rights, and DCS would no longer fund Father's therapy. Father failed to either inquire about the therapist's sliding scale fee program or obtain any therapy on his own.

\* \* \*

25. Kris Ping, LCSW, provided individual therapy for Mother and co-parenting therapy for Mother and Father [] during CHINS 2. Ping worked with [P]arents on intensive hands-on parenting, appropriate discipline, alternatives to spanking, developmental concerns, co-parenting, and communication skills with the children. Mother worked well with Ping and some improvement was shown.

26. Parents stopped participating in services with Ms. Ping in April of 2010. Parents scheduled three (3) meetings with Kris Ping and cancelled each session. When services were ordered to be at Mother's own expense, Ms. Ping suggested Mother contact Wabash Valley to set up individual counseling on a sliding scale basis. Since the permanency plan changed to termination of parental rights, Mother has failed to obtain counseling on her own.

27. While Mother did participate in many services through both CHINS cases, she was unable to internalize what she learned from the services and programs.

At times, Mother would acknowledge that is [sic] was possible Father [] may have caused some of the children's bruises. Mother decided to marry Father [] during the second CHINS case, prior to Father [] completing any services.

28. Mother continues to have a limited support group which consists largely of Father []. Mother testified it is difficult for her to handle both of her children at the same time. Mother believes she is motivated, loving, and brave. Mother claims that she could currently provide financially for children, but was unable to state how she would do so. Mother does not believe she currently needs assistance to safely parent her children.

29. Father [] and Mother abruptly stopped participating in services and visitation for a period in February of 2010 when they traveled to Florida.

30. Parents' instability with employment carried over through both CHINS cases. Mother failed to obtain employment. Father [] had obtained short-term employment at SIA through a temp agency. Father [] receives a monthly National Guard pay. Father [] is currently unemployed.

31. Parents' visitation has remained supervised through CHINS 2 as visitations were frequently full of safety concerns. . . . Parents were not able to keep the home minimally clear of choking hazards, dog feces, cigarette ashes on the floor, nails on carpet, trash on floor, plastic wrappers, and small objects on the floor that AM was observed putting in her mouth. Parents were repeatedly instructed to pick up items on the floor and remove choking hazards. Parents often agreed to clean up the home, but as recently as the week before the present hearing, choking hazards remained on the floor during the supervised visitation. During some of the visits, it was observed that [P]arents did not supervise the children; AM would be left in a room alone, and she would place cardboard and/or plastic pieces in her mouth. Throughout the case, [P]arents continued to have to be prompted to watch for safety concerns. Parents would leave the visitations to take smoke breaks, leave to purchase cigarettes, or run other errands. Parents were observed putting the children down for naps excessively during visits. AM was observed to be left in her crib for the majority of a visit. During another visit parents put a bouncy seat with a battery operated pack in the bathtub with AM in it because she was crying, even after being told it was a safety hazard.

32. Father [] had been observed getting angry during visits. AM urinated on him, and after becoming angry Mother had to take over AM's bath. Father [] became visibly frustrated while dressing AM, and again, Mother had to take over and finish dressing her. Father [] would minimize his anger or not discuss why he became angry with the child(ren).

33. Providing proper nutrition for the children was a concern through both CHINS cases. During a supervised visit in June of 2010, [P]arents gave MR large amounts of sweets during a snack time including two pop tarts, gummy

bears, a ding dong, and numerous Oreo and oatmeal cookies. During another supervised visit, AM was not fed until two o'clock (2:00 pm).

34. Visits were moved out of [P]arents' home because of [P]arents' utilities being turned off the week of June 14, 2010. This same month, [P]arents purchased approximately \$100.00 in birthday presents, continued to pay a \$72.00 cable bill, purchased cigarettes, and failed to show any diligence in obtaining employment.

\* \* \*

36. Psychological evaluations were completed . . . and there were not any mental health issues that would impede [Parents'] ability to learn from services to have a safe home for their children. It was noted that Mother has some intellectual challenges. The court finds the services provided to the Mother were tailored to account for such limitations.

37. Sharon Cornell has been the children's CASA on both CHINS cases. CASA fully supports the termination of the [P]arents' rights. CASA has been present for visitations and also observed the ongoing safety concerns noted above.

\* \* \*

41. While Mother and Father [] have shown ability to make some short-term progress and had the first CHINS case successfully dismissed, the Court finds this short-term progress is outweighed by significant evidence of their habitual pattern of conduct of putting their own needs above that of the children, of failing to address Father[']s anger, as well as a present inability to provide a safe and stable home environment for the children.

42. The Court finds there is a substantial probability of future neglect or deprivation of these children in their parents' care.

Appellant's Appendix at 412-16.

### Discussion and Decision

When reviewing the sufficiency of the evidence to support a trial court's judgment terminating parental rights, we neither reweigh the evidence nor judge the credibility of witnesses. In re G.Y., 904 N.E.2d 1257, 1260 (Ind. 2009). We consider only the evidence most favorable to the judgment and the reasonable inferences therefrom. Id. Where, as here, the trial court entered findings of fact and conclusions of law, we apply a two-tiered standard of review: first we determine whether the evidence supports the findings, and second we

determine whether the findings support the judgment. Id. We will set aside the trial court's judgment only if it is clearly erroneous. Id.

In order to terminate Parents' parental rights, DCS pleaded and was required to 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[ren]'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[ren].

. . . [and]

(C) that termination is in the best interests of the child[ren.]

Ind. Code § 31-35-2-4(b)(2). DCS must prove these elements by clear and convincing evidence. In re I.A., 934 N.E.2d 1127, 1133 (Ind. 2010).

Here, Parents do not challenge the factual correctness of the trial court's findings set forth above. They do challenge the trial court's conclusions that 1) there is a reasonable probability that the conditions that resulted in the children's removal or the reasons for continued placement outside Parents' home will not be remedied, and 2) termination is in the children's best interests. Parents argue that the only reason they ceased to participate in services in April 2010 was that they lacked the financial means to pay for services once the trial court ordered that they, rather than DCS, would have to pay the costs going forward. Parents also note that their trip to Florida in February 2010 was not for vacation but was at the request of Father's mother, who lives in Florida, to help locate Father's missing sister. Therefore, Parents contend, the trial court should not have used these instances of their failure to participate in services as a basis for its conclusions and judgment.

Even leaving aside these instances of Parents' failure to participate in services, both Parents were given ample opportunities to improve their parenting, starting with the first CHINS case in 2008. Despite the extensive services provided to them in both CHINS cases, Mother showed only minimal improvement in her parenting and Father showed no long-term progress in controlling his anger around the children. The children continued to be exposed to Parents' unsafe home environment during supervised visitation, and Parents repeatedly failed to comply with instructions meant to ensure a safe home environment. Such facts showed that the reason for the children's removal in August 2009 – the threat to their physical safety – was not remedied. Parents continued to put their own interests ahead of the children's needs by failing to perform the relatively low-cost, simple, yet necessary tasks they were instructed to do, such as clean their home, remove choking hazards, maintain utility service, and provide the children proper nutrition. The children's court appointed special advocate specifically testified that in her opinion, the reasons for removal and placement of the children outside Parents' home had not been remedied, continuation of the parent-child relationship posed a threat to the children's well-being, and termination of parental rights with a plan for adoption was in the children's best interests.

The remainder of Parents' argument amounts to a request to reweigh the evidence, which we may not do. G.Y., 904 N.E.2d at 1260. Our review of the record reveals that the evidence supports the trial court's findings of fact, which in turn support its conclusions of law and judgment terminating Parents' parental rights. As is well settled, "[p]arental rights may be terminated when the parents are unable or unwilling to meet their parental

responsibilities.” Id. at 1259-60 (quotation omitted). The trial court’s judgment is based on clear and convincing evidence that Parents are unable or unwilling to fulfill their parental responsibilities, and we therefore affirm.

### Conclusion

Sufficient evidence supports the termination of Parents’ parental rights as to M.R. and A.M., and the judgment is affirmed.

Affirmed.

CRONE, J., and NAJAM, J., concur.