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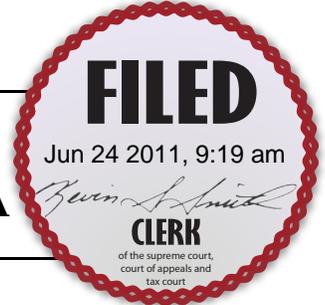
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**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF Dam.T., Das.T., and Z.T.)
)
K.T. (Mother),)
)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
Appellee – Petitioner,)
)
and)
)
CHILD ADVOCATES, INC.,)
)
Co-Appellee (Guardian ad Litem).)

No. 49A05-1010-JT-694

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary Chavers, Judge Pro Tem

June 24, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

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

We affirm.

Mother is the biological mother of D.T., born in June 1999, J.T., born in October 2001, Da.T., born in February 2005, and Z.T., born in July 2008.¹ The facts most favorable to the juvenile court's judgment reveal that in December 2008 the local Marion County office of the Indiana Department of Child Services (MCDCS) filed a petition alleging all four children were children in need of services (CHINS) because Mother was unable to provide them with a safe and stable home environment, free from domestic violence. Specifically, the CHINS petition alleged Mother was persistently engaged in a "violent and volatile relationship" with her domestic partner that resulted in "numerous altercations requiring the involvement of law enforcement and presenting a danger to the children." *Exhibits* at 2. The

¹ The children's respective biological fathers' parental rights were terminated by the juvenile court in its October 2010 termination order, except for J.T.'s biological father who is deceased. None of the biological fathers participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother's appeal.

CHINS petition also alleged Mother failed to properly supervise the children.

Mother admitted to the allegations of the CHINS petition during a hearing in April 2010. The juvenile court thereafter proceeded to disposition and formally removed all four children from Mother's custody. The juvenile court's dispositional order also directed Mother to participate in a variety of services designed to enhance her parenting skills and to facilitate reunification of the family. Specifically, Mother was ordered to, among other things: (1) obtain and maintain suitable housing and stable employment sufficient to support all household members and safe for all residing within; (2) successfully complete a home-based counseling program; (3) complete an intensive out-patient drug rehabilitation program (IOP) and aftercare services, as well as submit to random drug screens; and (4) visit the children on a consistent basis as recommended by MCDCS.

Mother's participation in court-ordered reunification services was sporadic and ultimately unsuccessful. MCDCS therefore filed a petition seeking the involuntary termination of Mother's parental rights to D.T., J.T., Da.T., and Z.T. in March 2010. An evidentiary hearing on the termination petition was held in October 2010. During the termination hearing, MCDCS presented evidence showing Mother had failed to successfully complete a majority of the court's dispositional orders, including obtaining safe and stable employment and housing. Although Mother participated in a substance abuse assessment and completed the recommended IOP, she continued to drink alcohol on a regular basis after the program and tested positive for marijuana. In addition, Mother was convicted of class C felony welfare fraud during the CHINS case and was incarcerated for approximately two months. There was also evidence showing Mother missed multiple visits with the children,

due in part to her incarceration, failed to progress in her ability to properly care for and supervise the children, especially with respect to Da.T., who is autistic and non-verbal, and continued to engage in unhealthy personal relationships involving domestic violence.

At the conclusion of the hearing, the juvenile court took the matter under advisement. On October 15, 2010, the juvenile court entered its judgment terminating Mother's parental rights to all four children. Mother now appeals.

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

Here, the juvenile 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 juvenile court’s conclusions or the conclusions do not support the judgment thereon. *Quillen v. Quillen*, 671 N.E.2d 98. 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 juvenile 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) that one (1) of the following is true:
 - (i) There is a reasonable probability that the conditions that resulted in the child’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.
 - (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services; [and]

(C) that termination is in the best interests of the child

Ind. Code Ann. § 31-35-2-4(b)(2) (West, Westlaw current through 2011 Pub. Laws approved & effective through 6/28/2011). 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 current through 2011 Pub. Laws approved & effective through 6/28/2011)). If 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. I.C. § 31-35-2-8 (West, Westlaw current through 2011 Pub. Laws approved & effective through 6/28/2011). Mother challenges the sufficiency of the evidence supporting the juvenile court's findings as to subsection (b)(2)(B) and (C) of the termination statute cited above. *See* I.C. § 31-35-2-4(b)(2).

We pause to observe that I.C. § 31-35-2-4(b)(2)(B) provides that the MCDCS need establish only one of the three requirements of subsection (b)(2)(B) by clear and convincing evidence before the juvenile court may terminate parental rights. Here, the juvenile court found MCDCS presented sufficient evidence to satisfy the first two subsections of (b)(2)(B) of the termination statute. *See* I.C. § 31-35-2-4(b)(2)(B)(i) & (ii). Because we find it dispositive under the facts of this particular case, we shall only consider whether clear and convincing evidence supports the trial court's findings regarding subsection (b)(2)(B)(i), namely, whether there is a reasonable probability the conditions resulting in the children's removal or continued placement outside the family home will not be remedied.

In making such a determination, 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 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 juvenile court may also properly consider the services offered to the parent by a county office of the Indiana Department of Child Services and the parent's response to those services as evidence of whether conditions will be remedied. *Id.* Finally, a juvenile court need not wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth are permanently impaired before terminating the parent-child relationship. *In re E.S.*, 762 N.E.2d 1287 (Ind. Ct. App. 2002).

Here, in finding there is a reasonable probability the conditions resulting in the children's removal and continued placement outside of Mother's care will not be remedied, the juvenile court made detailed findings regarding Mother's overall lack of progress in reunification services, including her failure to obtain stable employment, persistent lack of stable housing, ongoing drug and alcohol use, and inability to maintain healthy, personal relationships free from domestic violence. In so doing, the juvenile court specifically found that despite the fact Mother had worked with "[f]our therapists or counselors" during a "sixteen[-]month period," Mother missed supervised visitation sessions on "multiple

occasions,” was unable to “engage productively with the children and provide for their needs,” failed to “show learned skills,” and “lacked a bond with her youngest child[,] [Z.T.]” *Appellant’s Appendix* at 37-38. The court also found Mother “lacked the initiative to follow through on help to obtain employment by going to P.A.C.E.^[2] only twice, and missing classes to obtain her G.E.D.” *Id.* at 38 (footnote supplied). In addition, the court noted Mother’s “sole income consists of food stamps,” that she “obtains financial help from family and seeks funds from [D.T.’s and Da.T.’s] foster mother,” and that Mother’s testimony that she had obtained a three-bedroom subsidized house was tempered by the fact she had previously “told the family case manager she would have housing in a week on several occasions.” *Id.*

As for Mother’s ongoing struggle with sobriety, the juvenile court found that although Mother indicated she had not smoked marijuana for a year during the termination hearing, Mother later “admitted testing positive on a probation or parole screen a couple of weeks prior to trial,” and further “admitted to drinking every weekend.” *Id.* In addition, the juvenile court noted Mother tested positive for marijuana after completion of an IOP, and thus her “goal of maintaining sobriety was not met.” *Id.* The court thereafter found as follows:

28. None of the home-based service providers recommended [Mother] be given additional time to work on issues and concerns due to a lack of progress without regression, or lack of motivation, during this long period of time.

² P.A.C.E. is a not-for-profit community program that seeks to provide services and resources exclusively to individuals with felony convictions.

29. It was explained how both domestic violence and substance abuse can affect children. However, service providers had concerns for the way [Mother] prioritized herself and her partners over the children.
30. In failing to recommend reunification or additional time, service providers refer to [Mother] as lacking responsibility, lacking motivation, having a sense of entitlement, and having a sense of pervasive lack of initiative.
31. There is a reasonable probability that the conditions that resulted in the children's removal and continued placement outside the home will not be remedied. [Mother] has failed to successfully address any issues and conditions in the period of time services have been in effect. Given the diligent services that were offered, it is not probable that she can now be successful. This is especially true given her lack of taking responsibility and initiative.

Id. at 38-39. Our review of the record reveals that these findings are supported by abundant evidence.

During the termination hearing, Kori Bloomquist, case manager and therapeutic foster care therapist with Adult & Child Center, indicated she began supervising Mother's visits with the children in May 2009. Bloomquist also informed the juvenile court that Mother had missed "multiple" scheduled visits with the children during the CHINS case, and that Mother had "[c]onsistently demonstrated an inability to manage [Da.T.'s] behaviors, engage with him in a productive way[,] and meet his basic needs during visits." *Transcript* at 55, 57. In addition, Bloomquist testified that Mother "struggled to initiate activities" with all the children, would oftentimes leave Z.T, "out of the picture" altogether, was unable to demonstrate the parenting skills that were modeled to her during visits, and would "sit on the

couch and remain on the couch for the majority of the visits” while answering phone calls.
Id. at 57-58.

When asked whether she would recommend reunification “at this time,” Bloomquist replied, “No. I would not.” *Id.* at 59. Bloomquist further explained:

Based on my efforts with [Mother] and the children over the past year and a half, I have failed to observe progress in [Mother’s] ability to parent the children consistently, participating in parenting opportunities and grow in her role as a parent, [and] to consistently and effectively meet their needs.

Id. When asked why she believed Mother had failed to do what was needed for reunification to occur, Bloomquist said she had observed a “persistent lack of responsibility in the choices that [Mother] has made throughout her life and during [] this case,” as well as a “pervasive lack of initiative,” and an “overwhelming sense of entitlement,” the combination of which “have led us to this point today.” *Id.* at 61.

Home-based therapist Jennifer Lopez Hunt likewise testified that Mother failed to meet the goals of home-based counseling, including “[p]roviding a stable, safe environment for her children” remaining “drug free,” eliminating “domestic violence” in her life, and “[p]rioritizing her children.” *Id.* at 73. Similarly, home-based counselor Tawny Culver informed the juvenile court that she had worked with Mother for approximately sixteen months on obtaining “appropriate housing,” “stable employment,” and “living a substance[-]free lifestyle,” but that Mother was “never successful” with these goals. *Id.* at 79-80. Culver further indicated there had been “a lot of times” when Mother “didn’t follow through” with employment leads, that she “stopped going” to P.A.C.E. appointments after only “a couple of sessions,” was asked to leave the GED program because she had missed “too many

classes,” and had self-reported being present or involved in instances of domestic violence in July and November of 2009. *Id.* at 81.

When asked whether Mother had made “any progress towards meeting any of her goals,” Culver answered, “[Mother’s] progress was a cycle of progression and regression. . . . It was always up and down, up and down. So I don’t feel like by the end of the case we were any closer to reunification than we were at the beginning of the case.” *Id.* at 86. Similarly, home-based counselor Abigayle Taylor also confirmed Mother had failed to meet any of the home-based counseling goals, tested “positive for THC” despite having completed an IOP, and failed to benefit from domestic violence counseling which was “definitely a safety concern” for the children. *Id.* at 101, 104.

As previously explained, a juvenile 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 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 failed to obtain stable housing and employment, been convicted of welfare fraud, declined to visit with the children on numerous occasions, continued to use drugs and alcohol, and has remained unable to demonstrate she is capable of providing the children with the emotional support and basic life essentials they need to live and to thrive. For all these reasons, we conclude that clear and convincing evidence supports the juvenile court’s determination that there is a reasonable

probability the conditions leading to the children's removal and/or continued placement outside Mother's care will not be remedied. Mother's arguments to the contrary 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 MCDCS 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 juvenile 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 juvenile 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.

In addition to the juvenile court's findings previously discussed, the court made several additional pertinent findings in determining that termination of Mother's parental rights is in the children's best interests, including: (1) D.T. and Da.T. had been placed together in the same foster home since shortly after their removal; (2) J.T. and Z.T. had been placed together in relative foster care, (3) all four children were "doing very well, happy, thriving, and bonded to their caregivers;" and (4) both sets of caregivers were committed to adopting the respective children in their care and to allow contact amongst the siblings to

continue. *Appellant's Appendix* at 39. The juvenile court also found that termination of Mother's parental rights would provide the "opportunity for adoption, would provide the children with permanency after twenty-two months in foster and relative care, and permanency in a safe and stable environment where needs would be met." *Id.* In addition, the court acknowledged that "[b]ased on the length of time the children have been removed and their need for permanency, the good placements, and the lack of success [Mother] has had in remedying conditions, Guardian ad Litem [GAL] Fishel agrees with the plan of adoption as being in the children's best interests." *Id.* These findings, too, are supported by the evidence.

In recommending termination of Mother's parental rights to all four children, MCDCS case manager Maryann Teixeira informed the court that she still had "many concerns" regarding Mother's ability to parent the children, her "skill level" with regard to the "special needs that her children have," and the "priority setting that is needed to keep the children safe." *Transcript* at 129. Teixeira was also concerned with "what appears to be ambivalence on [Mother's] part regarding triggers for domestic violence, the reasons why she engages in relationships that . . . feed into violence[,] and the [] lack of understanding of how that affects her children." *Id.* at 134. Finally, when asked how the children were doing in their current placements, Teixeira reported that the children were doing "[v]ery well" and were "happy," "thriving," and "safe." *Id.* at 133.

Guardian ad Litem (GAL) Renee Fishel's testimony echoed the testimony of Teixeira. Fishel reported the children were doing well in their respective placements, and were "very attached" to their caregivers. *Id.* at 159-60. Fishel also informed the juvenile court that she

was confident all four children would continue to have contact with each other “throughout their li[ves]” if adopted because the foster moms were sisters. *Id.* at 160. In recommending termination of Mother’s parental rights and adoption by the current caregivers, Fishel testified that the children were safe, educated, loved, and thriving, and that she did not believe any other plan would be in the children’s best interests.

Based on the totality of the evidence, including Mother’s persistent and ongoing lack of stable housing and employment, unresolved drug and alcohol use, domestic violence issues, and current inability to demonstrate she is capable of providing the children with a safe and stable home environment, coupled with the testimony from Teixeira and Fishel recommending termination of the parent-child relationships, we conclude that clear and convincing evidence supports the juvenile court’s determination that termination of Mother’s parental rights is in the children’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.” *In re A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting *Egly v. Blackford County Dep’t of Public Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Judgment affirmed.

BAILEY, J., and BROWN, J., concur.