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ATTORNEY FOR APPELLANT:

**AMY KAROZOS**  
Indianapolis, Indiana

ATTORNEY FOR APPELLEE  
MARION COUNTY DEPARTMENT  
OF CHILD SERVICES:

**ELIZABETH G. FILIPOW**  
Indianapolis, Indiana

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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 E.S. & R.S., MINOR )  
CHILDREN, AND THEIR MOTHER, )  
CYNTHIA SHANNON a/k/a CYNTHIA )  
MARTINEZ, )

CYNTHIA SHANNON a/k/a )  
CYNTHIA MARTINEZ, )  
Appellant-Respondent, )

vs. )

No. 49A02-0612-JV-1130

MARION COUNTY DEPARTMENT OF )  
CHILD SERVICES, )  
Appellee-Petitioner, )

AND )

CHILD ADVOCATES, INC., )  
Co-Appellee-Guardian Ad Litem, )

**July 16, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

**Case Summary**

Cynthia Shannon (“Mother”) appeals the trial court’s order terminating her parental rights to her two sons, E.S. and R.S. (collectively, “the Children”). Mother argues that the trial court erred by terminating her parental rights because: (1) she was denied due process during the Children in Need of Services (“CHINS”) proceeding because the Marion County Department of Child Services (“MCDCS”) failed to comply with a CHINS statutory requirement; and (2) the MCDCS failed to prove by clear and convincing evidence that there is a reasonable probability that the conditions that resulted in the Children’s removal will not be remedied. Concluding that Mother’s due process rights were not violated because the MCDCS made reasonable attempts to reunify the family as required by Indiana Code § 31-34-21-5.5 and that the MCDCS proved by clear and convincing evidence that there is a reasonable probability that the conditions that resulted in the Children’s removal or the reasons for placement outside the home will not be remedied, we affirm the trial court’s order terminating Mother’s parental rights to the Children.

## Facts

Mother is the mother of E.S., born May 31, 2001, and R.S., born January 20, 2004.<sup>1</sup> On August 4, 2004, a case manager with the MCDCS went to Mother's house after receiving a report from police following their investigation of children being left at home alone. The police discovered that Mother's house did not have electricity, had very little food, and had trash throughout it. The case manager talked to Mother, who reported that her other children had been removed from her care in a CHINS proceeding because the judge did not like her.<sup>2</sup> Mother told the case manager that she was taking Prozac but would smoke marijuana when she ran out of medication.

On August 6, 2004, the MCDCS filed a petition alleging that three-year-old E.S. and six-month-old R.S. were CHINS. The petition alleged that the Children were CHINS based on Mother's inability to "provide them with a suitable living environment," her drug use, and her "incidents of domestic violence" with her boyfriend in the presence of the Children. Ex. p. 13. On August 18, 2004, Mother appeared at the initial CHINS hearing, admitted that the Children were CHINS, and agreed to proceed to disposition. The trial court then determined that the Children were CHINS and ordered supervised

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<sup>1</sup> David Shannon is E.S. and R.S.'s "legal" father, and he signed general consents for E.S. to be adopted. Appellant's App. p. 6, 18. Mark Grever is E.S.'s "alleged" father, *id.* at 18, and "a convicted child molester," Tr. p. 44, 46, and his parental rights to E.S. were terminated on October 31, 2006. Joael Montoya is the "alleged" father of R.S., and his parental rights to R.S. were terminated on September 6, 2006. Ex. p. 25.

<sup>2</sup> Three of Mother's other children, J.S., born February 28, 1993, D.S., born June 10, 1997, and S.S., born December 31, 1998, were removed from Mother's home and found to be CHINS in May 1999 based on Mother's failure to maintain a "clean and suitable home for the children" and on her failure to take J.S. to scheduled mental health appointments after he had stabbed an elderly individual and repeatedly set fires. Ex. p. 3. Sometime in 2001, after Mother became pregnant again, she signed consents to have J.S., D.S., and S.S. adopted.

visitation for Mother. The CHINS court ordered Mother to, among other things, participate in and successfully complete a home-based counseling program with the Children, complete a parenting assessment and parenting classes, complete a drug and alcohol assessment and any resulting treatment recommendations, submit to random drug testing, and participate in a domestic violence program.

When E.S. was removed from Mother's home and was placed in his first foster home, he was aggressive and exhibited sexually inappropriate behavior toward the foster parent's granddaughter. E.S. was moved to another foster home, was seen by a therapist, and was diagnosed with post-traumatic stress disorder ("PTSD"). E.S.'s PTSD symptoms included fear, anxiety, difficulty sleeping, frequent nightmares, being easily startled, and inappropriate behaviors, including acting out sexually and masturbating in front of others multiple times per day. At times, E.S. would pinch or pull his penis until it was red or bled and occasionally while doing so, he would say things like, "You're bad . . . You'd better straighten your ass up [or] You are evil." Tr. p. 15. E.S. talked about Mother kicking him, choking him, locking him in a closet or basement, pinching and hurting his penis, and touching his penis and making it feel good. E.S. also talked about "Mark's scary hands" and Mark touching boys' penises and about Mark and Mother touching each other's "private" areas. *Id.* at 15. When E.S. saw Mother, his PTSD symptoms increased, including increases in nightmares, sexually acting out, and acts of aggression. The MCDCS caseworker discussed E.S.'s behavior and statements with Mother, but Mother denied that anything had happened or that E.S. exhibited similar behaviors when he was at her house.

In October 2004, Mother had two positive drug screens for cocaine. Based on Mother's positive drug screens and the concern with E.S.'s behavior, the CHINS court suspended Mother's supervised visitation in October 2004 until E.S.'s therapist recommended that visitation would be in E.S.'s best interest. E.S.'s therapists, however, agreed with the order for no contact with Mother due to the severity of E.S.'s PTSD symptoms and the exacerbation of these symptoms upon seeing Mother. Thereafter, Mother continued drug treatment services but did not have visitation with the Children.

On May 19, 2005, the MCDCS filed a petition to terminate Mother's parental rights to the Children. Mother's counsel arranged for a clinical psychologist, Lawrence Lennon ("Dr. Lennon"), to conduct a bonding assessment of Mother with the Children. On January 17, 2006, and February 22, 2006, Dr. Lennon observed two supervised visits of Mother with the Children. Thereafter, Dr. Lennon issued a bonding assessment report in which Dr. Lennon reported that Mother "demonstrated appropriate behavior with [the Children] during both supervised visits." Exhibits p. 35. Dr. Lennon's report provided that "[t]he purpose of this evaluation was to conduct a Bonding Assessment between [Mother] and [the Children]" and that it "was not designed to warrant an opinion as to whether [sic] or not it would be in the child[ren]'s best interest to re-establish a relationship between the children and their biological mother." *Id.* at 38.

On September 27-28, 2006, the trial court held a termination hearing at which Mother was present and represented by counsel. During the hearing, Diane Lanman ("Lanman"), a psychiatric social worker who did therapy with E.S., testified that E.S. had been diagnosed with PTSD and that his trauma included sexual trauma. Lanman testified

that E.S. has “tried to touch the genitals of other children multiple times and occasionally has attempted to touch the privates of adults” and that this type of sexually acting out behavior “makes it clear that [E.S.] had intimate knowledge of sex and had sexual experiences some of which was [sic] perceived as threatening and painful.” Tr. p. 16. Lanman testified that E.S. expressed hostility, anger, and distrust toward Mother and that he said that he “hate[d] her because she hurt him.” *Id.* at 16. Lanman also testified that when E.S. saw his biological parents, his symptoms increased, including increases in nightmares, sexually acting out, and acts of aggression. Finally, Lanman testified that it was E.S.’s best interests to terminate Mother’s parental rights. Specifically, Lanman stated:

. . . I think that it will take a very committed and very patient and understanding parent to provide [E.S.] what he needs. You know [E.S.] doesn’t trust [Mother]. He’s angry at her. He’s hostile toward her. My belief is that that was because of harm that was done so early and for such a long time that trust is going to be an ongoing issue for him. I think it is an issue in his life in general right now. An example of that was after visitation with [Mother] he was very angry at his foster parents and said that they, you know, didn’t protect him, my words, not his. Even if [Mother] was a perfect mother and none of us are perfect parents, I’m not sure that she could get him to trust her. I think as a therapeutic issue and it would be something that would require intensive treatment for a long time. The other thing is I believe that--I know that courts have stated that children need a permanency plan as quickly as possible. And I think in [E.S.]’s case it’s in his best interest for his future that parental rights be terminated and that a permanency plan be made as soon as possible.

*Id.* at 22.

The MCDCS case manager, Gail Waldron-Bray (“Waldron-Bray”), testified that R.S. had some developmental delays and was receiving occupational therapy, speech therapy, and developmental therapy through First Steps. She stated that R.S.—who was

two and one-half years old at the time of the termination hearing—spoke only in one-word sentences, was starting to speak in two-word sentences, and had a “pretty severe” habit of head banging to the point where he had to wear a helmet. *Id.* at 50.

Waldron-Bray testified that E.S.’s sexual acting out behaviors were noted when, at the age of three, he was removed from Mother’s home and placed in foster care. Waldron-Bray also expressed concern regarding Mother’s denial of E.S.’s allegations against her because Mother’s failure to accept that something had happened or refusal to acknowledge that something had happened hampered Mother’s ability to cooperate with the services needed to address the issues. Waldron-Bray testified that the CHINS court stopped Mother’s visitation with the Children because of Mother’s positive drug screens and because of the concerns with E.S.’s behaviors. She explained that the CHINS court continued the suspended visitation even after Mother had a clean drug screen because of the concern for E.S.’s behavior of “[m]utilating his penis” and the “statements that he had made.” *Id.* at 108. Waldron-Bray testified that the MCDCS could not recommend placement of the Children with Mother because:

Just kind of an overall picture, just a pattern of really ineffective parenting, the previous CPS history with the three other children that we had in care. One of those children was returned to her care during the course of that case and was removed again within a month and a half and sent to Community North. None of her children are with her right now. She has a history of relationships with inappropriate men. [J.S.]’s father had been in prison for gun possession and a cocaine possession. David Shannon was a drug abuser, Mark Grever is a convicted child molester and now her current husband Julio tested positive for marijuana at his parenting assessment last month. She does have a tendency to blame others, you know, it was the CPS worker’s fault that the kids were removed, the foster parents’ fault that [E.S.] has the behaviors that he currently has. My job is to reunify kids with their families but also to make sure that those children are gonna be safe, you know, when we put them back. I’ve never gotten a clear

understanding of what happened to these children, where, or by whom to be able to know that if we were to send them back that they would be safe. So it's impossible to put a safety plan in for something that you haven't identified.

*Id.* at 46.

The MCDCS also presented testimony regarding Mother's history and patterns of parenting from Alexa Bryan ("Bryan"), the case manager from Mother's 1999 CHINS proceeding with J.S., D.S., and S.S. Bryan testified that at the time of the 1999 CHINS proceeding, then six-year-old J.S. and almost two-year-old D.S. "were both probably two of the most psychology [sic] damaged kids that [she] had worked with." *Id.* at 58. Bryan stated that "their behavior was just out of control and we had a lot of concerns about them." *Id.* Specifically, she was concerned about D.S. because when he would have his diaper changed, he would stick his fingers in his anus and play with his feces. Bryan testified that the MCDCS worked with Mother to reunify her with these three children and provided her with many services, including an "intensive family reunification" home-based services. *Id.* at 59. At one point, the MCDCS returned J.S. to Mother's care; however, the MCDCS had to remove J.S. after only three weeks due to Mother's failure to attend home-based visits, her failure to properly give J.S. his medication—including one incident where she overmedicated J.S., which resulted in an ambulance being called for J.S. who was having heart palpitations and chest pains, and her failure to maintain a safe home environment—specifically, the police were called to her house when she and the married man she was dating had a fist fight. The MCDCS was also concerned because Mother was letting a man, who was "a convicted child molester," spend time at the house with the children. *Id.* at 62. When Bryan discussed her concerns with Mother



about letting a child molester near her children, Mother stated that she was not concerned about it, that she had been molested as a child and seemed okay, and that it was not a big deal. Bryan also testified that Mother completed services during that prior CHINS proceeding but that Mother did not appear to benefit from the services and did not assume responsibility for her children. Bryan reported that once Mother got pregnant again, she signed consents for J.S., D.S., and S.S. to be adopted.

Mother testified that she was not doing drugs now and that she was employed. Specifically, Mother testified that she worked at a gas station and babysat for two children. Mother testified that she did not learn anything from the services provided during her 1999 CHINS proceeding but claimed that she had learned from the current parenting classes and that she was a different person than when the Children were taken from her. Mother denied that she ever abused or inappropriately touched E.S.

Mother also presented testimony from the mothers of the children for whom she babysat, and she introduced the bonding assessment report from Dr. Lennon into evidence. Additionally, Dr. Lennon testified regarding his observations of Mother and the Children during the bonding assessment and stated that he thought that reunification could occur “[b]ut the past is a strong indicator for the future and that’s why you have to be extremely cautious.” *Id.* at 242.

On November 6, 2006, the trial court issued an order terminating Mother’s parental rights to the Children. The trial court found, among other things, as follows:

\* \* \* \* \*

1. [Mother] is the mother of [E.S.] and [R.S.] . . . .

2. [Mother] has given birth to five other children. But for [D.J.S.] who died shortly after birth, each of [Mother's] children has been removed from her care. She does not have custody of any of her six living children: [Jor.S.], [J.S.], [D.S.], [S.S.], [E.S.] or [R.S.].

3. . . . By the time [J.S.] was six years old, he was setting fires and had attacked an elderly individual with a knife. Despite having received a referral to take [J.S.] to a mental health assessment, [Mother] failed to attend the scheduled appointments. He was eventually adopted by his paternal grandmother and is now thirteen years old. When Mother was questioned about [J.S.]'s fire-setting behavior, including related to someone's hair on fire, Mother's comment was "not my hair".

\* \* \* \* \*

5. [D.S.] and [S.S.], respectively, due their [sic] mother's inability to meet their basic needs. They were eventually adopted by their foster parents and are now nine and seven. [D.S.] is currently institutionalized as a result of the long term effects of conditions that occurred prior to his removal from [Mother].

\* \* \* \* \*

7. [E.S.] and [R.S.] were removed from their mother's care because she was unable to meet the children's needs and provide a safe and stable home environment free from abuse and neglect. Those conditions continue because of Mother's inability to put her children first, to recognize the damage that has been done, [and] to see herself as anyone but a victim. Mother is able to provide childcare for other children on a limited basis, but has perfected her role as a "victim" to such an extent to preclude effective parenting on a full-time basis for her own damaged and troubled children.

8. [Mother]'s children have significant developmental, emotional, mental health and behavioral problems. . . [E.S.] is diagnosed with severe Post Traumatic Stress Disorder.

9. [Mother]'s children experienced significant trauma while in her care as detailed in these findings.

10. Specifically, [E.S.] was molested while in the care of his mother. [Mother] allowed a convicted child molester to have contact with [E.S.] yet expressed an absence of concern over that decision because she stated she was molested when she was a child and she is ok.

11. Throughout her years of parenting, [Mother] has demonstrated a pattern of ineffective and dangerous mothering. She blames others[.]

12. In the course of multiple CHINS proceedings, MCDCS attempted to assist [Mother] in becoming an appropriate parent for her children. [Mother] was provided with opportunities to participate in drug and alcohol treatment, parenting classes, home based counseling, a psychological evaluation, and individual counseling. Despite the efforts of MCDCS, [Mother] failed to benefit from the services that were available to her.

13. Despite [Mother]'s assertions to the contrary, MCDCS has offered reasonable assistance to [Mother] to work toward reunification. Mother has technically completed the services ordered by the CHINS Court other than home-based counseling has not been implemented.

14. Being an appropriate parent requires more than merely attending classes or services offered by the Department of Child Services or even caring for someone else's children a few hours each day. An appropriate parent must recognize her child's needs and meet those needs.

15. [Mother] denies any personal responsibility for the damage that has been done to her children. Her explanation that "all I know is I didn't have nothin' to do with it" is reflective of her inability to accept responsibility for the damage done to her children while in her care. Mother was questioned about the severe problems that [D.S.] has and is continuing to experience. Her rationale is that it must be the foster parents who have caused these problems for [D.S.].

16. Dr. Lennon conducted a bonding assessment of Mother and her children at the request of Mother's counsel. Dr. Lennon found an appropriate bond between Mother and her children. Dr. Lennon was not asked to nor did he conduct a psychological evaluation of [Mother]. Dr. Lennon indicated that the foster parents may be transmitting fears to the boys or unwittingly exacerbating the children's issues as they pertain to the foster parents. The problem with Dr. Lennon's report is that it is but a snapshot of the interaction between this Mother and her children. The extensive history of Mother's dysfunction would demonstrate a habitual pattern of problems with parenting and an inability to meet the extraordinary needs of the children at issue, particularly [E.S.].

17. [Mother] fails to even recognize the existence of [E.S.] and [R.S.]'s special needs. [Mother]'s self report that she has made changes in her life is unpersuasive. [R.S.] requires speech therapy, occupation therapy, [and] developmental therapy because he is developmentally delayed. He functions at a 20 month old level and he is nearly 3 years of age. Both boys exhibit head banging behaviors and [R.S.] has needed a helmet to protect his skull. [E.S.] bites himself, pinches himself, bangs his head on the table

and has numerous difficulties that Mother essentially blames on the “system”. She blames foster parents, the CHINS judge who she thinks prefers the foster parents over her. Mother’s other children who have been permanently placed with others also exhibited serious behavior issues. Mother’s response when asked about one of her other children who had alleged[ly] stabbed an elderly neighbor with a knife, was to downplay the significance of it even during her trial testimony.

18. [E.S.] and [R.S.] need a parent who is consistent, nurturing and supportive. One who can provide structure, stability and predictability on a routine daily basis for children, especially severely traumatized and troubled children. They need a parent who is willing and open to learning and practicing skills to deal with the children’s behaviors and emotional problems.

19. [Mother] cannot provide a safe home for [E.S.] and [R.S.] until she accepts responsibility for her role as a parent in their lives. Until she recognizes that her children were seriously harmed while in her care, there is a substantial probability of future neglect and deprivation if [E.S.] and [R.S.] were returned to the care of their mother.

20. It is appropriate to consider not only [Mother]’s fitness to parent her children at the time of trial, but *also* her habitual standards of conduct to determine whether there is a substantial probability of future neglect or deprivation of the children.

21. [Mother] has demonstrated [a] history of leaving her children with inappropriate caregivers, substance abuse, her children being molested while in her care, not taking responsibility for her children’s problems, completing services but showing no benefit and failing to meet the basic needs of her children.

22. Mother’s current husband tested positive for marijuana use, but 5 days later the marijuana level was low enough to not appear on the drug screen. Mother’s reason for the positive drug screen was to blame consumption by her husband of the beverage “red bull”, an assertion totally lacking credibility.

\* \* \* \* \*

24. At the time of trial [E.S.] and [R.S.] were not as badly damaged as the children who had remained in her care for longer periods of time. However, “[t]he trial 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.”

25. It is not in [E.S.] and [R.S.]’s best interest to even visit with [Mother] at this time. The Marion Superior Court, Juvenile Division, vested with the responsibility for monitoring the CHINS proceeding, suspended [Mother]’s visits. The therapist and psychiatrist who have worked with [E.S.] for over a year and a half believe that it would be harmful for him to have contact with [Mother]. The children’s Guardian ad Litem is opposed to visitation between [Mother] and [E.S.] and [R.S.].

26. Although it may be in [Mother]’s best interests to allow contact with the children, even Dr. Lennon specifically declined to offer an opinion as to whether it would be in the children’s best interests to re-establish a relationship with [Mother].

27. Reunification is not likely to occur in the foreseeable future. [Mother]’s statements that she was ready for her children to be returned to her care are not persuasive. [Mother]’s past behavior is the best predictor of her future behavior.

28. Remaining in the limbo of long term foster care to allow [Mother] an indefinite period of time to continue to work toward reunification is not in the children’s best interests.

\* \* \* \* \*

31. This termination proceeding involves a careful balancing of Mother’s rights to parent these children with the ultimate decision as to the best interests of the children. This Court has carefully listened to the testimony over hours of trial time, observed the demeanor of the witnesses, reviewed all of the reports, researched the caselaw and given this matter a great deal of thought in making the decision for this family.

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33. Although Mother has completed the majority of services required of her, she has never been able to do home-based counseling which would allow for the opportunity to observe Mother in her home with supervised visits. The CHINS Court has been involved with this family for years not only with these two children. Mother has no visitation with these boys to even reach the threshold for home-based counseling. This Court cannot in good conscience find in favor of Mother because the Court cannot find that the children would be safe with Mother. Given the children’s need for permanency and a stable, loving home and their parent’s lack of demonstrated ability to provide for those needs, it is in the children’s best interest to terminate the parent-child relationship. The risk of harm to these children outweighs Mother’s rights to parent [E.S.] and [R.S.].

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Appellant's App. p. 12-16 (case citations omitted). Mother now appeals the involuntary termination of her parental rights to the Children.

### **Discussion and Decision**

Mother argues that the trial court erroneously terminated her parental rights to the Children. Mother first argues that the termination of her parental rights violated her due process rights because the MCDCS failed to comply with Indiana Code § 31-34-21-5.5, the CHINS statute dealing with making reasonable efforts to preserve and reunify families. Mother also contends that the trial court erred by finding that the MCDCS presented clear and convincing evidence that there is a reasonable probability that the conditions that resulted in the Children's removal will not be remedied. We will review each argument in turn.

#### **I. Services Offered During CHINS Proceeding**

Mother contends that her parental rights should not have been terminated because she was denied due process of law during the CHINS proceeding. Specifically, she argues the MCDCS did not satisfy the CHINS statutory requirement dealing with making reasonable efforts to preserve and reunify families. The MCDCS responds that the CHINS statutory provision regarding reasonable services is not an element of termination and that a termination will not be overturned on that basis. Additionally, the MCDCS argues that Mother has waived her argument regarding the allegation that the MCDCS failed to provide services because she failed to file a motion to dismiss the termination petition under Indiana Code § 31-35-2-4.5(d)(2). Finally, the MCDCS argues that,

nevertheless, it did make reasonable efforts to provide services. We agree with the MCDCS.

The CHINS statute dealing with reasonable efforts to reunify families, Indiana Code § 31-34-21-5.5, provides:

(a) In determining the extent to which reasonable efforts to reunify or preserve a family are appropriate under this chapter, *the child's health and safety are of paramount concern.*

(b) Except as provided in section 5.6 of this chapter, the department shall make reasonable efforts to preserve and reunify families as follows:

(1) If a child has not been removed from the child's home, to prevent or eliminate the need for removing the child from the child's home.

(2) If a child has been removed from the child's home, to make it possible for the child to return *safely* to the child's home as soon as possible.

(Emphases added). However, this provision regarding reasonable efforts to provide family services is not a requisite element of our parental rights termination statute. *In re E.E.*, 736 N.E.2d 791, 796 (Ind. Ct. App. 2000). "A failure to provide services . . . does not serve as a basis on which to directly attack a termination order as contrary to law." *Id.* "[E]ven a complete failure to provide services would not serve to negate a necessary element of the termination statute and require reversal." *Id.* Under Indiana Code § 31-35-2-4.5(d)(2), a party may move to dismiss a termination petition on grounds that the county office of family and children has not provided family services in accordance with a currently effective case plan. *Id.* (citing Ind. Code § 31-35-2-4.5(d)(2)).

Here, Mother asks that the termination of her parental rights be vacated because she was denied due process during the CHINS proceedings. Specifically, Mother

contends that the MCDCS failed to comply with Indiana Code § 31-34-21-5.5 when it ceased her visitation with the Children. Mother, however, did not file a motion to dismiss under Indiana Code § 31-35-2-4.5(d)(2) following the MCDCS's petition to terminate Mother's parental rights to the Children. Thus, she has waived any argument regarding the same. Waiver notwithstanding, Mother's argument that the order terminating her parental rights should be vacated based on the MCDCS's lack of services during the CHINS proceeding also fails because a failure to provide services will not serve as a basis on which to directly attack a termination order as contrary to law. *See In re E.E.*, 736 N.E.2d at 796.

Nevertheless, the record before us reveals that the MCDCS's efforts to reunify the family were reasonable given the concerns for E.S.'s health and safety. Per the CHINS court's disposition order, Mother was initially given supervised visitation with the Children. When three-year-old E.S. was removed from Mother's home and was placed in his first foster home, he exhibited various sexually inappropriate behaviors and indicated that Mother and "Mark" had touched him inappropriately and mistreated him. E.S. was diagnosed with severe PTSD, and his therapist testified that when E.S. saw his biological parents, his PTSD symptoms increased, including increases in nightmares, sexually acting out, and acts of aggression. The MCDCS caseworker discussed E.S.'s behavior and statements with Mother, but Mother denied that she had done anything to him or that E.S. exhibited similar behaviors when he was at her house.

In October 2004, the CHINS court suspended Mother's supervised visitation based on the concern for E.S.'s behavior and Mother's positive drug screens, which were in



violation of the court's disposition order. The MCDCS case worker testified that the CHINS court suspended visitation until E.S.'s therapist recommended that visitation would be in E.S.'s best interest. E.S.'s therapists, however, agreed with the order for no contact with Mother due to the severity of E.S.'s PTSD symptoms.

Thus, the record shows that the MCDCS offered Mother's supervised visitation but that it was stopped due to Mother's own behavior by using drugs and due to concern for E.S.'s health and safety. Thus, we conclude that the MCDCS made reasonable efforts to reunify the family as required by Indiana Code § 31-34-21-5.5, and, therefore, there was no due process violation. *See, e.g., In re A.I.*, 825 N.E.2d 798, 813 (Ind. Ct. App. 2005) (concluding that the OFC made reasonable attempts to reunify the family as required by Indiana Code § 31-34-21-5.5 and, therefore, finding no due process violation with respect to this argument), *trans. denied*.

## **II. Termination of Parental Rights**

Mother also argues that the trial court erred by terminating her parental rights to the Children. We will not set aside a trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. *In re J.W.*, 779 N.E.2d 954, 959 (Ind. Ct. App. 2002), *trans. denied*. Where, as here, the trial court enters findings of fact, a two-tiered standard of review will be employed. *Id.* First, we determine whether the evidence supports the findings. *Id.* Next, we determine whether the findings support the judgment. *Id.* "A judgment is clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment." *Bester v. Lake County Office of Family and Children*, 839 N.E.2d 143, 147 (Ind. 2005) (quotation

omitted). When reviewing a termination of parental rights, this Court neither reweighs the evidence nor judges the credibility of witnesses. *Id.* Rather, we will consider only the evidence and reasonable inferences therefrom which are most favorable to the judgment. *Id.*

We begin by emphasizing that 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. *Castro v. State Office of Family and Children*, 842 N.E.2d 367, 372 (Ind. Ct. App. 2006), *trans. denied*. Rather, when the evidence shows that the emotional and physical development of a child in need of services is threatened, termination of the parent-child relationship is appropriate. *Id.* This Court has stated:

The involuntary termination of parental rights is an extreme measure that terminates all rights of the parent to his or her child and is designed to be used only as a last resort when all other reasonable efforts have failed. The Fourteenth Amendment to the United States Constitution provides parents with the rights to establish a home and raise their children. However, the law allows for termination of those rights when the parties are unable or unwilling to meet their responsibility as parents. This policy balances the constitutional rights of the parents to the care and custody of their children with the State's limited authority to interfere with these rights. Because the ultimate purpose of the law is to protect the child, the parent-child relationship must give way when it is no longer in the child's best interest to maintain the relationship.

*M.H.C. v. Hill*, 750 N.E.2d 872, 875 (Ind. Ct. App. 2001) (citations omitted). In sum, the purpose of terminating parental rights is not to punish parents but to protect children. *In re A.I.*, 825 N.E.2d at 805.

Indiana Code § 31-35-2-4(b)(2) provides that a petition to terminate parental rights must allege, in pertinent part, that:

(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.

The petitioner must prove each of these elements by clear and convincing evidence. Ind. Code § 31-37-14-2; *see also Castro*, 842 N.E.2d at 373.

Mother argues that the trial court erred by finding that the MCDCS presented clear and convincing evidence that there is a reasonable probability that the conditions that resulted in the Children's removal will not be remedied. "To determine whether there is a reasonable probability that the conditions which resulted in the removal of the children will not be remedied, the trial court should judge a parent's fitness to care for his children at the time of the termination hearing, taking into consideration evidence of changed conditions." *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). The trial court must evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the children. *Id.* In making such a determination, the trial court may consider "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." *Matter of D.G.*, 702 N.E.2d 777, 779 (Ind. Ct. App. 1998). Also, "the trial court can reasonably consider the services offered to the parent

and the parent's response to those services." *In re Termination of Parent-Child Relationship of L.V.N.*, 799 N.E.2d 63, 69 (Ind. Ct. App. 2003).

Mother contends that the trial court erroneously concluded that the conditions that resulted in the Children's removal will not be remedied; however, she does not specifically challenge any of the trial court's findings in support of that conclusion. Instead, she contends that the trial court's conclusion was erroneous because the MCDCS case worker admitted that the reason for the Children's removal—specifically, the dirty conditions of Mother's house, lack of electricity, and Mother's drug use—have been remedied. The MCDCS counters that the trial court did not err because the statutory subsection dealing with reasons for removal also requires the court to consider whether the reasons for the continued placement outside the parent's home will be remedied. We agree with the MCDCS.

Subsection (b)(2)(B)(i) of the termination statute requires that the State must establish 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." I.C. § 31-35-2-4(b)(2)(B)(i) (emphasis added). "This language clarifies that it is not just the basis for the initial removal of the child that may be considered for purposes of determining whether a parent's rights should be terminated, but also those bases resulting in the continued placement outside of the home." *In re A.I.*, 825 N.E.2d at 806.

Here, the trial court found that reasons for removal or the reasons for placement outside the home included Mother's inability to "meet the children's needs and provide a safe and stable home environment" and these "conditions continue because of Mother's

inability to put her children first, to recognize the damage that has been done, [and] to see herself as anyone but a victim.” Appellant’s App. p. 13. The trial court also found that Mother’s “fail[ure] to even recognize the existence of [E.S.] and [R.S.]’s special needs” and failure to recognize that her children were harmed provided a basis for continued placement outside the home. *Id.* at 14. While Mother may now have housing with electricity and be drug free, we cannot conclude that the trial court’s consideration of the conditions leading to the continued placement of the Children outside the home was erroneous. *See, e.g., In re A.I.*, 825 N.E.2d at 807 (holding that the trial court properly considered the conditions leading to the continued placement outside of the home rather than simply focusing on the basis for the initial removal of the child).

Mother also argues that the trial court improperly considered Mother’s past CHINS proceeding and that it should have considered Mother’s circumstances at the time of the termination proceeding—specifically, the fact that she was no longer using drugs, was in a stable relationship, and was working—and should not have ignored Mother’s “real changes and progress[.]” Appellant’s Br. p. 23. We disagree.

While it is true that when deciding whether to terminate a parent’s parental rights, the trial court should judge a parent’s fitness to care for his children at the time of the termination hearing and should consider evidence of changed conditions, the trial 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 children. *See In re M.M.*, 733 N.E.2d at 13.

Here, the trial court did just that. The trial court acknowledged Mother’s current situation and the fact that she had completed services with the MCDCS but also properly considered the significant evidence regarding Mother’s habitual patterns of conduct. The trial court found that “[t]hroughout her years of parenting, [Mother] has demonstrated a pattern of ineffective and dangerous mothering” and that her children have experienced “significant trauma while in her care[.]” Appellant’s App. p. 13. The trial court also found that “[t]he extensive history of Mother’s dysfunction would demonstrate a habitual pattern of problems with parenting and an inability to meet the extraordinary needs of the children at issue, particularly [E.S.]” *Id.* at 14. Furthermore, the trial court considered Mother’s current unwillingness to take responsibility and lack of acknowledgement that her children were harmed while in her care when determining that the reasons for placement outside the home would not be remedied. Because the trial court’s findings support its conclusion that there was a reasonable probability that the conditions that resulted in removal or the reasons for placement outside the home would not be remedied, we affirm the trial court’s involuntary termination of Mother’s parental rights to the Children.<sup>3</sup>

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<sup>3</sup> Mother also contends that the trial court erred by concluding that the MCDCS presented clear and convincing evidence that there is a reasonable probability that continuation of the parent-child relationship posed a threat to the well-being of the Children. Ind. Code § 31-35-2-4(b)(2)(B) is written in the disjunctive; therefore, the MCDCS was only required to demonstrate by clear and convincing evidence a reasonable probability that *either* (1) 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* (2) the continuation of the parent-child relationship poses a threat to the well-being of the child. The trial court concluded that the MCDCS proved both of these; however, for our review, we only need to find that the evidence supports one of the requirements. *See Bester*, 839 N.E.2d at 148 n.5. Because we conclude that the evidence supports the trial court’s conclusion that the conditions resulting in the Children’s removal or reasons for placement outside the home will not be remedied, we will not review Mother’s alternative argument.

Affirmed.

SULLIVAN, J., and ROBB, J., concur.