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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF N.B. (a/k/a N.S.) and V.B.,)
MINOR CHILDREN, AND THEIR MOTHER,)
S.E.S.,)
S.E.S.)

Appellant/Respondent,)

vs.)

INDIANA DEPARTMENT OF CHILD)
SERVICES,)

Appellee/Petitioner.)

No. 18A02-1001-JT-9

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Richard A. Dailey, Judge
The Honorable Brian M. Pierce, Master Commissioner
Cause Nos. 18C02-0907-JT-19, 18C02-0907-JT-20

August 5, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Respondent S.E.S. (“Mother”) appeals the juvenile court’s order terminating her parental rights to V.B. and N.B. (a/k/a N.S.). 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

Mother has two children, V.B. and N.B. (collectively “the children”) at issue in this appeal.¹ V.B. was born on February 7, 1998. N.B. was born on June 9, 1999. Following the children’s births, Mother and the children resided in Muncie.

At some point, DCS became involved with Mother and the children, and in 2003, the children were adjudicated Children In Need of Services (“CHINS”). At the time, the juvenile court found that the children had witnessed frequent drug use by Mother and had suffered from physical abuse and educational neglect. The juvenile court also found that Mother was unable to care for the children because she was incarcerated and because DCS substantiated allegations that Mother’s boyfriend, R.S., Jr., had sexually abused V.B. In December of 2005, DCS dismissed the 2003 CHINS proceedings after Mother agreed to a safety plan, in

¹ The termination of the parental rights of the children’s biological father, R.B., is not at issue in this appeal.

which she acknowledged the importance of supervising her children at all times. DCS, however, remained involved with Mother and the children following the dismissal of the 2003 CHINS proceedings.

In 2007, Mother, R.S., Jr., and the children moved to LaGrange County. While living in LaGrange County, the children were once again adjudicated CHINS and removed from Mother's care. Following the removal of the children from her care, Mother married R.S., Jr., and, despite having received a prior court determination that R.B. was N.B.'s biological father, changed N.B.'s birth certificate to name R.S., Jr. as N.B.'s biological father. Admittedly, Mother changed N.B.'s birth certificate so that the children would be placed with their paternal grandfather, R.S., Sr., with whom she and R.S., Jr. lived. The children were ultimately placed with R.S., Sr., who subsequently became the children's legal guardian. Eventually, DCS dismissed the 2007 CHINS proceedings and Mother, R.S., Jr., R.S., Sr., and the children moved back to Muncie.

In April of 2008, DCS again became involved with Mother and the children after Mother and R.S., Jr. were arrested in connection with a number of charges. Mother subsequently entered into a plea agreement and was placed on house arrest. DCS filed petitions alleging that the children were CHINS on April 10, 2008. In its petitions, DCS alleged that while in Mother's care, the children were traumatized by living in an inconsistent and unstable environment where they witnessed fighting, yelling, and drug use, and experienced neglect and physical and sexual abuse. DCS further alleged that the children's legal guardian, R.S., Sr., was aware of and participated in illicit drug use in the home.

On October 2, 2008, Mother's placement on house arrest was revoked, and Mother was committed to the Indiana Department of Correction for a term of three years after Mother violated the terms of her house arrest by testing positive for cocaine. DCS reported that prior to the revocation of Mother's placement on house arrest, it attempted to engage Mother in visitation with the children, but Mother refused. On November 20, 2008, the children were again adjudicated CHINS after Mother entered a general admission of the allegations contained in the CHINS petitions.

On July 23, 2009, DCS filed petitions seeking the termination of Mother's parental rights. On November 9, 2009, 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 the children. On December 10, 2009, 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 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 children'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 children. *Id.* Termination of parental rights is proper where the children's emotional and physical development is threatened. *Id.* The juvenile court need not wait until the children are irreversibly harmed such that their 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) (2009). Specifically, Mother claims that DCS failed to establish that either (1) the conditions that resulted in the children's removal or the reasons for placement outside of Mother's care will not be remedied; or (2) the continuation of the parent-child relationship posed a threat to the children's well-being. Mother also claims that DCS failed to establish that the termination of her parental rights is in the children's best interests.

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 the children's removal from her care will not be remedied or that the continuation of the parent-child relationship poses a threat to the children. 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 the children. *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[ren] 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[ren]." *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 children outside their 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 the children'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 the children’s removal from the 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 a history of substance abuse and that serious questions remain regarding Mother’s ability to provide the children with adequate supervision and a safe and stable living environment free of drugs and abuse. DCS presented evidence that Mother has, to date, refused to acknowledge that the children have been sexually abused by both R.S., Jr. and R.S., Sr., and argued that this failure to acknowledge the previous sexual abuse indicates that Mother would be unprepared to protect the children from similar abuse in the future. DCS also presented evidence that Mother has a substantial history of involvement with DCS and that despite the prior attempts by DCS to help Mother learn how to better care and provide for the children, Mother had continuously chosen to revert to her prior lifestyle and parenting habits. “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 the children’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 an adequate level of care and supervision and mental health conditions which led to the children’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 had established that it is unlikely that the conditions resulting in the children’s removal would not 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.

B. The Children’s Best Interests

Next, we address Mother’s claim that DCS failed to prove by clear and convincing

evidence that termination of her parental rights was in the children's best interests. We are mindful that in determining what is in the best interests of the children, the juvenile court is required to look beyond the factors identified by DCS and look to the totality of the evidence. *McBride*, 798 N.E.2d at 203. In doing so, the juvenile court must subordinate the interests of the parents to those of the children involved. *Id.* Furthermore, this court has previously determined that the testimony of the case worker and the Court Appointed Special Advocate ("CASA") regarding the children's need for permanency supports a finding that termination is in the children's best interests. *Id.*

Here, the testimony establishes that the children have a need for permanency and that the termination of Mother's parental rights would serve the children's best interests. The CASA, Mary Burden, testified to the children's need for permanency and stated that she fully supported DCS's plan for the children. Burden further testified that in light of the apparent lack of progress shown over the years by Mother and the children's need for stability, she believed that the termination of Mother's parental rights was in the children's best interest. Likewise, DCS case manager Pat Ergle testified to the children's need for permanency. Ergle testified that the children appeared to be happier, more energetic, and more well-adjusted since being placed in a stable home environment. Ergle further testified that since being placed in a stable home environment, the children have begun to willingly interact with others and have displayed a marked academic improvement. The juvenile court did not have to wait until the children were irreversibly harmed such that their physical, mental, and social development was permanently impaired before terminating Mother's parental rights. *See In*

re C.M., 675 N.E.2d at 1140. In light of the testimony of the CASA and the DCS case manager, we conclude that the evidence is sufficient to satisfy DCS's burden of proving that termination of Mother's parental rights is in the children's best interests.

In sum, we conclude that the juvenile court did not err in terminating Mother's parental rights because the evidence provided by DCS was sufficient to support the juvenile court's termination order.

The judgment of the juvenile court is affirmed.

DARDEN, J., and BROWN, J., concur.