ATTORNEY FOR APPELLANT:

JEFFREY S. ARNOLD
Columbia City, Indiana

ATTORNEY FOR APPELLEE:

WENDY J. GENSCH
Columbia City, Indiana

IN THE
COURT OF APPEALS OF INDIANA

BILLIE JO HINER,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 92A03-0707-JV-309
	)	
	)	
WHITLEY COUNTY DEPARTMENT OF CHILDREN SERVICES,	)	
	)	
	)	
Appellee-Petitioner,	)	

APPEAL FROM THE WHITLEY CIRCUIT COURT
The Honorable James R. Heuer, Judge
Cause Nos. 92C01-0701-JT-1 and 92C01-0701-JT-2

September 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, Billie Jo Hiner (Mother), appeals the trial court's involuntary termination of her parental rights to her minor children, K.H. and R.M.

We affirm.

ISSUE

Mother raises two issues on appeal, which we restate as follows:

(1) Whether the trial court used the correct standard when entering its findings of fact; and

(2) Whether the evidence was sufficient to support the trial court's termination of Mother's parental rights to R.M. and K.H.

FACTS AND PROCEDURAL HISTORY

Mother has three children, however the instant action only pertains to Mother's youngest children: R.M., born February 11, 1998; and K.H., born July 2, 2002. Initially, the Allen County Department of Child Services became involved with Mother and her oldest child in 1997. At that time, Allen County Department of Child Services held the oldest child in custody due to an unstable living environment. The Whitley County Department of Child Services (the WCDCS) became involved with Mother and her children in 1998 when Mother was referred for parenting help and assistance in finding housing. Although Mother was the custodial parent of both R.M. and K.H., in November 2004, both children were living with relatives of the Mother in Columbia City, Indiana. While in Columbia City, both children began seeing a Bowen Center therapist due to behavior problems.

In September 2005, Mother brought K.H. to the Parkview Whitley Hospital

Emergency Room alleging Corey Hiner (Hiner), K.H.'s father, had sexually molested K.H. Hiner is a registered sex offender, thus there was great concern about K.H.'s safety. Mother and Hiner agreed to a safety plan where Hiner would not have unsupervised visitation with K.H., and K.H. would receive services at Bowen Center. However, in October 2005, Mother ended services for K.H. alleging K.H. was not progressing, and in November 2005, sent K.H. to live with Hiner when Mother moved to Bloomfield, Indiana.

In November 2005, Mother also filed a petition to dissolve her marriage with Hiner. A body attachment was filed for both Mother and Hiner after they failed to appear for a hearing on the dissolution matter, twice. On December 29, 2005, Mother and Hiner were arrested for contempt of court and R.M. and K.H. were placed in foster care. On January 9, 2006, a Child in Need of Services (CHINS) petition was filed for R.M. and K.H. On March 13, 2006, Mother and Hiner admitted they (1) were in jail when R.M. and K.H. were placed in foster care, (2) neglected to properly provide for R.M.'s educational needs and personal hygiene, and (3) refused home-based services offered by the Bowen Center for K.H. and that K.H. had been bounced back and forth between various relatives' homes. In January 2006, Mother and Hiner moved in together in Bloomfield. On April 17, 2006, a Dispositional Order in the CHINS proceeding was entered requiring Mother to:

a. Have a psychological evaluation performed upon her and attend individual counseling to address the issues identified in the evaluation;

b. Have a drug and alcohol evaluation performed upon her and submit to random drug and alcohol screens, which must all be passed in order for visitations to be increased;

c. Attend and successfully complete parenting classes;

d. Work with the family preservation worker concerning parenting, nurturing, and budgeting;

e. Find full-time employment;

f. Report any contact with law enforcement, change of address, persons in the household, or employment within 48 hours;

g. Have supervised visitation no less than two times per month; and

h. Pay child support in accordance with the child support guidelines.

While residing in Bloomfield, Mother and Hiner moved residences at least three times. They did not participate in supervised visitation with R.M. and K.H. for a period of nine consecutive weeks, and then eleven consecutive weeks. In October 2006, Mother and Hiner returned to Whitley County. Mother did not obtain full-time employment or regularly attend individual counseling sessions; she also did not report changes in her address, employment, or household members as required by the dispositional order. Further, Mother did not pay support to the WCDCS even though she continued to receive child support and disability money from Robert Mix (Mix), R.M.'s father.

In January 2007, nine months after R.M. and K.H. were adjudicated as CHINS, the WCDCS filed petitions for involuntary termination of the parent-child relationship. Mix voluntarily terminated his parental rights to R.M. On April 17, 2007, a fact-finding hearing was held with respect to Mother's parental rights to R.M. and K.H., and Hiner's parental rights to K.H.[1] On May 2, 2007, the trial court entered its Findings and Order for Involuntary Termination of the Parent-Child Relationship, stating, in pertinent part:

4. There is a reasonable probability that the conditions which resulted in the

[1] This appeal only addresses the termination of Mother's parental rights to her children.

children's removal or the reasons for placement outside the home of the parents will not be remedied.

a. [Mother and Hiner] failed to provide a stable home environment for the children up to the time the children were detained. The couple continued to move from place to place, even moving several hours away, during the pendency of the CHINS actions. Testimony at the termination hearing indicated that the couple planned to move, again, that evening.

b. Due to their lack of suitable housing, [Mother and Hiner gave] the children to other adults at different times. This included a formal guardianship as well as other informal arrangements of custody.

c. Neither [Mother] nor [] Hiner has demonstrated that they are able to establish and maintain a suitable home for the children.

d. Both [Mother] and [] Hiner were incarcerated at the time the children were detained. . . .

e. Both [Mother] and [] Hiner have failed to consistently comply with dispositional decree requirements that were reasonably anticipated to demonstrate their ability to remedy circumstances which led to the children's removal, specifically: to find and maintain full-time employment; to attend individual counseling; to report any contact with [l]aw [e]nforcement, change of address, employment, or household members within 48 hours; and to pay support per Title IV-D guidelines.

f. Both [Mother] and [] Hiner also failed to participate with supervised visitation when they missed scheduled visitations for a nine (9) week period and an eleven (11) week period.

g. [Mother] has sought employment and held a few jobs, but never for more than a few weeks. . . .

5. There is reasonable probability that continuation of the parent-child relationship poses a threat to the well-being of the [children].

a. The children have been adversely affected by this instability as demonstrated by their high levels of anger and anxiety. The children have been diagnosed with reactive attachment disorder.

b. According to testimony, [R.M.] needs permanency, stability, and security in his older childhood years.

c. According to testimony, [K.H.] needs protection and guidance in her early childhood years.

d. There is no evidence to suggest that either parent is able to provide the permanency, stability, security, protection, and guidance that the children require.

6. Termination of the parent-child relationship is in the best interest of said children.

a. There is a reasonable probability that continuation of the parent-child relationship poses a threat to the well-being of the [children].

b. Both [Mother] and [] Hiner's pattern of conduct predicts long-term placement of the children in foster care under the CHINS actions, denying the children the stability of a permanent home with either adoptive or birth parents.

c. The children's age make it likely that they will be adopted and readily adapt to an adoptive family.

7. The [WCDCS] has a satisfactory plan for the care and treatment of said children.

8. None of the factors listed at [Ind. Code §] 31-35-2-4.5(d) applies that would require the [c]ourt to dismiss this petition.

(Appellant's Appendix pp. 7-10).

Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Mother argues that the trial court improperly terminated her parental rights to R.M. and K.H., because the trial court implemented the incorrect standard when entering its findings of fact. In addition, Mother asserts there was insufficient evidence to terminate her parental rights. Specifically, she (1) contests the trial court's finding that there is a

reasonable probability the conditions which resulted in the children's removal or the reasons for their placement outside her home will not be remedied was not found by clear and convincing evidence, and (2) contends there is insufficient evidence to show the reasons for removal are unlikely to be remedied, or that the continuation of the parent-child relationship poses a threat to her children's well-being.

The involuntary termination of parental rights is the most extreme measure that a court can impose for parenting failures, as it severs all rights of the parent to their child(ren). *In re W.B.*, 772 N.E.2d 522, 528 (Ind. Ct. App. 2002). Therefore, termination is designed only as a last resort when all other reasonable efforts have failed. *Matter of D.G.*, 702 N.E.2d 777, 780 (Ind. Ct. App. 1998). However, while parental rights have a constitutional dimension, the law allows for their termination when parties are unable or unwilling to meet their responsibility as parents. *Matter of A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997).

We will not set aside a trial court's order to terminate parental rights unless it is clearly erroneous. *In re Involuntary Termination of Parent Child Relationship of A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). In determining whether the evidence is sufficient to support the judgment of termination, we neither reweigh the evidence nor judge the credibility of witnesses. *Id.* We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.*

To effect the involuntary termination of Mother's parental rights to her children, the WCDCS must have presented clear and convincing evidence establishing 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 [I.C.] § 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) after July 1, 1999[,] the child has been removed from the parent and has been under the supervision of a county officer of family and children for at least fifteen (15) months of the more recent twenty-two (22) months;

(B) there is reasonable probability that:

> (i) the condition 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.

I.C. § 31-35-2-4(b)(2).

Additionally, in determining whether a reasonable probability exists that the reasons for removal will not be remedied, the trial court must judge the parent's fitness to care for the children at the time of the termination hearing, taking into consideration any evidence of changed conditions. *In re Termination of Parent-Child Relationship of D.D.,* 804 N.E.2d 258, 266 (Ind. Ct. App. 2004), *trans. denied.* A trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation." *Id.* A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, will support a finding that there exists no reasonable probability that the conditions will change in the future.

Matter of D.B., 561 N.E.2d 844, 848 (Ind. Ct. App. 1990).

Mother first argues the trial court did not implement the proper standard with respect to its finding that there is a reasonable probability the conditions resulting in the children's removal or placement outside Mother's home will not be remedied. However, merely because the trial court does not say it finds a specific finding to a particular standard that does not mean the finding is in error.

Our review of the record reveals ample evidence, including Mother's own testimony, supporting the trial court's finding that conditions will not be remedied to a clear and convincing degree. Particularly, Mother testified she and Hiner moved to Bloomfield, approximately three and a half hours from Whitley County, and lived in three different locations indicating her inability to provide a stable home for her children. Upon first moving to Bloomfield, Mother left K.H. in the care of Hiner, even though Hiner was not supposed to have unsupervised visitation with K.H. due to his being a registered sex offender and having been accused of sexually assaulting K.H.; R.M. and K.H. were also left in the care of relatives in Columbia City while Mother lived at another location. Additionally, the Court Appointed Special Advocate testified that Mother's residence at the time of the hearing was cluttered and not suitable for the children. It is also evidenced in the record that Mother was incarcerated December 29, 2006, and at the time of her arrest the children were removed from her custody. Mother has also failed to procure full-time employment and has not paid child support as required by the Child Support Guidelines. Moreover, Mother did not comply with the dispositional order that she have no less than two supervised visits per month with her children when she missed nine and, subsequently, eleven consecutive weeks

of visits. Thus, we find the trial court's finding that the conditions supporting the removal of Mother's children from her home is supported by clear and convincing evidence.

Mother also argues there is insufficient evidence to show the reasons for removal are unlikely to be remedied, or that the continuation of the parent-child relationship poses a threat to her children's well-being. Specifically, she claims she was provided services for less than one year and in that short amount of time the trial court could not have found by clear and convincing evidence the conditions leading to her children's removal would not improve. However, we note the WCDCS only had to prove the reasons for removal are unlikely to be remedied, or that the continuation of the parent-child relationship poses a threat to her children's well-being. *See* I.C. § 31-35-2-4.

The fact that Mother has received services for less than a year has no bearing on the trial court's ability to find by clear and convincing evidence the reasons for her children's removal are unlikely to be remedied, or that the continuation of the parent-child relationship poses a threat to her children's well-being. As we have previously discussed, the trial court's finding that the conditions, which resulted in the children's removal, or the reasons for placement outside the home of the parents, will not be remedied is supported by clear and convincing evidence. Thus, there is sufficient evidence to support the termination of Mother's parental rights to R.M. and K.H.

CONCLUSION

Based on the foregoing, we find the trial court used the correct standard when entering its findings of fact, and there was sufficient evidence to support the trial court's termination of Mother's parental rights to K.H. and R.M.

Affirmed.

SHARPNACK, J., and FRIEDLANDER, J., concur.