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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE: THE MATTER OF THE TERMINATION )  
OF THE PARENT-CHILD RELATIONSHIP )  
OF C.R. and D.R., minor children, and )

TINA ROWLAND, )  
Appellant-Respondent, )

vs. )

ALLEN COUNTY OFFICE OF FAMILY )  
AND CHILDREN, )  
Appellee-Petitioner. )

No. 02A03-0705-JV-218

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APPEAL FROM THE ALLEN SUPERIOR COURT  
The Honorable Charles F. Pratt, Judge  
Cause Nos. 02D07-0407-JT-85 & 02D07-0407-JT-87

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**October 18, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

Tina Rowland (“Rowland”) appeals the termination of her parental rights to C.R. and D.R. Specifically, she contends that the Allen County Department of Child Services (“DCS”) failed to prove that the reasons for placement outside the home will not be remedied. Because the DCS proved by clear and convincing evidence that there is a reasonable probability that the reasons for placement outside the home will not be remedied, the trial court’s judgment that Rowland’s parental rights should be terminated is not clearly erroneous. We therefore affirm the trial court.

## **Facts and Procedural History**

Rowland is the mother of C.R., who was born February 11, 1997, and D.R., who was born October 28, 2000.<sup>1</sup> On October 27, 2003, the DCS removed the children from Rowland upon receiving a referral that she was physically abusive; nonetheless, the children were returned two days later. On November 26, 2003, the DCS filed a petition alleging that C.R. and D.R. were Children in Need of Services (“CHINS”).<sup>2</sup> At the December 2, 2003, initial hearing, Rowland admitted to the following allegations contained in the CHINS petition: she has a problem controlling her anger, resulting in the verbal abuse of her children; she used physical discipline on her children; she pled guilty to charges stemming from her involvement in a fight and has been attending non-

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<sup>1</sup> Rowland is also the mother of J.R., who was born April 21, 1999. Rowland voluntarily terminated her parental rights to J.R. Thus, she only appeals the termination of her parental rights to C.R. and D.R.

<sup>2</sup> In her brief, Rowland incorrectly states that the DCS filed a Verified Petition to Terminate Parent/Child Relationship on this date. In fact, Rowland’s Statement of Facts only recites facts up to and including December 2, 2003, which is when the trial court found the children to be CHINS. Rowland does not discuss the three-year time period between this event and the trial court’s order terminating Rowland’s parental rights to C.R. and D.R. This has hampered our ability to properly recite the facts and procedural history of this case.

violence classes as a result; she is unemployed, has not maintained steady employment for quite some time, and has been living off public assistance; she has left her children in the care of others; and she and her family would benefit from court-ordered services. The trial court adjudicated the children to be CHINS, entered a dispositional decree, and placed Rowland under a parent participation plan. As part of the plan, the children were placed with Rowland, but she had many requirements, including: refraining from criminal activity, maintaining safe, clean, and appropriate housing, cooperating with case managers and attending case conferences, continuing anger management/non-violence counseling, participating in home-based services, refraining from physical discipline of the children, and completing various programs.

On December 18, 2003—barely two weeks after the children were adjudicated to be CHINS—the trial court conducted a detention hearing and found that removing the children from Rowland was in their best interests because of Rowland’s refusal to cooperate with service providers and concerns about the safety and location of the children. Thus, the children were placed in licensed foster care, where they have remained ever since, and Rowland was given supervised visitation.

At a permanency hearing held on June 29, 2004, the trial court found that Rowland had not cooperated with home-based services, had not shown proof of completion of her anger management counseling, and had recently been arrested for battery and theft. *See* Tr. p. 56.<sup>3</sup> The court approved a permanency plan of termination of parental rights.

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<sup>3</sup> It appears that Rowland later pled guilty to battery and theft and was sentenced to one and one-half years, which was suspended to probation. Appellant’s App. p. 230-33.

It appears that Rowland then had some interim progress. Consequently, her visitation with the children was expanded, and the permanency plan was changed to reunification with the mother. Nevertheless, from March 9, 2005, until April 28, 2005, Rowland was incarcerated for violating probation, and, at a September 28, 2005, review hearing, the court found that Rowland was again noncompliant with the parent participation plan. On December 15, 2005, the trial court concurrently adopted permanency plans of reunification with the mother and termination of parental rights.

It appears that on December 22, 2005, the DCS filed a Mandatory Petition for Termination of Parent-Child Relationship.<sup>4</sup> Appellant's App. p. 4. In early May 2006 Rowland was charged with and incarcerated for committing theft. Tr. p. 56. Then, on May 16, 2006, the permanency plan was updated to termination of parental rights.

The termination hearing was held October 16, 2006. At the time, Rowland had pled guilty to theft<sup>5</sup> and was still incarcerated waiting to be sentenced. *See id.* at 14. At the hearing, testimony was presented that Rowland failed to comply with the parent participation plan. For example, a case manager testified that when she received a referral that Rowland physically abused C.R. and D.R. during an unsupervised visit, she investigated the incident and observed a bruise on D.R. Another case manager testified that she had numerous parenting concerns, confronted Rowland, and made suggestions;

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<sup>4</sup> Because Rowland did not include the Mandatory Petition for Termination of Parent-Child Relationship in her appendix, we glean this date from the CCS. However, we point out that the trial court's order terminating Rowland's parental rights states that a "Petition for Termination of Parent-Child Relationship (Involuntary)" was filed July 1, 2004. *See* Appellant's Br. p. 12, 16. Indiana Appellate Rule 50(A)(2)(f) provides that the Appellant's Appendix "shall contain" "pleadings and other documents from the Clerk's Record in chronological order that are necessary for resolution of the issues raised on appeal." Because Rowland failed to include this document in her appendix, we are unable to determine the precise date that it was filed.

<sup>5</sup> Rowland pled guilty to theft on July 27, 2006. Appellant's App. p. 224.

however, her suggestions were often dismissed. Moreover, Rowland did not cooperate with service providers, and she did not demonstrate an ability to recognize dangers or risks to the children. Also, Rowland did not cooperate with her therapist, and he opined that Rowland did have the ability to meet the needs of the children.

On December 7, 2006, the trial court issued Findings and Order on Factfinding terminating the parent-child relationship between Rowland and C.R. and D.R. At the time the trial court issued this order, Rowland was still incarcerated for theft. *See* Appellant's Br. p. 14, 18. The trial court concluded, in pertinent part:

4. By the clear and convincing evidence the court determines that there is a reasonable probability that reasons that brought about the child's placement outside the home will not be remedied. Over a protracted period the mother has been offered substantial services to correct the circumstances that brought about the intervention of the court. Nevertheless, reunification could not be safely achieved. No man has registered as a putative father. No paternity has been established. The child needs stable permanent home to meet her special needs. Neither the mother nor the alleged father have demonstrated an ability to provide for the needs of the child.<sup>[6]</sup>

*Id.* at 14-15.<sup>7</sup> Accordingly, the court concluded, "The [DCS] has thus proven by clear and convincing evidence that the allegations of the petition are true and that the parent-child relationships should be terminated." *Id.* at 15, 19. Rowland now appeals.

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<sup>6</sup> The trial court issued separate orders for C.R. and D.R. The orders appear to be identical with the exception of the names and dates of birth of the children. *Compare* Appellant's Br. p. 12-15 *with id.* at 16-19.

<sup>7</sup> Because Rowland did not include the Findings and Order on Factfinding in her appendix, we cite to the copy located in the Brief of Appellant. In addition, we note that Rowland listed the exhibits in her appendix as "Exhibits 1 through 35 . . . 159-269." Indiana Appellate Rule 50(C) provides, "A table of contents shall be prepared for every Appendix. The table of contents shall specifically identify each item contained in the Appendix, including the item's date." Rowland's failure to specifically identify each item contained in her appendix has hindered our review on appeal, especially considering Rowland's failure to include necessary items in her appendix. Furthermore, Rowland stapled some of the Briefs of Appellant in the upper left hand corner. Indiana Appellate Rule 43(J) provides, "The document shall be

## Discussion and Decision

Rowland appeals the termination of her parental rights to C.R. and D.R. When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). We consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* Here, the trial court entered findings of fact and conclusions of law in granting the DCS' petition to terminate Rowland's parental rights. When reviewing findings of fact and conclusions of law entered in a case involving a termination of parental rights, we apply a two-tiered standard of review. First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Id.* We will set aside the trial court's judgment only if it is clearly erroneous. *Id.* A judgment is "clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment." *Id.* (quotation omitted).

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 & 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:

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bound in book or pamphlet form along the left margin. Any binding process which permits the document to lie flat when opened is preferred."

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.

*Id.* at 372-73 (quotation omitted). In sum, the purpose of terminating parental rights is not to punish parents but to protect children. *Id.* at 373.

Indiana Code § 31-35-2-4(b)(2)(B) 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 DCS must prove each of these elements by clear and convincing evidence. Ind. Code § 31-37-14-2; *In re D.L.*, 814 N.E.2d 1022, 1026 (Ind. Ct. App. 2004), *trans. denied*. On appeal, Rowland challenges only one of these elements. Specifically, she argues that the DCS failed to prove by clear and convincing evidence that there is a reasonable probability that the reasons for placement outside the home will not be remedied.<sup>8</sup>

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<sup>8</sup> It also appears that Rowland argues that the DCS failed to prove by clear and convincing evidence that the continuation of the parent-child relationship poses a threat to the well-being of the

In order to determine whether the conditions that led to the placement of the children outside the home are likely to be remedied, the trial court should determine (1) what conditions led the DCS to place the children outside the home and (2) whether there is a reasonable probability that those conditions will be remedied. *See In re B.D.J.*, 728 N.E.2d 195, 201 (Ind. Ct. App. 2000). The court can reasonably consider the services offered by the DCS to the parent and the parent's response to those services. *Id.* In addition, the court may evaluate the parent's habitual pattern of conduct in determining the probability of future detrimental behavior. *Id.*

Here, the DCS removed the children from Rowland's home because, among other things, Rowland verbally and physically abused them.<sup>9</sup> The record shows that at the time of the termination hearing, there had been more allegations of physical abuse. Furthermore, Rowland's incarceration was one of the continuing and ongoing conditions that precluded Rowland from being able to provide a stable home for her children. Additionally, Rowland did not cooperate with service providers, did not complete classes, and did not benefit from services. This evidence reflects that the overall pattern of Rowland's life, at least in those respects relevant to the decision whether to terminate parental rights, has not changed and that the same concerns that were alleged in the CHINS petition and led to the removal of the children are still present.

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children, and the State addresses this element as a result. However, Indiana Code § 31-35-2-4(b)(2)(B) is written in the disjunctive; therefore, the trial court need only find one of the two elements in (b)(2)(B) by clear and convincing evidence. *Bester*, 839 N.E.2d at 148 n.5. Here, the trial court did not find that the continuation of the parent-child relationship poses a threat to the well-being of the children. As a result, we do not address this element on appeal.

<sup>9</sup> Contrary to Rowland's suggestion, the children were not removed from her because she was receiving public assistance. This allegation was made in the context of Rowland being unemployed and not maintaining steady employment for a long period of time, which obviously affects her ability to provide a stable home for the children.



The DCS proved by clear and convincing evidence that there is a reasonable probability that the reasons for placement outside the home will not be remedied. As such, the trial court's judgment terminating the parent-child relationship is not clearly erroneous. We therefore affirm the trial court.

Affirmed.

BAKER, C.J., and BAILEY, J., concur.