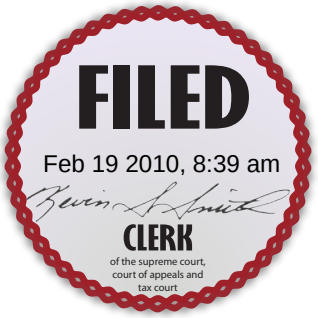

ATTORNEY FOR APPELLANT:

STEVEN P. TEVERBAUGH
Greensburg, Indiana

ATTORNEYS FOR APPELLEE:

KAELYN M. BULLOCK
Indiana Department of Child Services
Greensburg, Indiana

ROBERT J. HENKE
Indiana Department of Child Services
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

J.P.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 16A01-0907-JV-361
	)	
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE DECATUR CIRCUIT COURT
The Honorable John A. Westhafer, Judge
Cause No. 16C01-0902-JT-52

February 19, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

J.P. ("Mother") appeals the involuntary termination of her parental rights to her child, S.H., claiming there is insufficient evidence to support the trial court's judgment. Concluding that the trial court's judgment terminating Mother's parental rights is supported by clear and convincing evidence, we affirm.

FACTS AND PROCEDURAL HISTORY

Mother is the biological mother of S.H., born on April 30, 2007.[1] The facts most favorable to the trial court's judgment reveal that the Indiana Department of Child Services, through its Decatur County office ("DCS"), filed a petition alleging S.H. was a child in need of services ("CHINS") on June 29, 2007, after investigating a referral for domestic violence and substance abuse in the family home. During a hearing held the same day, Mother admitted the allegations in the CHINS petition. The trial court thereafter adjudicated S.H. a CHINS based on Mother's admission and prior history with DCS, ordered S.H. returned to Mother's care, and set the matter for a dispositional hearing on August 7, 2007.

Approximately ten days before the dispositional hearing, local police responded to another call at Mother's residence. Mother was found intoxicated and passed out in her bed, lying partially on top of S.H., who was then three months old. S.H. was immediately taken into protective custody, and the court held an emergency detention hearing the following day. During the detention hearing, the trial court approved the

[1] S.H.'s biological father voluntarily relinquished his parental rights to S.H. in May 2009. Father does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent to Mother's appeal.

emergency removal of S.H. and ordered S.H. to remain in relative foster care with his maternal great aunt. Mother was later convicted of neglect of a dependent as a result of this incident.

On August 7, 2007, the trial court proceeded with the previously scheduled dispositional hearing, after which the court incorporated DCS's recommendations in its dispositional order. The court's order directed Mother to participate in and successfully complete a variety of services in order to achieve reunification with S.H. In particular, the court ordered Mother in relevant part to participate in a substance abuse assessment, an intensive outpatient treatment program ("IOP"), and home-based counseling services; undergo random drug screens; obtain a psychological evaluation and a parenting assessment; and exercise supervised visitation with S.H..[2] In addition, services for Mother were coordinated with the Marion County office of the Indiana Department of Child Services ("MCDCS") because MCDCS had already made multiple referrals for Mother in conjunction with its prior removal of three different biological children from Mother's care.

Initially, Mother complied with court orders by actively seeking stable employment and housing, maintaining contact with the DCS family case manager, completing a drug and alcohol assessment, participating in an IOP at Quinco, and

[2] Unfortunately, the record does not contain several important documents, including the CHINS petition, the trial court's CHINS and dispositional orders, DCS's pre-dispositional report, and the parent participation plan, if any, thereby hampering our overall review of Mother's appeal. In addition, the absence of these documents caused this court to have to glean from the transcript what we could as to the court's precise dispositional orders. Counsel for Mother is reminded that the purpose of an Appellant's Appendix is to present this court with copies of those parts of the record that are necessary for our resolution of the issues presented on appeal. See Ind. Appellate Rule 50(A).

regularly visiting with S.H. During this initial period of cooperation, however, Mother was on house arrest. Almost immediately upon her release from house arrest in October 2007, Mother's participation in services began to wane. On October 20, 2007, Mother contacted her home-based case worker Kelly Stevens and informed Stevens she was upset because the foster mother had taken S.H. to the hospital without notifying her. Mother also told Stevens she no longer wanted to participate in services.

Stevens spoke with Mother on the telephone on November 14, 2007, and encouraged her to continue with services. Mother declined Steven's offer and further informed Stevens she was moving out of state. Stevens made several additional unsuccessful attempts to contact Mother from November 2007 through January 2008, until Mother's phone was disconnected. Mother also stopped attending visits with S.H. in October 2007, failed to appear for several review hearings in 2008, refused to participate in all services, and ceased all communications with DCS for approximately one year beginning in February 2008. DCS later learned that Mother had moved to Tennessee in March or April of 2008.

Mother returned to Indiana in January 2009 to serve a one-year house arrest sentence and two years of probation on a conviction for possession of controlled substances stemming from an arrest in 2008. On February 10, 2009, Mother appeared for a CHINS status hearing. On February 16, 2009, DCS filed a petition seeking the involuntary termination of Mother's parental rights. On February 18, 2009, the trial court granted DCS's motion to discontinue services and visitation for Mother.

The court held a fact-finding hearing on the termination petition on June 5, 2009. At the conclusion of the hearing, the trial court took the matter under advisement. On July 1, 2009, the trial court entered its judgment terminating Mother's parental rights to S.H. Mother now appeals.

DISCUSSION AND DECISION

We begin our review by acknowledging that this court has long had a highly deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. In re D.D., 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. Id. Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied.

Here, in terminating Mother's parental rights, the trial court entered specific findings and conclusions. When a trial court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. Id. "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." Quillen v.

Quillen, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court's decision, we must affirm. L.S., 717 N.E.2d at 208.

A parent's interest in the care, custody, and control of his or her children is arguably one of the oldest of our fundamental liberty interests. Bester, 839 N.E.2d at 147. Hence, "[t]he traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. These parental interests, however, are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. Id. In addition, although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. K.S., 750 N.E.2d at 836.

To involuntarily terminate parental rights, the State is required to allege and prove, among other things, 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 . . . .

Ind. Code § 31-35-2-4(b)(2)(B) (2008). Moreover, "[t]he State's burden of proof in termination of parental rights cases is one of 'clear and convincing evidence.'" In re G.Y., 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code § 31-37-14-2 (2008)).

Mother challenges the sufficiency of the evidence supporting the trial court's findings as to subsection 2(B) of the termination statute cited above. See Ind. Code § 31-35-2-4(b)(2)(B). In so doing, Mother claims DCS presented "absolutely no evidence as to [Mother's] current living situation." Appellant's Br. at 7. Mother further claims that "overwhelming evidence" indicates the conditions that led to S.H.'s removal from her care would be remedied in the future. Id. at 8. Mother therefore insists she is entitled to reversal of the trial court's termination order.

Initially, we observe that the trial court made no specific findings pertaining to subsection 2(B)(ii) of the termination statute cited above, namely, that continuation of the parent-child relationship poses a threat to S.H.'s well-being. We therefore shall only consider whether clear and convincing evidence supports the trial court's determination that there is a reasonable probability the conditions resulting in S.H.'s removal or continued placement outside of Mother's care will not be remedied. See L.S., 717 N.E.2d at 209 (stating only one of two requirements of subsection 2(B) have to be established by clear and convincing evidence because Indiana Code section 31-35-2-4-(b)(2)(B) is written in disjunctive).

In making such a determination, a trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. However, the court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." Id. Pursuant to this rule, courts have properly considered evidence of a parent's prior

criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. A.F. v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. The trial court may also properly consider the services offered to the parent by the county department of child services, and the parent's response to those services, as evidence of whether conditions will be remedied. Id. In addition, a county department of child services (here, DCS) is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability that the parent's behavior will not change. In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In finding there is a reasonable probability that the conditions resulting in S.H.'s removal or continued placement outside of Mother's care will not be remedied, the juvenile court made numerous detailed findings concerning Mother's history of alcohol abuse, failure to complete court-ordered services and maintain contact with DCS throughout the majority of the underlying proceedings, and past involvement with DCS, including the termination of Mother's parental rights to three other biological children in Marion County. The trial court also specifically found that:

> 6. Kelly Stevens, a case worker employed by Preventative Aftercare, began working with [Mother] on July 2, 2007[,] to accomplish several objectives including completion of a drug and alcohol assessment, providing parenting curriculum, offering case management services, assisting in finding employment and housing[,] and addressing substance abuse issues.
>
> * * *
>
> 8. From July 2007 through October 2007, [Mother] consistently met with . . . Stevens to address the identified objectives and worked

diligently on parenting skills and remaining sober. [Mother] also attended [IOP] session[s] and maintained employment and housing.

* * *

14. [Mother] did not contact [Stevens] from November 29, 2007[,] to May 7, 2009. The referral for services remained open.

15. [DCS] Family Case Manager (FCM) Amy Neimeyer-Davis testified that [Mother] has failed [to] comply with the Case Plan, has failed to consistently visit [S.H.], failed to comply with services referred for her[,] and has not exhibited a willingness or desire to be reunified with [S.H.].

* * *

20. [Mother] has failed to consistently visit with [S.H.] including a period of approximately one year in 2008 . . . .

21. [Mother] has failed to provide any financial support for [S.H.] throughout the underlying [CHINS] matter.

22. [Mother] has failed to show that she is able to sustain a safe, stable, drug-free home environment for [S.H.].

23. [Mother] testified that she has attended seventeen Alcoholics Anonymous meetings, is currently sober[,] and has a stable home environment. [Mother] did not provide the Court any proof to her attendance at the meetings, her sobriety[,] or her current home environment.

24. [Mother] admitted that she only returned to Indiana from Tennessee to serve a house arrest sentence. She admitted that [she] is currently on house arrest.

25. [Mother] reported she was arrested on March 1, 2008 for possession of a controlled substance.

26. [Mother] further admitted that she understands that she was [c]ourt ordered to complete services and that she did not comply with the order.

27. [DCS] has made reasonable efforts to reunify the family including referrals for home[-]based services, substance abuse assessment, [IOP,] and a mental health evaluation.

* * *

31. It is the recommendation of the Court Appointed Special Advocate, according her written report to the Court, that the parental rights be terminated.

Appellant's App. at 6-9. The trial court then concluded that DCS had "established by clear and convincing evidence that there is a reasonable probability that the conditions that resulted in [S.H.'s] removal and need for continued placement outside the home of [Mother] will not be remedied." Id. at 10.

A thorough review of the record leaves us satisfied that clear and convincing evidence supports the trial court's findings and conclusion set forth above, which in turn support the court's ultimate decision to terminate Mother's parental rights to S.H. S.H. was initially taken into protective custody due to Mother's neglectful conduct, addiction to alcohol, and history of involvement with DCS. At the time of the termination hearing, Mother was unable to demonstrate that these conditions had improved or that she was capable of providing S.H. with a safe, stable, and addiction-free home environment.

Testimony from various service providers and caseworkers during the termination hearing makes clear that, although Mother initially complied with court orders, upon her release from house arrest in October 2007, Mother immediately discontinued all participation in services, including visitation with S.H. Several months later, Mother moved to Tennessee and failed to initiate any contact with DCS for approximately one

year. In addition, Mother cut off all communication with S.H. and his relative foster parents during this time and failed to provide any financial or emotional support for S.H.

During the termination hearing, DCS family case manager Amy Neimeyer-Davis confirmed that Mother had not been compliant with nor completed the court-ordered services that were referred to her either through the Decatur or Marion County DCS offices. When asked whether Mother had consistently kept in contact with DCS, Neimeyer-Davis answered in the negative and further explained that Mother did not contact her or DCS from the time she was assigned the case in May 2008 until January 2009. Neimeyer-Davis also confirmed that Mother's last visit with S.H. had been in October 2007, that Mother had been arrested in December 2007 for public intoxication and in March 2008 on a warrant for possession of a controlled substance, and that at the time of the termination hearing Mother was serving a one-year sentence on house arrest. When Neimeyer-Davis was asked whether she had ever "seen [Mother] exhibit a willingness or a desire to be reunified with [S.H.]" during her time as a family case manager, Neimeyer-Davis replied, "No, not until January of 2009." Tr. at 10. When later questioned as to whether the progress made by Mother was, in her opinion, "essentially too little too late[,]" Neimeyer-Davis answered, "Yes." Id. at 18.

Similarly, in recommending termination of Mother's parental rights, Stevens informed the trial court that she had worked with Mother "[s]ince the beginning" of the case in July 2007. Tr. at 20. Stevens confirmed that Mother initially participated in reunification services for approximately three to four months while on house arrest, but that in October 2007 Mother became discouraged and asked Stevens "to stop calling."

Id. at 21. On November 14, 2007, Mother telephoned Stevens and informed her that she was "moving to a different state" and "was basically done with services," despite Steven's encouragement to remain engaged in services and to continue to work on "her addictions problems." Id. at 22. Approximately two weeks later, Mother told Stevens that she "realized that she was not gonna [sic] get her son back" and that she was "ready to sign her [parental] rights over[.]" Id. When asked whether Mother's house arrest ended at approximately the same time Mother stopped participating in services and left Indiana, Stevens answered, "Yes it did." Id. at 23. Stevens also informed the court that the results of Mother's substance abuse evaluation indicated Mother "had a high probability of having a substance dependence disorder" and that Mother "was very aware of this." Id.

Finally, Mother's own testimony supports the trial court's findings. Although Mother testified during the termination hearing that she believed she was capable of caring for S.H., she also admitted she was currently unemployed, living with her boyfriend and three-week-old baby, and serving a one[-]year house arrest sentence, followed by two years of probation, on her March 2008 conviction for possession of a controlled substance. Mother also admitted that she had failed to complete court-ordered reunification services and that, although she had been aware of S.H.'s address and contact information at all times during the CHINS case, she failed to visit with S.H. or to provide him with any sort of financial or emotional support, including diapers, formula, or birthday cards, since October 2007. We have previously explained that the failure to exercise the right to visit one's child "demonstrates a lack of commitment to complete the

actions necessary to preserve [the] parent-child relationship." Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied.

Mother also acknowledged during the termination hearing that she had known that she had an "alcohol problem" and needed to "sober up" prior to moving to Tennessee in 2008. Id. at 39. When asked whether she had completed "any sort of formal [IOP]" to overcome her addiction to alcohol, Mother testified that she had attended "seventeen [Alcoholic Anonymous] meetings out of twenty." Id. at 46. When further questioned as to whether she could provide the court with any proof of her participation in said meetings, Mother replied, "No." Id.

Based on the foregoing, we conclude that clear and convincing evidence supports the trial court's findings, which in turn support the court's conclusion that there is a reasonable probability the conditions resulting in S.H.'s removal or continued placement outside Mother's care will not be remedied. Although DCS made multiple referrals for Mother to participate in services designed to improve her parenting ability, overcome her addiction to alcohol, and facilitate her reunification with S.H., Mother's initial participation in services essentially evaporated upon her release from house arrest. By the time of the termination hearing, she had failed to successfully complete a majority of the trial court's dispositional goals.

"A pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, support[s] a finding that there exists no reasonable probability that the conditions will change." Lang, 861 N.E.2d at 372. Moreover, as previously explained, a juvenile court must judge a parent's

fitness to care for his or her children at the time of the termination hearing, taking into consideration the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the children. D.D., 804 N.E.2d at 266. It is clear from the language of the judgment that the juvenile court gave more weight to the evidence of Mother's habitual pattern of neglectful conduct, criminal activity, untreated addiction to alcohol, and failure to successfully complete services, than to Mother's purported change in circumstances, which the court was permitted to do. See Bergman v. Knox County Office of Family & Children, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001). Mother's arguments on appeal, emphasizing, among other things, her self-serving testimony regarding her current living arrangement with her boyfriend and undocumented attendance at Alcoholics Anonymous meetings, as opposed to the evidence cited by the trial court in its termination order, amount to an invitation to reweigh the evidence, which we may not do. D.D., 804 N.E.2d at 265.

This court will reverse a trial court's termination order only upon a showing of "clear error"–that which leaves us with a definite and firm conviction that a mistake has been made. A.J. v. Marion County Office of Family & Children, 881 N.E.2d 706, 716 (Ind. Ct. App. 2008), trans. denied. We find no such error here. Accordingly, the trial court's judgment terminating Mother's parental rights to S.H. is hereby affirmed.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.