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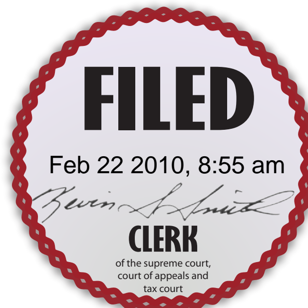

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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF L.S., E.S., and M.W., MINOR CHILDREN, AND THEIR MOTHER, A.W. (f/k/a A.S.),

A.W. (f/k/a A.S.)

Appellant/Respondent,

vs.

INDIANA DEPARTMENT OF CHILD SERVICES,

Appellee/Petitioner.

No. 20A03-0907-JV-329

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
The Honorable Deborah A. Domine, Magistrate
Cause Nos. 20C01-0902-JT-10, 20C01-0902-JT-11, 20C01-0902-JT-12

February 22, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Respondent A.W. ("Mother") appeals the juvenile court's order terminating her parental rights to L.S., E.S., and M.W. 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 three children, M.W., L.S., and E.S. (collectively "the children") at issue in this appeal.[1] M.W. was born on January 18, 2003. L.S. and E.S. are twins who were born on September 26, 2007. L.S. and E.S. were born prematurely and have never lived with Mother. The children were placed in protective custody by DCS on November 5, 2007. L.S. and E.S. were placed in protective custody because of the actions and statements provided by Mother. M.W was placed in protective custody because Mother was allowing an older male to share a bedroom with M.W. after having previously failed to protect M.W. from sexual molestation. M.W. has not lived with Mother since being placed in protective custody. L.S. and E.S. were placed in the care of their paternal grandparents, and M.W. was placed in foster care.

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[1] C.W., the biological father of M.W., and E.S., the biological father of L.S. and E.S., have voluntarily relinquished their parental rights and are not at issue in this appeal.

On November 14, 2007, DCS filed petitions alleging that the children were Children in Need of Services ("CHINS"). The CHINS Petitions alleged as follows:

> A. … [E.S.] and [L.S.] have been hospitalized since their birth and are currently in the neonatal intensive care unit of Memorial Hospital. Hospital Staff have concerns about [Mother] and [Father]'s ability to care for the babies, in part because neither parent feeds the babies on a consistent and regular basis. [Mother] has a history of mental health issues and has recently exhibited some irrational and erratic behavior, which causes concern about her ability to care for the children. Upon the babies['] discharge from the hospital, they will need special medical equipment, which necessitates the use of a telephone line in the home. The parents currently do not have a phone line in their home. Hospital staff has expressed concern that the parents have not expressed interest in learning how to use the medical equipment which the babies will need.
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> B. In June of 2007, [DCS] substantiated the molest[ation] of [M.W.]. The alleged perpetrator was a family friend. Despite the substantiated child molest, [Mother] continued to allow [M.W.] to be unsupervised with the alleged perpetrator. [Mother has] recently allowed a man, whose last name [she does] not know, to live in [her] home and share a bedroom with [M.W.].

Appellant's App. pp. 68-73. On December 10, 2007, Mother admitted to the allegations in the CHINS petitions. The juvenile court accepted Mother's admission, held a dispositional hearing, and ordered Mother to submit to psychological and psychiatric evaluations, that she successfully complete parenting classes, that she obtain and maintain a reliable source of income to support the children, and that she pay child support. In November of 2008, Mother signed a voluntary relinquishment of her parental rights to the children. Mother subsequently requested that the voluntary relinquishment be withdrawn. The juvenile court granted Mother's request and withdrew the voluntary relinquishment. In the time since the CHINS action was filed, Mother has moved to Kentucky, remarried, and had another child. To date,

Mother has not successfully completed all of the services ordered by the juvenile court, and her contact with her DCS case manager and the children has been sporadic.

On February 20, 2009, DCS filed a petition to involuntarily terminate Mother's parental rights. On June 8, 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 all three children by the twins' paternal grandparents. On June 12, 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 the parents' parental rights, DCS must establish by clear and convincing evidence that:

> (A) one (1) of the following exists:
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> (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) (2008). Specifically, Mother claims that DCS failed to establish that the conditions that resulted in the children's removal or the reasons for placement outside of Mother's care will not be remedied, that the continuation of the parent-child relationship posed a threat to the children's well-being, and that termination of Mother's 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 and that the continuation of the parent-child relationship poses a threat to the children. Although Mother claims that DCS failed to establish both of the elements outlined in Indiana Code section 31-35-2-4(b)(2)(B), we note 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 their 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 the children were removed from Mother's care because Mother failed to provide for the safety and welfare of L.S. and E.S. following their premature birth, and Mother failed to adequately provide M.W. with an adequate level of care and supervision. In support of its determination that these conditions would not likely be remedied, the juvenile court found as follows:

> i. Karen Matthews is a Clinical Social Worker at Memorial Hospital in South Bend. She testified that after the birth of [E.S.] and [L.S.], the hospital staff became concerned over the ability of [Mother] to care for the babies, and provide for their safety and welfare upon discharge from the hospital. Matthews reported that [Mother] slept through feedings, and failed to complete the paperwork necessary for the babies to be placed on Medicaid, which she said was necessary to meet the children's post hospitalization needs. Former DCS case manager Jackie Stoy testified that [E.S.] and [L.S.] were placed in protective custody because [Mother was] not providing the children with the care they needed.
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> ii. Also according to Jackie Stoy's testimony, [M.W.] was subsequently placed in protective custody because of a lack of care and supervision by [Mother]; [M.W.] was molested, and yet [Mother] continued to allow the child to share a bedroom with the man who victimized her. Exhibit 4, admitted without objection, is the record of [M.W.]'s CHINS case. The CHINS Petition filed on November 14, 2007, alleges that [Mother] allowed [M.W.] unsupervised contact with her alleged perpetrator, and that [Mother] allowed the perpetrator to live in the family home, and share a bedroom with [M.W.] The Psychological Assessment on [Mother] completed by Dr. Jay Shetler (Exhibit 7, admitted without objection) notes that the sexual abuse perpetrated against [M.W.] "may have been going on for as long as two years."
>
> iii. The children were removed from the care of their mother based upon a lack of care and supervision provided by [Mother]. Those conditions have not changed, [Mother] continues not to provide, or be able to provide, for the care and supervision for her children. [Mother] testified that she has lived in Kentucky for more than a year, while the children remain in Indiana. Dr.

Shetler's Psychological Assessment notes that [Mother] "has little contact with her children since moving to Kentucky." The second case manager assigned to this case, Diana Hampton, testified that [Mother] moved to Kentucky in March of 2008, and since the move she has had few visits with her children and never paid any child support.

iv. The Psychological Assessment notes that [Mother] has a significant and long history of mental health problems. [Mother] reports that she has been diagnosed with multiple personalities, schizophrenia, depression, obsessive-compulsive disorder, and bipolar. Since moving to Kentucky, the assessor notes that she has been hospitalized three times, and has attempted suicide at least once by overdose. Records from Madison Center, reviewed by Dr. Shetler in his assessment, document an emergency hospitalization for [Mother] on December 31, 2006, resulting from [Mother] reporting suicidal and homicidal thoughts and because [Mother] expressed fear over daily thought of drowning then 3-year old [M.W.] during bath times. The cited report quotes [Mother] as saying that "if she just held her ([M.W.]'s) head under the water until she stopped breathing her problems would be over." The 2006, hospitalization is one of many; [Mother] has stated that she has been hospitalized for mental illness so many times she can not remember how many hospitalizations have occurred. Dr. Shetler concluded in his report that if [Mother] is allowed contact with her children, all visits with her children must be supervised until [Mother] demonstrates greater psychological stability, and there is documentation of improved mental health functioning. Dr. Shetler's report concludes that "[Mother]'s problems are chronic and severe, and they are not likely to improve quickly or easily. Thus, her prognosis for significant improvement is probably quite poor. It may be necessary to consider placement options other than reunification." The doctor's report recommended AA or NA to address addictions, and mental health treatment.

v. The current DCS case manager assigned to these cases, Tiffany Smith, testified that [Mother] has completed few services necessary to facilitate reunification. That includes services recommended by Dr. Shetler, and those advocated by the DCS.

vi. [Mother] claims to have gotten involved in drug treatment two weeks ago, and claims to have gotten involved in therapy with a therapist named "Jodi" or "Julie," she was not sure of the exact name. And she provided no documentation of any involvement in any treatment. Moreover, [Mother] demonstrated little insight into her need for treatment during her own testimony. Although in the Psychiatric Evaluation, completed by Dr. Josh Mathews, M.D., at Oaklawn (Exhibit 9, admitted without objection), [Mother] is quoted as admitting to having used crack cocaine, and admitted to a recent incident, since moving to Kentucky, involving heavy drinking and taking a handful of pills. During her testimony at trial she explained that she no longer

has a problem; she explained that she used to drink, but she stopped drinking two weeks ago when she started her Intensive Outpatient Program. It must be noted and considered that as a result of the most recent incident of drugs and drinking in Kentucky, the Psychiatric Evaluation reports that [Mother] reported waking up in a hospital. The court has no doubt that this kind of behavior would be a threat to the well-being of any child.

vii. Finally, the court finds inconsistency in [Mother]'s commitment to her children. [M.W.]'s foster mother, Rebecca Hurley, and [L.S.] and [E.S.]'s relative foster care provider, Robert Schmidt, both testified that since moving to Kentucky, [Mother] has only visited with her children twice. DCS case manger, Tiffany Smith, testified that she attempted to encourage [Mother] to move back from Kentucky to Indiana in order to complete services and facilitate reunification with her children, but [Mother] refused. [Mother] testified that she would "fly to the moon for her children", but stated several times during testimony that she would not move back to Indiana. In October [Mother] went so far as to sign a Voluntary Relinquishment of Parental Rights asking that her rights with respect to her three children be terminated and then she turned around two months later asking that the consent to terminate be withdrawn.

viii. … The court finds that [Mother]'s habitual pattern of conduct, including a lengthy history of mental illness and hospitalizations going back to when she was 10-years old (Exhibit 7), and a history of neglecting her children's needs, indicate that there is a substantial probability of future abuse or neglect. [Mother]'s demonstrated inconsistency in her commitment to the children add to that concern.

Appellant's App. pp. 26-30.

Upon review, we determine that each of the juvenile court's findings are supported by the record. The record reveals that Mother has a history of substance abuse and that serious questions remain regarding Mother's psychological stability. Although Mother claims to have entered into treatment for her substance abuse and psychological issues, Mother has provided no documentation substantiating her claim. Notably, Mother has failed to complete court-ordered services, has had inconsistent contact with the children and DCS case managers, and has a history of being uncooperative with DCS case managers and services providers. "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). We therefore conclude that the evidence was sufficient to support the juvenile court's determination that the conditions that resulted in the children's removal from Mother's care are unlikely to be remedied. 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 child involved. *Id*.

On appeal, Mother correctly asserts that her parental rights should not be terminated solely because there is a better home available for the children. *In re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Our review of the evidence, however, does not reveal that the juvenile court's termination of Mother's parental rights was based on who could provide a "better" home for the children, but instead was properly based on the inadequacy of Mother's custody. *In re V.A.*, 632 N.E.2d 752, 756 (Ind. Ct. App. 1994) (stating that it is the inadequacy of parental custody and not the superiority of an available alternative that determines whether parental rights should be terminated). 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 child's best interests. *McBride*, 798 N.E.2d at 203.

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, Anne Hostetler, testified to the children's need for permanency and stated that she fully supported DCS's plan for the children. Hostetler further testified that, as the children's advocate, she could not advocate for reunification because Mother has not followed through on services and has failed to prove that she could provide the children with a safe and stable home. Hostetler stated that she believed Mother was granted sufficient time to complete services prior to the initiation of termination proceedings. Likewise, DCS case manager Tiffany Smith testified to the children's need for permanency. Smith also testified that she believed Mother had been granted enough time to complete services, stating that "it's not helping the children out waiting that long as well, because they do need to have some kind of permanency. And allowing assessment to go without being completed, we're not really solving the reason why the children are not with [Mother]." Tr. p. 211-12. Additionally, Dr. Allen Stuckey, a child psychiatrist who has treated M.W., opined that M.W. needs a stable home where she feels safe, where she does not have to fear that she will again be sexually abused or exploited. The court also heard testimony that the children are, for the most part, well-adjusted and happy but that M.W. becomes sad and withdrawn after contact with Mother. 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 DCS case manager, the CASA, and Dr. Stuckey, 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.

NAJAM, J., and FRIEDLANDER, J., concur.