ATTORNEY FOR APPELLANT:

RONALD E. McSHURLEY
Muncie, Indiana

ATTORNEY FOR APPELLEE:

JAMES E. MOORE
Indiana Department of Child Services
Muncie, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination of the Parent-Child Relationship of D.P. and A.P., the Minor Children, and A.A., their Mother	)	
A.A.,	)	
Appellant-Respondent,	)	
vs.	)	No. 18A02-0906-JV-566
STATE OF INDIANA, DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Richard A. Dailey, Judge
The Honorable Brian Pierce, Master Commissioner
Cause Nos. 18C02-0812-JT-89 and -90

February 23, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

A.A. ("Mother") appeals the involuntary termination of her parental rights to her children A.P. and D.P. Mother challenges the sufficiency of the evidence supporting the trial court's termination orders.

We affirm.

FACTS AND PROCEDURAL HISTORY

The facts most favorable to the trial court's judgments reveal that Mother is the biological mother of at least ten children, including A.P., born on March 4, 2006, and D.P., born on June 9, 2007 (together, "the children"). Mother has a history of drug addiction and involvement with the Delaware County Department of Child Services ("DCDCS") that spans more than a decade.[1] In May 2008, DCDCS case worker Brad Robertson received a report of environment and life and health endangerment involving Mother and the children. Among other things, the report alleged Mother and her own mother, S.M., were using and selling drugs at the family home and in the presence of the children.

Robertson initiated an investigation. Although the condition of the home appeared "totally appropriate," Mother tested positive for cocaine. *Tr.* at 52. After consulting with his supervisor, Robertson was instructed to allow the children to remain in Mother's care subject to certain conditions. Mother was offered treatment services through Meridian

[1] At the time of the termination hearing, none of Mother's biological children were in her care or custody. In addition, the record suggests that Mother may have one additional child who lives out-of-state, but DCDCS has been unable to identify and/or locate that alleged child. A.P. and D.P. are the only children subject to these proceedings, and their biological father, R.P., does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother's appeal of the involuntary termination of her parental rights to A.P. and D.P.

Services, asked to sign a safety plan that required her to submit to a drug and alcohol evaluation and follow all resulting recommendations, and warned that any future reports of neglect or failure to abide by the terms of the safety plan could result in additional actions by DCDCS, including initiation of child in need of services ("CHINS") proceedings and/or removal of the children. Mother voluntarily signed and agreed to abide by the safety plan on May 20, 2008.

On or about June 30, 2008, DCDCS received another referral involving Mother and the children. This new report alleged a very young child was observed walking alone by a busy street near Mother's home. DCDCS case manager, Kathryn Davis, initiated an investigation the same day. Initially, Davis was unable to locate anyone at Mother's home. During Davis's second visit to the home at the end of the work day, Mother answered the door and told Davis she lived alone with her two children in the one-bedroom apartment.[2] Mother allowed Davis to inspect her apartment, which appeared to Davis to be "adequately clean" and "okay." *Id.* at 17.

Upon arriving at work the following day, Davis entered Mother's name in the computer system and discovered Mother had up to seven additional children who had been previously involved with DCDCS. This information contradicted Mother's statement the day before that she had only two children. Davis also learned that since 1998, DCDCS had substantiated at least sixteen separate referrals for child abuse and neglect involving Mother and her children, rather than just a single incident the preceding

[2] Mother lived in a house that had been divided into three separate rental units.

month as Mother had suggested. In addition, the report revealed Mother had a long history of drug abuse, had been the subject of at least three prior involuntary termination proceedings, and tested positive, not negative as Mother had claimed, for cocaine during DCDCS's investigation just one month earlier.

Based on this newly discovered information, Davis became "extremely concerned" for the safety and welfare of A.P. and D.P. *Id.* at 23. Davis therefore decided to revisit the family home to obtain a drug screen from Mother and check on the children. Mother complied with Davis's request for a drug screen. Mother also admitted to having ten biological children when Davis confronted her with the information Davis had obtained from DCDCS's records.

On July 3, 2008, Davis was notified that Mother's most recent drug screen was positive for cocaine and metabolized cocaine. DCDCS therefore decided that the children should be taken into emergency protective custody. When Davis went to Mother's apartment to remove the children, Mother initially refused to answer the door. Eventually, with the help of local police personnel, Mother opened the door and informed Davis that the children were in Anderson, Indiana, with a relative. A subsequent inspection of the home confirmed the children were not present. The condition of the apartment, however, had changed drastically from Davis's last visit, as there were approximately eight unrelated adults in the home, and a secret room was discovered behind a sliding wall.

In an attempt to confirm the children's safety and whereabouts, Davis called the police in Anderson and requested they check the address provided by Mother. Davis also proceeded to the relative's home. Upon her arrival, Davis was unable to locate the relative of the children, but an unidentified male, who indicated he also lived in the residence, allowed Davis and the police to search the home. The children were not present, and there was no indication that any children had been staying in the home. Davis then returned to Mother's apartment, but she was no longer at home.

Although the children's whereabouts remained unknown, DCDCS proceeded with a detention hearing on July 7, 2008. Mother attended the hearing with A.P. and D.P. At the conclusion of the hearing, the children were removed from Mother's care and temporarily placed in foster care. DCDCS thereafter filed petitions under separate cause numbers alleging each child was a CHINS.

An initial hearing on the CHINS petitions was held in July 2008, during which Mother admitted to the allegations therein. On July 30, 2008, the trial court issued orders in each cause adjudicating A.P. and D.P. to be CHINS, directing both children to remain in relative foster care with a maternal cousin, R.J., and setting the matter for disposition. Between July 7 and August 7, 2008, Mother was scheduled for approximately twelve supervised visits with the children. Mother attended only three of these visits. Mother's proffered reason for missing visitation with her children was that the visits conflicted with her job. Despite repeated requests, however, Mother refused to provide DCDCS

caseworkers with verification of her employment. Mother also tested positive for cocaine and opiates on August 7, 2008.

On August 11, 2008, Mother was arrested and incarcerated for failing to appear on charges of neglect of a dependent pertaining to a child that was not her own, possession of a controlled substance, and false identifying. Mother remained incarcerated for approximately five months and eventually pled guilty to all three charges. The criminal court accepted Mother's plea and ordered sentencing in the matter on January 8, 2009.

Meanwhile, in October 2008, the trial court entered orders, pursuant to Indiana Code section 31-34-21-5.6, finding reasonable efforts to reunify the children with Mother were not required, as Mother's parental rights to at least two other children had been involuntarily terminated in prior actions. The trial court's orders further directed DCDCS to cease any reasonable reunification or family preservation efforts. DCDCS thereafter filed petitions seeking the involuntary termination of Mother's parental rights to A.P. and D.P. in December 2008.

A consolidated fact-finding hearing on both involuntary termination petitions was held in April 2009. At the time of the hearing, Mother was released from incarceration and serving approximately two years on probation. On June 8, 2009, the trial court issued its judgments terminating Mother's parental rights to A.P. and D.P. 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 case, 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.

The "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.

Before an involuntary termination of parental rights may occur, 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 court's findings as to subsection 2(B) of the termination statute cited above. *See* Ind. Code § 31-35-2-4(b)(2)(B). Specifically, Mother admits that she "made no effort to prove that [DCDCS's] evidence was incorrect" concerning her "past drug usage" or "the number of

children she has given birth to" and thereafter lost custody of during the termination hearing, and that she "accepts full responsibility" for her past mistakes. *Appellant's Br.* at 10. Nevertheless, Mother asserts that "[j]ust as her . . . history is undisputed, it is [also] undisputed that her current situation in one where she is now drug[-]free" and "taking steps to improve her life" to better care for her children. *Id.* at 10-11. Mother therefore contends the trial court committed reversible error because it "gave no consideration to her 'changed conditions' as required by law." *Id.* at 11.

We pause to note that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, DCDCS was required to establish, by clear and convincing evidence, only one of the two requirements of subsection 2(B). *See L.S.*, 717 N.E.2d at 209. In its termination order, the trial court found both prongs of subsection 2(B) had been satisfied. Because we find the issue to be dispositive, in the present case we need only consider whether sufficient evidence supports the trial court's determination that there is a reasonable probability the conditions justifying A.P's and D.P.'s removal or continued placement outside Mother's care will not be remedied.

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*. The trial 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 a county department of child services, and the parent's response to those services, as evidence of whether conditions will be remedied. *Id.* Finally, we point out that a county department of child services (here, DCDCS) is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In its judgments terminating Mother's parental rights to A.P. and D.P., the trial court made several specific findings pertaining to Mother's history of involvement with DCDCS, including the involuntary termination of her parental rights to at least two other children and the multiple substantiations of child abuse and neglect. The trial court also specifically found as follows:

> 3. The child[ren] [were] originally adjudicated CHINS because drugs were being sold and used in the home where the child[ren] resided and [M]other tested positive for cocaine.
>
> 4. When [Mother] was informed that her children were being detained, she falsely reported that the children were residing with [a relative] in Anderson, Indiana.
>
> * * *
>
> 10. That [Mother] has given birth to at least ten (10) children, none of [whom] she cares for or has the legal responsibility to parent.
>
> * * *
>
> 13. That [Mother] tested positive for cocaine on May 2008, July 1, 2008, August 7, 2008.

> 14. That [Mother] was again untruthful to this court when she testified that she was not using cocaine during the time in which she tested positive for the substance in July and August 2008, for she later admitted that she was indeed actively using cocaine during that time period.
>
> 15. That [Mother] requests that she be given a "second chance" to become a parent to her children. [Mother] was afforded that chance in May 2008 when [DCDCS] investigated allegations of her drug use, where she tested positive for cocaine at that time, and when [DCDCS] did not remove the children from her care. Instead of utilizing that "second chance" to stop using drugs and cooperating with a substance abuse evaluation, as called for in the safety plan that she signed, she continued to use cocaine and put her children at risk.
>
> 16. That the CASA agrees that it is in the best interest of the child[ren] to terminate the parental rights of [Mother], stating that she believes [Mother's] recent improvements [are] "too little too late."
>
> 17. That based on the foregoing, there is a reasonable probability that the conditions that resulted in the child[ren's] removal will not be remedied.

Appellant's App. at 104-06.[3] The evidence most favorable to the judgment supports these findings, which in turn support the trial court's conclusion that there is a reasonable probability the conditions resulting in the children's removal will not be remedied, as well as its ultimate decision to terminate Mother's parental rights to A.P. and D.P.

Testimony from various caseworkers during the termination hearing makes clear that since 1998, Mother has been the perpetrator of more than sixteen substantiated reports of child abuse and neglect against her ten biological children. Moreover, by the time of the termination hearing, Mother had lost care and custody of all ten children,

[3] The language of the trial court's judgments terminating Mother's parental rights to A.P. and D.P. cited to herein are substantially the same. We therefore cite to only one.

including A.P. and D.P., due to her habitual neglectful conduct, refusal to cooperate with case workers, and inability to refrain from the use of illegal substances. Mother also repeatedly lied to the trial court and DCDCS caseworkers throughout the entirety of the underlying proceedings, both prior to and during the termination hearing, regarding such matters as the number of children she had given birth to, the specific whereabouts of her children, her past involvement with DCDCS, her criminal activities, and her long-standing addiction to cocaine. Moreover, when given yet another chance to receive services and retain custody of A.P. and D.P. as recently as May 2008, Mother once again rejected DCDCS's offer of help and chose to place her children at risk by continuing to use illegal substances and participate in criminal activities, resulting in five months of incarceration during the underlying proceedings. This court has previously recognized that "[i]ndividuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children." *Castro v. State Office of Family & Children*, 842 N.E.2d 367, 374 (Ind. Ct. App. 2006), *trans. denied*.

Mother's current case manager, Melissa Strus, confirmed that, as of the date of the termination hearing, Mother's parental rights to three other children had already been involuntarily terminated, three children were in a formal guardianship, and two additional children were in separate relative placements. Strus also testified that despite scheduling approximately twelve supervised visits for Mother and the children between July and August 2008, Mother only attended three of the scheduled visits. When asked if she

agreed, given Mother's history, that the conditions resulting in A.P.'s and D.P.'s removal or continued placement outside Mother's care will *not* be remedied, Strus answered, "Yes." *Tr.* at 79. Similarly, although the court-appointed special advocate ("CASA") discussed Mother's recent strides toward improving her life, the CASA ultimately recommended termination of Mother's parental rights stating, "I think it might just be a case of too little too late . . . . [W]e've got to make sure that [Mother's] kids stay safe. And so reluctantly and sadly, in the end . . . I think we should probably terminate [Mother's] rights . . . ." *Id.* at 140.

Finally, Mother's own testimony confirms her long-time addiction to cocaine and continuing dishonesty with the trial court and DCDCS throughout the underlying proceedings. During cross-examination, Mother initially insisted that, despite her positive drug screens in July 2008, she was not actually using drugs. Mother went on to explain that she had tested positive for cocaine because there were drugs "in [the] home" and on her "dishes" and because her own mother had turned her house "into a crack house." *Id.* at 114-16. Mother also testified that she never actually committed the criminal offenses charged in the plea agreement but had nevertheless admitted to the charges to avoid additional jail time. Upon further questioning by the court, however, Mother recanted and admitted that she had in fact used cocaine in June and July of 2008 and committed all three criminal offenses. Mother also admitted that her life had really not begun to "turn around" until she was "sitting in jail," and that the longest period of

time she had been sober during the preceding thirteen years was for approximately two years when she was pregnant. *Id.* at 133.

Based on the foregoing, we conclude that the trial court's findings are supported by clear and convincing evidence. These findings, in turn, support the court's ultimate decision to terminate Mother's parental rights to A.P. and D.P. As previously explained, 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 the parent's *habitual patterns of conduct* to determine the probability of future neglect or deprivation of the child. *D.D.*, 804 N.E.2d at 266. Although we commend Mother for her recent attempts to improve her life by taking a two-week parenting class and working toward her G.E.D. while incarcerated, as well as refraining from the use of cocaine and regularly visiting with A.P. and D.P. upon her release, at the time of the termination hearing Mother remained unable to demonstrate she was capable of providing A.P. and D.P. with a consistently safe, stable, and drug-free home environment.

"[T]he time for parents to rehabilitate themselves is during the CHINS process, prior to the filing of the termination petition." *Prince v. Dep't of Child Servs.*, 861 N.E.2d 1223, 1230 (Ind. Ct. App. 2007). Notwithstanding Mother's recent self-improvements, her habitual pattern of conduct for more than a decade indicates there is a substantial probability of future neglect and deprivation of the children should they be returned to her care. Moreover, contrary to Mother's assertion on appeal, the trial court's

comments at the end of the termination hearing make clear it considered all the evidence presented during the hearing, including the evidence of Mother's recent improvements.

Immediately before taking the matter under advisement, the trial court made the following statement, "You take a look at this case and it looks simple from the start[,] but then you have to ponder, ['D]o people change[?][,'] and that's what I've got to figure out . . . . At this point[,] [this] matter is under advisement." *Tr*. at 143. It is clear from this statement, as well as the language of the judgment itself, that the trial court considered Mother's recent efforts at self-improvement, but ultimately gave more weight to the evidence of Mother's habitual pattern of neglectful and abusive conduct, substance abuse, and criminal activities, 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) (concluding trial court was permitted to and in fact gave more weight to abundant evidence of mother's pattern of conduct in neglecting her children during several years before termination hearing than to mother's testimony she had changed her life to better accommodate children's needs). Mother's arguments on appeal, emphasizing the few services she completed instead of 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.

Conclusion

This court will reverse a termination of parental rights '"only upon a showing of "clear error" – that which leaves us with a definite and firm conviction that a mistake has

been made.'" *Matter of A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (*quoting Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Affirmed.

DARDEN, J., and MAY, J., concur.