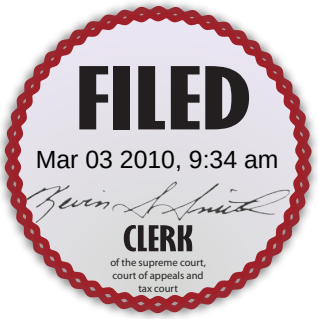

ATTORNEY FOR APPELLANTS:

HAROLD E. AMSTUTZ
Lafayette, Indiana

ATTORNEY FOR APPELLEE:

CRAIG JONES
Indiana Department of Child Services
Lafayette, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF: A.H. AND B.S., Minor Children, and	)	
Tr.S. AND Te.S., Parents,	)	
Appellants,	)	
vs.	)	No. 79A02-0908-JV-727
INDIANA DEPARTMENT OF CHILD SERVICES, TIPPECANOE COUNTY,	)	
Appellee.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Jennifer M. Fehrenbach, Judge
Cause No. 79D03-0903-JT-54/55/56

March 3, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Tr.S. ("Mother") and Te.S. ("Father") appeal the involuntary termination of their parental rights to their children, A.H. and B.S., claiming there is insufficient evidence supporting the trial court's judgment. Concluding that the trial court's termination order is supported by clear and convincing evidence, we affirm.

Mother is the biological mother of A.H., born on December 15, 1997.[1] Mother and Father are the biological parents of B.S., born on January 28, 2007. The evidence most favorable to the trial court's judgment reveals that on or about May 27, 2008, the local Tippecanoe County office of the Indiana Department of Child Services ("TCDCS") received a referral alleging the condition of Mother's and Father's home was dirty, in disarray, and unsafe for small children. The report further alleged that previously there had been no electricity in the home for over a month and that B.S. was being confined to a stroller or car seat all day.

TCDCS intake officer Elizabeth Garretson initiated an investigation on May 29, 2008, by visiting the family home and speaking with Mother. During their conversation, Mother admitted to Garretson that she and Father regularly took B.S. to work with them and that the child spent a lot of time in the stroller or car seat. While at the family home Garretson observed the house to be "cluttered," "dirty," and "in disarray." Appellants' Appendix, Vol. 2, at 254. The following day Garretson returned to the family home and learned that the family, who had been living in the home for only three days, was sharing the apartment with three roommates.

[1] Father is the step-father of A.H. The parental rights of A.H.'s biological father, S.H., were terminated in a separate, unrelated proceeding prior to the commencement of the underlying case. S.H. does not participate in this appeal.

Later the same day, Garretson met with Mother, Father, and both children in Garretson's office. During this meeting, Garretson informed the parents that she was concerned with the conditions of the home. Garretson advised Mother that she would return to the home the following Monday and that significant improvement in the cleanliness of the home was needed before Garretson's next visit. In addition, Garretson requested additional information concerning the identities of the other members of the household. Garretson subsequently discovered one of the women living with Mother and Father had an extensive history of involvement with TCDCS and that the woman's adult daughter, who was also living in the home, was currently the parent in an active child in need of services ("CHINS") case.

Garretson returned to Mother's and Father's apartment on June 2, 2008, and observed that the conditions of the kitchen, bathroom, living room, and bedroom had been "vastly improved." Id. Specifically, there were no longer "tripping or choking hazards" observed within reach of then sixteen-month-old B.S., the dishes had been washed, and the floors had been either cleaned or vacuumed. Id. Consequently, Garretson determined no further action was needed at that time.

Two days later, TCDCS received a report that B.S. had been taken to a local hospital and later flown by helicopter to Riley Hospital for Children in Indianapolis. It was believed B.S.'s sudden deteriorating medical condition may have been caused by ingesting prescription medication. Garretson investigated the referral and later determined that Mother had reason to believe her housemate's prescription pills might have been within reach of B.S. in the living room of the apartment, but Mother had

nevertheless allowed the child to nap on a sofa in the living room unsupervised immediately before the child became ill.

Garretson therefore decided to revisit the family home and to conduct a more thorough investigation of the premises. During this visit, Garretson observed many dead bugs in the cabinets. In addition, Garretson discovered there was very little food in the refrigerator and dead bugs in each section of an empty egg carton. There were also piles of clothing on the floor throughout the home.

On June 5, 2008, TCDCS took A.H. and B.S. into emergency protective custody. TCDCS thereafter filed petitions under separate cause numbers alleging each child was a CHINS. At the time of the children's removal, A.H. was underweight for her age and height, and TCDCS had numerous concerns regarding her mental state.

During a hearing held on July 7, 2008, both parents admitted to the allegations contained in the CHINS petitions. The trial court adjudicated the children CHINS and proceeded to disposition the same day. At the conclusion of the dispositional hearing, the trial court entered orders formally removing the children from Mother's and Father's care and directing both parents to participate in a variety of services in order to achieve reunification. Specifically, Mother and Father were required to, among other things, participate in and successfully complete a parenting education program, as well as family preservation counseling to work on achieving self-sufficiency. In addition, both parents were directed to complete psychological evaluations, exercise regular supervised visits with the children, and obtain stable family housing and income.

Mother's and Father's participation in services was inconsistent from the beginning of the CHINS case. Although both parents regularly attended supervised visits with the children, it appeared to visitation supervisors that the parents oftentimes wanted to end the visits early, claiming the children had lice or were ill. In addition, both parents largely ignored A.H. or made negative comments to her during visits while focusing the majority of their attention on B.S. With regard to obtaining stable housing, the parents chose to live with Mother's cousin from July 2008 until March 2009, even though it was made clear to them early in the CHINS case that TCDCS found this living arrangement to be unsuitable for reunification purposes because the house was too small to accommodate the family's needs and because Mother and Father had been evicted by the cousin in the past.

The parents' respective searches for employment were also unsuccessful. Mother obtained two jobs during the first eight months of the CHINS case, but held each job for less than two weeks. Father submitted multiple applications for employment, but he, too, was unable to obtain steady employment. In addition, by November 2008, Mother had ceased participating in all mental health services.

On May 6, 2009, TCDCS filed petitions seeking the involuntary termination of Mother's and Father's parental rights to both children. A fact-finding hearing on the termination petitions was held on June 4, 2009, after which the trial court took the matters under advisement. On July 1, 2009, the trial court issued judgments terminating Mother's and Father's parental rights to their respective children. This consolidated appeal ensued.

Standard of Review

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). Thus, when reviewing a trial court's judgment terminating a parent-child relationship, 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 therefrom that are most favorable to the judgment. Id.

Here, the trial court's termination orders contained specific findings of fact and conclusions thereon. When reviewing findings of fact and conclusions of law entered in a case involving the termination of parental rights, we apply a two-tiered standard of review. First, we must determine whether the evidence supports the findings. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). Second, we determine whether the findings support the judgment. Id.

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; see also Bester, 839 N.E.2d at 147. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. D.D., 804 N.E.2d at 265. A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment. Bester, 839 N.E.2d at 147.

Discussion and Decision

"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. Furthermore, because termination severs all rights of a parent to his or her child, the involuntary termination of parental rights is arguably one of the most extreme sanctions a court can impose. In re T.F., 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), trans. denied. Such a sanction is therefore intended as a last resort, available only when all other reasonable efforts have failed. Id. Parental rights are not absolute, however, and must be subordinated to a child's interests in determining the proper disposition of a petition to terminate a parent-child relationship. Id. Because the purpose of terminating parental rights is to protect the child, not to punish the parent, parental rights may be properly terminated when a parent is unable or unwilling to meet his or her parental responsibilities. K.S. 750 N.E.2d at 836.

In order to terminate a parent-child relationship, 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). The State's burden of proof for establishing these allegations in termination 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)). If the

court finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship. Ind. Code § 31-35-2-8 (2008).

Here, the trial court found TCDCS presented sufficient evidence to satisfy both prongs of Indiana Code Section 31-35-2-4(b)(2)(B). This statute, however, is written in the disjunctive. Thus, TCDCS 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. Because we find it to be dispositive, we consider only whether clear and convincing evidence supports the trial court's findings regarding Indiana Code Section 31-35-2-4(b)(2)(B)(i).

Remedy of Conditions

Mother and Father argue TCDCS failed to prove there is a reasonable probability the conditions necessitating the children's removal and continued placement outside their care will not be remedied. In so doing, the parents claim the evidence shows they "participated in services and made progress," displayed "many strengths during visits," and there were "no alcohol/drug or abuse concerns." Appellants' Brief at 11. The parents further assert that although income was still "a concern" they have been "able (with community help) to meet their own basic needs during the CHINS" case. Id. Mother and Father therefore contend the trial court committed reversible error in terminating their parental rights.

When determining whether there is a reasonable probability that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his or her children 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 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. Moreover, we have previously explained that the Indiana Department of Child Services (here, the TCDCS) is not required to rule 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 the present case, the trial court's judgments terminating Mother's and Father's parental rights contained extensive findings. Specifically, the trial court found Mother and Father "clearly love" their children, that there was "no evidence of any intentional physical abuse of the children by either [Mother] or [Father]," and that both parents tested negative on all drug and alcohol screens. Appellants' Appendix, Vol. 2, at 461-62. Nevertheless, in ultimately determining that there remains a reasonable probability that both parents' neglectful behavior will not change, the trial court made numerous additional pertinent findings, including the following:

> 3. [Mother] and [Father] are married and intend to continue their relationship.

4. [Mother] failed to comply with requirements to allow . . . [A.H.] to remain on Medicaid, which caused the child's counseling that addressed past sexual abuse by that child's father, [S.H.], to be discontinued.
5. [Mother] and . . . [A.H.] were previously involved in an informal adjustment in 2005.
6. [Father's] parental rights regarding another child were terminated . . . .

* * * * *

8. At the time of the initial report, there were concerns with cleanliness and safety of the home, the ability to pay utility bills, and whether [B.S.] had ingested drugs.

* * * * *

12. [Mother] and [Father] have shown a pattern of chronic instability with respect to housing.
13. [Father] has never lived in a residence for the duration of any lease into which he has entered.
14. Although on the day of the [termination] hearing [Mother] and [F]ather had appropriate housing for themselves, both [Mother] and [Father] acknowledge that they did not know if they would be able to pay the rent that was due three days after the date of the hearing in this matter.
15. The parties have recently had to reach out to the Salvation Army and churches to pay their recent utility bills and to acquire personal toiletry items.
16. [Mother] has exhausted her ability to use transitional housing for at least a year.
17. [Mother] is not eligible for HUD.
18. [Mother's] and [Father's] income is not high enough for them to qualify for Habitat for Humanity.
19. As a result of this instability in housing, . . . [A.H.] has attended eight schools from Kindergarten through fifth grade.
20. Both [Mother] and [Father] are currently unemployed.
21. [Mother] and [Father] have a lengthy history of instability with respect to employment, which precedes the recent downturn in the economy. [Father's] instability dates back to 2003.
22. [Mother] lost at least one job during the . . . underlying CHINS case due to having an emotional breakdown, which included her crying for two hours in a corner while on the job.
23. [Mother] exhibited emotional instability and an inability to focus on the needs of [the children] during facilitated case conferences.

24. Although [Mother] has had periods of improvement during the case, she has been unable to maintain [the children] as a priority.

* * * * *

28. Despite being almost a year into the CHINS case, [Mother] and [Father] have never made enough progress to have the visits proceed past being fully supervised.

29. [The parents] had difficulty expressing five positive phrases to the children per two to three hour visit, as requested by the visit facilitator.

* * * * *

31. Dr. Vanderwater-Piercy found in his psychological evaluation of [Father] that, "Although he is likely of below average intelligence, there is no indication of any cognitive deficits that would compromise his functioning as a parent or limit his ability to benefit from services."

32. [Father's] results on the MMPI-2 were consistent with those of individuals who repeatedly rely on others for support and assistance and who tend to be emotionally labile, self-defeating, and resentful of any demands or responsibilities placed upon them.

33. In her April 27, 2009, progress report, Lisa Harrison, [Father's] counselor, stated that "[Father] . . . is not benefitting from services although he has been compliant."

* * * * *

38. TCDCS provided the following services:

* * * * *

E. Individual counseling for [Mother]
F. Psychological evaluation and parenting assessment for [Mother]
G. Medication [m]anagement for [Mother]
H. Group therapy for [Mother]
I. Individual Counseling for [Father]
J. Psychological evaluation and parenting assessment for [Father]
K. Group therapy for [Father]
L. Couples counseling for [Mother] and [Father]
M. Supervised visits for [B.S.], [Mother], [Father], and [A.H.]
N. Therapeutic visits for [A.H.] and [Mother]
O. Case [m]anagement
P. Family preservation
Q. Parenting education

R. Assistance obtaining employment
S. Assistance obtaining housing

* * * * *

W. Drug screens

39. Despite the array of services provided by TCDCS, [Mother] and [F]ather do not have a sustainable plan for housing, employment, payment of utility bills, and provision of other items needed to provide a sufficient environment for children.

40. The testimony of multiple witnesses, including [Mother], [Father], the TCDCS family case manager, the Director of Child and Family Partners and the CASA, was that each was unaware of any additional services that could be put in place to assist the family.

* * * * *

45. There is a reasonable probability that [Mother's] and [Father's] failure to meet the emotional needs of [the children], the housing instability, the employment instability, and [M]other's emotional instability will not be remedied.

Id. at 465-67.[2] A thorough review of the record leaves us convinced that ample evidence supports the trial court's findings set forth above. These findings, in turn, support the trial court's conclusion that there is a reasonable probability that the conditions resulting in the children's removal or the reasons for their continued placement outside Mother's and Father's care will not be remedied, as well as its ultimate decision to terminate both parents' parental rights to their children.

The record reveals that at the time of the termination hearing, Mother and Father were both unemployed, and neither parent had any plan or prospect for future long-term employment. Although Mother and Father had recently obtained independent housing by leasing a one-bedroom efficiency apartment, this housing was too small to accommodate

[2] Because the language contained in both of the trial court's judgments referred to herein is substantially the same, apart from certain technical variations such as the names of the children and enumeration of the court's findings, etc., we cite to only one judgment throughout this Opinion.

the family if A.H. and B.S. were returned to the parents' care. In addition, both parents admitted during the termination hearing that not only did they not have the money to pay the current month's rent, which was due three days after the termination hearing, but that they had "struggled" to pay their rent the previous month and had to resort to obtaining financial assistance from community programs to do so. Transcript at 102.

When asked during the termination hearing how she planned to "feed" and "put a roof over" the children's heads should the children be returned to her care, Mother indicated she could obtain food for the family with "food stamps," that she "get[s] a lot of hand-me-downs" from friends to clothe the children, and she would go to food pantries for toiletries. Id. at 121-122. When asked if she had "any idea" where the family would live if she and Father were evicted from their current apartment, Mother replied, "No." Id. at 122. Similarly, when asked whether there was "any avenue [he] could see right now" where Father and Mother could "realistically afford a home that could be adequate for two children," Father replied, "Not at this present moment. . . ." Id. at 108. Father also answered in the negative when asked whether he had ever leased a residence in his adult life and then stayed in the residence for "the entire duration of the lease." Id. at 106.

TCDCS family case manager Katherine Holmes testified during the termination hearing about both parents' participation in services. Holmes informed the court that TCDCS initially referred the family to an "intensive wrap[-]around program" in an attempt to address the family's issue of "fundamental [in]stability of employment and residence." Id. at 154. The wrap-around program also provided Mother and Father with

supervised visitation and family preservation services. Holmes testified that despite these services, Mother and Father failed to make any significant progress in obtaining long-term employment and spent most of their time during the first six to eight months of the CHINS case "arguing with me about whether or not they should have to find stable housing." Id. at 159.

With regard to Mother's mental health issues, the record reveals Dr. Vanderwater-Percy diagnosed Mother with depression and anxiety disorder, as well as a histrionic personality style. Mother had also been previously diagnosed with Attention Deficit Hyperactivity Disorder. Although Mother initially attended weekly individual counseling sessions at Child and Family Partners and group therapy for her depression at Wabash Valley, her participation in counseling services became increasingly inconsistent and, according to Holmes, the progress Mother had made began to "unravel[]" beginning in late November 2008. Id. at 163. Soon thereafter, Mother was unsuccessfully discharged from Child and Family Partners for repeatedly failing to show for her scheduled appointments. In addition, Mother became ineligible to receive her prescription depression medication free of charge through Wabash Valley when she stopped participating in their group therapy program.

When asked whether the parents had achieved any sustained change as a result of their participation in services, Child and Family Partners Director Vivian Leuck initially acknowledged Mother had "improved temporarily in her ability to deal with things" when she was taking her prescription medication. Id. at 71. Leuck later testified, however, that even without the family's problems with housing and employment, termination was still

the most likely result due to "Mother's health issues, the history of the family, and the effect that all the history has had on the kids." Id. at 73-4. When asked whether Father had achieved any sustained change, Leuck stated Father had been better than Mother at attending his therapy sessions but concluded, "[Father] just seems to be the same [Father] . . . . I don't think there's been great milestones gained." Id. at 72.

Court Appointed Special Advocate ("CASA") Sue Goecker likewise advised the court that she had not seen any sustained improvements in the parents' overall performance during the CHINS case. In recommending termination of Mother's and Father's parental rights, Goecker informed the court that she did not think Mother and Father are "really capable of providing what the children need." Id. at 142. Goecker further explained, "[T]here's no house, there's no stability, it's move here, move here, move here. When I went to get the school records[,] [A.H.] had been in seven or eight, nine school[s] . . . [since] she started school." Id. When asked whether she believed there was a "meaningful chance that with time and effort [Father] and [Mother] could fix these problems," Goecker answered in the negative and explained that it "[s]eems like [Mother and Father] are in a cycle . . . and they've been given lots of services but [have] not [been] successful. . . . They can't hold employment, they need a house, [they have] no transportation, [and] the stability that kids need to feel . . . isn't there." Id. at 143.

In light of the foregoing, we conclude TCDCS presented clear and convincing evidence to support the trial court's determination that there is a reasonable probability the conditions resulting in A.H.'s and B.S.'s removal or continued placement outside the parents' care will not be remedied. As previously explained, a trial court must judge a

parent's fitness to care for his child *at the time of the termination hearing*, taking into consideration evidence of changed conditions, when determining whether there is a reasonable probability the conditions justifying a child's removal or continued placement outside the parent's care will not be remedied. Furthermore, receiving services alone is not sufficient evidence to show that conditions have been remedied if the services do not result in the needed change, and the parent does not acknowledge a need for change. In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). In the present case, at the time of the termination hearing, neither Mother nor Father had shown any significant overall improvement in their respective abilities to parent A.H. and B.S., or to provide them with a safe and stable home environment, despite having had a wealth of services available to them for well over a year.

We have previously acknowledged that where there are only temporary improvements and a parent's "pattern of conduct shows no overall progress, the court might reasonably find that the problematic situation will not improve." Matter of D.L.W., 485 N.E.2d 139, 143 (Ind. Ct. App. 1985). The trial court acted within its discretion when it considered Mother's and Father's testimony of changed conditions but gave more weight to the significant evidence demonstrating both parents' habitual pattern of neglectful conduct, chronic instability, prior involvement with TCDCS, and past and present inability to provide A.H. and B.S. with a consistently safe and stable home environment. See Bergman v. Knox County Office of Family & Children, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding that 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 prior to termination hearing than to mother's testimony that she had changed her life to better accommodate children's needs). Mother's and Father's arguments on appeal, emphasizing their recently obtained housing and lack of drug and alcohol abuse, rather than the evidence supporting the trial court's judgments, amount to an impermissible invitation to reweigh the evidence. See, e.g., In re L.V.N., 799 N.E.2d 63, 68-71 (Ind. Ct. App. 2003) (concluding that mother's argument that conditions had changed and she was now drug-free constituted an impermissible invitation to reweigh the evidence).

Conclusion

A trial court need not wait until a child is "irreversibly influenced" such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. A.F., 762 N.E.2d at 1253. A thorough review of the record reveals that the trial court's judgments terminating Mother's and Father's parental rights to A.H. and B.S. are supported by clear and convincing evidence. We therefore find no error.

Affirmed.

MATHIAS, J., and BARNES, J., concur.