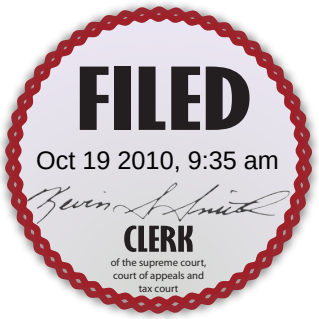

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IN THE
COURT OF APPEALS OF INDIANA

In the Matter of the Termination of the Parent-Child Relationship of C.H., Minor Child, and L.M., Mother:	)	
L.M.	)	
Appellant-Respondent,	)	
vs.	)	No. 49A04-1003-JT-201
STATE OF INDIANA, DEPARTMENT OF CHILD SERVICES, OFFICE IN MARION COUNTY,	)	
Appellee-Petitioner,	)	
and	)	
CHILD ADVOCATES, INC.,	)	
Co-Appellee (Guardian Ad Litem),	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Larry Bradley, Magistrate
The Honorable Marilyn Moores, Judge
Cause No. 49D09-0910-JAT-48649

October 19, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

L.M. ("Mother") appeals the involuntary termination of her parental rights to her child, C.H., contending that the evidence supporting the trial court's termination order is insufficient.

We affirm.

FACTS AND PROCEDURAL HISTORY

Mother is the biological mother of C.H., born in February 2001.[1] The facts most favorable to the juvenile court's judgment reveal that in June 2008, Mother left then seven-year-old C.H. in the care of Youth Emergency Services because Mother was homeless, unemployed, and could no longer provide C.H. with the minimal necessities of life, including food and shelter. Shortly thereafter, the Indiana Department of Child Services, Marion County ("MCDCS"), filed a petition alleging C.H. was a child in need of services ("CHINS"). Mother admitted to the allegations of the CHINS petition, and the juvenile court proceeded to disposition the same day.

[1] C.H.'s biological father, Co.H., voluntarily relinquished his parental rights to C.H. by signing a consent to adopt form during the underlying proceedings. Father does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother's appeal.

Following the dispositional hearing, the juvenile court entered an order formally removing C.H. from Mother's care. The court also issued a Parent Participation Decree directing Mother to successfully complete a variety of services in order to achieve reunification with C.H. Among other things, Mother was ordered to: (1) secure and maintain a legal and stable source of income, including public assistance, sufficient to support all household members including C.H.; (2) obtain and maintain stable housing with adequate bedding, functional utilities, and sufficient food supply; (3) maintain weekly contact with MCDCS and notify the case worker of any changes in address or household composition; (4) enroll in and successfully complete any programs as ordered by the juvenile court without delay; (5) participate in and successfully complete a home-based counseling program and any recommendations of the counselor; and (6) complete a comprehensive family profile and follow any resulting recommendations.

Mother's participation in services was inconsistent and ultimately unsuccessful. Throughout the duration of the CHINS proceedings, Mother failed to obtain independent housing and bounced between living with relatives or in her car. In addition, Mother did not maintain regular contact with MCDCS nor provide MCDCS with her frequent changes in address. Regarding employment, Mother was hired four times in eleven months, but was fired from all four positions in less than sixty days due to her temper and inability to get along with co-workers.

Over time, MCDCS and service providers became increasingly concerned regarding Mother's mental health. Mother oftentimes appeared agitated and paranoid, complaining that co-workers and service providers were out to get her and that everyone was treating

her unfairly. Mother also struggled with controlling her temper and alienated virtually everyone around her, including her own family members. Consequently, in February 2009, Mother was ordered to participate in a psychological examination. Mother participated in the psychological examination in April 2009 at Midwest Psychological Examinations with psychologist Dr. Benetta Johnson. Mother refused, however, to complete all testing. In addition, Mother informed Dr. Johnson that she did not believe she had any mental health issues and blamed others for her problems.

MCDCS eventually filed a petition seeking the involuntary termination of Mother's parental rights in October 2009, and by November 2009, Mother had ceased all communication with MCDCS case workers. In a separate proceeding in December 2009, however, Mother was determined to be permanently disabled by an Administrative Law Judge and was awarded social security benefits due to her "severe depression" with "daily features of paranoia and difficult temper control." *Ex.*, Vol. 1 p. 71. Although still unemployed, Mother's social security benefits provided her with the financial means to obtain independent housing, and Mother began leasing one-half of a double residence approximately three weeks before the termination hearing. In the final weeks before the termination hearing, Mother also made arrangements to receive individual counseling at Midtown Mental Health and was prescribed mood stabilization medication.

A three-day evidentiary hearing on the involuntary termination petition was held on February 10, 11, and 17, 2010. During the termination hearing, MCDCS presented evidence that Mother had failed to successfully complete a home-based counseling program despite two separate referrals to different agencies, refused to fully complete

court-ordered psychological testing, recently requested reduced visitation hours with C.H., and had ceased all communications with MCDCS since November 2009. In addition, Mother's own testimony revealed that she was not consistently taking her newly prescribed mood stabilizing medications as directed because she didn't believe it would help her.

At the conclusion of the termination hearing, the juvenile court took the matter under advisement. On March 5, 2010, the juvenile court entered its judgment terminating Mother's parental rights to C.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 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 juvenile 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 juvenile court entered specific findings and conclusions. When a juvenile 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 juvenile 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; [and]
>
> (C) termination is in the best interests of the child[.]

Ind. Code § 31-35-2-4(b)(2)(B) and (C) (2008).[2] 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 juvenile court's findings as to subsections (B) and (C) of the termination statute cited above. *See* Ind. Code § 31-35-2-4(b)(2). We pause to observe, however, that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, MCDCS was required to establish, by clear and convincing evidence, only one of the two requirements of subsection (b)(2)(B). *See L.S.*, 717 N.E.2d at 209. Nevertheless, the juvenile court found both prongs of this subsection had been satisfied. Because we find the issue to be dispositive, we need only consider whether sufficient evidence supports the juvenile court's determination that there is a reasonable probability the conditions resulting in the children's removal or continued placement outside Mother's care will not be remedied.

I. Remedy of Conditions

Mother acknowledges on appeal that she had a "rocky relationship with most service providers and [MCDCS] employees that she encountered in this case." *Appellant's Br.* at 7. She also admits that she "refused to communicate with her [MCDCS] family case manager after November 2009," refused to "fully complete[]" the court-ordered psychological exam, and failed to successfully complete two home-based counseling programs with "two different home-base counselors." *Id.* Nevertheless, Mother asserts

[2] Indiana Code section 31-35-2-4 was amended by Pub. L. No. 21-2010, § 8 (eff. March 12, 2010). Because the changes to the statute became effective after the filing of the termination petition herein, they are not applicable to this case.

that by the time of the termination hearing she had "worked hard to obtain appropriate income and housing and ha[d] sought to improve her mental health." *Id.* at 5. Mother therefore contends MCDCS failed to prove by clear and convincing evidence that there is a reasonable probability the conditions resulting in C.H.'s removal will not be remedied and the juvenile court committed reversible error in terminating her parental rights to C.H.

In determining whether conditions causing removal or continued placement outside the care of a parent will be remedied, a juvenile 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 juvenile 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*. Finally, we point out that a county department of child services 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 judgment terminating Mother's parental rights to C.H., the juvenile court found that throughout "most" of the CHINS proceedings, Mother was unemployed, having obtained "four short[-]lived jobs before being fired," homeless, "living with relatives or out

of her car," had "alienated most, if not all, [of] her service providers and family case manager due to her agitated mood," and evidenced a "poor tolerance for stress, pressure, and interaction with others." *Appellant's App.* at 11. The court also found attempts at home-based counseling had been "unsuccessful" and that Mother had been "resistant on goals and therapy." *Id.*

Regarding Mother's mental health issues, the juvenile court found Dr. Johnson recommended maintaining "ongoing individual therapy" to increase Mother's "social interaction" due to Mother's "challenges of becoming frustrated during social interactions and stressful situations." *Id.* The court further found that Mother "voiced having no mental health concerns during the psychological evaluation" and admitted she "recently received medication through Midtown Mental Health, but also admitted that she did not take it consistently" because she did not believe the medication would help her and that "other people were the problem." *Id.* In addition, the juvenile court found Mother "lacked insight into her mental health issues, was in need of long-term mental health therapy, and in need of intensive long[-]term home[-]based services to gain parenting skills" at the time of the termination hearing. *Id.* at 12.

Although the juvenile court specifically acknowledged Mother had "remedied [the] conditions of lack of income and housing," the court thereafter indicated it nevertheless still had "concerns whether [Mother] can maintain housing with [her] under[-]addressed mental health issues" and her "pattern of poor interaction with others." *Id.* In addition, the juvenile court found:

15. [Mother] has made last minute improvements to her conditions, but has failed to adequately address, and will be unable to adequately address, mental health and parenting issues which she fails to accept as issues as she has done throughout the CHINS proceedings.

* * *

17. There is a reasonable probability that the conditions that resulted in [C.H.'s] removal and continued placement outside the home will not be remedied by [Mother] due to her inability to interact with others and her continued lack of insight into the mental health issues that result in that inability. Given [Mother's] behavior throughout the twenty[-]month CHINS proceeding, and her lack of insight, it is not probable that she will now cooperate and maintain a level of relationship with [MCDCS] and service providers to successfully complete long[-]term home[-]based services and mental health therapy to be able to safely and appropriately parent.

18. Without persistent therapy, [Mother's] mental health issues, resulting in paranoia and lack of trust, would be an obstacle in meeting [C.H.'s] needs when interacting with doctors, school personnel, and other service providers, and may be hurtful to [C.H.'s] growth and treatment.

19. If placed back with [Mother] at this time, [C.H.] would be in an environment lacking positive coping skills, and one in which perception is askew. [C.H.] needs to continue in therapy at this time to identify appropriate coping skills and to appropriately express emotions. [C.H.] is also being tested for possible learning disabilities. [C.H.] lacked basic hygiene skills such as knowing how to shower or brush his teeth when placed in relative care at the beginning of the CHINS matter at seven years of age. He did not know how to play and lacked basic socialization skills. [Mother] lacks the parenting skills to appropriately parent [C.H.] and demonstrated this as late as [February 2010] at [C.H.'s] birthday party. Given her past history, there is no reason to believe that [Mother] will listen or agree with service providers as to what is in [C.H.'s] best interests.

Id. The evidence most favorable to the juvenile court's judgment supports these findings, which in turn support the court's ultimate decision to terminate Mother's parental rights to C.H.

Testimony from various witnesses during the termination hearing makes clear that although Mother had recently obtained stable income and independent housing, she remained incapable of demonstrating an ability to provide a safe and stable home environment for C.H., due in large part to Mother's inability to recognize her own mental health issues and her refusal to cooperate with service providers and consistently engage in therapy. Throughout the duration of the underlying proceedings, Mother's ill-tempered, irrational behavior and underlying mental health issues have remained unchanged. Although unaware of her recent improvements in housing and income due to Mother's refusal to maintain contact with MCDCS, case manager Yanna McGraw ("McGraw"), home-based counselors Daniel Sparling ("Sparling") and Rachel Krizic ("Krizic"), as well as Dr. Johnson, all testified that notwithstanding Mother's improved living conditions, they each still recommended termination of Mother's parental rights to C.H.

Dr. Johnson testified that caring for a young child required an ability to be able to "collaborate effectively" with teachers, school personnel, and physicians in order to ensure the child's health and safety. *Tr.* at 24. Dr. Johnson therefore believed Mother would need to maintain "some type of ongoing individual therapy" to assist with "social interactions" and "managing stressors." *Id.* Dr. Johnson further testified that if "consistent treatment" were not maintained, then it may be difficult for someone with Mother's mental diagnosis to "maintain a level of functioning that's necessary for a child's growth and development." *Id.* at 27. When asked to advise the court as to "how long it would take for effective therapy to help [Mother] manage her mental health problems," Dr. Johnson recommended six months to one year of effective therapy. *Id.*

Home-based counselor Krizic informed the juvenile court that during the time she worked with Mother, Mother continued to lack insight and understanding into her own mental health issues and "didn't think that she had the problem, it was always someone else." *Id.* at 51. In addition, home-based counselor Sparling testified that since his assignment to the case in July 2009, Mother repeatedly refused his offers for assistance. Sparling also indicated that he did not believe Mother was "motivated to follow through with the recommendations of the home[-]based team," and that despite Mother's recent improvements in housing and income, he had continuing concerns regarding Mother's "untreated mental health problems," and therefore still recommended termination of Mother's parental rights. *Id.* at 89, 116.

MCDCS case manager McGraw confirmed that Mother had not successfully completed home-based services, the psychological evaluation, or individual counseling. McGraw also informed the juvenile court that she had experienced significant difficulty in communicating with Mother, describing her conversations with Mother as "unproductive" and "confrontational." *Id.* at 155. When asked why Mother's recent improvements in housing and disability income had not changed MCDCS's recommendation for termination of the parent-child relationship, McGraw stated, "[Mother] did not cooperate and complete all the other recommended services that were [made] during the life[]time of the case," and further indicated that MCDCS remained concerned about Mother's mental health issues. *Id.* at 181.

Finally, Mother's own testimony confirmed that her mental health issues and ability to provide C.H. with a safe and stable home environment were unlikely to improve.

During the termination hearing, Mother confirmed she was fired from four different jobs due to conflicts with co-workers, had been verbally "abusive" to McGraw before ceasing all contact with MCDCS in November 2009, never fully completed the psychological examination with Dr. Johnson, and failed to successfully complete home-based counseling services. *Id.* at 286. Mother also testified that she "cannot deal with a lot of stress," and admitted she had not been taking her mood stabilizing medication as prescribed. *Id.* at 294. When asked whether she believed taking her medication will help "change her behavior," Mother responded in the negative and explained, "It's not my behavior. . . . I cannot control society. It's not me. I'm not a bad person. . . . I can get along with anybody[,] but I refuse to be discriminated against because someone doesn't like me." *Id.* at 297.

Based on the foregoing, we conclude that MCDCS presented clear and convincing evidence to support the juvenile court's determination that there is a reasonable probability the conditions resulting in C.H.'s removal and continued placement outside Mother's care will not be remedied. As stated previously, a juvenile 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. Moreover, "a pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change." *Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. Mother's arguments on appeal, emphasizing her recent housing and income improvements, rather than her

significant and unresolved parenting and mental health issues relied upon by the juvenile court, amount to nothing more than an invitation to reweigh the evidence, which we may not do. *D.D.*, 804 N.E.2d at 265.

II. Best Interests

We next consider Mother's assertion that MCDCS failed to prove termination of her parental rights is in C.H.'s best interests. In determining what is in the best interests of a child, the juvenile court is required to look beyond the factors identified by the Indiana Department of Child Services and look to the totality of the evidence. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the juvenile court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* Moreover, we have previously held that the recommendations of both the case manager and child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

In addition to the findings previously cited, the juvenile court made several additional pertinent findings in determining that termination of Mother's parental rights is in C.H.'s best interests, including the following:

> 20. [C.H.] was placed with his maternal great aunt, [B.S. ("Foster Mother")], shortly after the CHINS action was filed. Family case manager Yanna McGraw has observed him to be well provided for, and bonded to his caregiver and other family members. [Foster

Mother] interacts with school personnel and service providers. She is willing to adopt [C.H.].

21. Termination of the parent-child relationship is in [C.H.'s] best interests. Although [Mother] had obtained housing and income at the time of trial, she was in need of home[-]based services and mental health treatment which would be long[-]term. [C.H.] has been removed from his mother for a long time . . . . [C.H.] is in need of stability and permanency and termination would provide the opportunity for him to be adopted by [Foster Mother] who will continue to meet his physical, emotional, mental health, and socialization needs, and address his special educational needs.

22. [C.H.] has expressed to his Guardian ad Litem ["GAL"], Bonnie Goff[,] that he loves his mother but wishes to be adopted by [Foster Mother].

* * *

24. [GAL] Goff agreed with the plan of adoption as being in [C.H.'s] best interests considering his age and need for stability.

25. [GAL] Goff then contrarily suggested that [Mother] be given additional time after she found out that housing and income were obtained. In contemplation of mental health and parenting skill issues, [Mother's] history of not accepting these as issues, and the improbability of the issues being adequately addressed now, the Court disagrees that additional time would be in [C.H.'s] best interests.

Appellant's App. at 12-13. These findings, too, are supported by the evidence.

Foster Mother informed the juvenile court that when C.H. first came to live with her he was "very afraid of things." *Tr*. at 245. She went on to explain that C.H. was "afraid to go outside" and did not know how to play with other children, ride a bike, brush his teeth, or shower. *Id.* Foster Mother also observed a "difference in [C.H.'s] behavior" when Mother was near and indicated C.H. would "get very quiet, on the nervous side, won't say anything, won't talk." *Id.* at 238.

Charity Humphrey ("Humphrey") of Adult & Child Center, Inc., performed an assessment of C.H. at MCDCS's request. Humphrey described Foster Mother's home as "an extremely calm environment and very loving." *Id*. at 60. Humphrey also described Foster Mother as "very loving towards [C.H.,]" and indicated C.H. "openly communicates his needs [to Foster Mother]" and "gets along very well with the other children living in the home." *Id.* Similarly, in recommending termination of Mother's parental rights, case manager McGraw informed the court that C.H. "is in a safe and a secure environment" and is "receiving love and stability . . . on a daily basis." *Id.* at 159. McGraw thereafter stated C.H. "should remain with [Foster Mother]." When asked whether there is a "risk of harm" for C.H. if permanency is not established at this time, McGraw answered in the affirmative and further explained that it was important at C.H.'s age "that he ha[ve] stability, safety, and well-being." *Id.* at 191.

When asked to describe how C.H. was currently doing in placement with Foster Mother, GAL Goff testified, "I think he's doing well in placement." *Id.* at 268. Goff further testified that C.H. "[a]lways seems happy," and "doesn't complain." *Id.* In addition, Goff acknowledged C.H. loves Mother and Foster Mother, but he wishes to be adopted by Foster Mother. Although Goff initially recommended termination of Mother's parental rights as in C.H.'s best interests, upon learning during the termination hearing of Mother's recent improvements in housing and income, Goff indicated that she believed Mother should be given some additional time.

A juvenile court need not wait until a child is "irreversibly influenced" such that his physical, mental, and social growth is permanently impaired before terminating the parent-

child relationship. *A.F.*, 762 N.E.2d at 1253. Based on the totality of the evidence, including Mother's failure to complete a majority of the juvenile court's dispositional orders and current inability to demonstrate she is capable of providing C.H. with a safe and stable home environment in light of her unresolved mental health issues, coupled with the testimony from Dr. Johnson, Foster Mother, Humphrey, McGraw, and Goff, we conclude that there is sufficient evidence to support the juvenile court's determination that termination of Mother's parental rights is in C.H.'s best interests, notwithstanding Goff's conflicting testimony.

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.

RILEY, J., and BAILEY, J., concur.