ATTORNEY FOR APPELLANT:

STEVEN C. LITZ
Monrovia, Indiana

ATTORNEY FOR APPELLEE:

JAMES D. BOYER
Indiana Department of Child Services
Morgan County Office
Martinsville, Indiana

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

IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF S.W. AND C.W.,	)	
and	)	
M.C. (Mother) Appellant-Respondent,	)	
vs.	)	No. 55A01-1003-JT-196
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MORGAN SUPERIOR COURT
The Honorable Christopher L. Burnham, Judge
Cause No. 55D02-0908-JT-121
55D02-0908-JT-122

December 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

M.C. ("Mother") appeals the trial court's termination of the parent-child relationship with her daughters, seven-year-old S.W. and fourteen-year-old C.W., on the petition of the Morgan County Department of Child Services ("DCS"). Mother raises two issues for our review: whether the trial court properly denied her motion to dismiss the termination petitions on the grounds they were filed too early, and whether clear and convincing evidence supports the termination. Concluding DCS sufficiently pleaded and proved the children were removed from Mother for at least six months under a dispositional decree, and the evidence is sufficient to support the termination, we affirm.

Facts and Procedural History

C.W. was born to Mother in March 1996, and S.W. was born in May 2003. The children's paternity has not been legally established.

In April 2008, DCS investigated a report that C.W. was engaging in sex with older males and was using alcohol and marijuana. The report was substantiated as to the drug use, and Mother additionally admitted C.W. had been significantly absent from school. Mother's

previous involvement with DCS included substantiated allegations of educational neglect, and an informal adjustment that Mother failed to successfully complete, resulting in a previous adjudication of C.W. as a child in need of services ("CHINS") in 2004. In May 2008, Mother was arrested and jailed for educational neglect, and she later pleaded guilty to educational neglect as a Class B misdemeanor and was sentenced to time served plus one year of probation. At the time Mother was arrested and jailed, no family members were willing and able to care for S.W. and C.W.

On May 15 and 16, 2008, DCS filed new CHINS petitions as to S.W. and C.W. On May 16, 2008, S.W. was removed from Mother and placed in foster care, and on May 22, 2008, C.W. was placed in the Methodist Children's Home. Both children were adjudicated CHINS on Mother's admission. On July 1, 2008, the trial court issued CHINS dispositional orders providing S.W. would return to Mother's care and C.W. would remain at the Methodist Children's Home under DCS supervision. Mother was ordered to maintain appropriate housing; establish paternity of the children; seek full-time, verifiable employment; maintain regular contact with the DCS case manager; and participate in and successfully complete services that "may include, but [were] not limited to, home based counseling, individual counseling, parenting classes and instruction." Appellant's Appendix at 37.

On October 21, 2008, Mother overdosed on methamphetamine or amphetamine. The DCS case manager found her nonresponsive on the couch in her apartment, while S.W. was present and unsupervised. As a result, the next day, the trial court issued an amended order

placing S.W. back in foster care. Mother checked herself into a hospital treatment center and completed one drug treatment program successfully. She then enrolled in the Centerstone intensive outpatient program, but dropped out before the end of 2008.

In January 2009, Mother admitted to her probation officer that she had recently smoked marijuana and used a prescription pain pill that was not prescribed to her. Mother's probation was revoked based on her drug use and she received a 180-day jail sentence.

In May 2009, the trial court approved DCS changing its permanency plan for S.W. and C.W. from reunification to termination of parental rights and adoption. The trial court found DCS had provided Mother with counseling services, intensive outpatient services, and other service referrals, as well as supervised visitation. The trial court found Mother was not in compliance with the case plan because of her failure to maintain contact with DCS, failure to participate in supervised visitation, and failure to complete services. The trial court also entered a finding that reasonable efforts at reunification were no longer required, and as a result, DCS stopped offering services to Mother.

In June 2009, Mother re-enrolled at Centerstone but did not follow through with the intensive outpatient program. On August 7, 2009, DCS filed petitions to terminate the parent-child relationships between Mother and S.W. and C.W. Between late June 2009 and the initial hearing on the termination petitions in September 2009, Mother had no contact with the DCS case manager.

In November 2009, Mother again re-enrolled at Centerstone and "was still diagnosed with polysubstance dependence." Transcript at 13. On November 30, 2009, the trial court

issued a review order finding Mother had not complied with the children's case plans and had not enhanced her ability to fulfill her parental obligations.

The trial court held an evidentiary hearing on the termination petitions on March 1, 2010. The trial court denied Mother's motion to dismiss and, on March 15, 2010, issued its order granting the terminations. Mother now appeals.

Discussion and Decision

I. Timing of Termination Petitions

Mother argues the termination petitions should have been dismissed because the children were not removed from Mother for the statutorily-mandated period of time before the filing of the petitions. In support of her argument, Mother cites Indiana Code section 31-35-2-4.5, and in particular the language which provides:

> This section applies if:
> * * *
> (2) a child in need of services . . .:
> (A) has been placed in . . . a foster family home, child caring institution, or group home . . .; and
> (B) has been removed from a parent and has been under the supervision of [DCS] . . . for not less than 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 [CHINS] . . . .

Ind. Code § 31-35-2-4.5(a). Contrary to Mother's contention, this statutory section does not require DCS to wait to file a termination petition until twenty-two months have passed from the date the child was removed from a parent's home. Rather, Indiana Code section 31-35-2-4.5(b) provides DCS must file a termination petition in certain circumstances, including that described in the above quoted language. Subsection (d) then provides grounds and

appropriate circumstances for dismissing such a mandatory petition. See Ind. Code § 31-35-2-4.5(b) & (d); Castro v. State Office of Family and Children, 842 N.E.2d 367, 377 (Ind. Ct. App. 2006) (noting section 31-35-2-4.5 implements a federal statute providing as a condition of federal funding that the State must file a termination petition regarding a child who has been in foster care under the responsibility of the State for fifteen of the most recent twenty-two months), trans. denied.

The timing requirements for when DCS may file a termination petition are set forth in Indiana Code section 31-35-2-4(b)(2)(A) (2009)[1], which provides a petition must allege:

> that one (1) of the following exists:
> (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 . . . that reasonable efforts for family preservation or reunification are not required . . .; 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 [CHINS] or a delinquent child[.]

As we have previously held, the three elements of this subsection are written in the disjunctive, such that DCS need only plead and prove one of them. In re B.J., 879 N.E.2d 7, 20 (Ind. Ct. App. 2008), trans. denied.

Here, the termination petitions alleged S.W. and C.W. had been removed from Mother for at least six months under a dispositional decree, and had been removed from Mother and under DCS supervision for at least fifteen of the most recent twenty-two months. In its order

[1] We cite the version of Indiana Code section 31-35-2-4(b)(2) effective at the time the termination petitions were filed in this case. The statute has since been amended effective March 12, 2010. See P.L. 21-2010, § 8.

granting the terminations, the trial court found C.W. had been removed from Mother since May 2008 under a dispositional decree, and S.W. had been removed from Mother since October 21, 2008, under a dispositional decree. Mother does not challenge these findings. DCS filed its termination petitions on August 7, 2009, meaning well over six months had passed since both children were removed from Mother under a dispositional decree. The trial court correctly concluded DCS pleaded and proved the six-month condition of Indiana Code section 31-35-2-4(b)(2)(A)(i), which was all DCS was required to do. See id. at 20-21.

II. Sufficiency of the Evidence

When reviewing the sufficiency of the evidence to support an involuntary termination of the parent-child relationship, we neither reweigh the evidence nor judge the credibility of the witnesses. In re G.Y., 904 N.E.2d 1257, 1260 (Ind. 2009). We consider only the evidence most favorable to the judgment and the reasonable inferences to be drawn therefrom. Id. Where, as here, the trial court entered findings of fact and conclusions of law, we apply a two-tiered standard of review: first we determine whether the evidence supports the findings, and second we determine whether the findings support the judgment. Id. We will set aside the trial court's judgment only if it is clearly erroneous. Id.

To terminate Mother's parent-child relationship, DCS must prove by clear and convincing evidence that, among other things, (1) there is a reasonable probability the conditions that resulted in S.W. and C.W.'s removal or the reasons for their placement outside Mother's home will not be remedied, or the continuation of the parent-child relationship poses a threat to the well-being of the children; and (2) termination is in the

children's best interest. Ind. Code § 31-35-2-4(b)(2)(B) & (C) (2009); G.Y., 904 N.E.2d at 1260. Mother concedes she had a history of substance abuse, failed to maintain a stable living environment, and made inconsistent efforts at substance rehabilitation. Nonetheless, she contends the evidence was insufficient to prove clearly and convincingly that termination was in the children's best interest. She bases this argument in part on the fact DCS stopped providing her services in the spring of 2009, which she claims thwarted her efforts to change. She also claims DCS and the trial court put her in a "Catch-22" by both cutting off her services and using her failure to complete services as a factor in support of the termination. Appellant's Brief at 8.

While DCS and the trial court are not required to provide services to a parent, the trial court may consider a parent's failure to respond to services offered as one factor supporting the termination of parental rights. In re B.D.J., 728 N.E.2d 195, 201 (Ind. Ct. App. 2000). Mother was provided with services for the greater part of a year before the trial court permitted DCS to stop offering her services. In addition to Mother's failure to respond consistently to the services offered her, the trial court cited her failure to maintain a stable living environment and her history of substance dependence and relapses as reasons for concluding the conditions resulting in the children's removal were unlikely to change. "While the trial court should judge the parent's fitness at the time of the termination hearing, it must also evaluate the parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect of the children." Matter of C.M., 675 N.E.2d 1134, 1139 (Ind. Ct. App. 1997). While Mother was making progress in her treatment at

Centerstone as of the March 2010 termination hearing, her counselor also testified it was "incredibly difficult" to say how long her sobriety would continue. Tr. at 15. DCS case manager Mark Davy, assigned to the case between June 2008 and January 2010, testified that during that time Mother never maintained stable housing or employment and her overall cooperation with the dispositional decree was "very minimal." Id. at 42.

This court has held that the recommendations of both a DCS case manager and a child's court-appointed special advocate ("CASA") to terminate parental rights, when coupled with evidence of unchanged conditions, support a finding that termination is in a child's best interest. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). Case manager Davy testified termination was in the children's best interest because of their need for permanency and stability which could be achieved through adoption. The children's CASA likewise testified termination was in their best interest because of their need for a stable home, and recommended adoption for S.W. and a permanent guardianship for C.W. The evidence was sufficient to prove clearly and convincingly that the conditions resulting in the children's removal are unlikely to change and termination is in their best interest.

Conclusion

DCS pleaded and proved S.W. and C.W. were removed from Mother for at least six months under a dispositional decree, and the filing of the termination petitions was therefore proper. In addition, because the evidence is sufficient to support the termination of Mother's

parent-child relationship, the judgment of the trial court is affirmed.

Affirmed.

RILEY, J., and BROWN, J., concur.