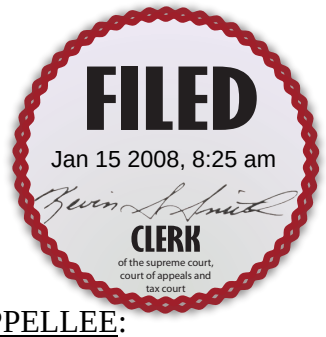


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# IN THE
# COURT OF APPEALS OF INDIANA

| | | |
|---|---|---|
| IN RE THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONASHIP OF D.H. AND A.H., MINOR CHILDREN AND THEIR MOTHER, ELIZABETH H. | ) | |
| ELIZABETH H. | ) | |
| Appellant-Respondent, | ) | |
| vs. | ) | No. 49A02-0706-JV-473 |
| MARION COUNTY DEPARTMENT OF CHILD SERVICES, | ) | |
| Appellee-Petitioner, | ) | |
| AND | ) | |
| CHILD ADVOCATES, INC., | ) | |
| Co-Appellee (Guardian ad Litem). | ) | |

APPEAL FROM THE MARION SUPERIOR COURT – JUVENILE DIVISION
The Honorable Viola Taliaferro, Judge Pro Tempore
Cause Nos. 49D09-0411-JT-323 & 49D09-0512-JT-049514

**January 15, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## Case Summary

Elizabeth H. ("Mother") appeals the involuntary termination of her parental rights to her children D.H. and A.H., claiming the Marion County Department of Child Services ("MCDCS") failed to prove by clear and convincing evidence that the conditions resulting in the removal and continued placement of the children outside Mother's care would not be remedied and that termination of the parent-child relationship was in the children's best interests. Concluding that the trial court's judgment terminating Mother's parental rights was not clearly erroneous, we affirm.

## Facts and Procedural History

D.H. was born prematurely on May 7, 2003, to Mother and alleged father Brian H. ("Father").[1] On April 23, 2004, D.H. was removed from Mother's care because he had been diagnosed with "failure to thrive" and had missed numerous doctor appointments. Tr. p. 64. On that same day, the MCDCS filed a petition alleging D.H. was a Child in Need of Services ("CHINS").

On April 28, 2004, Mother admitted to the allegations in the CHINS petition. The court then proceeded to disposition, and D.H. was ordered removed from Mother's care and custody. As part of the court's participation decree, Mother was ordered, among

[1] Father's parental rights to the children have been terminated. Father is not a party to this appeal.

other things, to: (1) complete a parenting assessment, (2) complete drug and alcohol assessments and follow all resulting recommendations, (3) submit to random drug screens, (4) exercise regular visitation, and (5) maintain appropriate housing and income.

On December 25, 2004, Mother gave birth to A.H. A CHINS petition for A.H. was filed on February 1, 2005. The CHINS petition alleged that Mother and Father were unable to meet the needs of the children because they had not completed services required under D.H.'s CHINS case, and because Father, who was living with Mother at the time, had failed a drug screen.

On March 11, 2005, Mother admitted to the allegations in the CHINS petition as to A.H. The trial court found A.H. to be a CHINS and proceeded to disposition, removing A.H. from the care and custody of Mother. Pursuant to the agreed entry, Mother was to secure stable housing and employment, to actively participate in and successfully complete certain services, including home-based counseling, to follow the recommendations of all service providers, and to reasonably demonstrate the skills taught by the service providers.

In an effort to facilitate reunification of the family, Mother was offered two home-based counseling programs. The first program commenced in January 2005 and ended in April 2006. During this time, Mother did not make enough progress for the counselor to recommend unsupervised visitation because Mother had tested positive for cocaine and failed to keep several appointments for urine drug screen testing. Consequently, the home-based counselor could also not recommend reunification with the children, and the home-based counseling program was closed as unsuccessful.

The second home-based counseling program began in August 2006. Services under this program were still ongoing at the time of the termination hearings. The goals set by the home-based counselor and Mother were to provide a safe and stable home for the children, to develop the ability to make positive decisions, and to maintain sobriety. By the time of the termination hearing, Mother had made limited progress toward these goals.

On November 1, 2004, the MCDCS filed a petition for involuntary termination of Mother's parental rights to D.H. On December 23, 2005, the MCDCS filed a petition for involuntary termination of Mother's parental rights to A.H. Consolidated fact-finding hearings were held November 29, 2006, December 5, 2006, and March 30, 2007. On April 26, 2007, the trial court issued its order terminating the parent-child relationship between Mother and both children. This appeal ensued.

**Discussion and Decision**

Initially, we note 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 the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id*.

In deference to the trial court's unique position to assess the evidence, we will set aside the trial 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*. 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 thereon. *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.

Here, the trial court made specific findings and conclusions thereon in its order terminating Mother's parental rights. Where the trial court enters specific findings 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.*

"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*. However, the trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *K.S.*, 750 N.E.2d at 837. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.* at 836.

In order to terminate a parent-child relationship, the State is required to allege and prove that:

> (A) 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;
>
> * * *
>
> (B) there is a reasonable probability that:

(i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
(C) termination is in the best interests of the child; and
(D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). The State must establish each of these allegations by clear and convincing evidence. *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992).

Mother does not challenge the trial court's determination that the children had been removed for more than six months under dispositional decrees or that the MCDCS had a satisfactory plan for the care and treatment of the children: namely, adoption. Rather, a fair reading of Mother's brief suggests that Mother challenges the sufficiency of the evidence supporting the remaining elements of Indiana Code section 31-35-2-4(b).[2]

**I. Conditions Will Not Be Remedied**

Mother asserts that she "complied with everything [the] MCDCS asked of her." Appellant's Br. p. 3. Our review of the evidence most favorable to the judgment, however, does not support Mother's contention.

When determining whether a reasonable probability exists 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

[2] We observe that Mother's brief generally argues that the trial court "erroneously" terminated her parental rights. However, Mother's brief does not specifically delineate what elements of Indiana Code § 31-35-2-4(b)(2) were not proven by the MCDCS. We remind counsel that Indiana Appellate Rule 46(A)(4) states that an Appellant's statement of the issues "*shall concisely* and *particularly* describe each issue presented for review." (Emphasis added).

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*. In so doing, the trial court may consider the parent's response to the services offered through the Department of Child Services. *Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. Additionally, the MCDCS is not required to rule out all possibilities of change; rather, it need establish "only that there is a reasonable probability that the parent's behavior will not change." *In re Kay. L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In this case, there is ample evidence to demonstrate that there is a reasonable probability that Mother's behavior will not change and, consequently, that the conditions resulting in the children's removal from Mother's care will not be remedied. The record reveals that the MCDCS initially became involved with the family because Mother was unable to meet the needs of D.H. and because D.H. was failing to thrive. Mother admitted to the allegations contained in the CHINS petition and was ordered to, among other things, complete drug and alcohol assessments and follow all resulting recommendations, submit to random drug screens, exercise regular visitation, and maintain appropriate housing and income. By the time of the termination hearing, however, other than exercising regular visitation with the children, Mother had failed to make any significant progress in these areas as illustrated by the trial court's findings set forth below:

> 18. [Mother] lived in six different residences during the CHINS proceedings. She has lived in three different residences during the

past three months. At the time of the final hearing in this case, [Mother] was living in her mother-in-law's home.

19. [Mother] admitted to her home-based counselor that she had a problem with alcohol. She chose, however, not to attend AA meetings as a means of support. On December 8, 2006, one of the home-based counselors went to [Mother's] residence in preparation for a scheduled visitation with the children. The home-based counselor observed beer cans outside and inside [Mother's] home. [Mother] admitted that she had been drinking alcohol. Due to the condition of the home and [Mother's] condition, the visitation was cancelled.
20. During the December 8, 2006 visit, the home-based counselor noticed that [Mother] was unkempt, had dried blood around her nose and bite marks on her body. [Mother] admitted that she drank alcohol at some time prior to the meeting with the home-based counselor. She also admitted that she and [Father] were involved in a physical altercation on the previous evening. The police were called and [Father] was arrested on an outstanding warrant which was unrelated to the physical altercation.
21. [Mother] has not admitted the extent of her drug use . . . .
22. [Mother] tested positive for cocaine in August 2006. She maintained throughout the proceedings in this case that the test result was a "false" positive. At the final hearing in this case on March 30, 2007, [Mother] admitted that she tested positive for cocaine [on] December 5, 2006. All of the drug screens taken by [Mother] since December 5, 2006 have been negative. She has not however, participated in the available services, such as NA, that would have assisted her in remaining drug free.
23. In addition to the lack of stable housing and drug and alcohol problems, [Mother] has not demonstrated that she can maintain steady employment. She was employed by Redcats on February 10, 2007 . . . earning $8.15 an hour. She was previously employed by Kroger, St. Clair Printing Press and 21st Amendment. Not one of the previous jobs lasted more than two (2) months.
24. [Mother] has been diagnosed with depression and anxiety. She was referred to Midtown for mental health counseling. The counselor prescribed Prozac . . . . When it was known that [Mother] was no longer taking the medication, the current home-based counselor informed [Mother] that resources were available to her for purchase of the medications. [Mother] chose not to use the resources and discontinued taking the medications.

Appellant's Br. pp. 14-15. These finding are supported by the evidence.

We further observe that the MCDCS filed three separate continuances prior to the first termination hearing in order to allow Mother more time to participate in and complete the services ordered by the court. Despite these efforts by the MCDCS and extensive services designed to help Mother achieve her goal of reunification with the children, by the time of the termination hearing, Mother still was unable to demonstrate that she had progressed to the point where she could have unsupervised visitation with her children.

Based on the foregoing, we find that the evidence supports the trial court's ultimate conclusion that there is a reasonable probability that the conditions leading to the removal and continued placement of the children outside of Mother's care would not be remedied.[3] "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*, 861 N.E.2d at 372. We are unwilling to put D.H. and A.H. "on a shelf" until Mother is capable of caring for them. Three years without improvement is long enough. *See In re Campbell*, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (stating the court was unwilling to put child "on a shelf" until her parents were capable of caring for her and that two years was long enough).

[3] Having determined that the trial court's conclusion regarding the remedy of conditions is not clearly erroneous, we need not address the issue of whether the MCDCS failed to prove that the continuation of the parent-child relationship posed a threat to the children's well-being. *See L.S.*, 717 N.E.2d at 209 (explaining that Indiana Code § 31-35-2-4(b)(2)(B) is written in the disjunctive).

## II. Best Interests of the Children

Next, Mother asserts that termination of her parental rights to D.H. and A.H. was not in the children's best interests. Specifically, Mother argues that the "focus of [the] MCDCS and the court was not on the best interest of the [children] or on reuniting the family but instead on strict compliance with court orders." Appellant's Br. p. 8.

The purpose of terminating parental rights is not to punish the parents but to protect the children involved. *K.S.*, 750 N.E.2d at 836. However, in determining the best interests of the children, the trial court must subordinate the interests of the parents to those of the children. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). Additionally, we are mindful that in determining what is in the best interests of the children, the court is required to look beyond the factors identified by the Department of Child Services and look to the totality of the evidence. *Id.* at 203.

Here, Mother was given three years to complete services designed to facilitate reunification with her children. Unfortunately, Mother failed to make any significant progress during that time. In fact, by the time of the termination hearing, Mother was still struggling with maintaining stable employment and with securing a safe and suitable residence. Additionally, Mother was still not taking her prescribed medication for depression and anxiety, and she still had not achieved unsupervised visitation with her children.

The record also reveals that the children, who have been removed from Mother's care for practically their entire lives, need permanency and have recently been placed

together with a family who is willing to adopt them. We have previously held that the testimony of a child's guardian ad litem regarding the child's need for permanency supports a finding that termination is in the child's best interests. *McBride*, 798 N.E.2d at 203. Likewise, the recommendations of the welfare case worker and the child's guardian ad litem that parental rights should be terminated also supports a finding that termination is in the child's best interests. *Campbell*, 534 N.E.2d at 276. Here, the guardian ad litem testified that the children needed permanency "so they can begin to establish themselves and mature into healthy, successful human beings." Tr. p. 141. He further testified that termination of Mother's parental rights to D.H. and A.H. was in the children's best interests and that allowing Mother more time was not a viable option because the case had "dragged on, in my estimation for far too long." *Id.* at 143. Case manager Mingo Morrison also testified that termination was in the best interests of the children. Thus, the MCDCS proved by clear and convincing evidence that the termination of Mother's parental rights to the children was in the children's best interests.

Based on the foregoing, we conclude that the trial court's judgment terminating Mother's parental rights to D.H. and A.H. is not clearly erroneous.

Affirmed.

SHARPNACK, J., and BARNES, J., concur.