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**IN THE  
COURT OF APPEALS OF INDIANA**

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REGINA FENDER, )

Appellant-Respondent, )

vs. )

No. 03A05-0706-JV-308

BARTHOLOMEW COUNTY )

DEPARTMENT OF CHILD SERVICES, )

Appellee-Petitioner. )

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APPEAL FROM THE BARTHOLOMEW JUVENILE COURT  
The Honorable Stephen R. Heimann, Judge  
Cause No. 03C01-0603-JT-523

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**December 28, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

Regina Fender (“Mother”) appeals from the trial court’s termination of her parental rights with respect to her daughter J.F. She presents a single issue for our review, namely, whether the Bartholomew County Department of Child Services (“DCS”) presented sufficient evidence to sustain the termination of her parental rights.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

On July 3, 2005, Mother, who suffered from a seizure disorder and high blood pressure, sought medical treatment at Columbus Regional Hospital. While being assisted to the restroom, Mother gave birth to J.F. Mother, who is mildly mentally retarded, did not know she was pregnant before giving birth. J.F. weighed only two pounds, seven ounces at birth and required care in the neonatal unit for more than one month.

In the meantime, on July 13, 2005, an investigator for Bartholomew Adult Protective Services filed a petition alleging that Mother, who was unable to care for herself, was an endangered adult in need of emergency protective services. In the petition, the investigator requested that the court order that Mother be placed in a residential treatment facility. The court granted that petition, and Mother was placed in a group home, which could not accommodate residents’ children.

In August 2005, the DCS filed a petition alleging that J.F. was a child in need of services (“CHINS”). The petition alleged that Mother was not competent to care for J.F. In October 2005, the trial court adjudicated J.F. a CHINS, and the DCS placed J.F. in foster care.

The DCS established a case plan for Mother, which required her to undergo a psychiatric evaluation and participate in recommended services, participate and successfully complete individual counseling, cooperate with the case manager, adhere to and participate in the visitation plan, and demonstrate appropriate parenting skills during visits. While Mother complied with some of the terms of the case plan, she did not complete individual therapy. Moreover, her psychological evaluation resulted in a conclusion that Mother was unable to parent J.F. As a result, on March 9, 2006, the DCS filed a petition to terminate Mother's parental rights with respect to J.F. Following a hearing on February 27, 2007, the trial court entered its order terminating Mother's parental rights with respect to J.F. and made findings and conclusions. Mother now appeals.

### **DISCUSSION AND DECISION**

Mother contends that the evidence is insufficient to support the involuntary termination of her parental rights. Initially, we note that the purpose of terminating parental rights is not to punish parents, but to protect the children. Weldishofer v. Dearborn County Div. of Family & Children (In re J.W.), 779 N.E.2d 954, 959 (Ind. Ct. App. 2002), trans. denied. "Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their responsibilities as parents. This includes situations not only where the child is in immediate danger of losing his life, but also where the child's emotional and physical development are threatened." Id.

In reviewing a decision to terminate a parent-child relationship, this court will not set aside the judgment unless it is clearly erroneous. Everhart v. Scott County Office of Family & Children, 779 N.E.2d 1225, 1232 (Ind. Ct. App. 2002), trans. denied. Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences to support them. Id. When reviewing the sufficiency of the evidence, this court neither reweighs the evidence nor judges the credibility of the witnesses. Id.

To support a petition to terminate parental rights, the DCS must show, among other things, that 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 DCS must also show that termination is in the best interest of the child and that there exists a satisfactory plan for the care and treatment of the child. Ind. Code § 31-35-2-4(b)(2)(C), (D). These factors must be established by clear and convincing evidence. Ind. Code § 31-34-12-2.

In interpreting Indiana Code Section 31-35-2-4, this court has held that the trial court should judge a parent's fitness to care for his or her child as of the time of the termination hearing, taking into consideration evidence of changed conditions. J.K.C. v. Fountain County Dep't of Pub. Welfare, 470 N.E.2d 88, 92 (Ind. Ct. App. 1984). However, recognizing the permanent effect of termination, the trial court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. Id. To be sure, the

trial court need not wait until the child is irreversibly influenced by a deficient lifestyle such that the child's physical, mental and social growth is permanently impaired before terminating the parent-child relationship. Id. at 93. When the evidence shows that the child's emotional and physical development is threatened, termination of the parent-child relationship is appropriate. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

Mother's sole contention on appeal is that the evidence is insufficient to show that there is a reasonable probability that the conditions that resulted in J.F.'s removal from her home will not be remedied. But the DCS presented overwhelming evidence that Mother was unable to take care of herself, let alone take care of J.F. Deanna Gamroth, a family case manager with DCS, testified that Mother lives in a group home because she cannot live independently. The undisputed evidence shows that the group home does not permit residents to have their minor children live with them at the home. Gamroth also testified that in light of Mother's limited intellectual capacity and serious health problems, Mother cannot provide adequate care for J.F. The DCS also presented evidence that Mother will require assistance with her activities of daily living for the rest of her life. Finally, Gamroth testified that she believed a continuation of the parent-child relationship posed a threat to J.F.'s well-being and that termination is in T.W.'s best interest.

Mother merely asks that we reweigh the evidence, which we will not do. The evidence is sufficient to support the trial court's conclusions both that there is a reasonable probability that the conditions that resulted in the child's removal will not be

remedied and that a continuation of the relationship between Mother and J.F. poses a threat to the child's well-being. And there is also clear and convincing evidence that termination is in the best interest of the child and that there exists a satisfactory plan for the care and treatment of the child. We conclude that the DCS presented sufficient evidence to support the trial court's termination of Mother's parental rights.

Affirmed.

BAILEY, J., and CRONE, J., concur.