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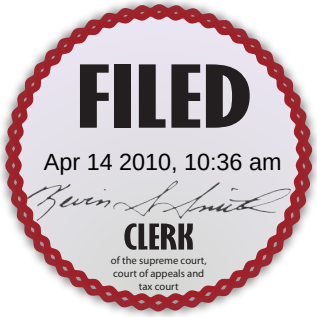

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF K.C., A.C., and Z.C.:	)	
S.C.,	)	
Appellant-Respondent,	)	
vs.	)	No. 34A02-0912-JV-1237
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE HOWARD CIRCUIT COURT
The Honorable Lynn Murray, Judge
Cause No. 34C01-0903-JT-8
Cause No. 34C01-0903-JT-9
Cause No. 34C01-0903-JT-10

April 14, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

S.C. (Mother) appeals the involuntary termination of her parental rights to her children, K.C., A.C., and Z.C. Mother challenges the sufficiency of the evidence supporting the trial court's judgment.

We affirm.

Mother is the biological mother of K.C. born on October 28, 2003, A.C., born on March 31, 2005, and Z.C., born on October 10, 2006 (collectively, the children).[1] The facts most favorable to the trial court's judgment reveal that in August 2007 the local Howard County office of the Indiana Department of Child Services (HCDCS) was contacted by the Kokomo Police Department. Law enforcement personnel informed HCDCS that Mother, Father, and the children's maternal grandmother were all being arrested on drug-related charges. Mother and Father were also facing child neglect charges.

HCDCS case manager Lori Meyer initiated an investigation. Upon arriving at the family home, Meyer discovered that the home was filthy, animal infested, littered with trash and debris, and the stench of dirty diapers and animal feces permeated the home. In addition, the children appeared dirty, and the two older children had head lice. Based on her investigation, Meyer took the children into immediate protective custody and HCDCS

[1] The parental rights of the children's biological father, G.T. (Father), were also involuntarily terminated by the trial court in its September 2009 termination order. Father does not participate in this appeal. Consequently, we shall limit our recitation of the facts to those pertinent solely to Mother's appeal.

subsequently filed separate petitions alleging K.C., A.C., and Z.C. were children in need of services (CHINS).

During an initial hearing on the CHINS petitions, Mother admitted to the allegations contained therein. A dispositional hearing was held in September 2007. Mother failed to appear. Following the dispositional hearing, the trial court issued an order formally removing all three children from Mother's care. The dispositional order also directed Mother to participate in a variety of services in order to achieve reunification with the children. Specifically, Mother was ordered to, among other things, successfully complete parenting classes, submit to random drug screens, exercise regular visitation with the children upon her release from incarceration, and cooperate with the family educator and follow all of the family educator's recommendations.

Upon her release from incarceration, Mother initially cooperated with service providers by cleaning the family home, participating in parenting classes, and exercising regular visitation with the children. Due to Mother's progress in services, the children were returned to her care as in-home CHINS in November 2007. Within a few months of the children's return to Mother's care, however, Mother's participation in services and cooperation with case workers began to wane.

During a review hearing in April 2008, the trial court ordered Mother to complete parenting classes again. The court also granted HCDCS's request for a parent participation plan that directed Mother not only to comply with all previous court orders, but also to keep all appointments and maintain contact with HCDCS case workers and services providers, to

sustain a consistently clean and suitable home environment for the children, to allow HCDCS case managers and service providers access into her home when requested, and to refrain from threatening the children with returning to foster care. In July 2008, the trial court conducted a permanency review hearing. HCDCS presented evidence that during the previous three months, Mother had refused to submit to drug screens, had become openly defiant with case workers and service providers, and had failed to keep her appointments with the family educator and HCDCS family case manager. Although HCDCS sought to have the children returned to foster care, the trial court ultimately allowed Mother to retain physical custody of the children despite her regression in services. The trial court warned, however, that further deterioration in Mother's ability to care for the children and provide them with a safe environment could result in the children's removal from Mother's care. The court also ordered Mother to attend therapy sessions.

In August 2008, the children were taken into emergency protective custody as Mother had left one of the children with a non-relative and unauthorized caretaker for approximately one week while Mother's whereabouts were unknown. In addition, Mother had failed to maintain contact with HCDCS, and was no longer living at the address she had provided to HCDCS. Shortly after the children's second removal from Mother's care, Mother refused to participate in services altogether. By mid-October 2008, Mother had ceased virtually all communications with HCDCS case workers and was no longer participating in visits with the children.

HCDCS filed petitions seeking the involuntary termination of Mother's parental rights

to K.C., A.C., and Z.C. in March 2009. A two-day, consolidated evidentiary hearing on the termination petitions was held in July 2009. At the conclusion of the termination hearing, the trial court took the matter under advisement. On September 8, 2009, the trial court issued its judgment terminating Mother's parental rights to K.C., A.C., and Z.C. The following appeal ensued.

Mother asserts on appeal that HCDCS failed to prove, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in the children's removal from her care will not be remedied. In so doing, Mother acknowledges that she "did not fully cooperate with [HCDCS] and did not contact [HCDCS] or visit with her children for several months." *Appellant's Brief* at 16. Mother nevertheless asserts that she "made great improvements in the beginning of the case" that resulted in the children being returned to her and has "once again begun doing the things necessary to have the children returned to her care. . . ." *Id.* Mother therefore contends the trial court's judgment is "clearly erroneous and should be reversed." *Id.* at 17.

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 (Ind. Ct. App. 2001). 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 (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 court's judgment

terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204 (Ind. Ct. App. 1999), *trans. denied*. If the evidence and inferences support the trial court's decision, we must affirm. *Id.*

Here, the trial court made specific findings in its order terminating Mother's parental rights. Where the 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 (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). 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.

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*. Although parental rights are of a constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144 (Ind. Ct. App. 2008). In addition, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In re K.S.*, 750 N.E.2d 832.

To terminate a parent-child relationship, the State is required to allege and prove,

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 Ann. § 31-35-2-4(b)(2)(B) (West, Westlaw through 2009 1st Special Sess.). 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 Ann. § 31-37-14-2 (West, Westlaw through 2009 1st Special Sess.)). 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. I.C. § 31-35-2-8 (West, Westlaw through 2009 1st Special Sess.).

In the present case, the trial court found HCDCS presented sufficient evidence to satisfy both requirements of I.C. § 31-35-2-4(b)(2)(B). This statute, however, is written in the disjunctive. Thus, HCDCS 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 204. Because we find it dispositive under the facts of this case, we only consider whether clear and convincing evidence supports the trial court's findings regarding I.C. § 31-35-2-4(b)(2)(B)(i).

In determining whether there is a reasonable probability the conditions resulting in a child's removal or continued placement outside the family home will be remedied, a trial 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 (Ind. Ct. App. 2001), *trans. denied*. The 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. *In re M.M.*, 733 N.E.2d 6 (Ind. Ct. App. 2000). 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 (Ind. Ct. App. 2002), *trans. denied*. The trial court may also properly consider the services offered to the parent by a county Department of Child Services, and the parent's response to those services, as evidence of whether conditions will be remedied. *Id.* Finally, a trial court need not wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. *In re E.S.*, 762 N.E.2d 1287 (Ind. Ct. App. 2002).

In deciding there is a reasonable probability the conditions resulting in the children's removal or continued placement outside Mother's care will not be remedied, the trial court specifically found that Mother had "not demonstrated a consistent ability to parent" the children and had shown only a "minimal ability to participate in services." *Appellant's Appendix* at 8. The court also took note of Mother's criminal history, finding it "even more troublesome" that Mother had engaged in criminal activity following the removal of the children from her care while the underlying CHINS case remained open. *Id.* at 10.

As for Mother's use of illegal drugs, the trial court found Mother has a "history of drug abuse," tested positive for illegal drugs including marijuana, opiates, and amphetamines on eight separate occasions during the CHINS case, and had refused to submit to random

screens on many other occasions. *Id.* at 12. The court also found that, at the time of the termination hearing, Mother was pregnant but had "admitted to using marijuana after she found out that she was pregnant." *Id.* Regarding Mother's participation in services, the trial court acknowledged in its findings that Mother had "initially shown progress" sufficient to allow the return of the children to her care. *Id.* at 13. The court went on to find, however, that Mother's overall participation in services was "minimal at best," and led to the children's second removal from her care. *Id.*

The trial court also made the following pertinent findings:

> 25. In the judgment of the Court, neither [M]other nor [F]ather is likely to ever adequately care and provide for the children as a custodial parent.
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> * * *
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> 30. [Mother has] exhibited a pattern of engaging in criminal conduct. . . . [B]y engaging in criminal behavior, [Mother] again jeopardized her ability to care for her children. . . . At the time of the termination hearing, [M]other faces possible sanctions for her probation violations. Mother's pattern of behavior indicates that she will continue to jeopardize her ability to be a parent to the children as she has continued to jeopardize her ability to provide her children with stability and permanency.
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> * * *
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> 33. [Mother] failed to follow through with the recommendations of the service providers. Mother did not complete the parenting program and did not follow through with attending therapy.
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> * * *
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> 35. After [HCDCS] removed the children in August 2008, [M]other has only visited with her children on two occasions.

> 36. The Court finds by clear and convincing evidence that it is reasonably probable that the conditions that led to the removal and the reasons for placement outside the home; namely the parents' lack of stability, lack of ability to maintain consistent housing in a clean, safe, and stable environment for the children, lack of visitation, lack of participation with service providers and a commitment to effect reunification will not be remedied to the degree that they will be able to provide the children with the nurturing, stable, and appropriate care and environment that they require on a long[-]term basis.
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> * * *
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> 40. At the termination hearing, [M]other asks the Court not to terminate her parental rights to her children as she believes that she can get help and maintain her sobriety. While the Court applauds [M]other's recent revelations about her responsibility in these matters, [M]other's history throughout the wardships demonstrate[s] an unlikelihood that she can change her behavior or lifestyle long-term so that she can successfully be reunified with her children.

Id. at 8, 11-14, 16. The record reveals that clear and convincing evidence supports the court's findings set forth above. These findings, in turn, support the trial court's ultimate decision to terminate Mother's parental rights to K.C., A.C., and Z.C.

Since the time of the children's removal, Mother has been unable to provide a stable home environment for the children over a sustained period of time. Although Mother did initially accomplish several of the trial court's dispositional goals in 2007, Mother was unable to sustain this progress, resulting in a second emergency removal of the children in 2008. Following the children's second removal from her care, Mother ceased all participation in services, including visits with the children, for approximately five months. Notwithstanding Mother's recent re-engagement in some services, at the time of the termination hearing, she nevertheless had failed to successfully complete a majority of the

court's dispositional goals.

HCDCS family case manager Mike Deardorff informed the court that he had served as the family case manager for Mother since July 2008. Deardorff confirmed that, at the time of the termination hearing, Mother was unemployed, living with her mother in a one-bedroom apartment, had not completed parenting classes, had attended a total of only one or two therapy sessions, and had visited with the children only two times since their second removal from Mother's care in August 2008. Deardorff also testified that Mother had tested positive for opiates, marijuana, and oxycodone during the underlying proceedings.

When asked whether he had "seen [Mother] make any progress during this case at all," Deardorff answered, "Not really, no." *Transcript* at 78. When asked whether he believed there was a "reasonable probability of improvements in the conditions that caused the children's removal," Deardorff replied, "I don't see one at this point." *Id.* at 80. Deardorff went on to explain, "There's just been no follow through. Where [Mother's] at now[,] we've talked about[,] is not an acceptable place because it's not big enough for her and the children. . . . I don't really think she's tried with the homemaker to find a job. The dirty drug screens, the arrests, those are all concerns still." *Id.* In recommending termination of Mother's parental rights, Deardorff indicated Mother's lack of visitation with the children was also "a huge concern," and that he felt Mother "just hasn't done anything at this point in time to really try to get the children back . . . ." *Id.* at 80-81. We have previously stated that "the failure to exercise the right to visit one's child demonstrates a lack of commitment to complete the actions necessary to preserve the parent-child relationship." *Lang v. Starke*

County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*.

Jason Cephus and Todd Powell, family educators with The Villages, also testified during the termination hearing. Cephus informed the court that he was assigned to Mother's case from August 2007 until November 2008. Cephus explained that his service goals were to ensure the family home was "neat and orderly to house children in," to provide Mother with curriculum-based materials, and to educate Mother regarding the children's cognitive development. *Transcript* at 31. When asked to detail Mother's participation in services, Cephus stated that Mother's participation was inconsistent and that she essentially failed to show for scheduled appointments "every other week." *Id.* at 33. Cephus also reported that during his involvement in the case, he had continuing concerns regarding the children's "disheveled" appearance, "tattered clothes," and "out of control" behavior. *Id.* at 36.

When questioned as to whether Mother showed any positive progress, Cephus replied, "Yes. There were some times where [Mother] would make a stride to better herself. There were times where I would come and the house would be clean [because] she was trying to make amends for having a disheveled home the last visit. However, again[,] it would just fall back . . . ." *Id.* at 38. When later asked if Mother's behavior could be accurately described as a "pattern of improvement . . . taking one step forward but then taking two steps back," Cephus answered, "I would say taking one step forward, seven steps back." *Id.*

Powell likewise informed the court that he had continuing concerns regarding Mother's ability to be a parent and failure to consistently attend weekly appointments.

Powell testified that although he took over the case in December 2008, he had only met with Mother approximately six times. Powell also acknowledged that during the limited time he had worked with Mother, he had failed to see Mother make any progress.

As previously explained, a 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 the parent's *habitual patterns of conduct* to determine the probability of future neglect or deprivation of the children. *In re D.D.*, 804 N.E.2d 258 (Ind. Ct. App. 2004), *trans. denied*. Where there are only temporary improvements and the parent's pattern of conduct shows no overall progress, the court might reasonably infer that, under the circumstances, the problematic situation will not improve. *In re A.H.*, 832 N.E.2d 563 (Ind. Ct. App. 2005). Here, although it is readily apparent from the record that Mother loves the children and has, at times, made some progress in services, she nevertheless has been unable to demonstrate an ability to consistently provide the children with a safe and stable home environment. Consequently, the conditions that resulted in the children's removal and continued placement outside Mother's care have remained largely unchanged. This is true despite Mother having received approximately two years of in-home services designed to facilitate her reunification with K.C., A.C., and Z.C.

"A pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, support[s] a finding that there exists no reasonable probability that the conditions will change." *Lang*, 861 N.E.2d at 372. Based on the foregoing, we conclude that clear and convincing evidence supports the

trial court's determination that there is a reasonable probability the conditions leading to the children's removal or continued placement outside Mother's care will not be remedied. Mother's arguments on appeal, emphasizing her recent re-engagement in services, as opposed to the evidence cited by the trial court in its termination order, amount to an invitation to reweigh the evidence, which we may not do. *In re D.D.*, 804 N.E.2d 258 (Ind. Ct. App. 2004), *trans. denied*. 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.

Judgment affirmed.

KIRSCH, J., and ROBB, J., concur.