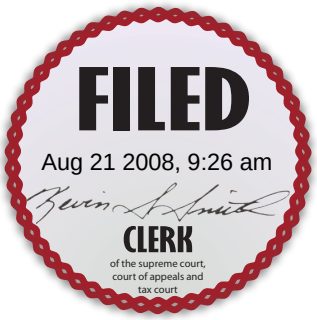

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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MATTER OF THE INVOLUNTARY TERMINATION OF PARENT-CHILD RELATIONSHIP OF Ma.H. and My.H., Minor Children, and VERONICA. R., Mother,	)	
VERONICA. R.,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A02-0712-JV-1087
MARION COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner,	)	
and	)	
CHILD ADVOCATES, INC.,	)	
Co-Appellee (Guardian ad Litem).	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary Chavers, Judge Pro Tem
The Honorable Larry Bradley, Magistrate
Cause No. 49D09-0704-JT-16149

August 21, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Veronica R. ("Mother") appeals the involuntary termination of her parental rights to her children, Ma.H. and My.H. As the juvenile court did not abuse its discretion when it denied Mother's motion to continue and admitted several of the State's exhibits into evidence, and its judgment is supported by clear and convincing evidence, we affirm.

FACTS AND PROCEDURAL HISTORY

Ma.H. was born September 5, 2003, and My.H. was born October 22, 2004.[1] The facts most favorable to the judgment are that on April 9, 2006, Mother was arrested for forgery. She was convicted and sentenced to three years executed time. Mother made arrangements for her cousin, Melissa R., to take care of the children. On or about May 30, 2006, Melissa contacted the Marion County Office of Family and Children ("MCDCS") because she was no longer able to care for Ma.H. and My.H.

After an investigation, MCDCS took the children into custody and on May 31, 2006, alleged the children were in need of services ("CHINS"). On July 14, 2006, Mother admitted in an Agreed Entry to the allegations in the CHINS petition. Mother agreed to waive the Predispositional Report and instead asked the juvenile court to accept the provisions of the Agreed Entry as the court's own Parental Participation Decree.

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[1] A third child, J.R., was born December 19, 2000. Mother's parental rights to J.R. were terminated in a separate cause on June 30, 2003.

The Agreed Entry required Mother to participate in services including a bonding assessment, individual and home-based counseling, and parenting classes, in order to achieve reunification with her children. Mother was to maintain contact with MCDCS every other week, secure a legal and stable source of income adequate to support all household members, maintain regular visitation with the children as arranged by the family case manager, follow all recommendations made by counselors and service providers, and successfully complete any criminal sentences, including any probation or parole to which Mother may be subject. The court accepted the Agreed Entry and ordered it serve as the Dispositional Decree.

On September 1, 2006, Mother was released from prison to participate in a residential work release program through Volunteers of America ("VOA"). She was required to participate in positive parenting classes, anger management classes, and individual counseling. Mother was to obtain and maintain employment, refrain from using drugs and alcohol, and follow all rules of the program.

On September 4, 2006, Mother began working for Life Line Industries in Indianapolis, Indiana. She was fired in December 2006 after several disciplinary incidents, including an "informal" report for "failing to stand count" and two formal reports for "disorderly conduct" and "having a dirty drop, which was alcohol."[2] (Tr. at 90.) On January 12, 2007, Mother was discharged from the VOA work release program

[2] "Failing to stand count" means Mother was not at her bunk for attendance. The "dirty drop" was a reference to a urine sample.

for noncompliance with program rules and her positive screen for alcohol. She was ordered to return to the Rockville Correctional Facility to serve the rest of her sentence.

Meanwhile, on September 19, 2006, following a hearing on the CHINS petition, the juvenile court found Ma.H. and My.H. to be CHINS and ordered the children be made wards of MCDCS. Mother was not present for the hearing but was represented by counsel. The children were placed with their paternal grandparents and have remained in the grandparents' care throughout the duration of this case.

MCDCS's original permanency plan called for Mother and her children to be reunified, but on April 19, 2007, MCDCS filed a petition for termination of Mother's parental rights. A hearing on the termination petition was set, and Mother filed a Request for Production of Documents. She sought copies of any documents MCDCS intended to introduce at trial, including all exhibits. The next day Mother moved to shorten the time for production. The juvenile court granted Mother's motion on September 4, 2007, and ordered MCDCS to produce the documents no later than September 10, 2007.

On September 11, 2007, MCDCS filed an emergency motion to continue the fact-finding hearing on the termination petition in order to pursue a possible guardianship. Mother did not object, but the Guardian ad Litem ("GAL") did. The trial court denied the emergency motion on September 13, 2007.

At the commencement of the fact-finding hearing on September 17, 2007, counsel for Mother asked that the hearing be continued because counsel had received copies of several of MCDCS's exhibits only that morning, in violation of the order to produce all documents by September 10th. The juvenile court denied the continuance and proceeded

with the termination hearing. During the hearing, counsel for Mother objected to four of the State's proffered exhibits because the exhibits had not been provided to counsel until that morning. The court admitted three of the exhibits.

On November 8, 2008, the court issued its judgment terminating Mother's parental rights to Ma.H. and My.H.

DISCUSSION AND DECISION

Mother asserts the juvenile court abused its discretion when it denied her motion to continue the fact-finding hearing on the termination petition and admitted certain documents into evidence. She also claims there is insufficient evidence supporting the judgment.

We are highly deferential when reviewing termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We do not reweigh evidence or judge the credibility of 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 therefrom that are most favorable to the judgment. *Id.*

The juvenile court made specific findings. When a court enters specific findings of fact, 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. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). 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*. A

judgment is clearly erroneous only if the findings do not support the juvenile court's conclusions or the conclusions do not support the judgment thereon. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

1. Motion to Dismiss/Admissibility of Evidence

Mother was not prejudiced by the denial of her motion to continue and in the admission of State's Exhibits 5 and 7 into evidence. A decision to grant or deny a non-statutory motion for a continuance rests within the sound discretion of the trial court. *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615, 619 (Ind. Ct. App. 2006), *trans. denied*. We will reverse only for an abuse of that discretion and prejudice resulting from such an abuse. *J.M. v. Marion County Office of Family & Children*, 802 N.E.2d 40, 43 (Ind. Ct. App. 2004).

Where there is a failure to comply with discovery procedures, "the trial judge is usually in the best position to determine the dictates of fundamental fairness and whether any resulting harm can be eliminated or satisfactorily alleviated." *Cliver v. State*, 666 N.E.2d 59, 64 (Ind. 1996). Absent clear error *and* resulting prejudice, the juvenile court's determination as to discovery violations and sanctions should not be overturned. *Id*.

Before the court decided to proceed with the case and admit the contested exhibits, the following exchange took place:

MCDCS:	I gave him all of [the exhibits] this morning.
Chavis:	I've got the proposed exhibits this morning[,] Judge.
Court:	Okay. But are they Court documents or what? I mean is it something . . .
MCDCS:	They're all certified documents.
Chavis:	There's a, there's an arrest record . . . . There is a[n] information sheet with some documentation attached to it.

* * * * *

Chavis: Criminal . . . I'm sorry. Criminal information sheet that details . . . .

Court: You mean like an affidavit? The charging affidavit?

Chavis: Yeah . . . .

* * * * *

Chavis: And . . . if I had had these in advance, I could've been prepared to deal with these, including . . .

Court: Well, I guess, I mean if they're just the arrest records and like you can talk to your client, we can clear the Court Room at a given time, you can talk to her about it. I don't see where that really prejudices you, that you got those late.

* * * * *

Court: I don't think the, the issues with the exhibits are anything that would be really prejudicial. What I'm willing to do is hear [MCDCS's] evidence today and yours, but I will give you an opportunity at a later date . . . we can adjourn and you can call any additional witnesses that you may need.

(Tr. at 4-5, 9.)

Mother presumably was aware of her own criminal record and had the opportunity to present her own evidence on that issue. Mother has not shown the admission of these court-certified documents prejudiced her case.

2. Clear and Convincing Evidence

A petition to terminate a parent-child relationship must allege:

(A) [o]ne (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).

A. Conditions Will Not Be Remedied

Mother asserts MCDCS did not prove the conditions resulting in the children's removal and continued placement outside the home would not be remedied and that continuation of the parent-child relationship posed a threat to the children's well-being. Specifically, she claims the juvenile court committed "clear error" when it relied in part on her "parole violation" to determine there is a reasonable probability the conditions resulting in the children's removal and continued placement outside the home will not be remedied, because she was not on parole or probation when she violated the conditions of the work release program. (Br. of Appellant at 9.)

Ind. Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, so the juvenile court need find by clear and convincing evidence only one of the two requirements of subsection (B). *See L.S.*, 717 N.E.2d at 209.

When determining whether there is a reasonable probability the conditions justifying a child's removal and continued placement outside the home will not be remedied, the juvenile court must judge a parent's fitness to care for her children 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 court must also "evaluate the parent's habitual patterns of conduct to determine the

probability of future neglect or deprivation of the child." *Id.* Accordingly, 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*. The court may also properly consider the services offered to a parent, and the parent's response to those services, as evidence of whether conditions will be remedied. *Id.* MCDCS is not obliged to rule out all possibility of change; it need establish only a reasonable probability a parent's behavior will not change. *In re Kay.L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

The juvenile court found:

> 7. Court[-]ordered services for Mother to complete toward reunification with her children included completion of a bonding assessment, parenting classes, individual counseling[,] and home[-]based counseling. In addition, Mother was to obtain stable employment and adequate housing. Further, as a result of Mother's pending criminal charges, she was to complete any criminal sentences, and follow all rules and regulations related to any probation or parole.
> 8. Mother remained incarcerated on charges of Forgery and Theft/Receiving Stolen Property. She [had] one conviction of Forgery as a Class C Felony on August 1, 2006, and a subsequent Forgery as a Class C Felony on August 8, 2006. She was sentenced to three years on each conviction. Mother had prior convictions of Check Fraud, Theft, and Criminal Conversion.
> 9. In September of 2006, Mother [was] released on parole to a work release center. She had brief employment at Lifeline Industries before being terminated for low sales. In December of 2006, she was in the process of obtaining employment at McDonald's.
>
> * * * * *
>
> 11. Due to non-compliance of rules, including testing positive for alcohol, Mother violated the terms of her work release parole and was sent to Rockville Correctional Facility in January of 2007. Her projected out date is April 13, 2009.

12. The conditions that resulted in the removal and placement of the children outside the home has not been remedied. Mother remains incarcerated. Mother has a future plan to take classes that may reduce her sentence.
13. There is no documentation that Mother has participated in MCDCS approved services. To her credit, she did complete an Anger Management Class and a Parenting Group. In addition, Mother took a Basic Computer Skills course. All were taken while on work release in 2006.
14. A previous CHINS case was filed on Mother in October of 2001 as to her child, [J.R.]. Services toward reunification were unsuccessful and Mother's parental [r]ights over [J.R.] were terminated in June of 2003.
15. At this point in time, prior to reunification taking place, Mother must complete her sentence and comply with the rules of any subsequent parole, obtain a suitable home environment with income[,] and complete the first tier of services required by MCDCS and the Court in the CHINS matter. Then home[-]based services would be commenced.

* * * * *

17. Given Mother's criminal history, including the parole violation, and Mother's lack of compliance with services in a previous CHINS and termination case, there is a reasonable probability that conditions resulting in the [children's] removal and continued placement outside the home will not be remedied.

(App. at 14-15.)

There is ample evidence to support the juvenile court's findings. Mother placed the children in the care of her cousin because she was incarcerated and unavailable to care for them. By the time of the termination hearing on September 17, 2007, Mother was still incarcerated and unavailable to provide for her children. Mother testified her earliest release date is April 13, 2009. Mother admitted to the specific allegations in the CHINS petition and agreed to participate in various services to achieve reunification with her children, but she did not complete most of the court-ordered services. When given an opportunity to work toward reunification by obtaining employment and participating in

parenting classes, individual counseling, and various other services through the VOA work release program, Mother chose instead to violate the VOA program rules and was discharged from the program.

The juvenile court considered Mother's violation of work release[3] as only one of several factors indicating the conditions resulting in the children's continued placement outside Mother's care would not be remedied. Thus, even if that finding was deficient or inaccurate, the alleged erroneous findings will not prove fatal if other valid findings support the juvenile court's conclusions. *See A.F.*, 762 N.E.2d at 1251 (if some valid findings support a trial court's conclusions, an erroneous finding will not prove fatal because findings of fact are not to be reviewed individually, but in their entirety, to determine whether they support the court's legal conclusions).

"[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*. Based on the foregoing, we cannot say the juvenile court committed clear error in determining there is a reasonable probability the conditions resulting in the children's removal from the care and custody of Mother will not be remedied.[4]

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[3] It was apparently this violation that the court characterized as a "parole violation."

[4] Having determined the juvenile court's finding regarding the remedy of conditions is supported by clear and convincing evidence, we need not address whether MCDCS proved continuation of the parent-child relationship poses a threat to the children's well-being. *See L.S.*, 717 N.E.2d at 209.

B. Best Interests

Mother also claims MCDCS failed to prove the termination of her parental rights is in the children's best interests.

In determining what is in the best interests of the child, we look beyond the factors identified by the 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). The juvenile court must subordinate the interests of the parent to those of the children. *Id.* Recommendations of a caseworker and Guardian ad Litem ("GAL") that parental rights be terminated support a finding that termination is in the child's best interest. *Id.*

The juvenile court found:

> 16. To allow the children to remain in limbo for the substantial amount of time needed for Mother to finish her sentence and attempt to complete services is not in the children's best interests.
>
> * * *
>
> 18. [Ma.H.] and [My.H.] have been placed with relative caregivers. This placement is pre-adoptive. They are well adjusted, happy, and have become very bonded to both caregivers. [Ma.H.] was born with a heart condition and [My.H.] suffers from Eczema. [Their] special needs are being managed and they are thriving.

(App. at 14-15.) These findings are supported by the evidence.

MCDCS case worker Erin Michael Jolliff and Guardian ad Litem Sharon Darby both recommended termination of Mother's parental rights. Jolliff testified she had observed the children in the grandparents' home and they were doing well. Darby testified the children "appear to be very happy and very playful like two and three[-

]year[-]olds are. They seem to adore the [caregivers]. They get along well with each other and . . . seem very well cared for and very happy." (*Id*. at 101.)

When asked whether the children appear bonded to their grandparents, Jolliff responded, "Oh yeah. Oh yeah. Absolutely. Very bonded to both caregivers." *Id*. When asked why she believed adoption was in the best interests of the children, Jolliff explained, "[O]ur objective is to maintain permanency. Permanency either with the parent[,] and if that's not a viable option, permanency in a home. We believe adoption is in the best interest [because] these children are young and they do need that stability in their life." (*Id*. at 62.)

The conclusion that termination is in the children's best interests is supported by clear and convincing evidence. *See In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding the testimony of court appointed special advocate and family case manager, coupled with evidence that the conditions resulting in continued placement outside the home will not be remedied, is sufficient to prove by clear and convincing evidence termination is in the child's best interest), *trans. denied*.

CONCLUSION

The juvenile court did not abuse its discretion in denying Mother's motion to continue the termination hearing and in allowing State's Exhibits 5 and 7 to be admitted into evidence. Mother has not completed or benefited from most of the dispositional goals put into place during the CHINS proceedings. At the time of the termination hearing, Mother was still unavailable to parent Ma.H. and My.H. due to her incarceration. "[I]individuals who pursue criminal activity run the risk of being denied the opportunity

to develop positive and meaningful relationships with their children." *Matter of A.C.B.*, 598 N.E.2d 570, 572 (Ind. Ct. App. 1992).

The juvenile court's judgment terminating Mother's parental rights to Ma.H. and My.H is supported by clear and convincing evidence and is therefore affirmed.

Affirmed.

VAIDIK, J., and MATHIAS, J., concur.