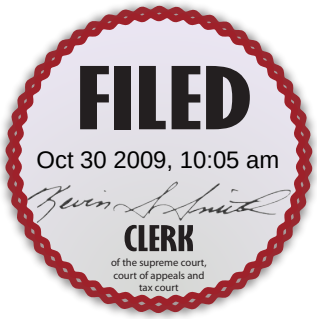

ATTORNEY FOR APPELLANT:

ERIN L. BERGER
Vanderburgh County Public Defender Agency
Evansville, Indiana

ATTORNEY FOR APPELLEE:

MARY JANE HUMPHREY
Indiana Department of Child Services
Vanderburgh County Office
Evansville, Indiana

IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF PARENT-CHILD RELATIONSHIP OF H.P., Minor Child, And A.H., Mother, Appellant,	)	
vs.	)	No. 82A01-0904-JV-164
INDIANA DEPARTMENT OF CHILD SERVICES, Appellee.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Brett J. Niemeier, Judge
The Honorable Jill Marcrum, Magistrate
Cause No. 82D01-0807-JT-77

October 30, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

A.H. ("Mother") appeals the involuntary termination of her parental rights to her child H.P. and raises two issues, which we restate as:

> I. Whether the trial court abused its discretion when it denied Mother's motions for continuance and services; and,
>
> II. Whether the evidence was sufficient to support the trial court's termination of Mother's parental rights.

Concluding that the trial court acted within its discretion when it denied Mother's motions, and that the court's judgment is supported by clear and convincing evidence, we affirm.

Facts and Procedural History

Mother is the biological mother of H.P. born December 27, 2003. On September 26, 2007, the Vanderburgh County Department of Child Services ("the VCDCS") filed a petition alleging that H.P. was a Child in Need of Services ("CHINS"). On that date, H.P. was not in the care of her Mother or her biological father, but in the care of A.A., H.P.'s grandmother, who had been named as H.P.'s guardian. The CHINS petition alleged that H.P.'s physical or mental condition "is seriously impaired or endangered as a result of the neglect of the child's guardian to supply the child with necessary supervision" because the guardian tested positive for cocaine and admitted to a history of cocaine use. Appellant's App. p. 14. The CHINS petition also alleged that Mother is unable to provide H.P. with necessary supervision due to Mother's history of drug use. Id. at 15.

Dispositional hearings were held in the CHINS proceedings on November 13, 2007, December 11, 2007, and January 22, 2008. At both the December and January hearings, Mother appeared and declined to participate in services.

On July 29, 2008, the VCDCS filed a petition to terminate Mother's (and biological father's) parental rights to H.P. Counsel was appointed for Mother on September 30, 2008. On that date, she requested that services be provided to her with the goal of being reunited with H.P. Tr. p. 15. The trial court denied Mother's motion. Mother renewed her motion to begin participating in services at a permanency hearing held on October 29, 2008, and that motion was denied.

The hearing on the VCDCS's petition to terminate Mother's parental rights was held on December 18, 2008. Mother again moved to continue the hearing arguing that she should be allowed to participate in services. That motion was denied. On February 10, 2009, the trial court issued its judgment terminating Mother's parental rights. In its findings of fact, the court noted:

> 14. [H.P.] has behavioral problems which increased after the visits that [H.P.] had with her mother. After visits with her mother, she began to wet her pants and was angry. [H.P. has stated to her therapist that she is afraid to visit her mother. [H.P.] is slow to "open" about her feelings.
> 15. [H.P.] stated that [] she was scared to visit.
> 16. [H.P.] is scared to discuss family issues and her feelings.
> 17. [H.P.] has a diagnosis of Adjustment Disorder and anxiety/depression.
> 18. [H.P.] needs long term attachments and permanent placement.
>
> ***
>
> 20. [H.P.] is receiving all the attention, care, and love that she needs in her current foster home.
> 21. It is in best interests of [H.P.] for her to have a permanent, stable home.

> 22. CASA did not interview mother because of the mother's extremely limited participation.
> 23. [Mother] had seven (7) supervised visits in November of 2007. She then tested positive for cocaine and quit participating.
> 24. During the course of this wardship of 17 months, the only actions of the [Mother] have been to attend some of the hearing and to have seven (7) supervised visitations. This coupled with the fact that [H.P.] was in a guardianship at the beginning of the wardship demonstrates the total lack of interest that [Mother] has in the well-being of [H.P.]

Appellant's App. pp. 18-19. Mother now appeals the court's judgment terminating her parental rights to H.P.

Standard of Review

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, 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, 265 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. Id.

In the present case, the trial court's judgments terminating Mother's parental rights to the children contained specific findings and conclusions. Where a trial court enters specific findings of fact, we must first 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). We will not set aside a trial court's judgment terminating parental rights unless it is clearly erroneous.

Rowlett v. Vanderburgh County Office of Family & Children, 841 N.E.2d 615, 620 (Ind. Ct. App. 2006), trans. denied. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. D.D., 804 N.E.2d at 265. 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).

I. Mother's Motion for Services and Continuance

First, Mother argues that the trial court abused its discretion when it denied her motion for a continuance.[1] The decision to grant or deny a motion to continue rests within the sound discretion of the trial court. Parmeter v. Cass County Dep't of Child Servs., 878 N.E.2d 444, 449 (Ind. Ct. App. 2007). Therefore, we will not disturb the court's ruling absent a showing of clear and prejudicial abuse of that discretion. Id.

Mother claims that she was "prejudiced by the denial of a continuance of the trial in that it affected her ability to demonstrate to the court that the conditions which caused the removal of [H.P.] would be remedied." Appellant's Br. at 8. Further, she argues that if her motions had been granted, she would have "been better able to demonstrate to the court that she had stable housing, stable income, could comply with DCS's requirements contained in the Petition for Parental Participation, and was able to parent H.P." Id.

[1] Mother argues that the DCS should have sought an order terminating the guardianship prior to the termination hearing, and at that point, Mother "should [] have been given the opportunity to participate in services to regain custody of H.P." Appellant's Br. at 7. Mother's argument ignores the fact that she was served with a copy of the CHINS petition and H.P. was adjudicated a CHINS in part due to Mother's drug use. Furthermore, Mother appeared at two dispositional hearings during the CHINS proceedings and declined the services offered to her.

H.P. was found to be a CHINS while in the care of her guardian due, in part, to her guardian's cocaine use and Mother's cocaine use. Mother was notified of the CHINS petition and appeared at two dispositional hearings. At those hearings, she was offered services. Mother told the VCDCS and the court that she did not want to participate in services even after she was told that she would not be able to visit H.P., and was informed of the risk of termination of her parental rights. Tr. pp. 8-9, 12.

"[T]he law concerning termination of parental rights does not require the [VCDCS] to offer services to the parent to correct the deficiencies in childcare." In re B.D.J., 728 N.E.2d 195, 201 (Ind. Ct. App. 2000). Mother was offered services, but she declined. Mother only asked for services to be provided to her after the VCDCS filed the petition to terminate her parental rights. Because "the time for parents to rehabilitate themselves is during the CHINS process, prior to the filing of the petition for termination" see Prince v. Dep't of Child Servs., 861 N.E.2d 1223, 1230 (Ind. Ct. App. 2007), we conclude that the trial court acted within its discretion when it denied Mother's motions for a continuance and services.

Finally, we observe that Mother presented no evidence that she took any action to improve her ability to parent H.P. or to address her substance abuse issues during the CHINS proceedings and the nearly five months between the date the petition to terminate parental rights was filed and the date of the hearing on the petition. Because Mother declined services when offered and failed to take any steps to avoid termination of her

parental rights, Mother cannot demonstrate that she was prejudiced by the trial court's denial of her motions.

II. Sufficient Evidence to Support the Termination of Mother's Parental Rights

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. Bester, 839 N.E.2d at 147. A parent's interest in the care, custody, and control of his or her children is arguably one of the oldest of our fundamental liberty interests. Id. However, these parental interests are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. Parental rights may therefore be terminated when the parents are unable or unwilling to meet their parental responsibilities. K.S., 750 N.E.2d at 836.

In order to terminate a parent-child relationship, the State is required to allege, among other things, that:

> (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 . . . .

Ind. Code § 31-35-2-4(b)(2)(B) and (C) (2008). Each of these allegations must be established by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992); see also Ind. Code § 31-35-2-8 (1998).[2]

Mother claims that the trial court's judgment is not supported by sufficient evidence. Specifically, she argues that the VCDCS failed to prove by clear and convincing evidence that 1) the conditions that resulted in H.P.'s removal would not be remedied, 2) the continuation of the parent-child relationship poses a threat to the well-being of H.P.; and 3) termination is in H.P.'s best interests. See Appellant's Br. at 10.

Because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, a trial court is required to find that only one of the two requirements of subsection (B) has been established by clear and convincing evidence in order to satisfy this portion of the termination statute. See In re L.S., 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), trans. denied. Yet, in this case, the trial court determined that the VCDCS presented sufficient evidence to satisfy both requirements of subsection (B). We therefore begin our review by considering whether sufficient evidence supports the trial court's findings regarding subsection (B)(i) of the termination statute.

To determine whether a reasonable probability exists that the conditions justifying a child's removal or 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 time of the termination hearing*, taking into consideration evidence of changed conditions. In re J.T.,

[2] Additional conditions not at issue in this case are also required to be alleged and proved before the involuntary termination of parental rights may occur. See Ind. Code § 31-35-2-4(b)(2).

742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. The trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." Id. 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, 1251 (Ind. Ct. App. 2002), trans. denied. In addition, the VCDCS was not required to rule out all possibilities of change; rather, it needed to establish only that there is a reasonable probability Mother's behavior will not change. In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

Mother argues that the fact that she established a guardian for H.P. "is evidence of [Mother's] desire to ensure that H.P. was properly cared for." Appellant's Br. at. 11. We agree with Mother that "'society should encourage parents who are experiencing difficulties raising them to take advantage of an available 'safety net,' such as a grandparent or aunt or uncle who is willing to accept temporary custody of the child.'" Id. at 11-12 (quoting In re M.K., 867 N.E.2d 271, 275 (Ind. Ct. App. 2007)).

However, H.P. was removed from her guardian's care on October 4, 2007, because H.P.'s guardian admitted cocaine use and a history of cocaine abuse. Mother, who is also a cocaine user, placed H.P. with a guardian who has a history of substance abuse. Moreover, there is no evidence in the record establishing that Mother has taken any steps to address her substance abuse issues.

Next, we observe that Mother was notified of the CHINS petition, and she declined to participate in services both at the December 11, 2007 and the January 22, 2008 dispositional hearings. She did so even though she was informed that by refusing to participate in services, she would not be able to visit with H.P. The trial court also advised Mother of the risk of declining services in the event the VCDCS filed a petition to terminate her parental rights. Mother had no visitation with H.P. from November 2007 to October 2008 because she refused to participate in services. Tr. p. 90. The Court Appointed Special Advocate ("the CASA") testified that Mother's parental rights should be terminated because Mother has not shown "any desire to be a mother at any point in time. She did not accept responsibility for what was going on or the care of the child." Tr. p. 74.

While we find no fault with Mother's decision to place H.P. with a guardian, Mother chose a guardian who has a history of using cocaine, which ultimately led to H.P.'s removal from the guardian's home. By declining to participate in services and failing to address her substance abuse issues, Mother has shown that she does not desire to be a parent to H.P. Moreover, Mother presented no evidence at the time of the termination hearing that would indicate that she has the ability or desire to be a parent to H.P. For all of these reasons, we conclude that the VCDCS presented clear and convincing evidence that the conditions that resulted in H.P.'s removal would not be remedied.

Finally, we consider whether termination of Mother's parental rights was in H.P.'s best interests. To determine what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Department of Child Services and to consider the totality of the evidence. McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the court must subordinate the interests of the parent to those of the child. Id. The trial court need not wait until a child is irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). Moreover, we have previously held that the recommendations of the case manager and court-appointed advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in the child's best interests. Id.

Mother is a cocaine user, who has not taken any steps to address her addiction. After the CHINS petition was filed, Mother declined to participate in services even after she was informed that she would not be allowed visitation with H.P. Mother has not made any attempt to maintain a relationship with H.P.

H.P. is doing well in her placement in her current foster home. Her sleep habits and behavior have improved. H.P. seems less anxious and happier. Tr. p. 54. H.P. needs a stable and long term placement. Tr. pp. 56, 92. The VCDCS case manager and

the CASA testified that termination of Mother's parental rights was in H.P.'s best interests. Tr. p. 82; Ex. Vol., Ex. 3.

Under these facts and circumstances, we conclude that clear and convincing evidence supports the trial court's determination that termination of Mother's parental right is in H.P.'s best interests.

Conclusion

The trial court acted within its discretion when it denied Mother's motions for a continuance and services. The trial court's judgment terminating Mother's parental rights to H.P. is supported by clear and convincing evidence.

Affirmed.

DARDEN, J., and ROBB, J., concur.