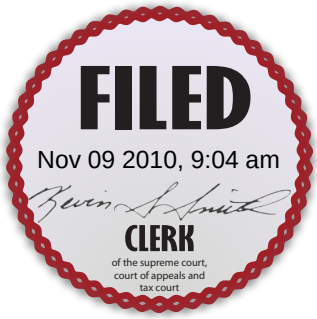

ATTORNEY FOR APPELLANT:

DOUGLAS D. MARTZ
Marion, Indiana

ATTORNEYS FOR APPELLEE:

DEBBIE BURKE
Indiana Department of Child Services of Grant County
Marion, Indiana

ROBERT J.HENKE
DCS Central Administration
Indianapolis Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN RE THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF:	)	
S.M., Minor Child, and T.U., Mother, Appellant-Respondent,	)	
vs.	)	No. 27A04-1005-JT-266
INDIANA DEPARTMENT OF CHILD SERVICES, Appellee-Petitioner.	)	

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Randall L. Johnson, Judge
Cause No. 27D02-0908-JT-506

November 9, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

T.U. ("Mother") appeals the involuntary termination of her parental rights to her child, S.M., claiming there is insufficient evidence supporting the trial court's termination order. We affirm.

Facts and Procedural History

Mother is the biological mother of S.M., born in November 2001. The facts most favorable to the trial court's judgment reveal that in October 2007, the Indiana Department of Child Services, Grant County ("GCDCS") received a report from S.M.'s physician regarding unexplained bruises found on the child's body, including S.M.'s right and left arms, back, upper left thigh, and right buttocks. There were also facial bruises on S.M.'s right temple, left check, and a bruise in the shape of a hand on her right cheek. Mother admitted to striking S.M. on the right cheek and right buttocks, but did not believe she hit the child hard enough to leave bruises. Mother was later charged with and pleaded guilty to battery as a result of these injuries.

Due to the amount and severity of the bruising, and Mother's inability to reasonably explain the causes of S.M.'s injuries, S.M. was taken into protective custody. At the time of S.M.'s removal, Mother was already receiving home-based services through a voluntary Informal Adjustment program entered into with GCDCS several months earlier, in June, as a result of case workers and service providers observing

Mother being physically aggressive and verbally abusive with S.M. and the child's younger sibling.[1]

In July 2008, S.M. was found to be a child in need of services ("CHINS") by the trial court. This was not the first time S.M. had been adjudicated a CHINS. When S.M. was approximately three-and-one-half years old, she was found to be a CHINS and was removed from Mother's care for approximately eight months. Although S.M. was eventually returned to Mother, GCDCS continued to monitor the family and provide services for approximately sixteen additional months.

Returning to the current case, in August 2008, the trial court entered a dispositional order formally removing S.M. from Mother's care and directing Mother to participate in a variety of services in order to achieve reunification with S.M. Specifically, Mother was ordered to, among other things: (1) successfully complete a parenting education program; (2) participate in therapy and follow any and all recommendations of the therapist; (3) complete a psychological evaluation including a Child Abuse Potential Inventory and follow all resulting recommendations, (4) participate in home-based case management services and follow any and all recommendations of that program; and (5) attend regular supervised visits with S.M.

[1] S.M.'s biological father, R.M., was incarcerated throughout the duration of the underlying proceedings on multiple felony child molestation convictions involving S.M.'s older half-sibling. R.M. voluntarily relinquished his parental rights to S.M. in September 2009, and the trial court terminated R.M.'s parental rights to S.M. in its April 2010 termination order. R.M. does not participate in this appeal. Additionally, Mother's parental rights to S.M.'s younger sibling, T.M., were not terminated by the trial court in its April 2010 judgment. Consequently, we limit our recitation of the facts solely to those pertinent to Mother's appeal of the involuntary termination of her parental rights to S.M.

Mother participated in several court-ordered services including a psychological evaluation, parenting education classes, and an anger management program. Notwithstanding her participation in services, however, Mother failed to improve her ability to safely and effectively parent S.M., especially in light of S.M.'s significant mental health issues including reactive attachment disorder, attention deficit hyperactivity disorder ("ADHD"), and post-traumatic stress disorder ("PTSD"). In addition, Mother's refusal to consistently take her prescribed medications for her own diagnosed mental health conditions, including Bipolar disorder, further frustrated Mother's ability to progress in services and gain the skills necessary to appropriately parent S.M.

GCDCS eventually filed a petition seeking the involuntary termination of Mother's parental rights to S.M. in August 2009. A two-day evidentiary hearing commenced on December 17, 2009, and concluded on February 3, 2010. At the conclusion of the hearing, the trial court took the matter under advisement, and on April 9, 2010, the court issued its judgment terminating Mother's parental rights to S.M. Mother now appeals.

Discussion and Decision

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). When reviewing a 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. Moreover, 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, 208 (Ind. Ct. App. 1999), trans. denied.

Here, in terminating Mother's parental rights, the trial court entered specific factual findings and conclusions. When a trial court's judgment contains specific findings of fact 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. "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). If the evidence and inferences support the juvenile court's decision, we must affirm. L.S., 717 N.E.2d at 208.

"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, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. K.S., 750 N.E.2d at 837. Termination of a parent-child relationship is proper where a child's emotional and physical development is threatened. Id. Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be

terminated when a parent is unable or unwilling to meet his or her parental responsibilities. Id. at 836.

Before an involuntary termination of parental rights can occur, the State is required to allege and prove, 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 . . . .

Ind. Code § 31-35-2-4(b)(2)(B) & (C) (2009).[2] 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, 1260-1261 (Ind. 2009) (quoting Ind. Code § 31-37-14-2). 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. Ind. Code § 31-35-2-8(a).

Mother challenges the sufficiency of the evidence supporting the trial court's findings as to subsection 2(B) of the termination statute cited above. Initially, we observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. It therefore requires the trial court to find that only one of the two requirements of subsection 2(B) has been established by clear and convincing evidence. See L.S., 717 N.E.2d at 209. Here, the trial court found both prongs of subsection 2(B) had been satisfied. Mother

[2] Indiana Code section 31-35-2-4 was amended by Pub. L. No. 21-2010, § 8 (eff. March 12, 2010). Because the changes to the statute became effective in March 2010 following the filing of the termination petition herein, they are not applicable to this case.

does not challenge the trial court's latter determination. In failing to do so, Mother has waived review of this issue. See Davis v. State, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005) (concluding that failure to present a cogent argument or citation to authority constitutes waiver of issue for appellate review), trans. denied. Nevertheless, given our preference for resolving a case on its merits, we will review the sufficiency of the evidence supporting the trial court's judgment with regard to subsection (B)(i) of the termination statute.

I. Conditions Not Remedied

When determining whether there is a reasonable probability the conditions resulting in a child's removal or continued placement outside the family home will not 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, 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. The trial court may also consider any services offered to the parent by the county department of child services (here, GCDCS), and the parent's response to those services, as evidence of whether conditions will be remedied. Id.

Moreover, a county department of child services is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In challenging the sufficiency of the evidence supporting the trial court's termination order, Mother asserts that "the evidence relied on by the [t]rial [c]ourt expressed only the service providers' concerns and fears for furthering the re-unification process at this time," and that "the evidence did not clearly and convincingly point to ongoing parental issues that related back to the original reason for [S.M.'s] removal from [Mother's] home. Appellant's Br. at 10. GCDCS counters that Mother "misapprehends" the statutory and case law in this instance, stating the termination statute "does not simply focus on the initial basis for the child's removal," but also the reasons for continued placement outside the home. Appellee's Br. at 7.

We have previously explained that the trial court looks not only at the initial reasons for a child's removal, but may also consider "those bases resulting in the continued placement [of the child] outside the home." A.I. v. Vanderburgh County Office of Family & Children, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005). Here, in determining that there is a reasonable probability the conditions resulting in S.M.'s removal and *continued placement* outside of Mother's care will not be remedied, the trial court made several pertinent findings. Specifically, the trial court found that while S.M. was still living in the family home, Mother "cursed directly at [S.M.], sometimes calling

her names and used foul language in [S.M.'s] presence," and that this behavior, as well as specific threats to "beat her [S.M.'s] ass" were observed by service providers and caseworkers. Appellant's App. p. 439. The court further found that S.M. was removed from Mother's care after GCDCS observed "marks and bruising to various parts of [S.M.'s] face and body" and Mother admitted to "striking [S.M.] in the face." Id. at 439-40. Moreover, the trial court noted that aside from entering a guilty plea to the battery charge, Mother "has not taken responsibility for the injuries to [S.M.]," and "minimized or denied that she had harmed [S.M.] to service providers and [GCDCS]." Id. at 440.

With regard to Mother's ongoing mental health issues, the trial court found that the results of Mother's psychological testing and interview with psychologist Lisa Wooley indicate Mother suffers with Bipolar Disorder, described as a "major mental illness." Id. The trial court also found that Mother "is in need of consistent and appropriate treatment for her own mental health needs," but has failed to present any evidence that she is receiving said treatment. Id. Also significant, the trial court found that "[a]t no time during the current CHINS proceeding did [GCDCS], Mother's service providers, Crossroad staff[,] or [the] CASA [court-appointed special advocate] recommend that [S.M.] be returned to Mother's care despite the need to make changes in [S.M.'s] placements. No one believed [S.M.] would be safe in Mother's care." Id.

A thorough review of the record leaves us satisfied that clear and convincing evidence supports these findings, which in turn support the trial court's ultimate decision to terminate Mother's parental rights to S.M. Testimony from various caseworkers and

service providers makes clear that despite a wealth of services available to her for over two years, at the time of the termination hearing, Mother's circumstances remained largely unchanged. Moreover, Mother remained incapable of demonstrating an ability to provide S.M. with a safe and stable home environment, notwithstanding her participation in and/or completion of several court-ordered services.

During the termination hearing, family support therapist Leslie King ("King") informed the trial court that she had been providing support services to the family since May 2007. King testified that while working with the family during the Informal Adjustment she had experienced growing concerns about the interactions she observed between Mother and the children, especially S.M., such as Mother "yelling," using "very harsh tones," and "grabbing" S.M.'s arms while disciplining the child. Tr. p. 8. King also observed Mother use "foul language" and call S.M., who was only four years old, a "bitch." Id. at 9.

Dr. Wooley informed the court that her psychological examination of Mother revealed Mother "has a history of abuse" and "struggles in being able to connect in healthy ways and trust folks." Id. at 34. Dr. Wooley also confirmed she had recommended that Mother follow through with her own mental health treatment, stating that in order to "function in a parenting role" one of "the biggest pieces for [Mother] is to be able to address her own mental health issues" by continuing to "take her medication, receiv[e] her counseling, and hav[e] adult case management services to help ma[k]e sure she's following through . . . with addressing those issues herself." Id. at 44. Dr. Wooley

explained that her "major concern" regarding Mother was her inability to stay on medication due to the fact Bipolar Disorder is a "lifelong" condition. Id. at 45. Dr. Wooley further testified that even when people with Mother's diagnosis complete all recommended services and treatment, there is no "guarantee" they will be able to incorporate all the information in a relationship. Id. at 61.

Home-based service provider Deane Wright informed the court that she and Mother had set several goals including increasing Mother's parenting skills, emotional consistency, and taking her medications as prescribed. When asked whether Mother was ever able to make any progress in these areas, Wright answered in the negative and explained that Mother's "lack of follow through with her medication . . . affected her ability to focus and her ability to even regulate her emotions which made therapy extremely difficult and . . . a factor in the lack of progress." Id. at 133. Wright also testified that Mother never took responsibility for S.M. being removed from the home, but rather considered herself a victim. Wright went on to explain that when a client "does not take ownership for their behavior, it makes it very difficult to look at change and to make . . . positive changes especially in their thinking." Id. at 134.

GCDCS assessment case worker Kelly Scott confirmed that Mother admitted to "slapping" S.M. in the face, and that Scott had personally observed Mother "cuss" at the children. Id. at 161, 163. Scott also testified she had observed Mother talking "aggressively" with the children "numerous times" during the Informal Adjustment period, and that Mother continued to "struggle" with not "swear[ing]" at the children or

"threaten[ing] bodily harm" while Scott was working on the case. Id. at 170, 172, 175.

GCDCS case manager Darin Sylte informed the court that Mother had admitted in April 2009, and again in August 2009, that she was still not taking her medications as prescribed. When asked to describe why this was a concern, Sylte explained:

> Well, the ongoing issues with her mental health which had been addressed from the onset, both by the assessor that was involved, myself, the service providers that we had worked with, that her consistency in her mental health treatment was crucial[,] and [because] she was not, [because] she was self-reporting the issue of her not taking her medication, it was an ongoing problem.

Id. at 233. Slyte also testified that he was concerned about Mother's employment and housing instability, stating Mother was currently unemployed and had lived in four separate residences during the underlying case with additional "gaps of time" during which GCDCS was unaware of Mother's place of residence. Id. at 234. When asked if any service providers working with the family had ever recommended reunification between Mother and S.M., including S.M.'s therapist, Sylte answered, "No." Id. at 247. When asked why he never recommended that S.M. be returned to Mother's care, Sylte answered:

> There were three . . . primary issues why I could not reunify[,] and I had addressed these with [Mother], the first being [S.M.'s] behaviors were extremely difficult by themselves . . . and then the issue of [Mother's] admission to not maintaining her medications for her [own] mental health treatment was a problem[,] and then the final thing was . . . the reasons why [Mother] felt that [S.M.] was removed. [Mother] never verbally [ad]mitted to me . . . that she . . . had anything to do with the removal. It was more [S.M.'s] behaviors, the medication that [S.M.] was on, as the primary problem which I had explained to her. . . that was a problem for me, that we

> had gone through the process and she was not able to take any responsibility in that.

Id. at 247. Finally, CASA Whitney Jo DeBruler also recommended termination of Mother's parental rights to S.M. In so doing, DeBruler informed the court that she did not believe Mother was currently capable of caring for S.M., nor did she believe Mother would ever be able to parent S.M.

Where a parent's "pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve." In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). Most importantly in this case, a trial court need not wait until a child's physical, mental, and/or social growth is irreversibly damaged or permanently impaired by a parent's consistent and serious, poor life choices before terminating the parent-child relationship. See In re E.S., 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002).

After reviewing the record, we conclude that GCDCS presented clear and convincing evidence to support the trial court's findings and ultimate determination that there is a reasonable probability the conditions leading to S.M.'s removal or continued placement outside of Mother's care will not be remedied. As noted earlier, 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 the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. D.D., 804 N.E.2d at 266. Here, the trial court had the responsibility of judging Mother's credibility and of

weighing her testimony of changed conditions against the abundant evidence demonstrating Mother's past and current inability to provide J.A. with a consistently safe and stable home environment. It is clear from the language of the judgment that the trial court gave more weight to evidence of the latter, which it was permitted to do. See Bergman v. Knox County Office of Family & Children, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding trial court was permitted and in fact gave more weight to abundant evidence of mother's pattern of conduct in neglecting her children during several years prior to termination hearing than to mother's testimony she had changed her life to better accommodate her children's needs).

Affirmed.

BAKER, C.J., and NAJAM, J., concur.