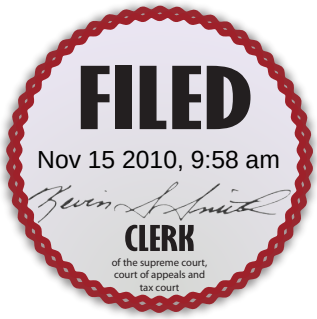

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF J.A., Minor Child	)	
S.J.M. and J.A., Appellants-Respondents,	)	
vs.	)	No. 20A03-1004-JT-228
INDIANA DEPARTMENT OF CHILD SERVICES, Appellee-Petitioner.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
JUVENILE DIVISION
The Honorable Terry C. Shewmaker, Judge
The Honorable Deborah Domine, Magistrate
Cause No. 20C01-0910-JT-79

November 15, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellants-Respondents, S.M. (Mother) and Jat.A. (Father), appeal the trial court's involuntary termination of their respective parental rights to their minor child, J.A..

We affirm.

ISSUE

Mother and Father raise several issues on appeal, which we consolidate and restate as: Whether the trial court properly terminated Mother's and Father's parental rights to J.A.

FACTS AND PROCEDURAL HISTORY

Mother and Father are the biological parents of J.A., born in December 2005. The facts most favorable to the trial court's judgment indicate that in November 2008, the Indiana Department of Child Services, Elkhart County (ECDCS), filed a petition seeking emergency protective custody of then-three-year-old J.A. after investigating reports alleging neglect, lack of supervision, and Mother's use of marijuana in the presence of her children.[1] ECDCS's petition was granted and J.A. was immediately taken into protective custody. At the time of J.A.'s removal from the home, Father was incarcerated as a result of convictions for dealing in cocaine and domestic violence. Father was therefore unavailable to parent J.A. Father's earliest possible release date is July 2022.

[1] At the time of J.A.'s removal, Mother was receiving home-based services through a child in need of services (CHINS) case pertaining to J.A.'s younger sibling, Q.A. Q.A. had been adjudicated a CHINS due to allegations of medical neglect. Because the trial court's judgment in this case did not terminate Mother's and Father's parental rights to Q.A., we shall limit our recitation of the facts to those pertinent solely to Mother's and Father's appeal of the trial court's termination order regarding J.A.

In November 2008, ECDCS filed a petition alleging J.A. was a child in need of services (CHINS). Mother initially denied, but later entered a qualified admission to the CHINS petition in December 2008 acknowledging her use of illegal drugs. In January 2009, J.A. was formally removed from Mother's custody pursuant to a dispositional order, which also directed Mother and Father to participate in a variety of services in order to gain reunification with J.A. Specifically, Mother was ordered to, among other things: (1) participate in and successfully complete a parenting evaluation and any recommended parenting education classes; (2) pay child support for J.A. in the amount of $47.00 per week; (3) regularly attend supervised visits with J.A. as recommended by ECDCS; (4) complete an updated addictions assessment and follow all resulting treatment recommendations, (5) submit to random drug screens; (6) follow all recommendations from the psychological parenting assessment previously ordered in J.A.'s younger sibling's CHINS case, and (7) participate in individual therapy. Father was likewise ordered to participate in similar services, including a psychological parenting assessment and addiction evaluation, and to follow all resulting recommendations upon his release from incarceration.

Mother's participation in reunification services was inconsistent from the beginning of the CHINS case. Mother completed a parenting evaluation, but only attended three of the recommended parenting education classes. Although Mother exercised her visitation privileges with J.A., her visits were sporadic. In addition, Mother's participation in individual counseling soon developed a pattern of missing at least one session every month. Mother also failed to pay any child support for J.A., never obtained employment, tested

positive for marijuana on three drug screens after completing an intensive out-patient substance abuse program (IOP), and refused to submit to two additional drug screens. In addition, Mother, who was diagnosed with Bipolar Disorder, refused to consistently take her prescribed medications.

Eventually, in October 2009, ECDCS filed a petition seeking the involuntary termination of Mother's and Father's parental rights to J.A. On April 5, 2010, the trial court commenced an evidentiary hearing on the termination petition. At the conclusion of the termination hearing, the trial court took the matter under advisement. On April 7, 2010, the trial court entered its judgment terminating both parents' parental rights to J.A.

Mother and Father now appeal. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *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). 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 trial court's 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, the trial court's judgment contains specific 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*. 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. *Bester*, 839 N.E.2d at 147. Thus, if the evidence and inferences support the trial court's decision, we must affirm. *L.S.*, 717 N.E.2d at 208.

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. *Bester*, 839 N.E.2d at 147. Hence, "[t]he 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*. These parental interests, however, are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. *Id.* In addition, 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. *K.S.*, 750 N.E.2d at 836.

Before an involuntary termination of parental rights may 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; [and]
> (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) (2008).[2] Moreover, "[t]he State's burden of proof in termination of parental rights cases is one of 'clear and convincing evidence.'" *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting I.C. § 31-37-14-2 (2008)).

Mother and Father challenge the sufficiency of the evidence supporting the trial court's findings as to subsections 2(B), (C), and (D) of the termination statute cited above. *See* I.C. § 31-35-2-4(b)(2)(B) - (D). Father, however, fails to support his assertion with cogent argument or a single citation to the record, as is required by our appellate rules. *See* Ind. Appellate Rule 46(A)(8). Rather, Father simply asserts that his "involvement with [J.A.] should continue after his release from incarceration." (Appellants' Br. p. 15.) Father has therefore waived appellate review. *See Davis v. State*, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005), *trans. denied*.

[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.

II. *Termination of Parental Rights*

A. *Remedy of Conditions*

Mother first argues she is entitled to reversal because "[t]he conditions that led to [J.A.'s] removal had been remedied at the time of the termination hearing . . . ." (Appellants' Br. p. 14). In making this claim, Mother directs our attention to evidence presented during the termination that she had not produced a positive drug screen for approximately four months, was attending NA classes, and had taken some parenting classes in the past.

Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. A trial court therefore need only find one of the two requirements of subsection 2(B) has been established to properly terminate parental rights. *See In re L.V.N.*, 799 N.E.2d 63, 69 (Ind. Ct. App. 2003). Here, the trial court determined that ECDCS presented sufficient evidence to satisfy both requirements of subsection 2(B). Because we find it to be dispositive under the facts of the current case, however, we need only consider whether ECDCS presented clear and convincing evidence establishing there is a reasonable probability the conditions resulting in J.A.'s removal and/or continued placement outside Mother's care will not be remedied. *See* I.C. § 31-35-2-4(b)(2)(B)(i).

In making such a determination, 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 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 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*. In addition, 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 that the parent's behavior will not change. *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

Here, the trial court made numerous detailed findings concerning Mother's refusal to consistently participate in, successfully complete, and/or benefit from court-ordered reunification services throughout the duration of the CHINS and termination proceedings. Although the trial court commended Mother for remaining sober for three to four months immediately preceding the termination hearing, the court nevertheless found that Mother's "ability to provide medical care" for herself and her children had not improved. (Appellants' App. p. 10). The trial court also found Mother had failed to consistently and successfully participate in reunification services offered by ECDCS throughout the underlying proceedings, seemed to "resent" the help that was offered to her, and was "even inconsistent in visiting with [J.A.]." (Appellants' App. p. 10).

With regard to Mother's mental health issues, the trial court found Dr. Jay Shetler (Dr. Shetler) had performed a psycho-parenting assessment of Mother and that according to Dr.

Shetler, Mother "shows poor judgment and inadequate knowledge about normal child development." (Appellants' App. p. 11). The trial court further acknowledged that due to Mother's Bipolar Disorder, Dr. Shetler felt it would be "important for [Mother] to consistently follow through with medication management," but that Mother admitted during the termination hearing she was not taking any medication for her mental health issues. (Appellants' App. p. 11).

The trial court also recognized that although visits between Mother and J.A. had reportedly gone "really well," Mother's participation in scheduled visits remained inconsistent and "not a single service provider ever recommended that visits move from supervised to unsupervised." (Appellants' App. p 12). In addition, the trial court found that ECDCS case manager Lance Knapp (Knapp) never recommended unsupervised visits because "to this day, [Knapp] is still waiting for [Mother] to demonstrate consistency in attending visits, and in her participation in other services, and consistency in her ability to care for her child." (Appellants' App. p. 12).

The trial court also made the following pertinent findings in determining there is a reasonable probability the conditions resulting in J.A.'s removal will not be remedied:

> 3.i. The [Court-Appointed Special Advocate] CASA Judy Kelly [Kelly] described that [Mother] was offered a tremendous amount of support and help throughout the case, and never took advantage of the help.
>
> j. [Mother] acknowledged that she has been inconsistent in her participation in services intended to help her parent her child. When asked why[,] she told the [ECDCS] attorney that she has cancer.
>
> k. Yet despite the diagnosis of a life threatening disease, [Mother] has failed to secure treatment for herself. [Mother] described that she has

cervical cancer, was involved in treatment initially, but has not seen a doctor for six months.

* * *

n. After hearing from [Mother] that she has cervical cancer and is not being treated for the disease, [Mother] was asked by the court if she had thought about who would care for [J.A.] if she were to die from the cancer. In response, [Mother] stated that she had not thought about that . . . . [Mother] also admitted that she has done nothing to secure her medical care in order to limit the risk of tragedy.

* * *

r. While [Mother] had made improvements over the sixteen months that [J.A.] has been out of the home, her stability remains questionable in other ways too. [Mother] remains unemployed. [Mother] is on a waiting list for government housing, but currently she is homeless[.] [Mother] lives in a halfway house operated by a church that does not allow children to live in the facility. [Mother] has a 10th grade education, and continues to work on the G.E.D. that she has been working on since the initiation of this case. In addition, [Mother] has no family support[.] The case manager testified that [Mother] has described to him that she needs to stay away from Elkhart because her family members are a bad influence on her efforts to remain clean.

(Appellants' App. pp. 10-12). Our review of the record reveals there is ample evidence to support the trial court's findings, which, in turn, support the trial court's ultimate decision to terminate Mother's parental rights to J.A.

During the termination hearing, Dr. Shetler testified that psycho-parenting assessments are used to identify parenting strengths and weaknesses, as well as any psychological problems. Dr. Shelter further explained that said evaluations are designed to achieve a "general assessment" of parenting and psychological issues, rather than to identify specific parenting issues regarding a particular child. (Transcript p. 97). Dr. Shetler also

confirmed Mother had been previously diagnosed with Bipolar Disorder, and that the testing he performed "showed some pretty significant emotional instability and moodiness and . . . given [Mother's] mental health history, following through with medication[] recommendations is viewed as a very important step for her." (Tr. p. 98).

Dr. Shelter also reported that Mother had submitted to a Child Abuse Potential Inventory (CAPI), a test that is specifically designed to identify a person's potential for child abuse and includes a "validity scale" or "faking good index." (Tr. p. 99). When asked to describe Mother's CAPI scores, Dr. Shetler stated that "despite [Mother's] efforts to look good" her scores were "high," indicating Mother has "many characteristics that are in common with people who abuse their children." (Tr. p. 99).

Daniel Facer (Facer) testified concerning his observations as visitation supervisor for Mother and J.A. Facer confirmed that although visits appeared to be going "really well," Mother was not always consistent in attending visits and would sometimes request the visits be "cut short." (Tr. p. 124). Similarly, case manager Knapp described Mother's participation in visits with J.A. as "sporadic" until Mother was admitted to Women's Journey, a residential substance abuse program with a "very controlled environment." (Tr. pp. 174, 176). We have previously stated that the failure 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.*

Case manager Knapp confirmed that Mother never paid child support for J.A. and never obtained employment during the CHINS case. When asked whether ECDCS had ever

contemplated returning J.A. to Mother's care during the CHINS case, Knapp answered in the negative and explained, "[Mother] had not demonstrated an ability to . . . care for [J.A.] . . . . [S]he remains homeless now and without a job, without good informal support[,] and no clear viable plan to care for [J.A.]." (Tr. p. 180).

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. *D.D.*, 804 N.E.2d at 266. Moreover, "a pattern of unwillingness to deal with parenting problems and to cooperate with those providing social 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. Although Mother's recent success at remaining drug-free is commendable, it does not negate the fact that ECDCS presented clear and convincing evidence to support the trial court's determination that there is a reasonable probability the conditions resulting in J.A.'s removal and/or continued placement outside Mother's care will not be remedied.

The trial court was responsible for judging Mother's credibility and for weighing her testimony of recently improved conditions against the abundant evidence demonstrating Mother's habitual pattern of drug use, neglectful conduct, and past and current inability to provide J.A. with a stable home environment. It is clear from the language of the termination order that the trial court gave more weight to evidence of the latter, rather than the former, 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). Mother's arguments on appeal amount to an invitation to reweigh the evidence, and this we may not do. *D.D.*, 804 N.E.2d at 264.

B. *Best Interests*

We next consider Mother's assertion that termination of her parental rights is not in J.A.'s best interests. We are mindful that, in determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Indiana Department of Child Services and to consider the totality of the evidence. *McBride v. Monroe Co. Office of Family & Children*, 798 N.E.2d at 185, 203 (Ind. Ct. App. 2003). In so doing, the trial court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* 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, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

In addition to the findings set forth previously, the trial court's findings acknowledged CASA Judy Kelly's (Kelly) testimony that J.A. had "blossomed" and appears to be "happy" in her current foster home, "laughs and interacts well with the other children in the [foster] home," and calls her foster mother "mommy." (Appellants' App. p. 13). The trial court also acknowledged case manager Knapp's testimony that J.A. "needs permanency," but that

Mother remains unable to provide that permanency. (Appellants' App. p. 13). Moreover, the trial court specifically found:

> 4f. The CASA described that termination of parental rights is in the best interest[s] of the child. When asked to give [the] reason for her opinion, the CASA . . . stated . . . [M]other simply has not made enough progress for reunification to be an option.
>
> g. [T]he court must consider here as it did above that [Mother] testified that she has cervical cancer, got treatment initially, but has not seen a doctor for six months. The condition of [M]other's health is currently unknown. . . . To send a child home under this condition would be contrary to the well-being of the child.
>
> h. Emotional stability is something that the experts have opined [Mother] is lacking. In his psycho-parenting assessment[,] Dr. Shelter wrote that "[Mother] appears to be a person who exercises poor control over her emotions. Her lack of emotional control is a serious problem that can lead to verbal and physical abuse." Also[,] because of this observation, it is in the best interest[s] of the child that parental rights be terminated.
>
> * * *
>
> 6. While the court is not without praise for [Mother's] three months of clean drug screens, and not without sympathy that [Mother] has lost one child previously, and is now fighting cancer, it must also [con]clude, for the sake of the child, that there is no reason for further delay in this case.

(Appellants' App. pp. 13-14). These findings, too, are also supported by the evidence.

In recommending termination of Mother's parental rights, Knapp informed the trial court that J.A. "appears to be doing quite well" in her pre-adoptive foster care placement. (Tr. p. 183). Knapp also testified J.A. "needs permanency and needs stability and needs someone to be looking out for [the child's] well-being instead of their own well-being. . . ."

(Tr. p. 182). In addition, Knapp explained that J.A. "needs to be a priority[,] and I'm not seeing [Mother] being able to do that . . . ." (Tr. p. 182).

CASA Kelly testified that when she first met J.A., the child was "[n]ot terribly well. [J.A.] was angry[,] . . . quite uncomfortable[,] . . . and slept a lot during the day . . . because of all [of] the nightmares [the child] was having." (Tr. p. 200). When asked how J.A. was doing now, Kelly replied, "Remarkably really. She's running around with the other children, laughing and smiling." (Tr. p. 201). Kelly also stated J.A. "seemed very bonded with the foster mom," and that she believed much of J.A.'s progress was the result of J.A. being in a "loving," "nurturing," and "structure[d]" living environment. (Tr. pp. 206-7). When questioned as to whether she agreed with ECDCS that termination of parental rights and adoption by the current foster parents is in J.A.'s best interests, Kelly answered, "I do." (Tr. p. 206).

"It is undisputed that children require secure, stable, long-term continuous relationships with their parents or foster parents. There is little that can be as detrimental to a child's sound development as uncertainty." *Baker v. Marion County Office of Family & Children*, 810 N.E.2d 1035, 1040 (Ind. 2004). Based on the totality of the evidence, including Mother's failure to successfully complete and/or benefit from a majority of the trial court's dispositional orders, history of unemployment and housing instability, untreated mental and physical health issues, and current inability to provide J.A. with a safe and stable home environment, coupled with the case manager's and CASA's testimony recommending termination of parental rights, we conclude that ample evidence supports the trial court's

finding that termination of Mother's parental rights is in J.A.'s best interests. *See, e.g., In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005), *trans. denied*.

C. *Satisfactory Plan*

Finally, we consider whether sufficient evidence supports the trial court's determination that ECDCS has a satisfactory plan for the future care and treatment of J.A. Indiana Code section 31-35-2-4(b)(2)(D) provides that before a trial court may terminate a parent-child relationship, it must find there is a satisfactory plan for the future care and treatment of the child. *Id.*; *see also D.D.*, 804 N.E.2d at 268. It is well-established, however, that this plan need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated. *Id*. ECDCS's plan is for J.A. to be adopted by the child's current, pre-adoptive foster parents. This plan provides the trial court with a general sense of the direction of J.A.'s future care and treatment. ECDCS's plan is therefore satisfactory. *See Castro v. State Office of Family & Children*, 842 N.E.2d 367, 378 (Ind. Ct. App. 2006), *trans. denied*.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly terminated Mother's and Father's parental rights to their minor child.

Affirmed.

KIRSCH, J., and BAILEY, J., concur.