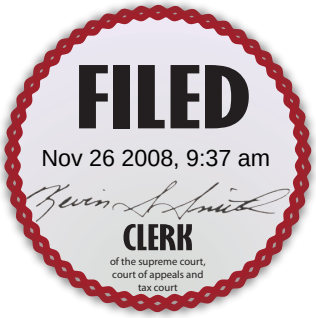

ATTORNEY FOR APPELLANT:

RACHAEL ARMSTRONG
English, Indiana

ATTORNEYS FOR APPELLEES:

MATTHEW JON MCGOVERN
Evansville, Indiana

IN THE
COURT OF APPEALS OF INDIANA

CRAWFORD COUNTY DEPARTMENT, OF CHILD SERVICES	)	
Appellant-Petitioner,	)	
vs.	)	No. 13A05-0807-JV-414
T.G.	)	
Appellee-Respondent.	)	

APPEAL FROM THE CRAWFORD CIRCUIT COURT
The Honorable Kenneth Lynn Lopp, Judge
Cause Nos. 13C01-0807-JV-2; 13C01-0807-JV-3; 13C01-0807-JV-4; 13C01-0807-JV-5; and 13C01-0807-JV-6

November 26, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

The Crawford County Department of Child Services (CCDCS) appeals the trial court's judgment denying its petition to terminate T.G.'s (Mother) parental rights to her children. In so doing, CCDCS alleges that the trial court's findings and conclusions are not properly supported by the evidence and that the trial court impermissibly subordinated the children's interests to those of Mother.

We affirm.

Mother is the biological parent of E.A., Dy.A., B.C., Da.A., and H.A. The facts most favorable to the trial court's judgment reveal that on or about June 15, 2006, CCDCS received a referral that Mother had left her children unattended in a van in a store parking lot. As a result of the report, CCDCS case worker Bonnie Pittman went to Mother's residence to investigate. Mother allowed Pittman to enter and inspect her home, at which time Pittman observed food, trash, and clothes to be strewn about the kitchen and living areas. Pittman felt the living conditions of Mother's home "did not appear to be safe and sanitary for the children[,]" who ranged in ages from approximately six-months to seven years old. *Transcript* at 165. Pittman became further concerned for the safety of the children after talking with Mother, who informed Pittman that she was afraid her own depression was beginning to affect the welfare of her children, especially E.A. and B.C. Mother described her depression as "severe," stated that she had been prescribed Paxil by her doctor, and further indicated that at times she was so stressed and overwhelmed with her living conditions and parental responsibilities that she felt like "just running her vehicle into oncoming traffic or into a tree[.]" *Id.* at 167. Mother also informed Pittman that she had been involved in domestic violence with James Patrick A., the father of four of her children.

At some point during their conversation, Mother asked Pittman for help with the children, requesting that they be placed with Mother's father and stepmother until she could "get her head together." *Id*. at 168. Consequently, the children were removed from Mother's care pursuant to an emergency detention order and placed in relative care with Mother's father. CCDCS also made arrangements for Mother to go to Wellstone Hospital for a psychological evaluation.

On June 20, 2006, CCDCS filed a petition alleging the children were in need of services (CHINS). Mother admitted to the allegations of the CHINS petition at a subsequent hearing held on September 6, 2006. On September 28, 2006, a dispositional hearing was held and the children were ordered formally removed from Mother's care. The trial court's dispositional order also required Mother to successfully complete various services in order to be reunited with her children. These services included (1) family and individual counseling, (2) stress and anger management classes, (3) parenting classes, and (4) specialized training on how to assist the children with their developmental delay. Mother was also ordered to comply with her case plan, which required her to obtain stable housing and employment.

For many months following the children's removal from her care, Mother's participation in services was inconsistent. For example, Mother participated in a psychological evaluation at Wellstone Hospital, after which it was recommended that she participate in intensive outpatient therapy. Mother did not, however, participate in the recommended treatment. Mother was later referred to Counsel House for individual and family counseling. Mother's participation with counseling at Counsel House was sporadic. Counsel House eventually closed Mother's case as unsuccessful due to her inconsistent

participation and lack of funds. CCDCS later made a third referral for Mother to attend Southern Hills for individual counseling and treatment of her depression, as well as for domestic violence education. Mother's participation at Southern Hills was also sporadic and her case was likewise eventually closed for lack of participation.

Although Mother experienced brief periods of progress with treatment during this time, these periods of success were followed by periods of regression and non-compliance. Consequently, on June 26, 2007, CCDCS filed a petition to involuntarily terminate Mother's parental rights to all five children. Mother's compliance with court-ordered services continued to be inconsistent until September 2007, at which time Mother began to show significant improvement. Mother began taking medication for her depression on a regular basis, obtained suitable housing, and in November 2007 began working as a certified nursing assistant at an assisted living home earning $8 per hour.

A fact-finding hearing on the termination petition was held on January 18, 2008. Mother appeared and was represented by counsel. At the conclusion of the hearing, the trial court took the matter under advisement, and on February 12, 2008, the trial court issued its judgment denying CCDCS's petition for involuntary termination of Mother's parental rights. The following appeal ensued.

Initially, we note our standard of review. 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 court's decision, we must affirm. *Id.*

Here, the trial court made specific findings in its order denying CCDCS's involuntary termination petition. When a trial 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*. The trial court must, however, subordinate the interests of the parent to those of the child when evaluating the circumstances surrounding the termination. *In re K.S.*, 750 N.E.2d 832. Parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.*

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

> (A) one of the following exists:
>
> > (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
> > (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required . . .; or
> > (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two months;
>
> (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.

I.C. § 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 (Ind. 1992). If a trial court finds the allegations in a termination petition described in section 4 of this chapter to be true, the court shall terminate the parent-child relationship. I.C. § 31-35-2-8. However, if the court does not find that the allegations in the petition to be true, the court "*shall dismiss* the petition." *Id*. (emphasis supplied).

CCDCS argues on appeal that the trial court's judgment is clearly erroneous. Specifically, CCDCS asserts that the evidence presented during the termination hearings did

not support the trial court's findings and conclusions and that the trial court improperly subordinated the interests of the children to those of Mother. We will address each argument in turn.

In making its determination to dismiss CCDCS's petition for the involuntary termination of Mother's parental rights to the children, the trial court made the following pertinent findings:

> 9. That the reasons that the children were removed or the reasons for placement outside the home of Mother were that the Mother, who had requested hel[p] from [CCDCS], did not have a suitable place for the children to live, did not have the means to care for the children, that she was overwhelmed, and that the [Mother] was suffering from depression and was not getting the proper medication or treatment to deal with the depression.
>
> 10. That the evidence presented shows that the Mother does have a suitable place for the children to live and is employed and is making sufficient income to care for the children. That her [m]other, the children's Grandmother, who is a registered nurse and is qualified to care for the children who are [CHINS], is now in her life and is willing to assist her in any way that is needed to care for the children. The Mother, [T.G.] . . . is now receiving proper medication and treatment for her depression.
>
> * * *
>
> 12. That the Court heard evidence that the Mother needed 'intensive' treatment to deal with multiple issues, including depression and being abused herself. Nevertheless, the Court heard testimony from multiple witnesses that Mother failed to attend and complete her therapy programs, let alone subject herself to the 'intensive' treatment she needed. These therapy sessions were crucial to Mother's ability to care for the children.
>
> 13. That although Mother gave testimony that she attended group therapy sessions, Mother did not provide any other verification to the Court in this regard. What's more, the Court believes the more credible evidence lies with Mother's own statement that Mother just recently did the assessment for counseling at a new counseling center. Because the assessment phase is only a preliminary step to counseling, Mother has,

in fact, done very little to remedy a situation that brought about the children's removal.

14. That in addition to Mother's mental health issues, testimony was that Mother has had suitable housing and a job for the last couple of months. This progress is notable. While the Mother has not shown a consistent pattern of stable housing or employment[,] she has shown a short[-]term effort.

15. That Dr. David [Winsch]1 said that the Mother . . . was an 'excellent candidate for therapy' and even the attorney for [CCDCS], Rachael Armstrong, said that 'this would be an entirely different case if (the Mother, Terri [G.]) was going to therapy' and the evidence presented to the Court is that the Mother . . . is going to therapy and apparently successfully for some time and thus, based on the above, there has been no showing that the continuation of the parent-child relationship poses a threat to the well-being of the children.

16. That although Dr. David Winsch testified Mother would be a good candidate for treatment[,] [i]t was Mother's own actions that spoke volumes to the Court. In other words, Mother had the ability to remedy the conditions that resulted in the removal of her children, but lacked the willingness and commitment to do so up until late 2007.

17 Dr. Winsch further testified that Mother's condition is a life[-]long problem and some people take years to progress. That even progress may be followed by 'backsliding[.]' That the Mother was an excellent candidate for treatment.

18. The Court finds that it was the Mother, herself, who sought help that began the child in need of services process. The Court finds that based upon the testimony of Dr. Winsch that the condition that resulted in the children's removal can still be remedied.

19. The Court finds that while the Mother can remedy the problem that caused the removal of the children, she needs to act promptly. The Court finds that her mental illness may have caused her to not properly respond until late fall of 2007. The Court, therefore, FINDS that the

[1] There is a discrepancy in the record regarding the proper spelling of Dr. Winsch's name. The Court Reporter spelled it as "Winch" in the transcript. On the other hand, both the judgment and the psychological evaluation prepared by Dr. Winsch and admitted into evidence indicate that the proper spelling is "Winsch." We therefore adopt the latter version as the proper spelling.

> Petition to Terminate the Parental Rights of [Da.A., Dy.A., E.A., B.C., and H.A.], should be DENIED at this time.

Appellant's Appendix at 15-18. CCDCS takes particular issue with the court's findings that Mother had a "suitable place to live," that it considered Grandmother "a proper support system" for Mother even though Mother had allegedly accused Grandmother of using drugs, that Mother is "now receiving proper medication and treatment for her depression," and that Mother is "going to therapy and apparently successfully for some time and thus there has been no showing that continuation of the parent-child relationship poses a threat to the well-being of the children." *Appellant's Brief* at 5. In so doing, CCDCS asserts these conclusions were "not properly supported by the evidence." *Id*. A thorough review of the record, however, leaves us convinced that these findings are supported by the evidence.

Mother, Pittman, and the children's Guardian ad Litem, Kevin Stilwell, all testified that for approximately three months prior to the termination hearing, Mother had been living in a trailer that she was renting. Although Pittman had not had the opportunity to go inside and inspect the trailer, Stilwell testified that he had seen Mother's trailer and that it was "nice." *Transcript* at 143. Thus, there was evidence to support the trial court's finding that Mother had obtained suitable housing by the time of the termination hearing.

CCDCS's argument that the trial court erred in considering Grandmother a proper support system for Mother because Grandmother lives in Florida and because Mother allegedly reported that Grandmother used drugs in the past is also unavailing. The evidence is undisputed that Grandmother is a Registered Nurse as well as a licensed foster care provider in the state of Florida. During the termination hearing, Grandmother vehemently denied ever using drugs. Grandmother also informed the court that she would "do whatever

it takes" to help her daughter get her children back. *Id.* at 266. Similarly, Mother testified that Grandmother had informed her she would be willing to stay in Indiana to help Mother care for the children. Although there may have been conflicting evidence regarding Grandmother's alleged prior drug use, as the trier of fact, it was the trial court's responsibility to weigh this conflicting evidence and to judge the credibility of witnesses. We may not interfere with this function on appeal. *In re D.D.*, 804 N.E.2d 258.

With regard to Mother's current treatment for depression, the evidence is uncontraverted that several months prior to the termination hearing, Mother saw a physician and thereafter began regularly taking Celexa, a prescription anti-depressant. The evidence is conflicting, however, regarding Mother's current therapy. Mother testified she had been regularly participating in therapy. She later explained that although she had been participating in group therapy for domestic abuse and single parenting through LifeSprings since September 2007, and that she had also submitted to an assessment with LifeSprings, her first appointment for individual counseling was not scheduled until January 22, 2008. Contrary to CCDCS's arguments on appeal, however, this evidence supports the trial court's findings that Mother was receiving proper medication and had been successfully participating in therapy for some time.

As previously explained, we will not set aside a trial court's judgment unless it is clearly erroneous. *In re A.H.*, 832 N.E.2d 563 (Ind. Ct. App. 2005). Considering only the probative evidence and reasonable inferences supporting the trial court's judgment, and without reweighing evidence or assessing witness credibility, we conclude that the trial court's findings and conclusions set forth above were established by clear and convincing

evidence. These findings and conclusions, in turn, support the trial court's ultimate determination that there is a reasonable probability the conditions that resulted in the children's removal from Mother's care can still be remedied and that continuation of the parent-child relationship does not pose a threat to the children's well-being.

Finally, CCDCS's argument that the trial court's judgment was "contrary to law in that it subordinated the interests of the children to those of the Mother" is also unavailing. *Appellant's Brief* at 10. Although CCDCS is correct when it argues that a trial court must subordinate the interests of the parent to those of the child when evaluating the circumstances surrounding an involuntary termination of parental rights, termination of parental rights nevertheless remains the most extreme measure that a court can impose and is designed only as a last resort when all other reasonable efforts have failed. *In re D.G.*, 702 N.E.2d 777 (Ind. Ct. App. 1998).

Here, the trial court concluded that, based upon the testimony of Dr. Winsch, the conditions that resulted in the children's removal from Mother's care "can still be remedied." *Appellant's Appendix* at 18. The record reveals that Dr. Winsch, a licensed clinical psychologist, conducted an extensive psychological evaluation of Mother that included a clinical interview and a battery of diagnostic tests. When questioned as to his prognosis for Mother, Dr. Winsch responded that he felt Mother was "an excellent candidate for therapy." *Transcript* at 218. He further described Mother as "a bright woman" who had "a good head on her shoulders." *Id*. Dr. Winsch went on to say that Mother had good reading skills and that her depression and post-traumatic stress were issues that were treatable. Finally, Dr. Winsch stated:

> [F]rankly[,] I was a little puzzled when I got the call saying that we're going to appear in court about this cause I thought [Mother], you know, given the entire . . . evaluation and some of her strengths and abilities as measured in our evaluation, I thought she was an excellent candidate for some treatment and [that] she would probably get better with some treatment.

Id. Although Dr. Winch acknowledged that people with Mother's condition often relapse or have setbacks during recovery, he explained that "depression can improve fairly rapidly within two to three months of treatment with medication and counseling[.]" *Id*. at 221. When questioned about how to measure progress when a person has a history of these types of "peaks and valleys," Dr. Winsch replied:

> [W]hat I take a good look at is if they're making progress . . . if they started out at a level where they were not even meeting basi[c] requirements for themselves or their children and they've shown improvement, maybe . . . been able to maintain a house, maintain a job . . . . I would look for [some] external kind of indications of some improvement. Either work . . . family relations, uh, relations in terms of just taking care of themselves in terms of making sure that their lights are on and their electricity is running . . . some stability in terms of that.

Id. at 222-23. Finally, when the court asked Dr. Winsch whether Mother's recent improvement, in light of her sixteen months of inconsistent participation, was an "adequate window" to determine if she's actually making significant progress or not, Dr. Winsch responded:

> [A]gain, I think, you know[,] based upon the information I had, I think [Mother] is a really good candidate for counseling and mental health treatment. I really do. I think she's got a good head on her shoulders. She is an intelligent woman. She's had a good work history . . . . I think with treatment . . . she's a very good candidate for it. If she will get herself into treatment and follow through with taking her medication and seeing a counselor on a weekly basis . . . I think she could improve[.]"

Id. at 223, 224-25.

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 any evidence of changed conditions. *In re D.D.*, 804 N.E.2d 258. Dr. Winsch's testimony supports the trial court's findings that Mother's recent progress was "notable," that there had been "no showing" by CCDCS proving continuation of the parent-child relationship poses a threat to the children's well-being, and further established that, by the time of the termination hearing, there was a reasonable probability the conditions resulting in the children's removal from Mother's would be remedied. *Appellant's Appendix* at 17.

The trial court was responsible for judging both Mother's and Dr. Winsch's credibility and for weighing the evidence of Mother's changed conditions against the evidence demonstrating her past patterns of conduct in failing to complete court-ordered services. *See In re D.D.*, 804 N.E.2d 258. CCDCS's arguments on appeal amount to nothing more than an invitation to reweigh the evidence, and this we may not do. *In re K.S.*, 750 N.E.2d 832.

Judgment affirmed.

DARDEN, J., and BARNES, J., concur