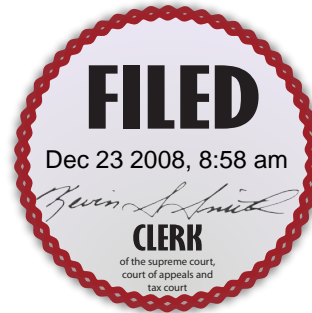


**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**



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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE: THE TERMINATION OF THE )  
PARENT-CHILD RELATIONSHIPS OF )  
B.L. and C.M. with )  
)  
ANGEL LIMBURG, )  
Appellant-Respondent, )  
)  
vs. ) No. 02A03-0809-JV-460  
)  
ALLEN COUNTY DEPARTMENT )  
OF CHILD SERVICES, )  
Appellee-Petitioner. )

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APPEAL FROM THE ALLEN SUPERIOR COURT  
The Honorable Charles F. Pratt, Judge  
Cause No. 02D07-0709-JT-172  
Cause No. 02D07-0709-JT-173

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**December 23, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-Respondent Angel Limburg (“Mother”) appeals an order terminating her parental rights to B.L. and C.M. (“the Children”) upon the petition of the Appellee-Petitioner Allen County Department of Child Services (“the Allen County DCS”). We affirm.

### **Issue**

Mother presents a single issue for review: Whether the Allen County DCS established, by clear and convincing evidence, the requisite statutory elements to support the termination of her parental rights.

### **Facts and Procedural History**

Mother has had five children and involvement with two county divisions of child services. Mother’s contacts with Wayne County DCS began in 1997, when the Wayne County DCS substantiated the allegation that Mother endangered C.M. and two older siblings. Subsequently, the State of Indiana charged Mother with battery, as a Class D felony, for slapping then fourteen-month-old C.M. Mother pled guilty to battery, as a Class A misdemeanor. In 1998, Mother pled guilty to operating while intoxicated and resisting arrest.

In September of 2003, Mother and her mother (“Grandmother”) signed an informal agreement with the Wayne County DCS related to allegations of failure to provide adequate supervision and education for C.M. and B.L. In July of 2004, Mother, the Children’s father (“Father”), and Grandmother admitted that C.M. was a Child in Need of Services (“CHINS.”) During August of 2004, Mother was arrested for driving with a suspended

license and the Children were informally placed in Grandmother's care. Shortly thereafter, a CHINS case relating to B.L. was commenced, and the Children were removed from Grandmother's care. In September of 2004, the Wayne County Court determined that B.L. was a CHINS. The Children were returned to Mother in October of 2004, but removed again in February of 2005 when Mother was evicted from her apartment.

In April of 2005, the CHINS court held Mother in contempt of court for failure to comply with court-ordered services and Mother was incarcerated for thirty days. In January of 2006, Mother was arrested on drug charges. Father took custody of the Children pursuant to a stipulation. Mother pled guilty to maintaining a common nuisance and was placed on probation. In July of 2006, a warrant was issued for Mother's arrest after a probationary drug screen indicated cocaine and cannabis use.

The following month, the Children were removed from Father's care because of physical abuse. A CHINS case was opened in Allen County for C.M. and B.L. At that time, Mother's whereabouts were unknown to Allen County DCS. On September 27, 2006, an Allen County court found C.M. and B.L. to be CHINS.

In March of 2007, Mother was arrested on the July 2006 warrant, and she began serving six months imprisonment for violating her probation related to the earlier drug conviction. On September 6, 2007, the Allen County DCS filed its petitions for termination of parental rights. On October 3, 2007, Mother was paroled from prison.

On February 6, 2008, the hearing on the termination petitions commenced. On that date, Father voluntarily relinquished his parental rights. The trial court issued an order

terminating Mother's parental rights. She now appeals.

## **Discussion and Decision**

### A. Standard of Review

This court will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, this Court neither reweighs the evidence nor judges the credibility of the witnesses. Id. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id.

### B. Requirements for Involuntary Termination of Parental Rights

Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied. The purpose of terminating parental rights is not to punish the parents, but to protect their children. Id.

Indiana Code Section 31-35-2-4(b) sets out the elements that the DCS must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

(A) One (1) 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, including a description of the court's finding, the date of the finding, and the manner in which the finding was

- made; 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 (22) 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.

The trial court must subordinate the interests of a parent to those of the child when evaluating the circumstances surrounding the termination. In re A.A.C., 682 N.E.2d at 544. Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. Id. The trial court need not wait to terminate the parent-child relationship until the child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired. Id.

### C. Analysis

Mother contends that the DCS presented insufficient evidence to establish a reasonable probability that the conditions that resulted in the Children's removal will not be remedied or that the continuation of the parent-child relationships would pose a threat to the Children. More specifically, Mother claims she is now "clean and sober," has attained suitable housing with Grandmother, receives disability income, and attends counseling

sessions. Appellant's Brief at 13.

It is well-settled that a parent's habitual pattern of conduct is relevant to determine whether there is a substantial probability of future neglect or deprivation of the child. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). Among the circumstances that a trial court may properly consider are a parent's criminal history, historical failure to provide support, and lack of adequate housing and employment. McBride v. Monroe Cty. Office of Family and Children, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003).

C.M., age twelve, testified at the termination hearing. She characterized living with Mother as "frustrating" and "horrible" because of Mother's alcohol use. (Tr. 88) She testified that she had been molested on several occasions, and that some of those incidents took place while she was in her Mother's custody. C.M. stated that she did not want to return to Mother's care.

B.L., age ten, also testified and similarly revealed that she was twice molested while she was in Mother's custody. B.L. described her life then as "horrible." (Tr. 101.) She testified that she and C.M. went hungry when "there was no food in the house because [Mother's] boyfriend was like almost eating it all." (Tr. 100.) B.L., like C.M., expressed a desire not to return to Mother's home. She described Mother as "a bad mother because [of] the stuff that she let men do." (Tr. 106.)

Allen County DCS case manager Trina Riecke ("Riecke") testified that Mother "participated initially" with services offered to her, but later failed to participate with "her home-based counseling and therapy" such that an allegation of contempt of court was filed.

(Tr. 141.) Riecke further testified that the Children had achieved some stability<sup>1</sup> and she could not recommend their return to Mother in light of her past drug use and failure to cooperate with services offered to her. Riecke recommended termination of the parent-child relationships. The Children's Guardian Ad Litem also recommended termination of parental rights.

As of the termination hearing, Mother was in substance abuse counseling as a condition of her parole. She had obtained adequate housing. She now asks that we focus upon these circumstances of relatively recent origin. Although Mother's efforts to comply with the conditions of parole are commendable, she has historically failed to provide the children with an adequate home and supervision. Both of the Children have been sexually victimized yet Mother had refused to comply with court-ordered services to address the aftermath of sexual abuse. She has a history of substance abuse, incarceration, and failure to maintain contact with the DCS. Mother has been diagnosed as suffering from chronic anxiety and depression, but was not on medication at the time of the termination hearing. Mother had last seen the Children in June of 2005.<sup>2</sup> We decline the offer to reweigh the evidence or to speculate that Mother will be able to offer long-term stability and protection to the Children in the future.

The DCS is not required to rule out all possibilities of change; rather, it needs to establish "only that there is a reasonable probability that the parent's behavior will not

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<sup>1</sup> B.L. was in a foster home and C.M., who is mildly mentally retarded, was in a developmental training center to better meet her educational needs.

<sup>2</sup> Mother alleged that Father thwarted her efforts to communicate with the Children. She testified that she

change.” In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). The DCS presented sufficient evidence that the conditions leading to the Children’s removal would not, in reasonable probability, be remedied and that termination of Mother’s parental rights was in the best interests of the Children.

### **Conclusion**

The Allen County DCS established by clear and convincing evidence the requisite elements to support the termination of Mother’s parental rights to the Children.

Affirmed.

MATHIAS, J., and BARNES, J., concur.

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did not seek to enforce her parenting time through a contempt action because of her impending incarceration.