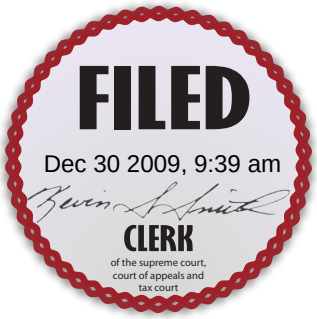

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF PARENT-CHILD RELATIONSHIP OF M.H., D.M-H.,	)	
Appellant-Respondent,	)	
vs.	)	No. 36A01-0906-JV-299
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE JACKSON SUPERIOR COURT
The Honorable Bruce A. MacTavish, Judge
Cause No. 36D02-0901-JT-34

December 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

D.M-H. ("Mother") appeals the involuntary termination of her parental rights to her son, M.H. On appeal, Mother claims there is insufficient evidence supporting the trial court's judgment. Concluding that the Indiana Department of Child Services, Jackson County ("JCDCS") provided clear and convincing evidence to support the trial court's judgment, we affirm.

Facts

M.H. was born to Mother on November 21, 2004.[1] The evidence most favorable to the trial court's judgment reveals that on February 7, 2007, the JCDCS received a report that Mother had physically abused her three children, M.H., E.H., and L.H., while residing at the Anchor House.[2] During the ensuing investigation, the children informed a JCDCS caseworker that Mother "constantly hit [them] with hairbrushes," "pulled" them by their ears, and had "banged" M.H. against the wall. Transcript at 250. Mother, who admitted to some physical discipline of the children, agreed to take a voice stress test and failed the question regarding hitting her children with hairbrushes. The caseworker was also informed by other Anchor House tenants that they had heard Mother "cursing" at the children. Id. at 251. Based on this investigation, the JCDCS substantiated the referral for

[1] The trial court involuntarily terminated the parental rights of M.H.'s biological father, Edward H. ("Father"), in its May 2009 termination order. Although it appears from the record that Father remains married to and is living with Mother, Father does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother's appeal.

[2] E.H. and L.H. are not subject to the trial court's termination order.

environmental life/health endangerment and inappropriate discipline against Mother. This, however, was not the JCDCS's first encounter with Mother.

The JCDCS had been consistently working with Mother and her family since July 26, 2006, after M.H.'s three-month-old younger brother, J.H., suffered a heat stroke while in the family home. When discovered, J.H. was blue and not breathing, having been left in an unventilated bedroom that had reached temperatures registering over 100 degrees Fahrenheit. Upon arriving at the hospital, J.H.'s core body temperature was 106.9 degrees, and hospital personnel observed that the baby was dirty, wore dirty clothes, his hair was matted, and there was grass in his stool. Although multiple services were offered to Mother and her family as a result of the ensuing child in need of services ("CHINS") action involving J.H., caseworkers described Mother's level of cooperation as "minimal to no cooperation" at all. Id. at 134.[3]

In addition to the CHINS action relating to J.H., both the JCDCS and the Bartholomew County ("BCDCS") offices of the Indiana Department of Child Services had been involved with Mother and her family on other occasions prior to M.H.'s birth. The BCDCS entered into a safety plan with Mother after investigating separate reports in August and September 2004 alleging both unsafe conditions in the family home and lack of supervision. Medical neglect was also substantiated against Mother for failing to give E.H. his prescribed seizure medication, Phenobarbital, in September 2004. Moreover,

[3] J.H. continues to suffer from severe and debilitating medical problems including blindness, as a result of the heat stroke he suffered. Mother declined to participate in court-ordered services during the CHINS case relating to J.H., and the JCDCS eventually initiated involuntary termination proceedings against Mother. Mother voluntarily relinquished her parental rights to J.H. on the first day of trial, and the trial court issued an order terminating Mother's parental rights to J.H. on July 23, 2008.

from September 2004 through May 2005, E.H. was admitted to Riley Children's Hospital ("Riley's") on three separate occasions. On one occasion, E.H. had to be "life-lined" to Riley's and, upon admission, it was discovered that E.H.'s Phenobarbital level, which was supposed to be maintained above 15, was only at a level of 0.1. Appellant's Appendix at 21 (Finding No. 140). At that time, Mother admitted to a JCDCS caseworker that she had not given E.H. his Phenobarbital for over two weeks and again signed a safety plan.

In the current case, upon receiving and substantiating the referral in February 2007 against Mother for environmental life/health endangerment and inappropriate discipline, the JCDCS offered Mother parenting classes and counseling through an Informal Adjustment.[4] Mother declined the offer. Consequently, it was determined that the children would not be safe if left in Mother's care and the JCDCS filed a CHINS petition as to all three children. M.H. and his siblings were subsequently removed from the home and placed in licensed foster care through Regional Youth Services.

Following the children's removal, Mother refused to participate in the treatment planning conference with Regional Youth Services and did not request visitation with the children for over ten days. At the end of February 2007, the JCDCS informed Mother that it was willing to return the children to her care as in-home CHINS cases if she and Father would agree to participate in services. Mother thereafter signed an agreement

[4] A program of Informal Adjustment is a negotiated agreement between a family and the Department of Child Services whereby the family agrees to participate in various services provided by the county in an effort to prevent the child/children from being formally deemed CHINS. See Ind. Code 31-34-8 et. seq.

admitting the children were CHINS and agreeing to participate in services. The CHINS document was filed in court on February 27, 2007, and the children were returned to Mother's care on March 12, 2007.

Shortly after returning to the family home, M.H. was diagnosed with failure to thrive by his pediatrician, Dr. Linda Hefner. Dr. Hefner also referred M.H. to the Indiana First Steps Early Intervention Program ("First Steps"), a program for infants and toddlers experiencing or at risk for developmental delays, and to a plastic surgeon for evaluation of M.H.'s syndactyl hands and feet.[5] M.H. was evaluated by First Steps on April 19, 2007, but Mother would not allow First Steps workers back into the home following the initial evaluation.

On April 24, 2007, during the initial CHINS hearing, Mother withdrew her admission to the allegations in the CHINS petition that she had signed in February. The trial court entered Mother's denial and set the matter for a fact-finding hearing in June 2007. The children were allowed to remain in the family home, and the JCDCS continued to offer services to the parents. The JCDCS also monitored the safety and well-being of the children by conducting home visits.

For the next several months, Mother refused to cooperate with service providers and caseworkers. In addition, from April 23, 2007, until July 18, 2007, Mother failed to take M.H. to several scheduled doctor visits. Consequently, Dr. Hefner was unable to

[5] Syndactylism is a congenital malformation syndrome involving both upper and lower extremities. In humans, this condition is normally characterized by two or more fused fingers or toes.

observe M.H. or to monitor his weight. During this time period, M.H. failed to gain any weight and instead lost four ounces.

Due to Mother's continuing refusal to participate in court-ordered services, a detention hearing was held at the request of the JCDCS on July 12, 2007. During this hearing, Mother consented to participating in court-ordered services, including weekly counseling sessions with Scott Phillips and weekly home-based services through Quinco Consulting Associates ("Quinco").[6] Mother also agreed to make M.H. available for weekly face-to-face conversations with JCDCS caseworkers and to take M.H. to various medical, dental, and First Steps appointments within a specific time frame in order to retain custody of M.H. Mother subsequently failed to uphold the terms of this agreement.

In late August 2007, Dr. Hefner submitted a letter to the trial court indicating M.H. had gained only fourteen ounces since his initial visit to her office in March 2007. Dr. Hefner further reported that an average boy M.H.'s age and size normally would have gained approximately twice that amount during the same period. Similarly, JCDCS case manager Mary Ann Spray provided a summary to the court dated September 3, 2007, detailing Mother's continuing non-compliance with the court's dispositional orders and Spray's "increased concern for the well being of the children." Id. at 204. Spray specifically mentioned that during her weekly visits to the family home, there had been only "a couple of times that there was adequate milk and appropriate food for the children." Id. Spray also informed the court that although Dr. Hefner had prescribed

[6] Quinco is a drug and alcohol rehabilitation center that provides outpatient care to the public.

Pediasure three times a day for M.H. in place of whole milk in response to M.H.'s continuing lack of weight gain, Mother had not provided M.H. with Pediasure for three weeks after it was prescribed despite the JCDCS's willingness to reimburse Mother for the cost. Mother also failed to take M.H. to several important doctor appointments and was unable to produce any of his immunization records.

On September 4th, 2007, the trial court issued an emergency detention order granting the JCDCS's request to remove M.H. from Mother's care. E.H. and L.H., however, were allowed to remain in the family home. At the time of his removal, M.H., who was nearly three years old, weighed 24.5 pounds, had poor verbal and social skills, did not know his name or his colors, was infected with head lice, and did not have any socks, shoes, or appropriately-sized clothes.

Following M.H.'s removal from Mother's care, he was placed in licensed foster care in Clark County with his younger biological brother, J.H., and soon thereafter began receiving services through First Steps. M.H. received speech therapy, assistance with simple social skills, such as identifying his first and last name and engaging in simple conversations, and preschool readiness education such as learning to identify shapes, colors, and animals and their sounds. M.H. was also placed under the medical care of Dr. Justin McMonigle on October 9, 2007.

On November 14, 2007, Dr. McMonigle noted M.H. had gained 1.3 pounds in one month. M.H. was also seen by Dr. Amit Gupta on November 29, 2007, for his syndactyl hands and feet. Dr. Gupta recommended corrective surgery and noted that the surgery to

release M.H.'s fingers needed to be done as soon as possible due to M.H.'s age and the deformities of the digits which had already occurred.

On January 11, 2008, M.H. weighed 27.4 pounds, a gain of 2.2 pounds since being removed from Mother. Dr. McMonigle also noted in M.H.'s medical chart that his failure to thrive was likely environmental, as steady weight gain had occurred since M.H. had been placed in foster care. On January 16, 2008, M.H. underwent a genetics evaluation at the Weisskopf Child Evaluation Center for his dysmorphic features and syndactyl hands and feet. Although M.H. exhibited some of the characteristics of Russell-Silver Syndrome, he was not diagnosed with such after further testing.

On April 11, 2008, M.H. underwent surgery on his right hand. Surgery on his left hand was performed on May 2, 2008. Both surgeries required skin grafts from his abdomen. A second surgery on M.H.'s right hand was performed on September 12, 2008. Despite receiving advanced notice of all three procedures, Mother did not attend any of M.H.'s surgeries.

Meanwhile, on May 14, 2008, Mother admitted to the allegations of medical neglect set forth in the CHINS petition and the trial court adjudicated M.H. a CHINS. A dispositional hearing was held on June 4, 2008, and the trial court ordered Mother to participate in a variety of services in order to achieve reunification with M.H. Specifically, Mother was ordered to, among other things: (1) obtain and maintain full-time employment and provide the JCDCS with documentary verification of such; (2) obtain and maintain clean, orderly, and appropriate housing and allow the JCDCS access to such housing at all reasonable times for inspection; (3) maintain sufficient food in the

home to substantially feed and meet the nutritional requirements of each family member; (4) provide M.H. with any doctor-ordered nutrition; (5) successfully complete a parenting skills program approved by the JCDCS; (6) participate in weekly supervised visits with M.H. and provide M.H. with appropriate food if the visits occur during mealtimes; (7) ensure that M.H.'s siblings participate in weekly visits with M.H. during the summer; (8) schedule appointments, meet with M.H.'s medical providers to obtain all information concerning M.H.'s medical needs, and actively participate in M.H.'s medical treatment; (9) obtain and maintain valid auto insurance; (10) provide the JCDCS with a workable, reliable, and "reachable" telephone number; (11) participate in a psychological evaluation and follow any resulting recommendations; (12) actively participate in case management services and follow all recommendations of the case manager; and (13) attend and actively participate in therapy services and follow all recommendations of the therapist.

For several months following the dispositional hearing, Mother continued to refuse to cooperate with case workers or to participate in court-ordered services, including visitation. In addition, from June 5, 2008 until August 7, 2008, Mother failed to visit with M.H. or to bring his siblings to any of the scheduled visits. In October 2008, however, Mother began to comply, in part, with some of the court's orders by improving her attendance at weekly visits with M.H. and by participating in individual counseling. On October 20, 2008, M.H. was placed in his current foster home, and once again was placed under the medical care of Dr. Hefner.

On January 27, 2009, the JCDCS filed a petition to involuntarily terminate Mother's parental rights to M.H. A three-day fact-finding hearing on the termination

petition was held on April 22, 23, and 24, 2009. On May 26, 2009, the trial court entered its judgment terminating Mother's parental rights to M.H. This appeal ensued.

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 trial court's judgment, 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 therefrom that are most favorable to the judgment. Id.

Here, the trial court's termination order contained specific findings of fact and conclusions thereon. When reviewing findings of fact and conclusions of law entered in a case involving a termination of parental rights, we apply a two-tiered standard of review. First, we must determine whether the evidence supports the findings. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). Second, we determine whether the findings support 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, 208 (Ind. Ct. App. 1999), trans. denied; see also Bester, 839 N.E.2d at 147. 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. Bester, 839 N.E.2d at 147.

"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. Moreover, because termination severs all rights of a parent to his or her child, the involuntary termination of parental rights is arguably one of the most extreme sanctions a court can impose; consequently, such a sanction is intended as a last resort, available only when all other reasonable efforts have failed. In re T.F., 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), trans. denied. Nevertheless, parental rights are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate a parent-child relationship. Id. Because the purpose of terminating parental rights is to protect the child, not to punish the parent, parental rights may be properly terminated when a parent is unable or unwilling to meet his or her parental responsibilities. K.S. 750 N.E.2d at 836.

In order to terminate a parent-child relationship, 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 . . . .

Ind. Code § 31-35-2-4(b)(2). The State's burden of proof for establishing each of these allegations in termination cases "is one of 'clear and convincing evidence.'" In re G.Y., 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code § 31-37-14-2 (2008)). 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 (2008).

Here, the trial court found the JCDCS presented sufficient evidence to satisfy both prongs of Indiana Code Section 31-35-2-4(b)(2)(B). This statute, however, is written in the disjunctive. Thus, the JCDCS was required to establish by clear and convincing evidence only one of the two requirements of subsection 2(B). See L.S., 717 N.E.2d at 209. We first consider whether clear and convincing evidence supports the trial court's findings regarding Indiana Code Section 31-35-2-4(b)(2)(B)(i).

Remedy of Conditions

Mother asserts the JCDCS failed to prove there is a reasonable probability the conditions necessitating M.H.'s removal and continued placement outside her care will not be remedied. In so doing, Mother argues:

> The most recent evidence demonstrates that [Mother] has shown sincere concern and interest in [M.H.'s] medical condition. That she has received education and instruction on how to care for [M.H.]. (sic) That she has been relatively consistent in the medical care of her older children who remain in her care and custody. (sic) And that M.H.'s pediatrician has only minimal concerns regarding his future care in the custody of Mother.

Appellant's Brief at 24. Mother therefore contends the trial court "improper[ly]" based its conclusions on Mother's "inadequacies at or prior to the time of M.H.'s removal[,] as opposed to [the] facts as they existed at the time of the termination [hearing]." Id.

When determining whether there is a reasonable probability that the conditions justifying a child's removal and 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., 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. Moreover, we have previously explained that the Indiana Department of Child Services (here, the JCDCS) is not required to rule 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 terminating Mother's parental rights, the court made 168 specific and detailed findings as well as twenty conclusions thereon acknowledging both Mother's successes and failures throughout the entirety of the underlying proceedings. The trial court recognized that Mother maintained a "clean" and "orderly" home, although she had not

always permitted the JCDCS to have access to the home during reasonable hours for inspections. Appellant's Appendix at 15 (Finding No. 97). The court also acknowledged that Mother "consistently attempted" to provide M.H. a high-calorie diet during visits, but that she did not always provide M.H. with the nutrition he needed such as the doctor-ordered Pediasure. Id. (Finding No. 99). In addition, the court noted Mother's recent improvements in participating in visitation with M.H., attending therapy, obtaining transportation, and communicating with M.H.'s medical providers. See id. at 17-19, 23 (Findings Nos. 110, 111, 113, 118, 122, 158). Nevertheless, in ultimately determining that there remains a reasonable probability Mother's behavior will not change, the trial court made numerous pertinent findings, including the following:

> 100. [Mother] [has] not answered all of [the JCDCS's] reasonable inquiries, including matters relating to employment, insurance[,] and random drug screens.
>
> * * *
>
> 102. [Mother] [has] not participated in weekly visits with [M.H.] for two hours per week. . . . [Mother] attended 56% of all the visits. [M.H.'s] two siblings have only visited thirty-two (32) times in nineteen (19) months, with the first visit occurring six (6) months after [M.H.'s] removal.
>
> 103. No family visited [M.H.] his first Christmas away from home. . . .
>
> * * *
>
> 105. No family visited with [M.H.] his first [s]ummer away from home either, so no family visited [M.H.] for two months from 6/5/08-8/7/08; therefore . . . [Mother] failed to ensure that [M.H.'s] siblings participated in weekly visits with [M.H.] throughout the [s]ummer, as [M.H.'s] siblings visited him one time, which was at the end of [s]ummer.
>
> * * *
>
> 109. [Mother's] cooperation prior to August 2008 was very poor. [Mother] failed to cooperate prior to August 2008 with counseling, case management, failed to attend visit[s] for twelve (12) straight weeks and failed to contact [M.H.'s] medical provider or attend his

surgeries. . . . [Mother] has substantially complied with parts of the Dispositional Decree since October 2008.

* * *

111. Since February 16, 2009, [the JCDCS] has been offering two hours of visits at a time that allows for a visit by the entire family, as it does not conflict with the children's school, [Father's] work schedule[,] and alleviates transportation issues. . . . Of the twenty (20) hours offered, [Mother] and the children have only visited ten (10) hours, so 50% of the time offered . . . . Reasons given for ending the visits early have been sickness, pipes burst[,] and needed to get a part for the van[,] . . . roads flooded[,] . . . E.H. not feeling well . . .[,] [and] the boys have homework and still have to eat dinner.

* * *

116. [Mother] . . . [has] not always had valid auto insurance on [the] truck or [the] van. Currently, neither vehicle is insured; yet . . . [Mother] continue[s] to drive both vehicles with [the] children in them.

* * *

119. [Mother] did not always provide [the JCDCS] with a . . . workable, reliable[,] and reachable telephone [number]. . . . [The JCDCS] and CASA had continued problems contacting the [parents].

120. [Father and Mother] completed a psychological evaluation in the [s]ummer [of] 2008, but did not follow all the recommendations of Dr. Christopher. Both [parents] were referred for diagnostic counseling due to their defensiveness and untruthfulness during the evaluation, and both were referred for parenting classes. Although both [parents] had previously completed the parenting workbook, Dr. Christopher felt they needed some additional assistance with parenting. Neither parent has undergone diagnostic counseling or additional parenting classes.

121. [Mother] initially completely refused to participate in case management services [with] Misty Burton of Quinco n/k/a Centerstone and Homebuilders. After an extended period of time, [Mother] began participating in case management services with Dianna Gray.

122. Beginning in August 2008, [Mother] started to participate in therapy. [Mother] has attended seventeen (17) hours of therapy since August 2008. . . .

* * *

132. [Mother] did not attend [M.H.'s] three (3) hand surgeries. [Mother] did attend [M.H.'s] surgery to have ear tubes put in [in] 2009. [Mother] testified that transportation was the reason [she] could not attend [M.H.'s] surgeries.

* * *

134. [Mother] have not attended [M.H.'s] follow[-]up appointments from his hand surgeries.

* * *

144. [Mother] failed to attempt to participate and comply with services regarding [M.H.] until after [her] parental rights were terminated as to . . . [J.H.].

* * *

158. The reason for [the JCDCS's] involvement has not been fully remedied for a period of nineteen (19) months. Both parents have failed to fully comply with the terms of the Dispositional Decree. [Mother] has not followed the recommendations of the psychological evaluation, has not always provided doctor[-]ordered nutrition [M.H.] needs (i.e. Pediasure), has not answered all of [the JCDCS's] reasonable inquiries, has not been able to maintain legal and reliable transportation, has not obtained employment, has failed to communicate with [the JCDCS] regarding employment, insurance and transportation, has not consistently visited with [M.H.], attending only 56% of total visits and did not ensure that the siblings visited weekly with [M.H.] during the [s]ummer, has not maintained valid auto insurance, and has not always had a reachable telephone.

* * *

163. The time of a termination is the most critical time for evaluating a parent's capabilities. The Court cannot ignore the totality of the relative evidence. The Court must consider and give appropriate weight to all relevant evidence. The Court must consider the totality of the evidence presented. . . . [Mother's] record of compliance is better than [Father's], but not good. [Mother] failed to comply with orders for counseling or case management. Both [Mother and Father] have been consistently oppositional and confrontational with [JCDCS] personnel. [Mother] failed to visit for twelve (12) weeks. [Mother] failed to attend counseling and case management, refusing to participate or comply for over one year.

The [parents] have acted throughout this case, and during trial, as if their case was a war between them and the [JCDCS]. The [parents] have fought with the [JCDCS] throughout this case.

> The Dispositional Decree in this case is the order of the Court. Each element of the Dispositional Decree is part of the Order. The [parents] have failed to comply with the dispositional order. [Mother] has substantially complied as to visiting, counseling, and following up with [M.H.'s] medical providers since October 2008. . . . Twenty months after the Dispositional Decree, [Mother] has not completed sufficient counseling to justify considering [M.H.'s] return home. . . . There has been a pattern of medical neglect as to the [children]. There is no indication this will not happen in the future. . . .
>
> [M.H.] was removed for failure to thrive. [Mother] did bring [M.H.] in for weigh-ins for (6) weeks when required by [the JCDCS]. [Mother] . . . had been inconsistent bringing [M.H.] prior to [the JCDCS's] participation. [Mother] . . . delayed obtaining Pediasure for three (3) weeks despite [M.H.'s] severe problems with failure to thrive.
>
> There has been medical neglect relating to [E.H.] . . . . After [J.H.'s] stroke, [Mother] . . . did not go to Kosair Children's Hospital for sixteen (16) days until transported by [JCDCS] personnel. [M.H.] has gained some weight while in foster care. [M.H.] will, the Court believes, have issues with weight and failure to thrive. The [parents'] history of medical neglect causes the Court great concern.

Id. at 16-26. A thorough review of the record leaves us convinced that ample evidence supports the trial court's findings set forth above. These findings, in turn, support the trial court's conclusion that there is a reasonable probability the conditions resulting in M.H.'s removal or the reasons for his continued placement outside Mother's care will not be remedied and its ultimate decision to terminate Mother's parental rights to M.H.

Following an extended period of time during which the JCDCS attempted to provide reunification services to the family through offers of informal adjustments and CHINS actions pertaining to M.H. and/or his siblings, M.H. was eventually removed from Mother's care for medical neglect in September 2007. M.H. was later adjudicated a

CHINS. For approximately one year following M.H.'s removal, Mother refused to participate in essentially all court-ordered services such as taking M.H. to important doctors' appointments, providing him with doctor-proscribed nutritional supplements, visiting with M.H. on a weekly basis and bringing his siblings to these visits, allowing caseworkers and service providers access to the family home during reasonable hours for inspection, and participating in individual therapy, parenting classes, and home-based case management services.

At the time of the termination hearing, Mother had failed to successfully complete a majority of the court's dispositional goals including obtaining employment, consistently maintaining auto insurance, successfully completing parenting classes, actively participating in M.H.'s medical treatment, and submitting to diagnostic counseling as recommended by Dr. Christopher. In addition, notwithstanding her recent progress with participating in individual therapy and weekly visits with M.H., Mother's compliance nevertheless remained sporadic.

During the termination hearing, JCDCS case manager Spray informed the court that she had been involved with the family from summer 2006 through October 30, 2007. Spray testified that during that time, Mother's "overall level of cooperation and compliance" with the JCDCS had been "extremely poor." Transcript at 346. Spray further testified that there were "no significant routines for the children as far as bedtimes, meals, bath time, and quiet time" and that the children were "socially deprived." Id. at 317. Spray also reported that there were "rarely" fresh fruits or vegetables in the home, that there was not always milk or dairy products for M.H, and

that on one visit she observed a case of beer sitting on top of the microwave even though Mother had reported to the JCDCS that she had been unable to provide M.H. with Pediasure because the family "couldn't afford it." Id. When asked whether she believed that Mother had "enhanced [her] ability to fulfill [her] parental obligations" during the time she was case manager, Spray answered in the negative and further testified that it was her recommendation to dissolve the parent-child relationship between Mother and M.H.

Similarly, the current JCDCS case manager, Lauren Brooks, also described Mother's overall participation in services as "minimally cooperative" and "very cyclical." Id. at 375. Brooks explained that Mother would "begin to cooperate, then she would completely drop off" and "not cooperate at all." Id. When asked whether visitation had "been an issue" throughout the underlying proceedings, Brooks responded affirmatively, stating it had been "[a]n extreme issue." Id. at 384. Brooks went on to testify that the JCDCS had offered a total of one hundred and three visits to Mother since M.H.'s removal, but that Mother had participated in only fifty-eight of those visits, failed to visit with M.H. at all during the first six months of his removal, missed twelve consecutive weeks of visitation between December 2007 and February 2008, and missed nine consecutive weeks of visits between June and August 2008. When questioned about Mother's more recent visitation history, Brooks confirmed that Mother's weekly attendance at visits had improved, but noted Mother oftentimes left visits early and had visited with M.H. for only ten of the twenty hours available since the filing of the termination petition. Finally, in recommending termination of Mother's parental rights to

M.H., Brooks confirmed that, as of the time of the termination hearing, Mother remained unemployed, had failed to submit to diagnostic counseling or to complete the recommended parenting class, had essentially denied Brooks access to the family home throughout "the majority of the case . . . unless [Brooks] did surprise visits," failed to maintain automobile insurance and was currently without it, failed to "actively participate" in M.H.'s medical treatment, and continued to refuse to answer the JCDCS's reasonable inquires or to provide the JCDCS with a reliable telephone number. Id. at 380, 403.

Mother also testified at the termination hearing. During cross-examination, Mother admitted that she "had an issue with respect to compliance with services" throughout the underlying proceedings. Id. at 616. Mother further acknowledged that she had "resisted the [JCDCS] in participat[ing] in any services while . . . Spray was the family case manager," that she had been unsuccessfully discharged from home-based services by Scott Phillips in 2007 due to her "lack of cooperation in participation," and that it was not "until the termination on [J.H.] that [she] even really started to . . . comply" with the court's dispositional orders. Id. at 621-22. Moreover, when asked whether it was true that her compliance with court-ordered services had recently "started to taper off," Mother replied, "I know that I go back and forth." Id. at 623. We have previously explained that "the time for parents to rehabilitate themselves is during the CHINS process, *prior* to the filing of the termination petition." Prince v. Dep't of Child Servs., 861 N.E.2d 1223, 1230 (Ind. Ct. App. 2007).

With regard to visitation, Mother acknowledged that she had been ordered to participate in two hours of weekly visitation with M.H. pursuant to the court's dispositional order, but that she had not "fully complied" with that order. Transcript at 29. Mother also admitted during the termination hearing that even after the filing of the involuntary termination petition, she had participated in visitation with M.H. for only ten of the twenty hours available to her and had foregone one of the two hours of visitation available to her "this week." Id. at 636. "[F]ailure to exercise the right 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) (internal quotation omitted), trans. denied.

As mentioned earlier, when determining whether a reasonable probability exists that the conditions resulting in a child's removal from the home will not be remedied, the juvenile court must judge a parent's fitness to care for his child *at the time of the termination hearing*. D.D., 804 N.E.2d at 266. In addition, receiving services alone is not sufficient evidence to show that conditions have been remedied if the services do not result in the needed change and the parent does not acknowledge a need for change. See, e.g., In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005) (concluding that court properly terminated parent-child relationship where parent participated in but failed to benefit from services). Here, the record reveals that at the time of the termination hearing Mother had shown no significant overall improvement in her ability to provide M.H. with a safe and stable home environment, despite having had a wealth of services available to her for over two years. Although we acknowledge that Mother had recently begun

participating more regularly in some services, she nevertheless remained non-compliant with several of the court's orders and had yet to complete a majority of the court's dispositional goals.

In light of the foregoing, we conclude that there was clear and convincing evidence supporting the trial court's determination that there is a reasonable probability the conditions resulting in M.H.'s removal or continued placement outside Mother's care will not be remedied. The trial court was within its discretion in weighing Mother's testimony of changed conditions against the significant evidence demonstrating her habitual pattern of neglectful conduct, her substantial prior involvement with the JCDCS, her history of medical neglect of M.H. and his siblings, and her past and present inability to demonstrate she is capable of providing M.H. with a safe and stable home environment. See Bergman v. Knox County Office of Family & Children, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding that trial court was permitted to 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 that she had changed her life to better accommodate children's needs). 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; see also In re L.V.N., 799 N.E.2d 63, 70-71 (Ind. Ct. App. 2003) (concluding that mother's argument that conditions had changed and that she was now drug-free constituted an impermissible invitation to reweigh the evidence).[7]

[7] Having determined that clear and convincing evidence supports the trial court's conclusion that there is a reasonable probability the conditions resulting in M.H.'s removal will not be remedied, we need not determine whether sufficient evidence supports the trial court's additional determination that continuation of the parent-child

Best Interests

Mother also challenges the sufficiency of the evidence supporting the trial court's determination that termination of her parental rights is in M.H.'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 look to 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 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 recommendations by a case manager and child advocate to terminate parental rights, coupled with evidence demonstrating 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. See 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 also made the following pertinent findings in determining that termination of Mother's parental rights is in M.H.'s best interests:

> 145. [M.H.] is very bonded to his foster family.
>
> 146. Dr. Hefner testified that [M.H.] is bonded with his foster mother and that [M.H.] may do better in her home. Dr. Hefner expressed there are concerns as to whether [M.H.] may regress if he is placed back in the home of [Father] and [Mother].

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relationship poses a threat to M.H.'s well-being. See L.S., 717 N.E.2d at 209 (explaining that I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive).

147. [M.H.] visited with his brothers thirty-two (32) times in nineteen (19) months. CASA Liz Larrison describes their bond as "moderate."

148. [M.H.] does have a bond with his parents . . . .

149. Prior to every visit, [M.H.] tells the foster mother that he loves her and gives her a kiss and a hug before he will go with the visitation supervisor to the visits.

150. [M.H.] also has been stuttering during and following visits with [Mother and Father] over the last five to six months. The stuttering lasts a few days following visits and then it subsides. [M.H.] is currently attending the Early Learning Center ("ELC") to address his stuttering issues.

151. [M.H.] also has had issues following visits with his brothers, whereby he cannot calm down following visits and will not go to bed until around 11:00 p.m. [M.H.] has also become quite clingy to the foster mother following visits. He literally runs from the visitation room to the back of the building where foster mom picks him up.

152. The foster mother, CASA, FMC Brooks[,] and FMC Spray all testified that [M.H.] needs permanency and stability. At this point[,] [M.H.] is in a stable foster home.

* * *

157. The CASA, Liz Larrison, is in agreement with the termination of parental rights and believes that this child needs permanency and stability and deserves to be adopted by a loving, stable family[] who can provide for his needs. This child has been thriving in foster care, and there is a strong bond with the foster family. CASA Liz Larrison had supported reunification up until November[] 2008.

158. The reason for [the JCDCS's] involvement has not been fully remedied . . . .

Appellant's Appendix at 22-23. The trial court then concluded that termination is in M.H.'s best interests.

A careful review of the record leaves us convinced that these findings are also supported by the evidence. Anne Scarlett, former case manager for the JCDCS and current case manager with Children's Sanctuary,[8] testified that she became involved with Mother and M.H. in September 2007 when she was contacted by the JCDCS to place M.H. in foster care. When asked to describe "how [M.H.] was" when he first came under her care, Scarlett described M.H. as "sheepish" and said he had poor communication and social skills. Transcript at 137. Scarlett further indicated M.H. had head lice and his only personal belongings consisted of a "partially filled duffel bag" containing no shoes or socks, clothes that were two sizes too large, a blue and orange dinosaur, a throw pillow, and a couple of diapers. Id. at 138. When asked whether she noticed a change in M.H. after being placed in foster care, Scarlett stated she had observed "very significant changes." Id. at 139. Scarlett testified that before entering foster care, M.H. was "a very withdrawn boy," did not know his own name, and could not identify shapes or colors, but that after entering foster care, M.H., "became very outgoing and social," was "happy," and would "jump[] around" when she visited. Id. She further explained, "[It was] just, night and day." Id. When asked whether she had an opinion as to what course of action would be in M.H.'s best interests, based on her experience with M.H.'s birth family, Scarlett replied, "From the experiences that I've seen . . . I would say that it would be in [M.H.'s] best interest . . . for [Mother's and Father's] rights to be terminated. . . . [T]hey

[8] Children's Sanctuary is a private foster care agency.

made minimal effort, at best, to go to visits and [to] be involved in [M.H.'s] medical care." Id. at 146.

Visitation supervisor Peggy Hood also testified during the termination hearing. When asked whether M.H. was bonded with his parents and brothers, Hood explained that M.H. is "always glad to see [them]," but indicated that it was also "okay [with M.H.] to leave." Id. at 186. Hood further informed the court that M.H. does not know his sibling's names and simply calls them "the brothers" during visits. Id. With regard to Mother, Hood testified that M.H. was likewise always glad to see her. However, Hood had also observed that during the last several months M.H. had begun to show resistance to any affection offered by Mother by "pushing [Mother] away when she tries to pull him close." Id. at 188. When questioned as to M.H.'s relationship with his foster family, Hood said M.H. was "very bonded" with his foster family and feels "very secure" with them. Id. at 192. When questioned as to whether "any [behavioral] issues" had been observed following M.H.'s visits with his family, Hood replied, "[W]e realized recently that after . . . visitation . . . [M.H.] has difficulty going to sleep at night . . . [and] is very clingy [with the foster mom] after a visit with [his family]." Id. Hood also observed that M.H. had begun to stutter after visits. Finally, Hood testified that based on her observations of M.H., she felt it was in M.H.'s best interests for Mother's parental rights to be terminated and for M.H.to "stay with the foster family where he is now." Id. at 193.

JCDCS case managers Brooks and Spray also recommended termination of Mother's parental rights. Brooks testified:

> I just have concerns because . . . there's no[] stability . . . in [the parents'] providing [care]. . . . [T]heir consistency has been extremely poor[,] and [M.H.] deserves to be in a stable home, especially being a failure[-]to[-] thrive child who has weight issues . . . . [T]he lack of . . . stability can impact his weight. And . . . [Mother has] not shown that [she] ha[s] a desire to maintain that bond with [M.H.] through visitations. . . .

Id. at 422. Court-appointed special advocate ("CASA") Liz Larrison also recommended termination, stating that she did not think that the family home is a "safe environment" for [M.H.] to return to in light of Father's refusal to participate in services. Id. at 278. Larrison's recommendation was also based on her concerns that Mother had "not fully complied with the dispositional order," and was "still struggling with anxiety and some depression[.]" Id. at 306, 313.

Based on the totality of the evidence, including Mother's habitual pattern of neglectful conduct and failure to successfully complete a majority of the court's dispositional orders, coupled with the testimony from Scarlett, Hood, Brooks, and Spray recommending termination of the parent-child relationship, we conclude that clear and convincing evidence supports the trial court's determination that termination of Mother's parental rights is in M.H.'s best interests. See, e.g., In re A.I., 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding that testimony of child advocate and family case manager, coupled with evidence that conditions resulting in continued placement outside home will not be remedied, is sufficient to prove by clear and convincing evidence termination is in child's best interests), trans. denied.

Conclusion

A thorough review of the record reveals that the trial court's judgment terminating Mother's parental rights to M.H. is supported by clear and convincing evidence. This court will reverse a termination of parental rights "only upon a showing of 'clear error'--that which leaves us with a definite and firm conviction that a mistake has been made." In re A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Affirmed.

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