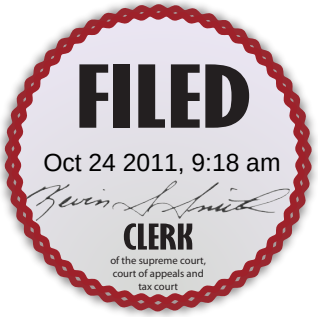

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF:	)	
A.W. (Minor Child),	)	
and	)	
T.H. (Father), &	)	
D.W. (Mother),	)	
Appellants-Respondents,	)	
vs.	)	No. 18A02-1102-JT-161
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Richard A. Dailey, Judge
The Honorable Brian M. Pierce, Master Commissioner
Cause No. 18C02-1006-JT-17

October 24, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

T.H. ("Father") and D.W. ("Mother") appeal the involuntary termination of their parental rights to their child, A.W. Concluding that the trial court's judgment is supported by clear and convincing evidence, we affirm.

Facts and Procedural History

Father and Mother are the biological parents of A.W., born in November 1997. The facts most favorable to the trial court's judgment reveal that in April 2009 A.W. was removed from Mother and temporarily placed in relative care following an altercation during which Mother left physical marks on A.W.'s arms and legs and ordered A.W. to leave the family home. When case workers from the local Delaware County Office of the Indiana Department of Child Services ("DCDCS") found A.W., she was approximately one mile away from home, barefoot, and in the home of her paternal great-grandmother. This was not DCDCS's first encounter with this family. Rather, the family had an extensive history of involvement with DCDCS, including a service referral agreement in 2000, a previous CHINS adjudication that was closed in 2005, and a pending Informal

Adjustment[1] at the time A.W. was found at her great-grandmother's home. As a result of this most recent incident, Mother was arrested and charged with neglect of a dependent and battery on a juvenile. She later pled guilty to the neglect of a dependent charge.

Following A.W.'s removal, DCDCS filed a petition alleging A.W. was a child in need of services ("CHINS"). Both parents made general admissions to the allegations contained in the CHINS petition, and, following a hearing in May 2009, A.W. was adjudicated a CHINS. In June 2009, the trial court adopted the recommendations contained in DCDCS's pre-dispositional report and entered its dispositional order formally removing A.W. from the care and custody of Father and Mother and making A.W. a ward of DCDCS. The court's dispositional order further directed the parents to participate in and successfully complete a variety of tasks and services designed to facilitate their reunification with A.W. Specifically, Mother was granted visitation privileges with Father supervising the visits, ordered to submit to random drug screens and to complete a substance abuse program, and directed to participate in family counseling with A.W. Father, who was never married to Mother but who lived with A.W. for a majority of the child's life, was permitted to have physical custody of A.W. while living with the paternal great-grandmother. Father was also directed to submit to random drug screens, maintain regular contact with DCDCS, and notify DCDCS of any changes in his address or contact information.

[1] A Program of Informal Adjustment is a negotiated agreement between a family and the Indiana Department of Child Services whereby the family agrees to participate in various services in an effort to prevent the child/children from being formally deemed a child in need of services. *See* Ind. Code ch. 31-34-8.

Approximately one month later, in July 2009, DCDCS filed a petition seeking an emergency change of placement after learning Father and A.W. were no longer living with the great-grandmother at the address Father had provided but were again living with Mother. In addition, Father had "willfully left [A.W.] unsupervised with [Mother]," the great-grandmother had confirmed that she had not seen A.W. in over one week, and Father had failed to maintain consistent contact with DCDCS. Exhibits, Vol. 1 (Mother) p. 35. The trial court granted DCDCS's petition, and A.W. was placed in licensed foster care. The court also modified its dispositional order as follows: (1) both parents were ordered to attend couples counseling; (2) Father was directed to participate in family counseling with Mother and A.W.; and (3) each parent was provided an opportunity to receive expanded visitation privileges should they show progress in services.

For nearly one year, both parents' participation in court-ordered reunification services continued to be sporadic. Although each parent made some progress and even achieved some unsupervised visitation privileges during the CHINS case, neither parent was able to sustain his or her progress for a significant period of time. For example, Father tested positive for cocaine in October 2009, failed to maintain consistent contact with DCDCS, and repeatedly violated the court's orders regarding permissible contact between Mother and A.W. Mother, on the other hand, was granted a trial in-home visit with A.W. in November 2009, but the in-home visit ended unsuccessfully in January 2010 when DCDCS was forced to file a second emergency change of placement petition. This second petition was filed following a domestic dispute late one evening between Mother and Father after which Mother ordered A.W. out of the home, informed A.W.

that she no longer wanted anything to do with her, and insisted that the visit supervisor immediately "come pick up [A.W.]." Tr. p. 69.

The trial court attempted a second in-home trial visit with Father in January 2010, but it was unsuccessfully terminated in May 2010 after Father was arrested for operating a vehicle while intoxicated while A.W. was present in the car. Before his arrest, Father and Mother had been drinking alcohol at Mother's residence and an argument ensued. At some point during the argument with Father, Mother initiated a physical altercation with A.W., who had accompanied Father that evening. While driving home with A.W., Father was stopped by local law enforcement officers and arrested.

Due to Father's and Mother's failure to progress in services, DCDCS filed a petition seeking the involuntary termination of both parents' rights to A.W. in June 2010. A two-day evidentiary hearing commenced in October 2010 and concluded in November 2010. During the termination hearing, DCDCS presented evidence showing Father had failed to benefit from reunification services and continued to struggle with substance abuse issues, having tested positive for cocaine in July 2010 and again in September 2010. He was also arrested in October 2010 for operating a vehicle while intoxicated and driving with a suspended license. Mother had also failed to successfully complete and/or benefit from a majority of the court-ordered reunification services, including overcoming her anger management issues. In addition, the evidence clearly established there was no bond between Mother and A.W. To that end, A.W. informed the trial court that she did not wish to live with Mother, Mother treated her differently than she treated A.W.'s siblings, and Mother continues to blame A.W. when fighting with Father.

At the conclusion of the November 2010 evidentiary hearing, the trial court determined that Father, Mother, and the great-grandmother were all in contempt of court for willfully violating the court's orders regarding visitation with A.W. No sanctions were imposed, however. The court then took the termination matter under advisement. In January 2011, the trial court issued its order terminating both Father's and Mother's parental rights to A.W. This consolidated appeal ensued.

Discussion and Decision

When reviewing the termination of parental rights, we will neither reweigh the evidence nor judge witness credibility. *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 most favorable to the judgment. *Id.* Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

Here, in terminating Father's and Mother's parental rights, the trial court entered 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 Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Id.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by

inference." *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court's decision, we must affirm. *L.S.*, 717 N.E.2d at 208.

The "traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. 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.* 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. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001).

Before an involuntary termination of parental rights may occur in Indiana, the State is required to allege and prove, among other things:

> (B) that one (1) of the following is true:
>
> (i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.
>
> (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.
>
> (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services . . . .

Ind. Code § 31-35-2-4(b)(2). The State's burden of proof for establishing these allegations in termination cases "is one of 'clear and convincing evidence.'" *In re G.Y.*,

904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code § 31-37-14-2). If the trial 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. Father and Mother both challenge the sufficiency of the evidence supporting the trial court's findings as to subsection (b)(2)(B) of Indiana's termination statute.[2]

Indiana Code section 31-35-2-4(b)(2)(B) provides that DCDCS need establish only one of the three requirements of this subsection by clear and convincing evidence before the trial court may terminate parental rights. Here, the trial court found DCDCS presented sufficient evidence to satisfy subsection (b)(2)(B)(i) and (ii) of the termination statute as to both parents. Because we find it to be dispositive in the instant case, we shall consider only whether sufficient evidence supports the trial court's determination that there is a reasonable probability that the conditions resulting in A.W.'s removal and continued placement outside of Father's and Mother's respective care will not be remedied.

In challenging this conclusion, neither parent disputes any of the trial court's specific findings as unsupported by the evidence. Rather, Father and Mother simply assert that the trial court's judgment is not supported by the evidence and direct our attention to certain self-serving testimony. For example, Mother asserts that A.W.'s "most serious injuries . . . consisted of scratches and bruises" and further claims that

[2] Although Mother also states in her brief that DCDCS failed to prove termination of her parental rights is in A.W.'s best interests, she fails to support this contention with any cogent reasoning or citation to authority. In failing to do so, Mother has waived review of this issue. *See Davis v. State*, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005) (concluding that failure to present a cogent argument or citation to authority constitutes waiver of issue for appellate review), *trans. denied*.

A.W. "never indicated that she wanted her mother's rights terminated" during the termination hearing. Appellant Mother's Br. p. 13-14. Father, on the other hand, claims that he was "not the cause of [A.W.'s] removal from the home," that he does not plan to live with Mother, and that individual counseling for Father was "not ordered until after the filing of the Termination of Parental Rights petition" in June 2010. Appellant Father's Br. p. 9. Father therefore contends that termination of his parental rights "cannot be sustained on this ground of lack of remedying." *Id.*

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 Cnty. Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. Moreover, a county department of child services is not required to provide evidence ruling out all possibilities of change; rather, it need only establish 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). Finally, we have previously explained that Indiana's termination statute makes clear that "it is not just the basis for the initial removal of the child that may be considered for purposes of determining whether a parent's rights should be terminated, but also those bases resulting in the continued

placement outside of the home." *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*.

In determining there is a reasonable probability that the conditions leading to A.W.'s removal and/or continued placement outside of Father's and Mother's care will not be remedied, the trial court made several pertinent findings regarding each parent's past and present inability to provide A.W. with a safe and stable home environment. In so doing, the trial court took note of the family's "extensive history of involvement with DCS." Appellant Father's Appendix p. 41. The court also found that "DCS and this court have diligently attempted to engage the parents and place services which would allow for reunification with either [Mother] or [Father], modifying services and placement on numerous occasions," but that despite these efforts, "neither parent has demonstrated a willingness to seriously engage in the services offered" and "[b]oth parents have been found in contempt of court for wantonly ignoring this court's orders concerning visitation and counseling." *Id.*

Regarding the parents' participation in counseling, the trial court found Father "disrupted" A.W.'s individual therapy by informing her that he believed therapy was a "waste of time," after which time A.W. became "more aloof and irritated in therapy." *Id.* The court further noted that Father repeatedly refused to contact therapist Amanda McKinley to set up individual counseling sessions, "missed all but three scheduled sessions," and that Father's referral was eventually closed as unsuccessful due to Father's "pervasive lack of involvement." *Id.* Similarly, the trial court found Mother "demonstrated a pervasive pattern of hostility toward[] therapist [McKinley]," attended

only half of her scheduled individual therapy sessions, and "demonstrated zero progress in addressing the issues between [A.W.] and [Mother]." *Id.* The court also noted that Mother's case had likewise been "closed due to lack of cooperation." *Id.* As for Father's and Mother's participation in couples counseling, the trial court determined that the parents had been "unsuccessful" in this endeavor as well, noting that during "the one time" Father and Mother actually attended couples counseling, they "demonstrated the sporadic, manipulative and violent nature of that relationship. However, due to lack of cooperation, these issues could never be addressed by [McKinley]." *Id.* at 41-42.

The trial court's judgment terminating Father's and Mother's parental rights also contains detailed findings regarding the repeated attempts to place A.W. back in the home of each parent. Specifically, the trial court noted A.W. had been placed with Father in June 2009 but was removed pursuant to an emergency change of custody order issued in July 2009 after DCDCS informed the court that Father "was not supervising visits between [A.W.] and [Mother]," there was "evidence that [Father] and [A.W.] were staying with [Mother] at that time without the court's authorization," Father was "failing to keep appointments with DCS," and A.W.'s therapist was "concerned that [A.W.'s] safety was at risk due to [Father's] inability to establish proper boundaries with [M]other." *Id.* at 42. The court's findings further indicate that a second attempt to place A.W. with Father in January 2010 also ended unsuccessfully in May 2010 when, following an argument with Mother, Father was arrested for operating a vehicle while intoxicated with A.W. in the car. *Id.* Regarding the court's attempt to place A.W. with Mother during the CHINS case in November 2009, the trial court found that this

placement likewise ended unsuccessfully in January 2010 when Mother "kicked [A.W.] out of her home, informed [A.W.] that she no longer wanted to have anything to do with the child, and called . . . a visitation supervisor to pick [A.W.] up." *Id*.

Finally, the trial court found that both parents had been provided with "ample opportunity" to complete reunification services and to demonstrate the ability to effectively parent A.W., but that neither parent had done so. *Id.* at 43. In so doing, the court observed: "It appears that neither parent has demonstrated any benefit from the court[-]ordered services designed to promote reunification. Neither parent has indicated a willingness or desire to change their dysfunctional personal relationship or their relationship with [A.W.]." *Id.* at 26. These findings are supported by the evidence.

The record makes clear that although Father and Mother were each afforded multiple opportunities to participate in counseling, supervised visits, and other programs designed to facilitate their respective unification with A.W., both parents refused to take advantage of these programs and were never able to demonstrate any significant progress in their abilities to safely parent A.W. During the termination hearing, DCDCS case manager Mary Revolt confirmed that Father and Mother had repeatedly "ignore[d]" the trial court's orders regarding visitation with A.W. and had failed to successfully complete a majority of the court's dispositional orders, including family and individual counseling. Tr. p. 140. Revolt also confirmed that Father's significant substance abuse issues remained unresolved, stating Father repeatedly tested positive for cocaine and received "two DUI's" during the pendency of this case. *Id.* at 142. In addition, Revolt testified that she did not believe Mother had resolved her anger management issues as they relate

to A.W., stating there had been "several incidents" of "physical altercations between [Mother] and [A.W.]" during this case and that she did not believe those issues were likely to be resolved in light of the fact Mother had failed to successfully complete counseling services. *Id.* at 145.

Therapist McKinley likewise testified that Mother had refused to "actively participate" in therapy and "would not set goals." *Id.* at 26. When asked to describe Mother's attitude during therapy sessions, McKinley explained that Mother was "hostile a lot of the times" or "just aloof." *Id.* at 27. McKinley also indicated that Mother did not appear to take her therapy seriously and repeatedly canceled in-home counseling appointments even when Mother knew McKinley was already on the way or had already arrived at Mother's home. Due to Mother's "non-involvement" in therapy, McKinley acknowledged that she was unable to "make any headway with regard to the underlying problems between [M]other and [A.W.]" *Id.* at 26.

Regarding Father, McKinley testified there was "a pervasive lack of participation on [Father's] part[,] too." *Id.* at 28. McKinley went on to explain that Father repeatedly refused to make future appointments, attended only "a few" of the sessions that actually were scheduled, and that Father's referral for services was eventually closed for "[l]ack of participation." *Id.* at 28-29. When asked to describe how successful couples counseling with Father and Mother had been, McKinley replied, "It wasn't. Um, there was only one session that I had with [Father] and [Mother] and it got very, very heated very quickly[.] . . . [T]hey were yelling and arguing at each other and . . . just trying to even de-escalate them was very difficult." *Id.* at 30.

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. *See 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, supports a finding that there exists no reasonable probability that the conditions will change." *Lang v. Starke Cnty. Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied.* Based on the foregoing, we conclude that DCDCS presented clear and convincing evidence to support the trial court's findings previously cited as well as its ultimate decision to terminate Father's and Mother's parental rights to A.W. The parents' arguments to the contrary amount to an invitation to reweigh the evidence, which we may not do. *See D.D.*, 804 N.E.2d at 264.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.