

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.

ATTORNEY FOR APPELLANT:

LILABERDIA BATTIES
Batties & Associates
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

KIMBERLY SPINDLER
Marion County Department of
Child Services
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

In the Matter of the Involuntary Termination of the)
Parent-Child Relationship of C.B and S.B., Minor)
Children, and Their Mother,)

CHARLENE BURNS,)
)
Appellant-Respondent,)

vs.)

No. 49A02-0703-JV-231

MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner,)

and)

CHILD ADVOCATES, INC.)

Co-Appellee (Guardian Ad Litem).)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Victoria Ransberger, Judge Pro Tempore
Cause No. 49D09-0505-JT-17833

November 20, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Charlene Burns (“Mother”) appeals the termination of her parental rights to C.B. and S.B. Burns raises two issues, which we consolidate and restate as whether the trial court’s termination of Mother’s parental rights is clearly erroneous. We affirm.

The relevant facts follow.¹ Mother is the parent of C.B., born June 26, 1994, and S.B, born October 21, 1995, along with seven other older children.² In 1998, Mother placed both C.B. and S.B. and two of their older sisters, I.B. and M.B., in a legal guardianship with Mother’s brother, Bobby Henson, and his wife, Brenda Henson. Mother placed the children in the guardianship because she was using drugs and could not care for the children.

On October 21, 2003, the Marion County Office of Family and Children (“MCOFC”) filed a petition alleging that C.B., S.B., and I.B. were children in need of services (“CHINS”) because M.B. reported that Bobby had been molesting her since she

¹ We remind Mother that Ind. Appellate Rule 46(A)(5) requires assertions in the statement of the case to be supported by references to pages of the record on appeal or the appendix. Further, Ind. Appellate Rule 46(A)(6) provides that “[t]he facts shall be supported by page references to the Record on Appeal or Appendix” Many of the statements in Mother’s statement of the case and statement of the facts are not supported by such page references.

² Junior Turner is the alleged father of C.B. and S.B., but he is not a party to this appeal.

was fourteen years old and Brenda did not believe the allegations.³ At that time, the children were removed from the Hensons and were ultimately placed in foster care.

Mother did not appear in the CHINS proceedings until January 2004 and, at that time, did not take advantage of services offered by the MCOFC. Although Mother was authorized to have visitations, she did not start visiting the children until late 2004. In September 2004, she admitted the allegations in the CHINS petition, and the trial court found the children to be CHINS. Mother agreed to secure and maintain a legal and stable income, maintain suitable housing, complete home based counseling, complete a parenting assessment, participate in parenting classes, complete a drug and alcohol assessment, and follow all recommendations made by counselors, therapists, and other service providers.

In May 2005, the MCOFC filed a petition to terminate Mother's parental rights. Mother then started services from the MCOFC in May 2005. After several hearings in late 2006 and early 2007 regarding the petition, the trial court issued the following findings of fact and conclusions thereon terminating Mother's parental rights to C.B. and S.B.:

8. [Mother] was referred to services and only started doing services by completing the first part of her parenting assessment in June 2005, a month after the TPR was filed. She did not finish the bonding portion of the parenting assessment until late 2006, despite knowledge that this basic service was required. [Mother] testified

³ I.B. was later dismissed from the termination proceeding because she was institutionalized for allegedly molesting a younger child.

that she finally finished this section of the parenting assessment two months prior to her testimony on January 31, 2007, which would have been some time in November or December 2006, approximately two years after she signed the agreed entry.

9. [Mother] completed Intensive Outpatient treatment for her longtime cocaine addiction. She has done random drug screens which were negative, but has not participated in after care programs on a regular basis.
10. [Mother] was referred to Home Based Counseling (HBC) in November 2005. She had to address her concrete needs: find housing, find a stable source of income, learn parenting skills, address her reading deficiencies, and progress to regular supervised visits with the children.
11. At the start of the CHINS in 2003, [Mother] was homeless. Since then she has lived “here and there” with family and friends, with a sister and in the Salvation Army. Since April 2006 she has had a one year lease in Amberwoods, procured when she was receiving HBC services. The apartment is completely subsidized, so [Mother] pays no rent.
12. The Amberwoods apartment is described by the Gallahue case manager, Sue Pitman, who lived not far from there, as a high crime area. Nancy Arkins, the Guardian ad Litem, who has been a nurse in Wishard Hospital and is familiar with unsafe neighborhoods in Indianapolis due to the patients she met in her work, also put the safety of the neighborhood in question. [Mother] stated to the children in the presence of the current visitation supervisor, Crystal Nevins, that someone in the neighborhood was recently murdered.
13. The odor of marijuana was noted by Crystal Nevins (visitation supervisor since December 2006), Greg Kemp (current HBC counselor), and Regina Johnson (former HBC counselor) in the building where [Mother’s] apartment is situated. This is a concern because of Mother’s addiction history.
14. [Mother] never provided any MCDCS case manager or the Guardian ad Litem with a copy of the lease to her apartment for documentation, despite repeated requests. [Mother] was to provide this because case manager and GAL need to know what the

conditions are for the continuity of housing in the future. [Mother] testified that she has a lease that started in April 2006 and lasts for one year, but did not provide this Court with a copy at trial. No verification was produced that she would be recertified for another subsidized rent period upon expiration of her current lease.

15. [Mother] has not parented the children in over eight years. In fact, she left them in the legal guardianship with her brother when they were preschoolers, just three and four years old. It is only in the year preceding the last TPR hearing that she has visited them regularly on a weekly basis since 1998. [C.B. and S.B.] are now preteens. It is clear that the children have a friendly relationship with her, but not much of the parenting bond if any existed prior to 1998, has survived beyond the weekly visits with the children. From the GAL's observations and contacts with the children, it appears that the children viewed the uncle's home as their permanent home until the molestation incident and have since come to look to the Gaskins for permanency.
16. [Mother] has a total of nine children. She has not raised at least five of the children, and the other four were raised by her in part and otherwise by family members.
17. [Mother's] long cocaine addiction is a concern, despite the fact that recent random drug screens were negative. [Mother] had been clean about one year when the TPR trials started. [Mother] testified that she has had relapses in the past, among others, in 2000 or 2001 at her son's wedding. She testified that she tried to get her life back together again a lot, but has never been able to sustain it in the face of significant stress.
18. [Mother] found a job with the help of HBC, but has been let go from two jobs since March 2006 and has been unemployed since October 5, 2006. She never provided the MCDCS case manager with pay stubs despite repeated requests, and did not provide the Court with any documentation of employment.
19. Even though she can sign up for them in her apartment complex, [Mother] has not taken GED classes which would be helpful in obtaining a better job, and in improving her reading difficulties. Mother has not been able to maintain a stable job despite continued help by Regina Johnson, her first HBC counselor: she has had two

short term jobs in 2006. There was no proof of work history prior to that.

20. She does not have to pay rent in Amberwoods, and does not have to pay for the utilities. She pays the phone bill with help from her family. She claims she receives help from church friends and family. When asked who her support group was, she remained vague.
21. Mother was not able to keep up with a safety plan for her daughter's visits, even though she was involved herself in developing the safety plan with the DAWN project, wrap-around services, and even though her HBC, Regina Johnson and Greg Kemp discussed it with her.
22. She has not displayed any self-sufficiency skills, let alone parenting skills, even though she finished her parenting education through HBC. However, her house is always clean.
23. Mother has not taken advantage of other community services that are available to her in her apartment complex, except in late 2006 she started a typing class (no verification provided), despite the fact that Regina Johnson, her first HBC counselor taught her how to access these services.
24. Karen Wilkerson and Erik Felts, the current MCDCS case manager, testified that they had to drop off bus passes at [Mother's] home because she cannot provide her own transportation. Several witnesses testified that they had to transport [Mother] to community visits (Nicole Biggerstaff and Crystal Nevins), to meetings and to visits.
25. [Mother] was supposed to learn how to budget. While she does not have a lot of money, she appears to save money per Regina Johnson, but doesn't have a bank account, and at the same time asserts that she spends a lot of money on her children.
26. [Mother] stated that it hurts when the children don't want to come back to her, but she wants her children back so she will have a chance to love and mother them.

27. The DAWN project got involved because of [I.B.'s] special needs in education. DAWN provides wrap around services for the child and the family of the child. This includes biological parents when the children are in foster care and going through TPR proceedings. DAWN has been involved with [I.B.], the older sibling of [C.B. and S.B.] since August 24, 2006. While working with [I.B.], Nicole Biggerstaff, who has been a case manager for children and adolescent services in the Adult and Child, Inc. DAWN project for five months and worked in a homeless shelter as a case manager for three years prior to that, has also worked with [Mother]. She has worked on connecting Mother with resources, encouraged her to make progress on the treatment goals, and also worked on a crisis plan. Mother did not follow up and has not been able to be supportive of or to advocate for her daughters. On December 12, 2007, Ms. Biggerstaff offered [Mother] help in developing a self-sufficiency plan. She referred [Mother] to Indy Reads for literacy training, but [Mother] has not followed upon on that either. In bi-monthly DAWN meetings, [I.B.'s] needs and intervention progress are discussed. Even though Mother's ability to respond to her responsibilities and needs regarding [I.B.] has been addressed extensively, she has not been able to respond to those.
28. HBC Greg Kemp addressed the molestation issues which initiated the CHINS matter. [Mother] remained vague and made no effort to discuss or explain the history of the CHINS case with Kemp. She did concede that she had not made a good choice by consenting to the guardianship for her children with her brother. HBC Regina Johnson went with Mother to the MCDCS office to read letters from [Mother's] brother written to a minor daughter whom he molested. Mother does believe now that her child was molested.
29. In November 2006, the HBC still advocated for reunification. The two home based counselors are the only witnesses who had no concerns about Burns' parenting skills or the high crime area in which she lives. Both stated that they have to pursue reunification for [Mother] and her children, until a TPR decision is made by this Court. Kemp believes that every child needs its mother. He would not close a case if a parent has not reached in-home trial visits.
30. Kemp testified that [Mother] would still need HBC services after the children are placed with her.

31. [Mother] attends the same church as her brother and has some interaction with him. She did not report to Kemp that she confronted her brother regarding her brother's molestation of her older daughter or discussed it with him. [Mother] herself stated that she found out that the CHINS proceeding was filed because of her contacts with her brother.
32. [Mother's] visits with her daughters were initially irregular: she visited once with the children in the last quarter of 2004, and then did not see them until her second visit in the last quarter of 2005. Since then, she has visited with the children on a regular basis, but never achieved the self-sufficiency required to achieve long term unsupervised visitations. The few she had, she violated by having strangers in the home.
33. While [Mother] attempted to follow a safety plan she helped develop, she was not successful at following it. Kemp stated that [Mother] understood that her unsupervised visits violated the safety plan, but didn't appear to be sure why a man dropping by was a violation. The safety plan was very specific: she was not to have anyone in the home during visits with her daughters. She was told to hang a note on the door that stated that nobody was allowed in, but a male stranger visited one, and a second time a friend "Willie" was in the home during the visit, as well as other folks. It is apparent from testimony by [Mother] that she tried to follow the safety plan rules, but was notable to keep people out. This is a concern for service providers, to such an extent that before the January 2007 hearings, visits were moved from [Mother's] home to a neutral location outside the home. There have been visits in the community, recommended by Greg Kemp, but when [Mother] went shopping with her children at the mall, there was not much parenting observed. It was clear that the children were excited, but they did not involve [Mother] in the shopping nor did she take initiative to coordinate the children during that trip.
34. In a DAWN meeting all service providers decided that Crystal Nevins, who has supervised visits since December 2005, would initiate a discussion of the children's wishes relative to living with their mother. [S.B.] told [Mother] that she wanted to be adopted by the Gaskins. [Mother] asked her why she just told her now, and [S.B.] was upset and said to [Mother] that she had before. There

was no further discussion, and [Mother] did not want to address this issue any further.

35. Visitations have reasonably gone well, but the concern of those who observed visits have been that [Mother] is not able to provide planned activities, or to provide a lot of parenting. The visits have been described as “slumber parties,” “times when the children overeat,” “not much communication between [Mother] and the children.” While there is certainly a connection, [Mother] doesn’t seem to be able to get involved into the interests of the children. [C.B.] in particular seems to be hesitant at the visits, and is visibly uncomfortable at times.
36. Since April 30, 2005, the children have resided in foster care with Mr. and Mrs. Gaskin, without any change of placement.
37. The Gaskin home is an appropriate home to raise the children, despite some testimony of Regina Johnson to the contrary. It appeared that Johnson also worked for Whites Foster Care licensing agency and in that capacity, inspected the Gaskin home where she found the house’s hygiene inappropriate. However, the Gaskins cleaned up the house and there were no more complaints. The Court questioned her conflict of interest in this matter. However, since that time, the Gaskins have continued to be licensed therapeutic foster parents, and none of the other witnesses who visited . . . have noticed anything out of the ordinary.
38. Jennifer Henk, MSW and licensed in Indiana, has counseled children in the foster care system due to abuse and neglect as a mental health therapist at Gallahue Mental Health Services for the past four years. The children had been referred by MCDCS for therapy with her, starting in July 2005.
39. Henk has kept detailed documentation of her therapy sessions with the children and of statements made and behavior exhibited by the children during the sessions.
40. The main concerns Henk addressed with the children in therapy have been treatment for their chronic adjustment disorder, adjustment to their current foster home, behavioral issues, and since November 2006, repeated questions by the children why the TPR process is taking so long.

41. Throughout their therapy sessions with Henk, the children have expressed progress in their relationship with Mr. and Mrs. Gaskin, and have adjusted well. Behavioral problems have lessened, and they have made positive strides in school. They have become more social and less introverted. [C.B.] in particular has expressed how important it has been to her that the Gaskins have actually allowed her to do something she really wanted and supported her in achieving the goal to participate in a trip to Washington DC with school.
42. The children have addressed their feelings regarding [Mother]. [S.B.] has been ambivalent about continued contact and has resisted going to visits; [C.B.] has expressed her frustration that she has not had the opportunity to get to know [Mother] at all. She feels closer to Mrs. Gaskin, and knows details such as favorite foods of her foster mother. She has no such knowledge of her biological mother, and was frustrated that unsupervised visits did not increase communication between her mother and herself. Neither child has expressed any knowledge of or desire to meet with the extended family members of [Mother].
43. Both children have a close bond with Mr. and Mrs. Gaskin. They feel integrated in the family, and have stated to Henk that they feel safe in the Gaskins home, especially after the removal of their older sister, due [to] allegations of sexual molest of one of the younger children in the home.
44. The children have also expressed their wishes regarding their permanency, and although ambivalent about [Mother], wish to stay with the Gaskins. They often do not want to go to visits, as they explained to Henk, Karen Wilkerson and others.
45. Henk explained that the children had not been parented by their mother for seven years when she started therapy with them in July 2005. The harm that caused is a concern based on irregular contact between the children and [Mother] for the first two years of the underlying CHINS matter and prior to that during the legal guardianship with the Hen[sons].
46. Besides not having parented the children since 1998, when the children were four and three years old, mere preschoolers, [Mother]

had only visited the children once at the end of 2004 after the CHINS opened in October 2003, and only started visiting the children on a regular basis after November 2005, when HBC started.

47. The Court is gravely concerned about the possibility of runaway particularly with [C.B.]. These children who have adjusted so well to their current environment due in part to on-going therapy for chronic adjustment disorder would have to re-learn how to live with [Mother] and consider her as a parental figure instead of a friend. All the pillars of stability in children's lives as they know it now, would be severely disrupted although the girls would technically be able to remain in the same school. However, they would have to adjust to a new neighborhood and learn to live with their mother's chronic financial instability. [C.B.] in particular has expressed a concern that [Mother] won't be able to take care of her. Her statement was based on the fact that [Mother] has not been able to take care of her in the past, and is confirmed by concerns of Jennifer Henk and case manager, Sue Pitman in Respondent's Exhibit F.
48. Concern regarding the Children's best interests also relates to the fact that the children have been aware since April 2005 that they might be removed from the Gaskins at any time and be placed with their mother. These children need a stable home where they know the expectations and rules. Jennifer Henk does not believe it is in the best interest of the children to be removed from the Gaskin family, due to the children's bond with that family, and their adjustment to the home life there. [Mother] has stated that she cannot sign consents for the open adoption because the children are hers, her family would be very upset and she want[s] to keep them with her.
49. Nancy Arkins, the volunteer Guardian ad Litem, also believes it is not in the children's best interests to be reunified with their mother due to her own observations between the children and their foster parents and foster siblings. The Guardian ad Litem believes it is in the best interest of the children to be adopted by the Gaskins. She has fulfilled her statutory duties to visit with the children, observe them in the contexts in which they are active. The Gaskin home is appropriate for the children. The Gaskins provide appropriate advocacy for the children to address their specific needs of therapy, education and emotional stability. The Guardian ad Litem was also in contact with [Mother] by observing the children more than once in

50. The Court has given this termination proceeding a great deal of thought, has listened to countless hours of testimony and observed the demeanor of all the witnesses. Although it is somewhat difficult to express succinctly, the biggest obstacle to reunification from this judicial officer's perspective, is that [Mother] remains essentially dependent on the charity and services provided by others. [Mother] has no real impediments to employment, yet chooses not to work. She is not disabled, does not qualify for disability income, is not mentally challenged, but rather chooses to live her life completely dependent on other people and agencies. [Mother] pays -0- rent due to government assistance. Unnamed assorted church and family members pay for her utilities and other expenses. She uses government food stamp assistance for groceries. She attends services if DCS provides the agencies and bus passes. When doing a little grocery shopping with the case manager one evening, she volunteered to pay for the case worker's food items with her food stamps if the worker would trade her for cash. She demonstrates no understanding of why this would be inappropriate and violate policies for government assistance. Mother simply does not feel the need to work or support herself because others always take care of her. The Court cannot find that Mother after so many years of absence from a parental role will be willing or able to provide for these children who are now preteens. The best interests of the children must be of paramount concern to the Court despite the technical compliance in services by Mother.
51. Considerable testimony was elicited by Mother's attorneys regarding Mother's reading deficiencies. The Court is not swayed by these arguments given the incredible number of people who work every day with language or reading difficulties, including those who do not speak the English language.
52. Efforts were made to paint the foster/adoptive family as wealthy, with the inference that the only reason for leaving the children with this family would be because they can buy the children material items. The testimony clearly established that although the family

can certainly support these children, it is not a lavish lifestyle and the children contribute to saving money for items they wish to have.

53. Mother's proposed findings challenge the expertise of case manager Eric Felts. Mr. Felts testified during one of the last days of trial as a brand new worker for DCS. Mr. Felts was assigned to the Burns case on January 4, 2007, after the termination proceeding had been filed for quite some time. The termination trial had been underway for several months and was set to conclude in January 2007. His testimony was not considered by the court in a vacuum; indeed the court gave some weight to his testimony which was brief, given his limited experience with the family. The court considered the testimony of all of the witnesses presented in this proceeding.
54. These children have never been reunited with their Mother. [I.B.] is no longer even a part of the termination proceedings because the years of Mother's absence and the apparent dysfunction in the home of Mother's brother have created such instability for [I.B.] that she requires a structured institutional setting at this time. [Mother] has not been a full-time parent since 1998, over 8 years ago. She has not successfully completed court-ordered services for reunification, including home based counseling or obtaining and maintaining a stable source of income. She is not yet self-sufficient to be a responsible parent for these children, and given her history, the Court does not believe that she will do so during the remaining years of childhood for [C.B. and S.B.].

* * * * *

CONCLUSIONS OF LAW

* * * * *

5. There is a reasonable probability that the continuation of the parent-child relationship between the children and [Mother] poses a threat to the well-being of each child because of her lack of self-sufficiency and inability to demonstrate appropriate parenting skills. There is a reasonable probability that the conditions of removal will not be remedied by [Mother]: namely, she has not had full-time, complete parenting responsibilities since 1998; she has not been self-sufficient to provide for her own needs; although she has had more than a year of home base services, she is not fully compliant with the goals of

this service; her visitation with her children has never approximated regular parenting time and has never exceeded a four-hour period in any week; and she is unwilling to maintain regular employment.

* * * * *

7. Termination of the parent-child relationship between each of the children and [Mother] is in each child's best interest.

* * * * *

Appellant's Appendix at 21-29.

The issue is whether the trial court's termination of Mother's parental rights is clearly erroneous. The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). However, these parental interests are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. Id. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id. The purpose of terminating parental rights is not to punish parents, but to protect children. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), reh'g denied, trans. denied, cert. denied, 534 U.S. 1161, 122 S. Ct. 1197 (2002).

When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. Bester, 839 N.E.2d at 147. We will consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. Id. Here, the trial court made findings in granting the termination of Mother's parental rights. When reviewing findings of fact and conclusions thereon entered in a

case involving a termination of parental rights, we apply a two-tiered standard of review. Id. First, we determine whether the evidence supports the findings. Id. Then, we determine whether the findings support the judgment. Id. The trial court’s judgment will be set aside only if it is clearly erroneous. Id. “A judgment is clearly erroneous if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment.” Id. (citation and internal quotations omitted).

Ind. Code § 31-35-2-8(a) (2004) provides that “if the court finds that the allegations in a petition described in [Ind. Code § 31-35-2-4] are true, the court shall terminate the parent-child relationship.” Ind. Code § 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege that:

- (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 Ind. Code § 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 State must establish these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992); Doe v. Daviess County Div. of Children & Family Serv., 669 N.E.2d 192, 194 (Ind. Ct. App. 1996), trans. denied.

Mother challenges the trial court's conclusions under subsections (B) and (C). Specifically, Mother argues that the following conclusions by the trial court are clearly erroneous: (A) there was a reasonable probability that the conditions that resulted in the children's removal or the reasons for placement outside Mother's home would not be remedied;⁴ and (B) the termination was in the children's best interests. We will address each argument separately.

⁴ Mother also argues that the trial court erred by finding that the continuation of the parent-child relationship posed a threat to the well-being of the children. Ind. Code § 31-35-2-4(b)(2)(B) required the MCOFC to demonstrate by clear and convincing evidence a reasonable probability that *either*: (1) 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* (2) the continuation of the parent-child relationship poses a threat to the well-being of the child. The trial court specifically found a reasonable probability that the conditions that resulted in the children's continued placement outside Mother's home would not be remedied, and there is sufficient evidence in the record to support the trial court's conclusion. See infra Part A. Thus, we need not determine whether the trial court's conclusion that there was a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the children is clearly

A. Remedy of Conditions Resulting in Removal or Placement Outside Mother's Home.

The MCOFC was required to prove by clear and convincing evidence that there was a reasonable probability that the conditions that resulted in the children's removal or the reasons for placement outside Mother's home would not be remedied. To determine whether a reasonable probability exists that the conditions justifying a child's continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his children at the time of the termination hearing and take into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. However, the trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." Id. When assessing a parent's fitness to care for a child, the trial court should view the parent as of the time of the termination hearing and take into account any evidence of changed conditions. In re C.C., 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), trans. denied. The trial court can properly consider the services that the State offered to the parent and the parent's response to those services. Id.

First, Mother argues that the children were removed due to her brother's molestation of their older sister and that condition has been remedied by the termination of the guardianship. The evidence indicates that, although the children were initially removed in October 2003 from Mother's brother and his wife because he had molested

erroneous. See, e.g., Bester, 839 N.E.2d at 148 n.5; In re T.F., 743 N.E.2d 766, 774 (Ind. Ct. App. 2001), trans. denied.

the children's older sister, the reasons for continued placement outside Mother's home rest upon Mother's shoulders. Mother did not appear in the CHINS proceedings until January 2004 and did not start services until the petition to terminate her parental rights was filed in May 2005. At the time of the final hearings on the termination petition in January 2007, Mother still had not completed all of the requirements to regain custody of the children.

Mother argues that she demonstrated her ability and willingness to parent the children by completing the services required by the MCOFC. Specifically, Mother contends that she completed her parenting classes, passed her drug screens, obtained appropriate housing, was actively seeking employment, and exercised consistent visitation. Mother focuses upon the trial court's finding that she was in "technical compliance in services" Appellant's Appendix at 27 (Finding No. 50). She argues that this finding is inconsistent with the trial court's finding that Mother did not "successfully complete[] court-ordered services for reunification" *Id.* at 28 (Finding No. 54).

We acknowledge that Mother completed many of the services offered by the MCDCS. However, despite progress made by Mother and over a year of services, she was unable to complete her home based counseling by progressing to more extensive visitation, and she was unable or unwilling to maintain employment to support herself and the children. Unsupervised visits were short-lived because Mother allowed visitors into her apartment during the visits with the children. At the time of the final hearing on

the termination petition, Mother had only supervised visits at a location other than Mother's apartment. Mother obtained employment through home based counseling but was only able to maintain employment for a few months. At the time of the termination hearing, she had been unemployed since October 2006. As the trial court noted in its findings, Mother had the ability to work but remained "essentially dependent on the charity and services provided by others." Appellant's Appendix at 27.

The trial court was permitted to judge Mother's credibility and weigh her testimony regarding her progress against the significant testimony demonstrating Mother's habitual patterns of conduct in failing to complete the home based services and failing to maintain employment to support herself. On appeal, we cannot reweigh the evidence or judge the credibility of the witnesses. Bester, 839 N.E.2d at 147. We conclude that, under these circumstances, the trial court's finding of a reasonable probability that the conditions resulting in the children's removal or the reasons for placement outside Mother's home would not be remedied was supported by clear and convincing evidence. See, e.g., In re W.B., 772 N.E.2d 522, 534-535 (Ind. Ct. App. 2002) (holding that the trial court did not err by finding that the conditions resulting in the children's removal were not likely to be remedied where the parents had lost their parental rights to other children and the trial court thought their habitual pattern of past conduct might eventually overcome their present, short-term improvements).

B. Children's Best Interests.

Mother mentions that the MCOFC failed to prove that termination was in the children's best interest. However, Mother does not develop this argument. Generally, an appellant should support his arguments by cogent reasoning or risk waiver of his arguments. See Ind. Appellate Rule 46(A)(8)(a); Supervised Estate of Williamson v. Williamson, 798 N.E.2d 238, 242 (Ind. Ct. App. 2003) (holding that the estate waived an argument by failing to support the argument with cogent reasoning). Waiver notwithstanding, we will address Mother's contention.

The MCOFC was required to prove by clear and convincing evidence that the termination was in the children's best interests. In determining what is in the best interests of the children, the trial court is required to look at the totality of the evidence. A.F. v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1253 (Ind. Ct. App. 2002), trans. denied. In doing so, the trial court must subordinate the interests of the parents to those of the children involved. Id. "[T]he historic inability to provide adequate housing, stability, and supervision, coupled with the current inability to provide the same, will support a finding that continuation of the parent-child relationship is contrary to the child[ren]'s best interests." In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005).

Mother has not parented these children since 1998 due to her drug abuse and inability to care for them. The children were toddlers when they were placed in a guardianship with their aunt and uncle. They are now entering their teenage years, are living in a foster home, and want to remain there. They need and want permanency and

stability that Mother has been unable to provide. Although Mother has made strides toward improving her life, she remains unable to support and care for the children. Numerous witnesses testified that termination was in the children's best interest. Based upon the totality of the evidence in this case, the trial court's finding that termination was in C.B. and S.B.'s best interest was supported by clear and convincing evidence. See, e.g., A.H., 832 N.E.2d at 570 (holding that termination of parental rights was in the children's best interests due to the father's mental health impairments, the father's habitual pattern of conduct, the lack of a stable and suitable living environment, and the father's failure to complete services offered to him).

For the foregoing reasons, we affirm the trial court's termination of Mother's parental rights to C.B. and S.B.

Affirmed.

RILEY, J. and FRIEDLANDER, J. concur