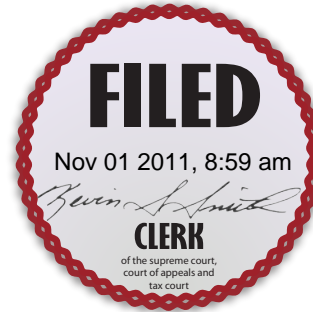


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

DEREK R. JONES
Jones Huff & Jones
Plymouth, Indiana

ATTORNEYS FOR APPELLEE:

CHRISTOPHER R. BERDAHL
Indiana Department of Child Services
Marshall County Local Office
Plymouth, Indiana

ROBERT J. HENKE
DCS Central Administration
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF A.D., A.W.D., A.M.D. and)
A.L.D., MINOR CHILDREN, AND THEIR)
MOTHER, M.A.P.,)

M.A.P.)

Appellant-Respondent,)

vs.)

INDIANA DEPARTMENT OF CHILD)
SERVICES,)

Appellee-Petitioner.)

No. 50A03-1103-JT-98

APPEAL FROM THE MARSHALL CIRCUIT COURT

The Honorable Curtis D. Palmer, Judge

Cause Nos. 50C01-1008-JT-29, 50C01-1008-JT-31, 50C01-1008-JT-33, 50C01-1008-JT-35

November 1, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Respondent M.A.P. (“Mother”) appeals the juvenile court’s order terminating her parental rights to A.D., A.W.D., A.M.D., and A.L.D. Mother alleges that the Indiana Department of Child Services (“DCS”) did not provide sufficient evidence to support the termination of her parental rights. Concluding that the evidence was sufficient to support the termination of Mother’s parental rights, we affirm.

FACTS AND PROCEDURAL HISTORY

Mother has four children, A.D., A.W.D., A.M.D., and A.L.D. (collectively “the children”), all of whom have special needs, at issue in this appeal.¹ A.D., who was born on February 4, 1998, has been diagnosed with Asperger’s Syndrome and has difficulty in social relationships. A.W.D., who was born on December 28, 2001, has been diagnosed with Pervasive Developmental Disorder, a non-specific form of Autism, requires significant interventions both academically and physically, requires ongoing physical and occupational therapy, and requires constant supervision and redirection. A.M.D., who was born on January 7, 2004, has been diagnosed with Fetal Alcohol Syndrome, is significantly impulsive, and requires extra supervision in order to keep him safe. A.L.D., who was born on October 31, 2005, has been diagnosed with Reactive Attachment Disorder and has suffered significant physical delays in his gross motor skills and speech.

DCS first became involved with the children when DCS and the family entered into a

¹ The termination of the parental rights of the children’s father is not at issue in this appeal.

period of informal adjustment after the children were left unsupervised by Mother. During this period of informal adjustment, DCS caseworker Jacqueline Smith² visited Mother's home and was greeted by two-year-old A.L.D., who answered her knock on the door. An alarm started buzzing when A.L.D. opened the door. Smith entered the house, encountered the children, but did not see either Mother or Father for approximately five minutes, despite the fact that both were home at the time. Smith subsequently learned that Mother had placed alarms on the tops of the doors and locks on the doors to prevent the children from getting out of the house unsupervised.

On July 9, 2008, DCS removed the children from Mother's home and placed the children in foster care after A.W.D. was hospitalized with second-degree burns on his stomach and first-degree burns on his hands, which he sustained after A.M.D. set him on fire while the children were playing unsupervised in the garage. DCS found that it was in the children's best interests to remove them from Mother's home and place them in foster care because of a lack of supervision and "environment life/health endangering" allegations against Mother. Appellant's App. pp. 62, 74, 86, 98. DCS filed four separate petitions alleging that the children were children in need of services ("CHINS") on July 11, 2008. In these petitions, DCS alleged as follows:

[DCS] had previously entered an Informal Adjustment with this family after the two youngest children were getting out of the house, crossing the street and entering the neighbor's home. There was concern for their safety. On July 9, 2008 the Department received a report that [A.W.D.] was at the hospital being

² Caseworker Smith's last name changed from Allen to Smith following her wedding which occurred at some time during her involvement with Mother and the children. For the purposes of this opinion, we will refer to Caseworker Smith's married rather than maiden name.

treated for 1st and 2nd degree burns. He and [A.M.D.] were playing in the garage with a lighter and [A.M.D.] lit [A.W.D.]’s shirt on fire which led to burns on his stomach and hand. Their father had left to run errands and their mother was in the house and not supervising the boys in the garage. Because of these incidents [DCS] found it in the best interest of the [children] to be removed from the house at this time.

Appellant’s App. pp. 47-48, 49-50, 51-52, 53-54. On September 16, 2008, the children were adjudicated CHINS after Mother entered a general admission of the allegations contained in the CHINS petitions. On September 22, 2010, the juvenile court conducted a periodic review hearing following which it found that Mother was not in compliance with the case plan, had not completed or participated in any services over the prior six months, had not recently visited with the Children, and had not participated in case planning and reviews, despite having been given the opportunity to do so.

On August 31, 2010, DCS filed a petition seeking the termination of Mother’s parental rights to the children. On January 27, 2011, the juvenile court conducted an evidentiary termination hearing at which Mother appeared and was represented by counsel. During the termination hearing, DCS provided a plan for the permanent care and adoption of the children. On February 9, 2011, the juvenile court terminated Mother’s parental rights to the children. Mother now appeals.

DISCUSSION AND DECISION

The Fourteenth Amendment to the United States Constitution protects the traditional right of a parent to establish a home and raise her children. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 145 (Ind. 2005). Further, we acknowledge that the parent-child relationship is “one of the most valued relationships of our culture.” *Id.*

However, although parental rights are of a constitutional dimension, the law allows for the termination of those rights when a parent is unable or unwilling to meet her responsibility as a parent. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Therefore, parental rights are not absolute and must be subordinated to the children's interest in determining the appropriate disposition of a petition to terminate the parent-child relationship. *Id.*

The purpose of terminating parental rights is not to punish the parent but to protect the children. *Id.* Termination of parental rights is proper where the children's emotional and physical development is threatened. *Id.* The juvenile court need not wait until the children are irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

Mother contends that the evidence presented at the evidentiary hearing was insufficient to support the juvenile court's order terminating her parental rights. In reviewing termination proceedings on appeal, this court will not reweigh the evidence or assess the credibility of the witnesses. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We only consider the evidence that supports the juvenile court's decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the juvenile court includes findings of fact and conclusions thereon in its order terminating parental rights, our standard of review is two-tiered. *Id.* First, we must determine whether the evidence supports the findings, and, second, whether the findings support the legal conclusions. *Id.*

In deference to the juvenile court's unique position to assess the evidence, we set aside the juvenile court's findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id.* A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it. *Id.* A judgment is clearly erroneous only if the legal conclusions made by the juvenile court are not supported by its findings of fact, or the conclusions do not support the judgment. *Id.*

In order to involuntarily terminate a parent's parental rights, DCS must establish by clear and convincing evidence 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 IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
 - (iii) the child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;
- (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.

Ind. Code § 31-35-2-4(b) (2010). Specifically, Mother claims that DCS failed to establish that the conditions that resulted in the children's removal or the reasons for placement

outside of her care will not be remedied. Mother also claims that DCS failed to establish that the termination of her parental rights is in the children's best interests.

A. Conditions Resulting in Removal Not Likely to be Remedied

Mother claims that DCS failed to establish by clear and convincing evidence that the conditions resulting in the children's removal from her care will not be remedied. In the instant matter, the juvenile court found that the conditions resulting in the children's removal from Mother's care will not be remedied, but made no finding regarding whether the continuation of the parent-child relationship poses a threat to the children. However, Mother acknowledges that because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, the juvenile court need only find either that the conditions resulting in removal will not be remedied or that the continuation of the parent-child relationship poses a threat to the children. *In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*. Therefore, "where, as here, the trial court specifically finds that there is a reasonable probability that the conditions which resulted in the removal of the child[ren] would not be remedied, and there is sufficient evidence in the record supporting the trial court's conclusion, it is not necessary for [DCS] to prove or for the trial court to find that the continuation of the parent-child relationship poses a threat to the child[ren]." *In re S.P.H.*, 806 N.E.2d at 882. In order to determine that the conditions will not be remedied, the juvenile court should first determine what conditions led DCS to place the children outside their Mother's care, and, second, whether there is a reasonable probability that those conditions will be remedied. *Id.*

When assessing whether a reasonable probability exists that the conditions justifying the children's removal and continued placement outside the parent's care will not be remedied, the juvenile court must judge the parent's fitness to care for her children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re A.N.J.*, 690 N.E.2d 716, 721 (Ind. Ct. App. 1997). The juvenile court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* A juvenile court may properly consider evidence of the parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate employment and housing. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). Moreover, a juvenile court "can reasonably consider the services offered by [DCS] to the parent and the parent's response to those services." *Id.* (quoting *In re A.C.C.*, 682 N.E.2d 542, 544 (Ind. Ct. App. 1997)).

Here, the juvenile court found that DCS presented sufficient evidence to prove that the conditions that resulted in the children's removal from Mother's care were not likely to be remedied, and upon review, we conclude that the juvenile court's finding to this effect is supported by the record. The record reveals that Mother had failed to implement skills taught during a parenting class that she was ordered to complete following her admission that her children were CHINS, and that Mother had failed to demonstrate through supervised visitation or therapeutic family sessions that she could provide adequate supervision over the children. DCS presented evidence that Mother's visits with her children were chaotic, that

Mother was often unengaged, and that she failed to supervise the children both indoors and out.

Erin Pretzer, a licensed clinical social worker who provided parenting education classes to Mother and conducted therapeutic family sessions with Mother and two of the children, testified that while Mother attended the required parenting classes, Mother was unable to communicate her understanding of the material or implement the skills learned during visits with her children. Additionally, on one occasion, Mother and the other two children were interacting outdoors during a therapeutic family session when one of the children ran towards the parking lot. Jeremy Digia, a licensed therapist who conducted the therapeutic family sessions with Mother and these two children, had to stop the child. When Digia brought the incident to Mother's attention, Mother was unresponsive. In light of Mother's inattentive and unresponsive nature, on May 29, 2009, Pretzer and Digia recommended that therapeutic family sessions be discontinued. Digia later testified during the evidentiary hearing that he believed that it would be unsafe to return the children to Mother unsupervised.

Mother's supervised visits with the children were also chaotic and demonstrated a failure by Mother to provide adequate supervision. DCS presented evidence that on one such occasion, A.M.D. got cleaning supplies from under the sink while Mother was cooking and sprayed the cleaning supplies around the apartment and at the other children. Mother did not attempt to stop or even seem to notice A.M.D.'s actions. Kara Peregrine, the Family Focus

case worker who conducted Mother's supervised visits with the children had to step in and take the cleaning supplies away from A.M.D.

DCS also presented evidence that Mother has failed to complete all of the services required by the dispositional order, including completing the required mental health evaluation and treatment, and to maintain consistent contact with Smith. The record demonstrated that Mother had begun the mental health evaluation process but had refused to take proscribed medicines or complete the necessary treatment. Mother refused to participate in recommended support groups that were available to her at no cost. During the evidentiary hearing, Mother expressed that she was willing to complete the required mental health evaluation and treatment, and that and that she had recently re-engaged herself in the process. Smith testified, however, that she could not recommend that the children be placed with Mother because she did not believe that the reasons for removal, namely Mother's failure to provide adequate supervision over the children, have been remedied.

When considered as a whole, the evidence is sufficient to demonstrate a reasonable probability that the conditions which resulted in the children's removal from Mother's care will not be remedied. It was within the province of the juvenile court, as the finder of fact, to minimize any contrary evidence of changed conditions in light of its determination that Mother's failure to provide adequate supervision over the children which led to the children's removal was unlikely to change. *See In re L.S.*, 717 N.E.2d 204, 210 (Ind. Ct. App. 1999), *trans. denied*. Mother is effectively asking this court to reweigh the evidence on appeal, which, again, we will not do. *See In re S.P.H.*, 806 N.E.2d at 879. Under these

circumstances, we cannot say that the juvenile court erred in determining that DCS had established that it is unlikely that the conditions resulting in the children's removal would not be remedied. *See In re C.M.*, 675 N.E.2d 1134, 1140 (Ind. Ct. App. 1997).

B. The Children's Best Interests

Next, we address Mother's claim that DCS failed to prove by clear and convincing evidence that termination of her parental rights was in the children's best interests. We are mindful that in determining what is in the best interests of the children, the juvenile court is required to look beyond the factors identified by DCS and look to the totality of the evidence. *McBride*, 798 N.E.2d at 203. In doing so, the juvenile court must subordinate the interests of the parents to those of the children involved. *Id.* Furthermore, this court has previously determined that the testimony of the case worker and the children's court appointed special advocate ("CASA") regarding the children's need for permanency supports a finding that termination is in the children's best interests. *Id.*; see also *Matter of M.B.*, 666 N.E.2d 73, 79 (Ind. Ct. App. 1996), *trans. denied*.

Here, the testimony establishes that the children have a need for permanency and that the termination of Mother's parental rights would serve the children's best interests. Smith testified that she does not believe that the reasons for the children's removal from Mother's home have been remedied. Smith further testified that Mother has failed to follow through with the dispositional order and has not completed all services. Smith recommended that Mother's parental rights be terminated because she believes termination was in the children's best interests. In addition, Jessica French, the CASA for A.D. and A.W.D., testified that she

believed that the case manager's recommendation for termination of Mother's parental rights was appropriate and that adoption was in the children's best interests. Likewise, Erica Rowe, the CASA for A.M.D. and A.L.D., testified that she agreed with the recommendation that Mother's parental rights should be terminated and that adoption was in the children's best interests. The juvenile court also heard testimony that the children appeared to be happier, more well-adjusted, and have displayed marked academic and disciplinary improvement since being removed from Mother's home. The juvenile court did not have to wait until the children were irreversibly harmed such that their physical, mental, and social development was permanently impaired before terminating Mother's parental rights. *See In re C.M.*, 675 N.E.2d at 1140. In light of the testimony of the children's CASAs and Smith, we conclude that the evidence is sufficient to satisfy DCS's burden of proving that termination of Mother's parental rights is in the children's best interests.³

In sum, we conclude that the juvenile court did not err in terminating Mother's parental rights because the evidence provided by DCS was sufficient to support the juvenile court's termination order.

The judgment of the juvenile court is affirmed.

ROBB, C.J., and BARNES, J., concur.

³ Mother acknowledged below that she suffers from mental illness. While we do not hold Mother's mental illness against her, we, like the trial court, must consider the evidence and all of the reasonable inferences drawn therefrom in determining whether the evidence was sufficient to prove that the termination of Mother's parental rights was in the children's best interests.