ATTORNEY FOR APPELLANT:

KATHERINE A. CORNELIUS
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

PETER DIEDRICHS
Peru, Indiana

IN THE COURT OF APPEALS OF INDIANA

IN RE THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT CHILD RELATIONSHIP OF M.A., minor child and KARI ARMSTRONG, his mother	)	
KARI ARMSTRONG,	)	
Appellant-Petitioner,	)	
vs.	)	No. 52A02-0607-JV-598
MIAMI COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Respondent.	)	

APPEAL FROM THE MIAMI CIRCUIT COURT
The Honorable Rosemary Higgins Burke, Judge
Cause No. 52C01-0510-JT-0064

November 1, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Kari Armstrong appeals the trial court's termination of her parent-child relationship with her biological son, M.A. Armstrong contends that the trial court's determination that the Miami County Department of Child Services sufficiently proved each of the required elements of Indiana Code § 31-35-2-4(b)(2) necessary to support termination was clearly erroneous. Finding that the evidence was sufficient to prove each of the elements within the statute, we affirm the decision of the trial court.

Facts and Procedural History

M.A., who was born on February 8, 1990, is the biological child of Kari Armstrong and Arthur Smith. Armstrong had sole legal and physical custody of the child. On March 18, 2004, M.A. met with his middle school vice principal and showed him numerous bruises on his back and legs. M.A. reported to the vice principal that the bruises were the result of a beating he had received from Armstrong. The school subsequently contacted the Miami County Department of Child Services ("the DCS").

The DCS conducted an investigation and removed M.A. from Armstrong's care. M.A. also eventually disclosed that, in addition to the beating that had caused the bruising he reported to his vice principal, his mother had once pointed a gun at his head and forced him to call his grandmother to convince her to come to the home and speak with his mother. Further, M.A. reported that his mother had once forced him to have sexual intercourse with her. As a result of the DCS investigation, Armstrong was eventually charged with pointing a firearm and battery, and she ultimately pled guilty to a misdemeanor battery charge.

The DCS petitioned to have M.A. declared a Child in Need of Services ("CHINS"), and an initial hearing was held on May 11, 2004. In its order following that hearing, the trial court declared M.A. to be a ward of the DCS and stated, "The Court will order reasonable services to be offered by the [DCS] to the parents, and/or ward in an effort to effectuate reunification with one of the biological parents." Ex. 1, p. 51 (Order of May 13, 2004). The trial court also admonished Armstrong for emotional outbursts and profane language during the hearing, and it noted that "reunification is not possible at this time with the mother while the [DCS] proceeds with its investigation concerning the minor ward." *Id*. at 53. Finally, the trial court scheduled a fact-finding hearing on the CHINS petition for June 23, 2004.

On May 17, 2004, the trial court issued an order in response to the DCS's concerns regarding inappropriate and threatening contact by Armstrong toward M.A. and certain of his service providers. The trial court issued an emergency protective order barring Armstrong from contact with M.A. or his service providers pending the June 23, 2004, hearing.

At that hearing, M.A.'s father, Arthur Smith, appeared for the first time in court, and the trial court conducted an initial CHINS petition hearing with regard to him. Smith informed the court that he had not seen M.A., now fourteen, since the boy was three years old.[1] The trial court ordered that M.A. continue to be a ward of the DCS, and it authorized the DCS to commence supervised visitation between M.A. and his father to

[1] Though not addressed in the court's order regarding this hearing, *see* Ex. 1, p. 42-47 (Order of June 28, 2004), the parties each mention in their briefs that Smith is a convicted child molester. Whether this has anything to do with his lack of contact with M.A. for eleven years, we cannot say on the record before us; it does seem likely to be, at least, a partial explanation.

provide the two with an opportunity to get to know one another. Due to issues with discovery, the trial court continued the hearing as between the DCS and Armstrong, and it also extended the protective order. With regard to both parents, the trial court commented:

> The [DCS's] pending Petition for Parental Participation seeks the Court's intervention with the biological parents by requiring the parents to do those things necessary in order to address the issues that prompted the filing of the CHINS petition by the [DCS]. **The Court expressly grants the [DCS's] Petition for Parental Participation and orders the biological mother and father to accept service referrals from the [DCS] family casemanager and to actively participate therein, all without the further Order of this Court.**

Ex. 1, p. 45 (Order of June 28, 2004).

A six-month CHINS review hearing was held on August 26, 2004. The trial court ordered that M.A. should remain a ward of the DCS, and it ordered M.A. to continue meeting with a therapist and to follow a prescribed medication regimen under the supervision of a psychiatrist. The court further ordered Armstrong to continue receiving counseling services and taking medications as prescribed by her psychiatrist.

At the fact-finding hearing on October 21, 2004, the trial court found that the evidence was sufficient to prove that Armstrong engaged in inappropriate discipline of M.A., that she pointed a gun at his head and forced him to make a phone call to his grandmother, and that she sexually abused him. The trial court found M.A. to be a CHINS, and it ordered that he remain a ward of the DCS. The court provided:

> Reasonable efforts have been made by the [DCS] on behalf of said minor ward; however, reunification is not possible at this time with the mother or father. The Court notes that there are pending criminal charges filed against the mother as a consequence of her inappropriate discipline of the minor ward, and said criminal charges are not yet resolved.

Ex. 1, p. 27 (Order of Oct. 27, 2004).

A second six-month CHINS review hearing was held on June 8, 2005. The trial court found M.A. continued to be a CHINS and in most respects ordered that treatment of the case and orders applicable to the parties remain the same. However, the court did update its order with respect to the eventual placement of M.A.:

> The Court notes that reunification of the child with the biological mother is not a goal of this proceeding; however, at the **Status Hearing scheduled for August 16, 2005,** this Court will consider whether or not a relative placement is then appropriate for the minor ward. The Court will consider a placement in the home of the biological father and step-mother, Arthur and Deborah Smith.[2]

Ex. 1, p. 13 (Order of June 9, 2005).

At the August 16, 2005, status hearing, the DCS sought the court's permission to file for the involuntary termination of the parent-child relationship between Armstrong and M.A.[3] The trial court found that the DCS satisfied the statutory criteria to file for termination, whereas M.A. had been in out-of-home placement "continuously from March 18, 2004, being a period more than 15 months out of the past 22 months, and . . . for more than 6 months following entry of the Dispositional Order on December 22, 2004." Ex. 1, p. 7 (Order of Aug. 17, 2005); *see* Ind. Code § 31-35-2-4(b)(2)(A)

[2] In later proceedings, the trial court evaluated the possibility of M.A.'s placement with both Mr. and Mrs. Smith and with M.A.'s maternal grandparents but determined that neither placement was in M.A.'s best interests.

[3] The DCS declined to file a petition for the termination of Smith's parental rights. It appears that Smith acquiesced to the DCS's permanency plan, which was for M.A. to remain in foster care and transition to independent living upon reaching the age of majority. Furthermore, the DCS noted that Smith had actively and successfully participated in all of the recommended services stemming from the CHINS proceedings.

(establishing time constraints for filing of petition for involuntary termination of parent-child relationship).

On February 17, 2006, the trial court held a hearing on the termination of the parent-child relationship between Armstrong and M.A. M.A.'s testimony reiterated his allegations that Armstrong beat him, held a gun to his head, and had sexual intercourse with him. Tr. p. 8, 10, 11-12, 14. The child testified that he is afraid of his mother even when the Sheriff is present and they are in court. *Id*. at 9. M.A. further testified that he does not wish to be reunited with Armstrong, and he indicated his understanding that the DCS's plan was for him to remain in foster care until he could live independently as an adult. *Id*. at 11. He also testified that he has been resistant to the idea of engaging in family counseling with his mother because he is afraid of her and only wishes that her parental rights be terminated. *Id*. at 17. Finally, M.A. testified that he has undergone continuous counseling since becoming a ward of the DCS in March 2004. *Id*.

Jo Hayes, the Court Appointed Special Advocate ("CASA"), and Cassie Bault, M.A.'s DCS case manager, each testified in favor of the termination of Armstrong's parental rights. Each witness confirmed her opinion that termination is in M.A.'s best interests, *id*. at 24, 25, 41, and that any continuing parent-child relationship in this case would be a threat to M.A's well-being, *id*. at 29, 41. Both witnesses testified that they reviewed continuing reports from Armstrong's counselor, and each stated her opinion that these reports indicate that Armstrong is mentally unstable and has not shown significant improvement or progress since M.A. was removed from her home. *Id*. at 24, 52. Both testified that they believed M.A. told the truth about his abuse, that he is

genuinely afraid of Armstrong, and that they believe Armstrong is dishonest. *Id*. at 24-25, 49. Both witnesses provided examples of Armstrong's alleged dishonesty, including reports that she had suffered a miscarriage despite medical records indicating that she was never pregnant, *id*. at 24, and that she had falsely reported that M.A.'s father had been arrested and had violated his probation, *id*. at 44. Both witnesses further testified that due to the severity of Armstrong's abuse of her son and the unlikelihood that the conditions leading to his removal could be remedied, each witness recommended termination as opposed to reunification in this case. *Id*. at 29-30, 39. CASA Hayes also recounted the instance when Armstrong verbally accosted her outside the courtroom, and both witnesses testified regarding the alleged instances when Armstrong made harassing phone calls to Hayes and DCS case manager Pepper Stevens. *Id*. at 32-33, 42-43. Finally, case manager Bault testified that the DCS's permanency plan for M.A. following termination included foster placement and a support program to move him toward independent living as an adult, and she confirmed that the DCS would assist M.A. in arranging adult services once he became independent. *Id*. at 45.

Armstrong also testified at the hearing, and she denied ever having sexually abused M.A. or having held a gun to his head. *Id*. at 62, 65. She also insisted that the allegations leading to the protective order against her—including the report of the trial court itself—were falsified, arguing that she had never verbally harassed or abused any party to the proceedings. *Id*. at 71. Armstrong confirmed that she had completed an anger management program and parenting classes and that she has been in counseling since M.A. was removed from her home. *Id*. at 58, 60, 61.

Both CASA Hayes and counsel for the DCS questioned Armstrong regarding her income and whether she had reported it to the trial court as she was required to do by court order. *See* Ex. 1, p. 31 (Order of Aug. 31, 2004). Armstrong repeatedly avoided this line of questioning and refused to respond definitively to the questions posed, and on several occasions she had to be ordered by the trial court to reveal her place of employment, source of income, and the balance of her checking account. Tr. p. 73-76. She also insisted that she had consistently informed her attorney of her income and of changes in that income, though this information was never presented to the court.[4] *Id*. at 81, 83-84. CASA Hayes also questioned Armstrong about her reported miscarriage, and when Armstrong insisted she had miscarried, CASA Hayes admitted the medical reports indicating that Armstrong had not been pregnant. *Id*. at 87-88.

Following the termination hearing, the trial court issued an order terminating the parent-child relationship between Armstrong and M.A. Appellant's App. p. 7 (Order of Mar. 27, 2006). In that order, the trial court explained its reasoning, providing in part:

> The biological mother's sexual misconduct, pointing of a handgun, and physical abuse resulting in bruising of her son, [M.A.], manifests a threat to the child's physical and emotional condition such that termination of the relationship is necessary to protect the ward from further acts that endanger his physical and emotional condition. The court concludes that based upon the evidence presented, there is a reasonable probability that the conditions that resulted in [M.A.] being removed from his home are not going to be remedied. Ms. Armstrong has gained little or no insight from counseling, blames her son because of his lying, [and] believes other people are against her. In addition, [M.A.] has consistently testified that he is afraid of his mother, and does not want to be around her. No evidence has been presented that would cause the Court to conclude that the conditions that

[4] During these interactions, the trial court admonished Armstrong that she was under oath and could be held in contempt. Tr. p. 84. Counsel for the DCS stopped short of calling Armstrong's attorney to testify on the matter. *Id*.

led to the removal of the child from the mother could be corrected within the reasonably foreseeable future.

Id. at 9. Armstrong now appeals the decision of the trial court.

Discussion and Decision

Armstrong raises the following argument on appeal, which we consolidate and rephrase as follows: whether the DCS presented sufficient evidence to meet the requirements of Indiana Code § 31-35-2-4(b)(2)+, which must be satisfied before a trial court may order an involuntary termination.

I. Indiana Code § 31-35-2-4(b)(2)

Indiana Code § 31-35-2-4(b)(2) sets forth the matters the DCS must prove in order to support a petition for the involuntary termination of the parent-child relationship. The DCS is required to prove 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) 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.

Ind. Code § 31-35-2-4(b)(2). The DCS must prove each of these elements by clear and convincing evidence. Ind. Code § 31-37-14-2; *In re Termination of Parent-Child Relationship of D.L. & C.L.*, 814 N.E.2d 1022, 1026 (Ind. Ct. App. 2004), *trans. denied*.

A trial court need not wait until children are irreversibly influenced by a deficient lifestyle such that their physical, mental, and social growth are permanently impaired before terminating the parent-child relationship. *In re D.L.*, 814 N.E.2d at 1027. Indeed, the purpose of terminating parental rights is not to punish parents but to protect children. *Id*. Where the evidence shows that the emotional and physical development of a CHINS is threatened, termination of the parent-child relationship is appropriate. *Id*.

We reiterated in *M.H.C. v. Hill* that:

> The involuntary termination of parental rights is an extreme measure that terminates all rights of the parent to his or her child and is designed to be used only as a last resort when all other reasonable efforts have failed. The Fourteenth Amendment to the United States Constitution provides parents with the rights to establish a home and raise their children. However, the law allows for termination of those rights when the parties are unable or unwilling to meet their responsibility as parents. This policy balances the constitutional rights of the parents to the care and custody of their children with the State's limited authority to interfere with these rights. Because the ultimate purpose of the law is to protect the child, the parent-child relationship must give way when it is no longer in the child's best interest to maintain the relationship.

750 N.E.2d 872, 875 (Ind. Ct. App. 2001) (citations omitted). Thus, we will not set aside a trial court's judgment terminating a parent-child relationship unless we determine that it is clearly erroneous. *Id*. Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences to support them. *Id*. In determining whether the

evidence is sufficient to support the judgment terminating parental rights, this Court neither reweighs the evidence nor judges the credibility of witnesses. *Id*. With these considerations in mind, we turn our attention to the pertinent sections of the statute.

A. Section 4(b)(2)(A)

Section 4(b)(2)(A) requires the DCS to prove that one of three conditions exists. Under the statute, the DCS must show that:

> (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
>
> (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; *or*
>
> (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months; . . . .

I.C. § 31-35-2-4(b)(2)(A) (emphasis added). Much of Armstrong's brief on appeal contends that the trial court was without power to order the involuntary termination of her parental rights because the second condition listed, pertaining to findings under Indiana Code § 31-34-21-5.6,[5] was not satisfied. She contends that "it was the responsibility of Miami County DCS to prove each of these elements." Appellant's Br. p. 10 (referencing I.C. § 31-35-4-2(b) as a whole). However, this subsection of the statute is written in the disjunctive and so requires only a finding as to any *one* of the three conditions listed.

[5] Indiana Code § 31-34-21-5.6 allows a trial court to exempt a particular case from any requirement that the State engage in reasonable efforts at reunification of a child with his or her parent or parents providing certain other conditions have been met. We agree with Armstrong that none of the conditions listed in the statute were met, but, as our analysis herein provides, we do not find this to preclude the involuntary termination of Armstrong's parental rights.

Armstrong's argument, then, is premised on an incorrect reading of the statute which places a higher burden on the DCS than was intended by our legislature.

Under a proper reading of the statute, then, the DCS satisfied its burden before the trial court. There is no dispute that both the first and third conditions have been satisfied; M.A. was removed from Armstrong's care on March 18, 2004, a dispositional decree was entered on December 22, 2004, and the termination petition was filed on October 20, 2005. We move on, then, to the next portion of the statute.

B. Section 4(b)(2)(B)

Section 4(b)(2)(B) requires the DCS to prove that 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; . . . .

Like section 4(b)(2)(A), this subsection is written in the disjunctive and so requires a finding as to only one of the two factors listed. Armstrong contends that neither condition was satisfied before the trial court, while the DCS contends that both conditions were satisfied. Because the trial court's decision must be upheld if its determination as to either of these two factors was correct, we find we need only address the first factor—whether the conditions that led to M.A.'s removal are likely to be remedied.

When addressing this factor, the trial court must look to the parent's fitness at the time of the termination proceeding. *In re D.L.*, 814 N.E.2d at 1027-28. In addition, the court must look at the patterns of conduct in which the parent has engaged to determine if

future changes are likely to occur. *Id*. at 1028. In doing so, the trial court may reasonably consider the services offered to the parent and the parent's response to those services. *Id*.

At the hearing, both CASA Hayes and case manager Bault indicated that they had regularly reviewed reports from Armstrong's counseling sessions and found them to indicate that Armstrong was unstable and had failed to make significant progress in counseling. These records were admitted into evidence, and the trial court found them to indicate that Armstrong "expresses significant concern over being 'stripped' of her parental rights, but never focuses on what might be done to resolve the issues," Appellant's App. p. 8, and that "Ms. Armstrong has gained little or no insight from counseling, blames her son because of his lying, [and] believes other people are against her," *id*. at 9. In addition, the trial court noted that no testimony was presented to rebut this evidence, *id*., and that Armstrong otherwise lacked credibility during her testimony and "was willing to manipulate facts to suit her interests and concerns." *Id*. at 8.

Based on our standard of review, we cannot say that the trial court's decision was clearly erroneous. The evidence viewed in the light most favorable to the ruling indicates that Armstrong has failed to make significant progress toward resolving the issues that led to M.A.'s removal and that she lacks insight regarding these problems. Furthermore, to the extent that Armstrong attempted to present herself favorably at the termination hearing, the trial court found that she lacked credibility. Armstrong's arguments to the contrary simply ask us to reweigh the evidence, and this we may not do.

C. Section 4(b)(2)(C)

The next prong of our inquiry focuses on section 4(b)(2)(C), which requires the DCS to prove that "termination is in the best interests of the child." In determining what is in the best interests of the child, the trial court is required to look at the totality of the evidence before it. *In re Termination of Parent-Child Relationship of A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005), *trans. denied*.

The evidence before the trial court, as noted above, indicated that Armstrong had failed to make progress toward improving the conditions that led to M.A.'s removal, that she was dishonest before the trial court and throughout the termination proceedings, that she lacked insight into her behavior or its effect on her son, and that she was willing to manipulate facts and situations in order to serve her own interests. M.A. was removed from the home, initially, because he had suffered a violent beating that left him bruised up and down his back and legs. It was subsequently discovered that Armstrong had also held a gun to M.A.'s head on one occasion and had forced him to have sexual intercourse with her on another. Both CASA Hayes and case manager Bault testified that Armstrong's abuse of M.A. was severe, and both advised against reunification of the boy with his mother and testified that termination of the parent-child relationship was in M.A.'s best interests. M.A. exhibited an overwhelming fear of Armstrong and indicated in no uncertain terms that he did not want to have a relationship with her.

The totality of the evidence, then, supports a finding that termination is, indeed, in M.A.'s best interests in this case. We cannot say that the trial court's decision was clearly erroneous on this point.

D. Section 4(b)(2)(D)

Our final consideration in a termination of parental rights case brings us to section 4(b)(2)(D), which requires the trial court to find that "there is a satisfactory plan for the care and treatment of the child." Without citation to any case law or statutory directive, Armstrong argues that the DCS's plan for permanency is inadequate. Neither party submitted a written copy of the DCS's permanency plan, which would aid our evaluation of the matter. Nevertheless, the trial court heard testimony from M.A. and his service providers that the boy would remain in foster care while participating in services directed toward providing him with the skills necessary for living independently once he becomes an adult, and that the DCS would arrange future adult services for M.A. as needed. In addition, although Armstrong complains in her brief that "[t]he DCS plan for a permanent family for M.A. is actually a plan for no family at all" and "[a]s long as the file is open, DCS might allow [M.A.] supervised visits with his father and maternal grandparents, or they might not," Appellant's Br. p. 19, case manager Bault testified that under the permanency plan, M.A. would continue visiting his father and grandparents, Tr. p. 45.

The evidence, then, supports the trial court's determination that there is a satisfactory permanency plan in place for M.A. Finding no clear error on this or any other issue Armstrong raises in her appeal, we affirm the decision of the trial court.

Affirmed.

BAKER, J., and CRONE, J., concur.