

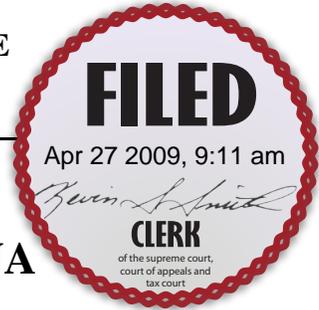
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**IN THE  
COURT OF APPEALS OF INDIANA**

In the Matter of the Involuntary Termination of )  
the Parent-Child Relationship of )  
R.H., R.H., R.H., and R.H., Minor Children, and )  
L.W., Their Mother: )

L.W., )  
Appellant-Respondent, )

vs. )

No. 49A02-0807-JV-654

MARION COUNTY DEPARTMENT OF )  
CHILD SEVICES and )  
CHILD ADVOCATES, INC. )  
Appellees-Petitioners. )

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Marilyn A. Moores, Judge  
The Honorable Danielle Gaughan, Magistrate  
Cause No. 49D09-0710-JT-44873

**April 27, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

The proceedings at issue in this appeal spanned almost six years from the filing of the Children in Need of Services (“CHINS”) petition to the order granting the third parental rights termination petition. This time delay is not only excessive; it is unacceptable when dealing with the lives of children and their need for permanency.

L.W. (“Mother”) appeals the involuntary termination of the parent-child relationship with her four children, R.H., R.H., R.H., and R.H. (collectively, “the Children”), raising the following restated issue: whether the Marion County Department of Child Services (“DCS”) presented clear and convincing evidence to support the termination of Mother’s parental rights as to the Children.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Mother has eight children, four of whom are the subjects of this termination proceeding. Mother and R.H., Sr. (“Father”) are the parents of R.H., born August 23, 1998, R.H., born August 30, 2000, and twins, R.H. and R.H., born February 25, 2002.<sup>1</sup> Mother also has four other children, D.W., born September 27, 1991, Ti.W., born June 27, 1992, To.W., born November 1, 1993, and R.H., Jr., born October 31, 1996.

In September 2002, Mother was in jail on a charge of robbery<sup>2</sup> and left her six

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<sup>1</sup> Father’s parental rights to the Children were also terminated in this proceeding, but Father does not participate in this appeal.

<sup>2</sup> The robbery charge was later dismissed when Mother pled guilty to Class B misdemeanor visiting a common nuisance.

youngest children in the care of Father.<sup>3</sup> That same month, while in Father's care, then two-year-old R.H. wandered outside unattended. DCS became involved and filed a petition alleging that then four-year-old R.H., two-year-old R.H., and seven-month-old twins, R.H. and R.H. were CHINS due to Mother's failure to make adequate arrangements for the care and supervision of the Children during her incarceration.<sup>4</sup> The Children were removed from Father's care and placed in relative placement with their paternal grandfather ("Grandfather").

Mother signed an agreed entry, admitting the allegations in the CHINS petition and agreeing to complete the court-ordered services of home-based counseling and a parenting assessment in order to achieve reunification with the Children. In April 2003, Mother was released from jail, but the Children remained in Grandfather's care. Mother started home-based counseling in June 2003, but it was discontinued due to Mother's noncompliance. Mother exercised visitation with the Children but missed some scheduled visitations.

In November 2003, Mother started home-based counseling for a second time, but it was again discontinued as unsuccessful due, in large part, to a physical altercation between Mother and Father during a supervised visitation in August 2004, which led to the subsequent suspension of Mother's visitation with the Children in September 2004.

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<sup>3</sup> D.W. and Ti.W. were not left in Father's care because Mother had signed over guardianship of D.W. and Ti.W. to relatives in Alabama in 1999.

<sup>4</sup> The CHINS petition also alleged that then eight-year-old To.W. and five-year-old R.H., Jr. were CHINS. The CHINS proceedings regarding these two children were closed when R.H., Jr. was adopted by his paternal great-grandparents and custody of To.W. was awarded to her father, E.F.

From the record before us, it appears that around this time, DCS filed the first petition to terminate Mother's parental rights to the Children. In October 2005, prior to a termination hearing being held, Mother and Father signed consents to have Grandfather adopt the Children. The adoptions, however, did not occur because, in December 2005, DCS removed the Children from Grandfather's home due to concerns about Grandfather's ability to appropriately care for the Children. DCS then placed the Children in the home of Sonja and Dennis Stewart,<sup>5</sup> a therapeutic foster care placement, where the Children have remained until this current termination hearing.

After Mother signed the consents for adoption, she did not have contact with DCS. In summer 2006, DCS filed a second petition to terminate Mother's parental rights to the Children. In October 2006, Mother contacted DCS and asked to reengage in services to reunify with the Children. In November 2006, Mother completed a parenting assessment. The assessor recommended, in part, that Mother have random drug screens due to Mother's report to the assessor that she had used marijuana in October 2006. Thereafter, Mother was referred for random drug screens and had eight negative drug screens during the months of November 2006, December 2006, and January 2007. Mother, however, missed twelve of twenty scheduled screens, and the referral was closed for lack of participation.

In February and March 2007, the trial court held a hearing on DCS's second termination petition. In April 2007, the trial court denied DCS's petition to terminate

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<sup>5</sup> Sonja Stewart met the Children in September 2002 when they were placed in Grandfather's home, and she helped babysit the Children and frequently had them spend the night when they were in Grandfather's care.

Mother's parental rights, thereby allowing Mother a further opportunity to complete services for reunification with the Children through the CHINS case that remained open.<sup>6</sup> Approximately two weeks later, at the end of April 2007, the trial court held a review hearing on the CHINS case, but Mother did not attend because she was in jail on a charge of driving while suspended.

Following Mother's release from jail, she asked the trial court to reinstate visitation with the Children. In June 2007, the Mother was referred for a third time to home-based counseling. Mother missed some of her home-based counseling appointments, and the counselor had difficulty getting in contact with Mother to schedule appointments.

On July 25, 2007, the trial court held a CHINS review hearing. The Children's guardian ad litem ("GAL") and the Children's therapist from Christian Theological Seminary ("CTS") indicated that it would not be in the Children's best interests to have visitation with Mother. The two older children's therapist from Gallahue recommended that Mother could have supervised visitation with the Children if she complied with services and showed stability in completing services. The trial court authorized Mother to have supervised visitation with the Children upon a positive recommendation from the home-based counselor and the completion of "five consecutive negative drug screens[.]" *Ex. 12 at 54*. Mother and DCS understood the drug screen requirement to mean that Mother had to complete five random drug screens in five consecutive weeks and that if Mother missed one weekly screen

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<sup>6</sup> The trial court's order denying DCS's second termination petition is not included in the record on appeal.

during the five-week period, then she would have to recommence the five consecutive screens. *Tr.* at 46-48, 398.

Mother missed some of the random drug screens, and it took her more than five weeks to complete five consecutive negative drug screens. However, whenever Mother completed a drug screen, she always had a negative test result. In September 2007, home-based counseling closed out services as unsuccessful because Mother had not completed the five consecutive drug screens and had not had any visitation with the Children.

On October 30, 2007, DCS filed this third petition to terminate Mother's rights to the Children. One month later, Mother completed the five consecutive negative drug screens. Thereafter, the trial court authorized Mother to have supervised visitation. However, DCS and the Children's therapists from Gallahue and CTS objected to the visitation, contending that it was not in the Children's best interest to have a visitation with Mother due to the stability that the Children had achieved and the progress they had made in therapy. Specifically, the Children's therapist from CTS noted that a visit with Mother "could cause unnecessary chaos" in the Children's lives and "would be detrimental to their physical, emotional, social, intellectual, and spiritual development[.]" *Ex. C* at 76-77. In January 2008, following a review hearing on the visitation issue, the trial court rescinded its authorization for Mother to have visitation with the Children.

The trial court held hearings on DCS's third termination petition on March 3, March 5, March 24, and April 14, 2008. During these hearings, DCS presented testimony regarding Mother's lack of compliance with services—most notably her difficulty completing the

requirement to obtain five consecutive drug screens—and the implication of Mother’s compliance issues. The DCS family case manager and the home-based counselor testified that they discussed with Mother the importance of her successfully completing the required drug screens and that Mother was aware that she needed to complete the five consecutive drug screens in order to have visitation with the Children. The family case manager explained that the drug-screen requirement meant that Mother was to do five weekly consecutive screens and would have to start over if she did not complete the five screens in five consecutive weeks. Mother indicated that she was aware of the weekly requirement of the screens and that her completion of the drug screens was necessary before she could get visitation with the Children. *See Tr.* at 398, 622.

The home-based counselor testified that the referral for home-based counseling was closed as unsuccessful in September 2007 due, in part, to Mother’s failure to complete the five drug screens necessary to have visitation with the Children. The home-based counselor testified that she was concerned about Mother’s motivation to reunify with the Children considering the fact that, even after discussing with Mother that completion of the screens could be easily done, Mother had not completed the five consecutive drug screens while home-based counseling was open. The home-based counselor indicated that she and Mother had even discussed where visitation would take place and how it would go and stated that it “seemed that [Mother] was motivated to be able to do that but then the screens weren’t being completed.” *Id.* at 71.

The DCS family case manager also testified that she considered Mother's failure to complete the drug screens in a timely manner as a reflection of Mother's lack of commitment to the Children. The DCS family case manager testified that while there was no evidence that Mother had used drugs during the case manager's time on the case, which was August 2007 to March 2008, she was still concerned about Mother's failure to complete the drug screens as ordered.

The therapist from Gallahue testified that she had initially recommended that Mother be allowed to have visitation with the Children if she complied with services and showed stability in completing services but that she changed her recommendation after she learned that Mother had not timely completed the five drug screens. The Gallahue therapist also testified that Mother's failure to complete the five required drug screens in five consecutive weeks raised concerns about Mother's ability to complete services and to meet the needs of the Children if they were returned to her. The therapist indicated that Mother's failure to timely complete the drug screens "raised red flags for the stability she would be able to provide for the [C]hildren, her commitment to getting the kids back, commitment to meeting the needs -- the requirements of DCS that they put out for her to get the kids back and to get a visit with them." *Id.* at 187.

The GAL testified that he agreed with the trial court's order for Mother to complete five consecutive drug screens because "[b]ased on the age of the case, . . . five consecutive screens was the least a parent could do if they're really interested in seeing their children." *Id.* at 525. The GAL continued that because "[t]his was five years after the fact almost[,] . . .

we needed to see if mom had the resolve to complete some steps in order to prove to us that she was going to comply with services.” *Id.* The GAL testified that Mother had had problems in the past with completing services and stated that “[t]here had been a lot of service interruptions. [Mother] would comply with services and then be absent . . . from service participation. Visitations were inconsistent. They were sometimes missed with no calls or no shows and those types of things. So we wanted to see some consistency.” *Id.*

In addition to the testimony regarding Mother’s service compliance issues, DCS also presented evidence in relation to Mother’s criminal history and arrests. DCS presented evidence that following the denial of DCS’s second termination petition in April 2007, Mother was arrested on a charge of driving while suspended. Mother testified that she was arrested three times—in April 2007, July 2007, and December 2007—relating to driving while suspended and unpaid parking tickets. At the time of the termination hearing, Mother testified that she did not have a driver’s license and that she had five unpaid parking tickets—each worth \$225—that she was attempting to pay off before she could get her license reinstated.

During these termination hearings, the DCS also presented testimony regarding the Children’s special medical and therapeutic needs and the progress they had made since being placed in their current foster home. Regarding the Children’s special needs, the therapeutic foster care case manager testified that three of the four children had Marfan Syndrome,

which was a condition that required these children be monitored for heart problems.<sup>7</sup> The Children's foster mother explained that: nine-year-old R.H. had asthma, attention deficit hyperactivity disorder ("ADHD"), and scoliosis, which required him to wear a brace at night; seven-year-old R.H. also had ADHD and had double scoliosis, which required her to wear a brace all day and night and which might require surgery in the future; six-year-old R.H. also had double scoliosis, which required her to wear a brace at night; and six-year-old R.H. had chronic asthma, which required four daily asthma treatments. The foster mother also explained that the Children's medical needs required attention on a daily basis and that the children with the double scoliosis needed to get their backs examined and their braces adjusted every three months.

In regard to the Children's therapeutic progress, the Children's therapist from CTS testified that when the Children started play therapy with her approximately two years earlier, they had difficulties appropriately expressing their emotions and respecting rules and boundaries due to experiencing several traumatic events in their lives. The CTS therapist stated that the Children had made tremendous progress in exhibiting age-appropriate behaviors and achieving success and balance in their lives. The CTS therapist also stated that the Children had formed a secure, strong attachment to their foster family who had been an important part of the Children's success.

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<sup>7</sup> Marfan Syndrome is "[a]n inherited disorder of connective tissue characterized by abnormalities of the eyes, skeleton, and cardiovascular system." See <http://www.medterms.com/script/main/art.asp?articlekey=4282> (last visited Mar. 10, 2009).

The DCS family case manager also testified that the Children were very bonded with the foster parents, who were planning to adopt the Children. Additionally, the foster care case manager testified that the foster family was doing a wonderful job with the Children and providing for their needs.

Thereafter, the trial court issued an order terminating Mother's parental rights to the Children. The trial court concluded, in part, that there was a reasonable probability that the conditions that resulted in the Children's removal or the reasons for their placement outside the home would not be remedied, that continuation of the parent-child relationship posed a threat to the Children's well-being, and that termination was in the Children's best interests. Mother now appeals.

### **DISCUSSION AND DECISION**

We begin by noting that this Court has long had a highly deferential standard of review in cases concerning the termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). The purpose of terminating parental rights is to protect children, not to punish parents. *In re D.L.*, 814 N.E.2d 1022, 1027 (Ind. Ct. App. 2004), *trans. denied*. Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied*.

The trial court supported its order terminating the Mother's parental relationship with the Children with specific findings and conclusions. Thus, we engage in a two-tiered standard of review: first, we determine whether the evidence supports the findings; second,

we decide whether the findings support the judgment. *In re W.B.*, 772 N.E.2d 522, 529 (Ind. Ct. App. 2002). In deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied*, 534 U.S. 1161 (2002). A finding is clearly erroneous only when there are no facts or reasonable inferences in the record supporting it. *W.B.*, 772 N.E.2d at 529. In reviewing the record, we consider only the evidence and inferences favorable to the trial court's decision, without reweighing evidence and without judging witness credibility. *Id.*

Mother argues that DCS failed to present sufficient evidence to support the termination of her parental rights. Indiana Code section 31-35-2-4(b)(2) sets out the following relevant elements that DCS must allege and prove by clear and convincing evidence in order to terminate the parent-child relationship:

- (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;  
\* \* \* \* \*
- (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.

Because subsection (b)(2)(B) is written in the disjunctive, the trial court need only find either that the conditions causing removal will not be remedied or that the continuation of the parent-child relationship poses a threat to the child. *In re S.M.*, 840 N.E.2d 865, 868 (Ind. Ct. App. 2006).

## I. Removal and Placement Outside the Home

Mother argues that the termination of her parental rights was erroneous because DCS failed to prove that there was a reasonable probability that the conditions that resulted in the Children's removal or the reasons for their placement outside the home will not be remedied.<sup>8</sup>

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 the child at the time of the termination hearing, taking into consideration any evidence of changed conditions. *In re A.N.J.*, 690 N.E.2d 716, 721 (Ind. Ct. App. 1997). The trial court must also evaluate the parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* A trial court may properly consider evidence of a 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 County Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003).

Additionally, the trial court can properly consider the services offered by DCS to the parent and the parent's response to those services as evidence of whether conditions will be

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<sup>8</sup> Mother also argues that the trial court erred by finding that the continuation of the parent-child relationship would pose a threat to the well-being of the Children. As noted above, Indiana Code section 31-35-2-4(b)(2)(B) required DCS 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 parent will not be remedied, *or* (2) the continuation of the parent-child relationship poses a threat to the well-being of the child. Because we conclude that clear and convincing evidence supports the trial court's conclusion that a reasonable probability exists that the conditions that led to the Children's removal and reasons for placement outside the home will not be remedied, we need not review whether the evidence supports the trial court's conclusion that a reasonable probability exists that the continuation of the parent-child relationship poses a threat to the Children's well-being. See *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 148 n.5 (Ind. 2005).

remedied. *Id.* “A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change.” *L.S.*, 717 N.E.2d at 210. “Moreover, where there are only temporary improvements, and the pattern of conduct shows no overall progress, the court might reasonably infer that under the circumstances, the problematic situation will not improve.” *R.W., Sr. v. Marion County Dep’t of Child Servs.*, 892 N.E.2d 239, 249 (Ind. Ct. App. 2008).

In terminating Mother’s parental rights to the Children, the trial court made the following relevant findings:<sup>9</sup>

6. The CHINS petition was filed on September 26, 2002 alleging that [Mother] failed to make adequate arrangements for the care and supervision of her children during her incarceration. [Mother] entered an Agreed Entry to the petition, admitting the allegation of the petition that the [C]hildren were in need of services and agreeing to complete court ordered services. The Court proceeded to disposition as to [Mother] on January 7, 2003 and the [C]hildren were removed from her care and custody on that date.

\* \* \* \* \*

9. In October of 2005, [Mother] and [Father] signed specific consents for the adoption of the [C]hildren by Grandfather. This adoption did not occur because of the removal of the [C]hildren from Grandfather’s home. The removal of the [C]hildren from Grandfather’s home occurred when DCS discovered an unapproved adult living in his home.

10. The [C]hildren have not been returned to the care and custody of either parent and have been removed from the care of [Mother] and [Father] pursuant to the terms of a dispositional decree for more than six (6) months. The [C]hildren have been placed in the home of the Stewarts continuously since December 2005.

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<sup>9</sup> The parties stipulated to findings 1 through 16. *See Appellant’s App.* at 12.

11. [Mother] and [Father] began participating in home based counseling with Karis Hopson in June 2003. This service was closed because of parents' non-compliance.

12. [Mother] and [Father] were referred a second time for home based counseling through Adult & Child, Inc., beginning in November 2003. In August 2004, parents were involved in a physical altercation during a supervised visit. The police were summoned and [Father] was arrested. [Mother] was not arrested. The visit was ended and further visitation was suspended as to both [Mother] and [Father]. Home based counseling services were closed out as unsuccessful in February 2006.

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14. [Mother] and [Father] did not maintain contact with any family case manager from the time they signed adoption consents in October 2005 until June 2006.

15. Family case manager Denise Davis first had contact with [Mother] in October 2006 when [Mother] appeared in court for a hearing. At that time, [Mother] stated her intent to reengage in services to reunify with the [C]hildren.

16. Mother completed her second parenting assessment in November 2006. The parenting assessor recommended that [Mother] participate in a series of services including, but not limited to, random drug screens due to her self-reported past drug use; a psychiatric evaluation due to self reported family history; anger management classes because of the domestic violence incident during visitation where she claimed she was the victim; and home based counseling.

17. A trial was held before this Court in February and March of 2007 and DCS's Petition to terminate parental rights was denied.

18. After the previous trial concluded and the DCS petition to terminate [Mother's] parental rights was denied, [Mother] was given the opportunity to complete required services for reunification through the CHINS case that remained open.

19. After the conclusion of the previous termination trial, [Mother] failed to attend the next Placement and Jurisdiction review regarding her children on April 25, 2007, because she had been incarcerated on new criminal charges of driving while suspended. [Mother] testified that she has received several

tickets for driving while suspended and was still having trouble paying her tickets.

20. Following [Mother's] release from jail, she requested that the CHINS court reinstate her visitation privileges with her children. [Mother] has not seen [the Children] since November 2005, which was a month before the [C]hildren were removed from their grandfather's home and placed in their current placement. Prior to November 2005[,] visits were suspended from August 2004 until September 2005 (when specific consents for the paternal grandfather to adopt were signed) because of a domestic violence incident that occurred between [Mother] and [Father] during a visit in August of 2004.

21. The Juvenile Court issued an order on July 25, 2007 stating that [Mother's] visitation would remain suspended until she completed five (5) consecutive random urine drugs screens that tested negative for all substances. In spite of having an open referral to two agencies to complete these five drug screens, [Mother] took approximately fifteen weeks to complete what should have taken her five weeks to complete.

22. All of [Mother's] drug tests were negative but she would miss tests so that she never completed five *consecutive* tests. [Mother] explained her inability to complete five consecutive screens was because of employment and transportation. These excuses are insufficient given that the [C]hildren had been out of her care for almost 6 years and she had not seen them since November of 2005. Clearly, participating in continued services so that she could visit with her children as soon as possible should have been her priority. Her excuses for not participating in these screens indicate an inability to complete the typical tasks of parenting including getting children to medical and therapeutic appointments when required.

23. Also following [Mother's] release from jail, she completed a psychological evaluation but failed to complete the third home based counseling program that she was referred to. The home based counselor, Karen Zickler, had difficulty scheduling appointments with [Mother] and home based counseling could not progress because [Mother] had not completed the drug screens she needed to in order to visit with her children. After three months, home based services were ended because without being able to visit with her children, [Mother] was not closer to reunification.

*Appellant's App.* at 13-16. The trial court concluded:

2. There is [a] reasonable probability that the reasons for placement of the [C]hildren outside of the home of [Mother] will not be remedied. [Mother] has struggled to complete services from the very beginning of the initial CHINS case. Delays were caused because of her failure to complete services or her failure to stay in contact with her case manager. After the second termination trial, she was given the opportunity to see her children if she could complete 5 consecutive drug screens. All the drug screens she took were negative for illegal substances but it took her approximately 5 months to complete what should have taken her 5 weeks to do. It has been nearly 6 years since the CHINS Petition was filed and repeatedly, [Mother] has not quite finished the services she needed to prove her ability to care for her children.

*Id.* at 20.

Mother argues that the trial court erred by concluding that the reasons for the Children's removal or for continued placement outside the home would not be remedied. As such, she contends that her parental rights were terminated merely because she did not complete five consecutive drug screens in five weeks.<sup>10</sup> DCS asserts that the totality of the circumstances, including Mother's pattern of decision making and non-cooperativeness and noncompliance with services, shows that the reasons for continued placement outside the home would not be remedied.

While we agree with DCS that the trial court's conclusion that there was a reasonable probability that the reasons for continued placement outside the home would not be remedied

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<sup>10</sup> Mother also challenges finding 22 as not supported by the evidence. Specifically, Mother asserts that the evidence did not support the part of the trial court's finding that Mother's excuses for not participating in the drug screens indicated an "inability to complete the typical tasks of parenting including getting children to medical and therapeutic appointments when required" and the part of the finding that "participating in continued services so that she could visit with her children as soon as possible should have been her priority." *See Appellant's App.* at 15-16. We disagree. As noted in the Facts above, the record contained testimony from various service providers regarding the implications of Mother's failure to complete the drug screens in a timely manner given the facts surrounding this case. Furthermore, because these challenged statements were reasonable inferences from the evidence presented, we cannot say that finding 22 was clearly erroneous.

is not clearly erroneous, we pause to express our concern over the reliance on the drug screen requirement, which was a focus of this termination hearing. Following the denial of the second termination petition, Mother's service referrals included the completion of a psychiatric evaluation, home-based counseling, and five consecutive random drug screens. Specifically, the trial court authorized Mother to have supervised visitation with the Children upon a positive recommendation from the home-based counselor and the completion of "five consecutive negative drug screens[.]" *Ex. 12 at 54*. On its face, the trial court's order only required five consecutive drug screens. However, the DCS required Mother to complete five consecutive weekly screens. This Court is troubled by what appears to be a situation where Mother was held to an expectation not reflected in the trial court's order. This concern, however, is tempered by the fact that testimony during the termination hearing showed that the general consensus between the parties was that Mother had to test negative in five consecutive weekly drug screens to reinstate visitation.

We are also concerned with the possibility that the purpose of the drug screens was merely to test Mother's future compliance or to chastise her for past non-compliance with service requirements instead of being a requirement that would assist Mother in her ability to reunify with or have visitation with the Children. Indeed, the purpose of terminating parental rights is to protect children, not to punish parents. *D.L.*, 814 N.E.2d at 1027. Again, our concern about the purpose of the drug testing is somewhat allayed by the fact that the record

indicates that the drug screen requirement was not entirely unfounded,<sup>11</sup> and we recognize that Mother did not complete the five drug screens within the five consecutive weeks following the entry of the trial court's order.

Nevertheless, we note that when determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for 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 record before us reveals that, at the time of the hearing, Mother had completed the five consecutive weekly drug screens and had never failed a drug screen. Thus, Mother's failure to complete the five consecutive drug screens in the five weeks immediately following the entry of the trial court's order is an insufficient basis, on its own, to support a determination that the reasons for continued placement outside the home would not be remedied.

The drug screens, however, were not the only factor the trial court cited to when determining whether there was a reasonable probability that reasons for continued placement outside the home would be remedied. The trial court also referred to Mother's failure to complete home-based counseling and Mother's criminal history. Additionally, the trial court also discussed the lengthy pendency of this case.

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<sup>11</sup> Mother admitted to the parenting assessor that she had used marijuana during the pendency of the CHINS proceeding, she has a prior, although remote, drug-related criminal conviction, and the GAL indicated that drug testing was necessary because Mother had had involvement in drugs in the past and needed to be monitored before she could visit with the Children. *See Tr.* at 566, 591, *Ex.15* at 66.

In relation to the consideration of Mother's failure to complete home-based counseling, the trial court can properly consider the services offered by DCS to the parent and the parent's response to those services as evidence of whether conditions will be remedied. *McBride*, 798 N.E.2d at 199. Here, the home-based counselor testified that Mother was inconsistent with and had missed appointments and that the counselor had difficulty reaching Mother to schedule appointments. The home-based counselor ultimately closed Mother's home-based counseling as unsuccessful due, in large part, to Mother's failure to complete the necessary drug screens and to have visitation with the Children. Mother had also failed to complete home-based counseling when the CHINS case was initially opened.

Mother's criminal history is also relevant to a determination of whether the conditions resulting in the Children's removal will not be remedied and is a part of her pattern of conduct. *See In re J.W.*, 779 N.E.2d 954, 961 (Ind. Ct. App. 2002), *trans. denied*. In 2002, when this case began as a CHINS proceeding, Mother was incarcerated on a robbery charge. She pleaded guilty to visiting a common nuisance and spent six months in jail. After the trial court denied DCS's second petition to terminate Mother's parental rights in April 2007, which provided Mother with another chance to reunite with the Children in this case that had been pending for almost five years, Mother failed to appear at the subsequent CHINS hearing because she had been arrested on a charge of driving while suspending. She was then arrested again in July 2007 and December 2007 in relation to driving while suspended and

unpaid parking tickets. At the time of the termination hearings in March and April 2008, Mother still did not have a license and had not resolved her unpaid parking ticket issues.

The trial court also referred to the time delay in this case when determining that the reasons for continued placement outside the home would not be remedied. While the duration of time, in and of itself, would not be sufficient to support such a determination, we note that the duration of this case, in conjunction with the other factors, was a relevant consideration. Indeed, approximately six years passed between the time of the Children's removal from Mother's care and the time of this last termination hearing. Under the facts of this case, it is unfair to ask the Children to continue to wait until Mother is willing or able to complete, and benefit from, the services required of her. The approximately six years that have already passed is long enough. *See In re Campbell*, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (stating court was unwilling to put child "on a shelf" until her parents were capable of caring for her and that two years was long enough).

We acknowledge that this case poses unique challenges. In this case there was evidence presented revealing that Mother had both taken some positive steps to do what was necessary to achieve reunification with the Children but, at the same time, had just simply missed the mark. Indeed, in its findings, the trial court noted Mother's positive involvement in this case, such as her ability to maintain employment and adequate housing, her completion of a psychiatric evaluation, and the fact that all of her drug test results were negative. Yet, the trial court also included findings regarding Mother's shortcomings with services, criminal issues, and difficulty with consistency that led the trial court to conclude

that the reasons for placement outside the home would not be remedied. The trial court weighed all the evidence presented—both in favor of and detrimental to Mother—and determined that there was a reasonable probability that the reasons for the Children’s placement outside the home would not be remedied.

Without reweighing that evidence and based on the record before us, we cannot say that the trial court committed clear error when it determined that there is a reasonable probability that the conditions resulting in the Children’s removal from Mother’s care or reasons for placement outside the home will not be remedied.

## **II. Best Interests**

Mother also argues that there was insufficient evidence to show that termination of the parent-child relationship was in the best interests of the Children. In determining what is in the best interests of the child, the trial court is required to look at the totality of the evidence. *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. In doing so, the trial court must subordinate the interests of the parents to those of the child involved. *Id.* Termination of a parent-child relationship is proper where the child’s emotional and physical development is threatened. *R.S.*, 774 N.E.2d at 930. The trial court need not wait until the child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* Additionally, a child’s need for permanency is an important consideration in determining the best interests of a child, and the testimony of the service providers, such as a child’s guardian ad litem,

supports a finding that termination is in the child's best interests. *McBride*, 798 N.E.2d at 203.

Here, the totality of the evidence demonstrated that the termination of Mother's parental rights was in the Children's best interests. Although the record indicates that Mother had completed some of her court-ordered services and that there were no problems indicated with Mother's employment or housing situations, the evidence most favorable to the judgment also shows that Mother had a criminal history, did not have a driver's license, and had a pattern or a history of not fully complying with or completing all court-ordered services, and had not seen the Children since 2005. The evidence further indicates that the Children had been removed from Mother's care and had been under the care and supervision of the DCS for approximately six years, which accounted for almost the entire duration of the twins' young lives and more than half of the other two children's lives. Additionally, there is evidence that the Children, each of whom had special medical or therapeutic needs, were doing very well in their placement in the pre-adoptive foster home, where they have been placed since December 2005.

Indeed, the family case manager testified that it was in the Children's best interests not to be reunified with Mother and that the Children were very bonded with their foster parents. The family case manager explained that while the duration of time in this case was a concern, her main concern was achieving permanency for the Children and having them in a home where they felt security and no disruptions. Likewise, the therapist from Gallahue testified that due to the Children's need for permanency, termination and adoption by the

foster family was in the Children's best interests. Additionally, the CTS therapist testified that it was in the Children's best interests to not be reunified with Mother and to instead stay with the foster parents. The CTS therapist testified that the Children had formed a strong attachment to the foster family and stated that reunification with Mother would be "detrimental to [the Children's] well being and how far they have come along in their growth and in the development as children." *Tr.* at 219. The GAL also indicated that termination would be in the Children's best interests. Finally, the foster care case manager testified that the foster family was doing a wonderful job with the Children and providing for their needs.

Based on the totality of the evidence, we conclude that the trial court's finding that termination was in the Children's best interests was supported by clear and convincing evidence. *See McBride*, 798 N.E.2d at 203 (concluding that testimony regarding child's need for permanency, coupled with fact that children were thriving in their current foster home, supported finding that termination is in child's best interests); *see also In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (stating that testimony of CASA and family case manager, coupled with evidence that conditions resulting in placement outside home will not be remedied, is sufficient to prove by clear and convincing evidence that termination is in child's best interests), *trans. denied*. We reverse a termination of parental rights "only upon a showing of 'clear error' -- that which leaves us with a definite and firm conviction that a mistake has been made." *Egley v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992). We find no such error here and, therefore, affirm the trial court. Affirmed. BAKER, C.J., and NAJAM, J., concur.