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**IN THE  
COURT OF APPEALS OF INDIANA**

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A.P., )  
 )  
Appellant-Respondent, )  
 )  
vs. )  
 )  
INDIANA DEPARTMENT OF CHILD SERVICES, )  
 )  
Appellee-Petitioner. )

No. 34A02-0902-JV-147

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APPEAL FROM THE HOWARD CIRCUIT COURT  
The Honorable Lynn Murray, Judge  
Cause Nos. 34C01-0806-JT-11 and 34C01-0806-JT-12

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**June 30, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## STATEMENT OF THE CASE

A.P. (“Mother”) appeals from the trial court’s termination of her parental rights with respect to her children K.P. and D.P. (“the children”). She presents a single issue for our review, namely, whether the Howard County Department of Child Services (“DCS”) presented sufficient evidence to sustain the termination of her parental rights.

We affirm.

## FACTS AND PROCEDURAL HISTORY

Mother gave birth to K.P. and D.P., who are twins, on September 20, 2006. On May 30, 2007, the Kokomo Police Department sought assistance from DCS regarding Mother’s residence, which the police found to be unsafe and unsanitary. DCS case managers found the residence to be dirty, with dog feces “all over the home[.]” Petitioner’s Exhibit 4. The bedrooms were “cluttered with piles of clothing[.]” and the bathroom toilet and tub were dirty. *Id.* Mother told the case managers that she would take K.P. and D.P. to stay with Mother’s mother, L.L., until she could get her residence cleaned up.

But when the case managers returned to Mother’s residence the next day, it had not been cleaned, and Mother’s roommates informed them that Mother did not live there anymore. The case managers went to L.L.’s house, where they found the children, but Mother was not there. L.L. informed the case managers that Mother was staying with a friend. L.L. also informed the case managers that she could not keep the children for more than a few days.

The case managers located Mother, who reported that she was working on finding a residence for herself and the children. But Mother telephoned the case managers on May 31, 2007, to report that she could not find a new home. Accordingly, the case managers contacted the trial court and requested an emergency detention order to place the children into foster care. The trial court granted that request. When the case managers went to Mother's original residence to retrieve some of the children's belongings, they found syringes in the bedroom where the children had previously stayed. Mother denied that the syringes were hers. On June 1, the case managers placed the children in foster care.

The DCS established a case plan for Mother, which required her to attain and maintain stable housing and employment; to submit to random drug screens; to cooperate with Family Educator Services; to attend and successfully complete parenting classes; and to enroll and participate in an individual drug counseling program. However, on July 10, Mother was arrested and placed in jail, so she was unable to comply with the case plan after that date. And during the short time prior to her incarceration,<sup>1</sup> Mother did not comply with the case plan. For instance, on June 21, a case manager asked Mother to submit to a drug test. She initially agreed, but ultimately refused to take the test. Mother admitted that she recently had smoked marijuana. And while Mother did visit the children prior to July 10, she canceled two appointments with Family Educator Services

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<sup>1</sup> Mother was ultimately convicted of Conspiracy to Commit Robbery, a Class C felony, and Conspiracy to Commit Dealing in Methamphetamine, as a Class B felony. The aggregate sentence imposed was ten years, with five years suspended.

and did not find housing or employment. The case manager did not think that Mother was making any attempts to be reunited with the children.

On June 5, 2008, the DCS filed petitions to terminate Mother's parental rights with respect to K.P. and D.P. Following a hearing on November 17, the trial court entered its order terminating Mother's parental rights with respect to the children and made findings and conclusions. Mother now appeals.

### **DISCUSSION AND DECISION**

Mother contends that the evidence is insufficient to support the involuntary termination of her parental rights. Initially, we note that the purpose of terminating parental rights is not to punish parents, but to protect the children. Weldishofer v. Dearborn County Div. of Family & Children (In re J.W.), 779 N.E.2d 954, 959 (Ind. Ct. App. 2002), trans. denied. "Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their responsibilities as parents. This includes situations not only where the child is in immediate danger of losing his life, but also where the child's emotional and physical development are threatened." Id.

In reviewing a decision to terminate a parent-child relationship, this court will not set aside the judgment unless it is clearly erroneous. Everhart v. Scott County Office of Family & Children, 779 N.E.2d 1225, 1232 (Ind. Ct. App. 2002), trans. denied. Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences to support them. Id. When reviewing the sufficiency of the evidence, this court neither reweighs the evidence nor judges the credibility of the witnesses. Id.

To support a petition to terminate parental rights, the DCS must show, among other things, 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.

Ind. Code § 31-35-2-4(b)(2)(B). The DCS must also show that termination is in the best interest of the child and that there exists a satisfactory plan for the care and treatment of the child. Ind. Code § 31-35-2-4(b)(2)(C), (D). These factors must be established by clear and convincing evidence. Ind. Code § 31-34-12-2.

In interpreting Indiana Code Section 31-35-2-4, this court has held that the trial court should judge a parent's fitness to care for his or her child as of the time of the termination hearing, taking into consideration evidence of changed conditions. J.K.C. v. Fountain County Dep't of Pub. Welfare, 470 N.E.2d 88, 92 (Ind. Ct. App. 1984). However, recognizing the permanent effect of termination, the trial court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. Id. To be sure, the trial court need not wait until the child is irreversibly influenced by a deficient lifestyle such that the child's physical, mental and social growth is permanently impaired before terminating the parent-child relationship. Id. at 93.

A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, will support a finding that there exists no reasonable probability that the conditions will change. In re

D.B., 561 N.E.2d 844, 848 (Ind. Ct. App. 1990). Where there are only temporary improvements and the pattern of conduct shows no overall progress, the court might reasonably find that, under the circumstances, the problematic situation will not improve. In re D.L.W., 485 N.E.2d 139, 143 (Ind. Ct. App. 1985). When the evidence shows that the child's emotional and physical development is threatened, termination of the parent-child relationship is appropriate. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

Mother contends that the evidence is insufficient to show that there is a reasonable probability that the conditions that resulted in the children's removal from her home will not be remedied or that termination is in the children's best interests. Specifically, Mother asserts that "[t]he trial court should have afforded [Mother] the opportunity to prove herself once released from incarceration[.]" Brief of Appellant at 6. At the final hearing, Mother testified that her incarceration was to end within nine to fifteen months' time. But Mother does not direct us to any evidence showing that, once she is released, she is likely to succeed in the case plan that DCS had established for her.<sup>2</sup> Indeed, the DCS case manager testified that during the short time between the children's removal and Mother's incarceration, the case manager did not think that Mother "was making any attempts to improve the situation or [to be] reunified with her children[.]" Transcript at 34. While Mother visited with the children prior to her incarceration, she also canceled two appointments with Vanessa Baker, the family educator assigned to work with Mother on parenting skills and finding housing and employment.

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<sup>2</sup> DCS is unable to provide services to Mother during her incarceration.

The DCS also presented evidence that Mother: refused to submit to the one drug test that the DCS case manager attempted to administer prior to her incarceration; was unable to obtain suitable housing for herself and the children between June 1 and July 10, 2007; and was convicted of two felonies, resulting in five years' incarceration and the inability to participate in DCS-recommended services.

Further, both the DCS case manager and CASA testified that they believed that termination is in the children's best interests. The CASA stated:

At this time [Mother's] going to be spending at least probably the next year and a half in jail. The boys have already been in foster care for a year and a half, and it's not fair for them to wait an additional 6 months or a year, depending on how long it would take [Mother] to complete the services [under the case plan], so we're looking at another 2 years of them being in limbo and not having the permanency that they deserve.

Transcript at 43. Mother merely asks that we reweigh the evidence, which we will not do. The evidence is sufficient to support the trial court's conclusion that there is a reasonable probability that the conditions that resulted in the children's removal will not be remedied. And there is also clear and convincing evidence that termination is in the best interests of the children and that there exists a satisfactory plan for the care and treatment of the children. We conclude that the DCS presented sufficient evidence to support the trial court's termination of Mother's parental rights.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.