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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT CHILD RELATIONSHIP OF:)
D.M. and M.B.)

M.M.,)
Appellant,)

vs.)

FAYETTE COUNTY DEPARTMENT OF)
CHILD SERVICES)

Appellee.)

No. 21A05-0812-JV-714

APPEAL FROM THE FAYETTE CIRCUIT COURT
The Honorable Daniel L. Pflum, Judge
Cause No. 21C01-0805-JT-337 and 21C01-0805-JT-338

July 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

M.M. (“Mother”) appeals the involuntary termination of her parental rights to D.M. and M.B. Mother presents the following restated issue for review: Was there sufficient evidence to support the trial court’s decision to terminate Mother’s parental rights because there was a reasonable probability that the conditions resulting in D.M. and M.B.’s placement outside the home would not be remedied, and that termination of her parental rights was in D.M. and M.B.’s best interest.

We affirm.

D.M. was born on February 22, 2003, and M.B. was born on August 9, 2004 to Mother and Father.¹ M.B. was removed from Mother’s care on June 14, 2007, because Mother had unstable living arrangements and was unemployed. D.M. and M.B. had been living with extended family prior to removal due to instability in Mother’s living arrangements. M.B. was living with his maternal grandmother, and D.M. was living with the maternal great-grandmother until allegations of sexual abuse were substantiated against the maternal great-grandmother’s boyfriend regarding D.M. D.M. then lived with the paternal grandfather and step-grandmother as Mother had no alternative housing arrangements to stay with D.M. or M.B. at that time. D.M. was placed in a foster home with M.B. when the paternal grandfather and step-grandmother could not care for D.M. due to a health issue of one of the adults. Mother had a history of drug abuse and Father was not actively involved with either of the children at the time of the intervention and did not have stable housing.

¹ Father is not seeking relief on appeal and has not filed a brief in this appeal. However, pursuant to Indiana Appellate Rule 17(A), a party of record in the trial court is a party on appeal.

Initially, Mother agreed to participate in an Informal Adjustment to address her unstable living conditions and drug/alcohol issues, but refused to sign for services when offered them by the Fayette County Department of Child Services (“DCS”). DCS made a decision to detain both of the children due to the instability in housing and Mother’s substance abuse issues because Mother refused to seek assistance in addressing these issues.

Mother was previously employed by Long John Silver’s in Connersville, Indiana, but failed to maintain employment there. Mother reported that she had an apartment of her own, yet continued to stay at different addresses with friends. Mother had no current employment and reported that she was staying with a male friend, but that the housing was not a permanent residence. There was some evidence that the male friend with whom Mother was living had a substantiated case of sexual abuse.

Mother claimed that when she contacted the Salvation Army’s Harbor Light’s program in Indianapolis, they advised her that it would cost \$50 to begin her detox program. Mother had failed to participate in another outpatient program to which she had been referred. In her case conference, Mother was advised that her sporadic visitation with her children was negatively impacting their behavior. Staff at a treatment center advised her that until she could address her sobriety and begin participation in parenting programs her visits would be suspended due to a lack of attendance and the emotional harm caused to her children by those visits.

Father failed to participate in any of the referred services or actively participate in visitations on a regular basis with the children. Father did not have a permanent residence,

employment, or a reason for his failure to participate in court-ordered programs.

D.M. attends school at Head Start and attends weekly therapy sessions with an employee of the Dunn Center. D.M.'s foster parents and a case manager at the Dunn Center noticed that D.M. was showing signs of aggression, tantrums, and angry behavior toward others when the visits with Mother and Father became sporadic in nature. Case managers determined it would be in D.M.'s best interest to discontinue visits until the parents had completed the recommended parenting and drug rehabilitation services.

On May 14, 2008, the DCS filed two petitions for the involuntary termination of Mother's and Father's parental rights to D.M. and M.B. On October 20, 2008, the trial court held a fact-finding hearing on the petitions and then took the matters under advisement. On November 5, 2008, the trial court entered an order terminating the parental rights of Mother and Father. Mother now appeals.

Mother challenges the sufficiency of the evidence supporting the trial court's decision to terminate her parental rights as to D.M. and M.B. More specifically, Mother argues the DCS did not prove by clear and convincing evidence that there was a reasonable probability that the conditions resulting in D.M.'s and M.B.'s placement outside the home would not be remedied, and that termination of Mother's parental rights was in the best interest of the children. Mother claims the trial court evaluated the matter based upon conditions at the time of the children's removal instead of the conditions at the time of the hearing.

We begin our review by acknowledging 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 (Ind. Ct. App. 2001). Thus, when reviewing the termination of parental rights, we will neither reweigh the evidence nor judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258 (Ind. Ct. App. 2004), *trans. denied*. We consider only the evidence and reasonable inferences most favorable to the judgment. *Id.*

Here, the trial court made specific findings and conclusions in terminating Mother's parental rights. Where the trial court enters specific findings of fact and conclusions thereon, we must first determine whether the evidence supports the findings. *Id.* Then, we determine whether the findings support the judgment. *Id.* We will not set aside the trial court's judgment terminating parental rights unless it is clearly erroneous. *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615 (Ind. Ct. App. 2006), *trans. denied*. A finding is clearly erroneous when there are no facts or inferences drawn therefrom from that support it. *In re D.D.*, 804 N.E.2d at 264. A judgment is clearly erroneous only if the findings of fact do not support the trial court's conclusions thereon, or the conclusions do not support the judgment. *Quillen v. Quillen*, 671 N.E.2d 98 (Ind. 1996).

"The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, these parental rights are not absolute and must be subordinated to the children's interests when determining the proper disposition of a petition to terminate parental rights. *Id.* Parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *In re K.S.*, 750 N.E.2d at 836.

To effect the involuntary termination of a parent-child relationship, the State is required to allege, among other things, that:

- (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) 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[.]

Ind. Code Ann. § 31-35-2-4(b)(2)(B), (C). The State must establish these allegations by clear and convincing evidence. *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232 (Ind. 1992).

When determining whether a reasonable probability exists that the conditions justifying a child's removal from the family home will not be remedied, the trial court must judge a parent's fitness to care for his or 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 (Ind. Ct. App. 2001), *trans. denied*. The trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.* at 512. The trial court may also properly consider the services offered to the parent by a county Department of Child Services, and the parent's response to those services, as evidence of whether conditions will be remedied. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244 (Ind. Ct. App. 2002), *trans. denied*. A county Department of Child Services is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not

change. *In re Kay L.*, 867 N.E.2d 236 (Ind. Ct. App. 2007).

The trial court specifically found in relevant part as follows:

5. (c)(1) There is a reasonable probability that: the conditions that resulted in the children's removal or the reasons for the placement outside the parent's home will not be remedied in that:

(a) [Mother] failed to successfully participate or complete substance abuse treatment as recommended by Dunn Mental Health.

(b) [Mother] failed to complete weekly counseling sessions through Dunn Center.

(c) [Mother] failed to complete parenting skills program through Dunn Center.

(d) [Mother] failed to participate with ongoing random drug screens.

(e) [Mother] failed to establish and maintain a stable and safe home.

(f) [Mother has] not kept the [DCS] up to date with her addresses or arrest reports.

5. (c)(2) Continuation of the parent-child relationship poses a threat to the well-being of the child in that:

(a) [Mother] failed to successfully participate or complete substance abuse treatment as recommended by Dunn Mental Health.

(b) [Mother] failed to complete weekly counseling sessions through Dunn Center.

(c) [Mother] failed to complete parenting skills programs through Dunn Center.

(d) [Mother] failed to participate with ongoing random drug screens.

(e) [Mother] failed to establish and maintain a stable and safe home.

(f) [Mother has] not kept the [DCS] up to date with her addresses or arrest reports.

5. (d) Termination of the parent child relationship is in the best interest of the child in

that:

(7) [Mother] failed to maintain continuous visitation and because of [her] sporadic attendance it caused negative behavior with the children leading Dunn Center to suspend visits until further treatment (Parenting and Drug Rehab) was completed by parent, which never happened.

(8) [Mother] admitted to knowing what was required in order to comply with the court ordered disposition and DCS case plan. When asked why [she] had not complied, [she] stated, “Why bother.”

5. (f) The parents continue to be unable to care for the child as of today in that:

(1) [Mother] remain[s] unemployed.

(2) [Mother has] not maintained an approved stable home environment.

(3) [Mother has] not completed drug treatment or completed drug screening to rule out continued drug use.

Appellant’s Appendix at 94. The evidence most favorable to the judgment supports these findings, which in turn support the trial court’s conclusions: 1) that there is a reasonable probability the conditions resulting in D.M.’s and M.B.’s removal will not be remedied, and 2) that termination of Mother’s parental rights is in D.M.’s and M.B.’s best interest. The trial court’s ultimate decision to terminate Mother’s parental rights as to D.M. and M.B. is also supported by this evidence and the findings.

“A pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, supports a finding that there exists no reasonable probability that the conditions will change.” *Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. Furthermore, a trial court must judge a parent’s fitness to care for his or her child at

the time of the termination hearing, taking into consideration the parent's *habitual patterns of conduct* to determine the probability of future neglect or deprivation of the child. *In re D.D.*, 804 N.E.2d at 266 (emphasis supplied). Despite being offered services, Mother has failed to make any significant improvement in her ability to care for D.M. and M.B.

Consequently, Mother's argument that the trial court relied upon DCS's evidence regarding the conditions at the time of the removal of the children from the home in reaching its decision must fail. Mother was advised about the services she needed to participate in and complete in order to be reunited with her children, and the record reflects that Mother failed to do what was necessary to significantly improve her ability to care for her children. Although Mother had completed her drug assessment, she completed only seven out of twenty-four drug treatments and tested positive for hydrocodone and codeine in her most recent drug screen. The court-appointed special advocate recommended termination of Mother's parental rights because Mother had not remedied any of the problems identified at the time of the children's removal.

It would be unfair to D.M. and M.B. to continue to wait until Mother is willing to obtain and benefit from the help she needs. *See In re Campbell*, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (stating that the court was unwilling to put the children "on a shelf" until their mother was capable of caring for them). This Court will 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." *Matter of A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting *Egley v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235

(Ind. 1992)). We find no such error here.

Judgment affirmed.

NAJAM, J., and VAIDIK, J., concur.