ATTORNEYS FOR APPELLANT:

DEIDRE L. MONROE
Public Defender's Office
Gary, Indiana

DONALD W. WRUCK III
Dyer, Indiana

ATTORNEY FOR APPELLEE:

EUGENE M. VELAZCO
Merrillville, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ANTOINEA BOWMAN,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 45A03-0707-JV-332
	)	
LAKE COUNTY DIVISION OF FAMILY AND CHILDREN,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Judge
Cause No. 45D06-0607-JT-71, 45D06-0607-JT-72 and 45D06-0607-JT-73

February 20, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Antoinea Bowman ("Mother") appeals the trial court's involuntary termination of her parental rights with respect to A.B. ("A.B.1"), A.B. ("A.B.2"), and D.H. (collectively "the children").[1] Mother presents two issues for review, which we restate as:

1. Whether the evidence is sufficient to support the order terminating her parental rights.

2. Whether the trial court erred when it failed to appoint counsel to represent Mother.

We affirm.

FACTS AND PROCEDURAL HISTORY

In 2004, Mother resided with her husband, Dansford Bowman; her son D.H., born July 23, 1998; and her daughters, A.B.1, born October 29, 2002, and A.B.2, born June 2, 2004. Bowman is the alleged father of A.B.1 and A.B.2, and Gawaine Johnson is the alleged father of D.H. In late October or early November 2004, D.H. reported to Gary police officers that Mother had choked him. Upon investigation, police officers found scratches on D.H.'s neck, and they also found Mother's home to be in disarray. On November 1, 2004, the police referred the case to the Lake County Department of Child Services ("DCS").

The DCS investigated the referral and found that Mother had bruised D.H.'s arm. And strewn about Mother's home, the DCS found clothes, dirty dishes, dirty diapers, and

[1] The children's fathers are not parties to this appeal.

other debris. At the time, the DCS also had an open investigation from July 2004 for physical abuse by Mother.[2]

On November 4, 2004, after a hearing, the trial court ordered the detention of the children and ordered the DCS to provide the following services: psychological evaluation and recommended treatment for Mother, individual counseling for the children, parenting classes for Mother and Bowman, and home-based services at Mother's home.[3] At some point not apparent in the record, the children were placed with Cynthia Hall, the children's maternal grandmother.[4] The court held an initial hearing on January 19, 2005, and ordered that the children were children in need of services ("CHINS") effective November 4, 2004. The court also ordered Mother and Bowman to complete anger management classes.

On March 20, 2006, the court held a permanency plan review hearing. At the conclusion of that hearing, the court adopted a permanency plan with a goal of "[r]eunification with [M]other or termination of parental rights and adoption by grandmother." Appellant's App. at 10. The court found that Mother had successfully completed a psychiatric evaluation and was to begin family therapy toward the aim of reunification with the children.

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[2] The record on appeal does not provide the name of the alleged victim or the nature of that abuse allegation.

[3] The detention hearing also addressed a separate CHINS proceeding for another of Mother's children.

[4] The record does not contain a Chronological Case Summary, as required by Indiana Appellate Rule 50(A), and the parties do not always agree in their briefs on the dates of particular hearings or events. Because the dates are not relevant to our determination of the issues presented on appeal, we address the merits of the issues presented on appeal. However, we remind Mother's counsel of the requirements of Appellate Rule 50 and the necessity of a complete record to aid our review.

On July 3, 2006, the DCS petitioned to terminate Mother's parental rights with regard to the children.[5] On July 5, 2006, the court authorized the filing of the petitions to terminate parental rights as to the children. The trial court convened for a hearing on the termination petitions on September 28, 2006, but continued the hearing to allow the judge presiding over the CHINS hearings to address disagreement by the maternal grandmother regarding the DCS's current goal of placing the children in the grandmother's guardianship.

The court convened again for the termination hearing on March 28, 2007, but Mother and Bowman did not appear. At the conclusion of the hearing, the trial court entered an order granting the DCS' petitions to terminate Mother's parental rights with regard to the children. Mother now appeals.

DISCUSSION AND DECISION

Standard of Review

In addressing Mother's claims that the DCS failed to meet its burden of proof, we first note that when reviewing termination of parental rights proceedings on appeal, this court neither reweighs the evidence nor judges the credibility of witnesses. See Judy S. v. Noble County Office of Family & Children (In re L.S.), 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied. We consider only the evidence that supports the trial court's decision and the reasonable inferences that may be drawn from that evidence. Id. In deference to the trial court's unique position to assess the evidence, we set aside the

[5] Appellant's Appendix contains a petition to terminate parental rights only as to A.B.1. Presumably, petitions to terminate parental rights with respect to A.B.2 and D.H. were filed the same day.

judgment terminating a parent-child relationship only if it is clearly erroneous. Id. If the evidence and inferences support the trial court's decision, we must affirm. Id.

The involuntary termination of parental rights is the most extreme sanction that a court can impose. Id. Termination severs all rights of a parent to his or her children. Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. Ferbert v. Marion County Office of Family & Children (In re T.F.), 743 N.E.2d 766, 770 (Ind. Ct. App. 2001), trans. denied. The purpose of terminating parental rights is not to punish the parents, but to protect their children. Id. at 773. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities. Id.

To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing the elements of Indiana Code Section 31-35-2-4(b)(2). Thus, the State must prove:

> (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 [Indiana Code] 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).

In construing this statute, this court has held that when determining whether certain conditions that led to the removal will be remedied, the trial court must judge the parent's fitness to care for his children at the time of the termination hearing. Newby v. Boone County Div. of Family & Children (In re L.V.N.), 799 N.E.2d 63, 69 (Ind. Ct. App. 2003). A parent's habitual patterns of conduct must also be evaluated to determine the probability of future negative behavior. D.J. v. LaGrange County Div. of Family & Children (In re D.J.), 755 N.E.2d 679, 684 (Ind. Ct. App. 2001), trans. denied. And the trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development are permanently impaired before terminating the parent-child relationship. Id.

Additionally, the trial court may consider the services offered as well as the parent's response to those services. Id. As noted above, parental rights may be terminated when parties are unable or unwilling to meet their responsibilities. In re T.F., 743 N.E.2d at 776. Also, when determining what is in the best interests of the children, the interests of the parents are subordinate to those of the child. Id. at 773. Thus,

parental rights will be terminated when it is no longer in the child's best interests to maintain the relationship. Jones v. Gibson County Div. of Family & Children (In re B.D.J.), 728 N.E.2d 195, 200 (Ind. Ct. App. 2000). "[C]hildren should not be compelled to suffer emotional injury . . . or instability to preserve parental rights." In re L.S., 717 N.E.2d at 210.

Issue One: Sufficiency of Evidence

Mother contends that the evidence is insufficient to support the termination of her parental rights. Specifically, Mother contends that the DCS did not prove that the conditions that resulted in the children's removal had not been remedied or that the termination was in the children's best interests. We address each contention in turn.

The trial court determined the children to be CHINS because the DCS substantiated an allegation that Mother had physically abused D.H. As a result, the trial court ordered the children to be placed with their maternal grandmother. The DCS offered services to Mother, including home-based counseling offered through Metropolitan Oasis, parenting classes, visitation at Pilgrim Baptist Church, psychological evaluations, psychiatric evaluations, and services through Apostolic Youth and Family Services.

Regarding Mother's compliance with services, Demetrius Cain, a DCS Case Manager, testified as follows:

> Q: And can you tell the Court whether or not [Mother] was compliant with the services that were provided to her?
>
> A: Mother completed parenting classes; however, services through Metropolitan Oasis were discontinued, due to noncompliance. [M]other was hostile, there were marital problems between [her and

Bowman]; often, they were both [sic], did not comply with the services offered to them. They did complete the psychological and the psychiatric evaluations.

Q: Okay.

A: Mother did not comply with the recommendations of the psychiatric [sic]. It was recommended that she undergo medications [sic], she refused to take the medications that was [sic] recommended by the doctor. Services through Apostolic, these services were participated in, however, it was sporadic. It appears that she would comply until—well, comply when it, the closer it became [sic] to court, but other than that, the visits were, the [sic], participation was sporadic with [Mother].

Transcript at 28-29. Additionally, Dr. Kalyani Gopal at Mid-America Psychological & Counseling Services, P.C., completed a psychological evaluation of Mother on February 14, 2007. Dr. Gopal recommended as follows:

1. [Mother] has one [toddler] child in her care and another one on the way. She is unable to fully care for the child in her care and has not taken him to his pediatrician for immunizations. He requires immediate care. It is questionable how she will be able to take care of any of her other children at this time.

2. [Mother] continues to remain paranoid, hostile, and has a short fuse. It is of grave concern that if she is given additional stress of parenting any of her other children[,] that she may not be able to cope with parenting demands and revert back to abusive behaviors in the past. Her expression of anger and hostility and denial of any wrongdoing is also worrisome. Also troublesome is her need to control those in her environment. She is unable to tolerate stressors and her husband is cautious about making her upset with him. She does appear to be quite controlling and self-absorbed to the point, that she justifies her need for sleep and rest as an excuse for not taking her son to the pediatrician.

3. Return home [for the children] is not recommended at this time. Long-term placement of her children may be necessary, as may be adoption[, as] she does not believe that she needs to comply with medication, nor does she wish to. She also is unlikely to keep up with their medical and other appointments as they grow older, nor is

she likely to keep up with their immunizations, given her history of not doing so in the past.

4. The courts may also wish to consider enforcing medical treatment in the form of immunizations for her young son—in addition to possibly his removal from his mother's care.

5. Continued supervised contact is recommended, so that the older children can see their baby brother and father. . . .

State's Exhibit 1 at 4-5.

Case Manager Cain testified that Mother did not fully comply with the case plan, and Mother concedes that she did not comply with all parts of that plan. Mother argues that she discontinued the medication prescribed for her mental health problems because of her pregnancy, but she provides no dates of her pregnancy, nor does she argue that discontinuing the medication was medically necessary or that she resumed the medication after the pregnancy. Indeed, Dr. Gopal noted that Mother "does not believe that she needs to comply with medication, nor does she wish to." Id. at 5.

Additionally, the children had been CHINS and in placement with their grandmother for more than three years. Mother's visitation with the children was "sporadic," and she provided no financial support for them. Indeed, in her interview with Dr. Gopal, Mother objected to the grandmother's adoption of the children because if Mother got the children then she "would have enough money to pay for rent etc." Id. at 2.

In considering the foregoing, we recognize that the trial court heard the testimony of all of the witnesses at the final hearing, observed their demeanor and judged their credibility. As a reviewing court, we defer to the trial court and may not weigh the

testimony of witnesses. Hence, we conclude that the DCS presented clear and convincing evidence that the conditions that resulted in the children's removal had not been remedied.

Mother also contends that the State did not prove that termination of her parental rights was in the children's best interests. But Mother does not support that argument with cogent argument and citation to authority. Thus, the argument is waived. See Ind. Appellate Rule 46(A)(8)(a). Waiver notwithstanding, Case Manager Cain testified that she believed termination to be in the children's best interest. We cannot say that the trial court's conclusion that termination is in the children's best interest is clearly erroneous.[6]

Issue Two: Right to Appointed Counsel

Mother also contends that the trial court erred because it did not appoint counsel to represent her in the termination proceeding. In support, Mother cites to Indiana Code Section 31-32-4-3, which provides, in relevant part:

> (a) If:
>
> > (1) a parent in proceedings to terminate the parent-child relationship does not have an attorney who may represent the parent without a conflict of interest; and
> >
> > (2) the parent has not lawfully waived the parent's right to counsel under [Indiana Code] 31-32-5 (or [Indiana Code] 31-6-7-3 before its repeal);
>
> the juvenile court shall appoint counsel for the parent at the initial hearing or at any earlier time.

[6] The termination of parental rights under Ind. Code § 31-35-2-4(b)(2) requires the DCS to prove four separate elements. Mother only challenges the court's findings as to two of those elements. Because we conclude that Mother's challenges fail, we need not address the court's findings as to the other two elements.

Additionally, Indiana Code Section 31-32-2-5 provides that "[a] parent is entitled to representation by counsel in proceedings to terminate the parent-child relationship." We agree with Mother's contention that she had a statutory right to the appointment of counsel in the termination proceedings. Thus, we consider whether the trial court erred by failing to appoint counsel for Mother in this case.

In Johnson v. Rush County Div. of Family & Children (In re the Termination of the Parent-Child Relationship of A.N.J. and T.R.J.), 690 N.E.2d 716 (Ind. Ct. App. 1997), trans. denied, a father appealed the termination of his parental rights, arguing in part that the trial court erred in failing to advise him of his right to counsel and to appoint counsel for him in a hearing for which he failed to appear. Although the right to counsel in a termination proceeding is granted by statute, this court held that the trial court could not have advised the father of his right to counsel because the father had not appeared at the hearing. Id. at 720. Thus, we held that the trial court did not err in failing to appoint counsel for the father. Id.

Here, the trial court informed Mother of her right to counsel at the first hearing on the petition to terminate Mother's parental rights. However, that hearing was interrupted by a question from DCS's counsel about the stated goal of guardianship, not adoption, in the permanency plan. Because of disagreement by the maternal grandmother to the goal of guardianship instead of adoption in the permanency plan, the trial court continued the termination hearing and gave Mother notice of the date and time of the continued hearing. Mother did not appear for the hearing on the continued date, and she does not

argue that she had no notice of it. Thus, the trial court did not err when it did not appoint counsel to represent Mother at the termination hearing.[7] See id.

Affirmed.

BAILEY, J., and CRONE, J., concur.

[7] Mother also presents a vague argument that she was entitled to counsel or the appointment of a guardian ad litem because she was diagnosed with Bipolar Disorder. But Mother does not support that argument with cogent reasoning or citation to authority. Thus, that argument is waived. See App. R. 46(A)(8)(a).