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IN THE
COURT OF APPEALS OF INDIANA

SHALONDA D. SMITH,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 48A02-0807-JV-607
	)	
MADISON COUNTY OFFICE OF FAMILY AND CHILDREN,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Jack Brinkman, Judge
Cause No. 48D02-0708-JT-368
48D02-0708-JT-369
48D02-0708-JT-370
48D02-0708-JT-371
48D02-0708-JT-372

January 15, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Shalonda Smith appeals the termination of her parental rights. We affirm.

Issue

Smith raises one issue, which we restate as whether there is sufficient evidence to support the termination of her parental rights.

Facts

On May 13, 2006, Smith's five children were removed from her custody because of allegations that neighbors had witnessed Smith beating one of the children with a plunger handle in the yard. Smith was apparently drunk at the time. When a case manager from the Madison County Department of Child Services ("DCS") arrived at the home, she observed that the children's bedrooms were not fit for them to sleep in and that there was no food in the refrigerator.

The children were determined to be children in need of services ("CHINS"). Pursuant to a October 5, 2006 dispositional decree, Smith was required to participate in regular visitation with the children, obtain a mental health evaluation and comply with all recommendations, obtain a substance abuse evaluation and comply with any recommendations, complete anger management classes, and complete parenting classes. Additional participation was required of Smith during the pendency of the CHINS proceedings. Smith did not fully comply with most of these requirements.

On August 22, 2007, the DCS filed a petition to terminate Smith's parental rights. On February 12, 2008, and March 6, 2008, the trial court conducted a hearing on the

DCS's petition. On May 14, 2008, the trial court issued an order terminating Smith's parental rights. She now appeals.

Analysis

"When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility." Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). "We consider only the evidence and reasonable inferences that are most favorable to the judgment." Id. Where a trial court enters findings and conclusions granting a petition to terminate parental rights, we apply a two-tiered standard of review. Id. First, we determine whether the evidence supports the findings. Id. Then we determine whether the findings support the judgment. Id. We will set aside a judgment that is clearly erroneous. Id. A judgment is clearly erroneous when the findings do not support the trial court's conclusions or the conclusions do not support the judgment. Id.

A petition to terminate the parent-child relationship must allege:

> (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 had the burden of proving these allegations by clear and convincing evidence. See Bester, 839 N.E.2d at 148. Clear and convincing evidence need not show that the continued custody of the parent is wholly inadequate for the child's very survival. Id. Instead, it is sufficient to show by clear and convincing evidence that the child's emotional and physical development is threatened by the parent's custody. Id.

Smith argues that the DCS did not prove by clear and convincing evidence that the conditions that resulted in the children's removal from the home would not be remedied.[1] Pointing to her own trial testimony, Smith argues that she did "substantially comply" with the recommended services. Appellant's Br. p. 12. In large part, Smith is asking us to reweigh the evidence, which we clearly cannot do. See Bester, 839 N.E.2d at 147.

[1] The trial court found both that the conditions resulting in removal would not be remedied and that the continuation of the parent-child relationship poses a threat to the children's well-being. Because the statute is written in the disjunctive, the DCS was not required to prove both. See Bester, 839 N.E.2d at 148 n.5. Accordingly, we only address the trial court's finding that the conditions resulting in the children's removal would not be remedied.

First, the children were removed from the home in part because Smith was beating one of them with a plunger handle. Smith pled guilty to criminal charges that arose out of the incident. At the hearing, Smith conceded she did not complete the anger management classes. Smith's failure to address her anger management issues is clear and convincing evidence that the conditions resulting in the children's removal from the home would not be remedied.

Further, contrary to Smith's argument, this is not a situation in which a parent did everything asked of him or her and the parental rights were terminated nonetheless. The evidence most favorable to the judgment shows that Smith did not timely complete parenting classes,[2] did not adequately treat her depression, and did not verify that she attended weekly AA meetings. Additionally, Smith did not regularly visit all of her children or participate in counseling with one of her children as required. At the time of the last hearing, Smith was working approximately ten hours a week at a fast-food restaurant. The DCS established by clear and convincing evidence that the conditions resulting in the children's removal—acting with violence toward the children, excessive drinking, inadequate housing, and the lack of food—would not be remedied.

Smith also suggests that the DCS does not have an adequate plan for the care of the children. She first points out that DCS's plan of adoption is not guaranteed. However, no such guarantee is required. The DCS's "plan need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the

[2] We acknowledge Smith's testimony that she completed the parenting classes between the February and March termination hearings. Nevertheless, we cannot conclude that completing parenting classes during the continuation of a termination hearing shows great motivation to regain custody of her children.

parent-child relationship is terminated." A.J. v. Marion County Office of Family and Children, 881 N.E.2d 706, 719 (Ind. Ct. App. 2008), trans. denied. Three of the children were in foster homes. The children's foster parents testified that they were "willing to" adopt and "interested in" adopting the children in their care. Tr. pp. 89, 93. Although two of the children were in residential care facilities, the family case manager testified that all five children could be adopted. At the time of the hearing, the DCS was working to get the two children in residential care facilities into pre-adoptive foster homes.

Smith also argues there is no guarantee that the children will stay together. First, Smith points to no requirement that the children must be adopted together. Moreover, there is evidence that it is not in the children's best interest to remain together. Specifically one of the children's case managers testified that previous visits between the children had gone "poorly" because of the "sexual history," referring to the allegations of sexual abuse among the children. Tr. p. 78. Smith has not established that the children remaining together is required or even in their best interests. There is sufficient evidence to support the trial court's finding that the DCS has an adequate plan for the care of the children.

Finally, Smith asserts that it is not in the children's best interest to terminate her parental rights. In support of this claim, she directs us to her own testimony that she completed substance abuse counseling and parenting classes, was no longer abusing alcohol, was employed, and was attending AA meetings. Contrary to Smith's characterization of the evidence, our review is limited to only the evidence and inferences most favorable to the judgment. See Bester, 839 N.E.2d at 147. Much of the DCS's

evidence directly contradicts Smith's testimony, and the family case manager specifically testified that she thought it was in the children's best interests that Smith's parental rights be terminated. This testimony supports the trial court's finding. We cannot reweigh the evidence. See id. There is sufficient evidence to support the trial court's finding that it was in the children's best interest to terminate Smith's parental rights.

Conclusion

There is clear and convincing evidence to support the trial court's finding that the conditions resulting in the children's removal from the home would not be remedied, that there is an adequate plan for the care of the children, and that termination of Smith's parental rights is in the children's best interests. We affirm.

Affirmed.

BAILEY, J., and MATHIAS, J., concur.