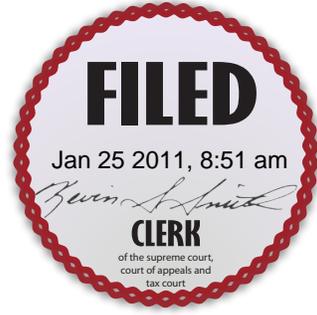


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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF M.T. (MINOR CHILD),)
AND)
R.T. (MOTHER),)
Appellant-Respondent,)
vs.)
MARION COUNTY DEPARTMENT)
OF CHILD SERVICES,)
Appellee-Petitioner,)
AND)
CHILD ADVOCATES, INC.,)
Co-Appellee-Guardian Ad Litem.)

No. 49A02-1006-JT-731

APPEAL FROM THE MARION SUPERIOR COURT - JUVENILE DIVISION
The Honorable Gary Chavers, Judge Pro Tempore
The Honorable Danielle Gaughan, Commissioner
Cause No. 49D09-0912-JT-56000

January 25, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

R.T. (“Mother”) appeals the involuntary termination of her parental rights to her child, M.T. Concluding that the Indiana Department of Child Services, local office in Marion County (“MCDCS”), presented clear and convincing evidence to support the juvenile court’s judgment, we affirm.

Facts and Procedural History

Mother is the biological mother of M.T., born in April 2009.¹ Within three days of M.T.’s birth and before the child’s discharge from the hospital, MCDCS took M.T. into emergency protective custody and filed a petition alleging the newborn was a child in need of services (“CHINS”). In its CHINS petition, MCDCS alleged Mother was currently involved in another CHINS action involving two older children, had not successfully completed services in that case to remedy the reasons for MCDCS’s involvement so that the children could be returned to her care, and that Mother had

¹ M.T.’s biological father, T.W. (“Father”), voluntarily relinquished his parental rights to M.T. and consented to the child’s adoption during the underlying proceedings. Father does not participate in this appeal. We therefore limit our recitation of the facts to those pertinent solely to Mother’s appeal.

“mental health issues that hinder her ability to appropriately care for her child[ren].” Ex. p. 2.

M.T. was adjudicated a CHINS following a hearing in June 2009. The juvenile court thereafter proceeded to disposition. In its dispositional order, the juvenile court formally removed M.T. from Mother’s care and custody and entered a Participation Decree directing Mother to participate in a variety of services in order to achieve reunification with her child. These services included, among other things, parenting classes, home-based counseling, substance abuse treatment and any recommended follow-up program, random drug screens, mental health counseling, and non-offender sexual abuse classes. Mother was also directed to obtain stable and suitable housing and income, including public assistance, adequate to support all members of the household.

Mother, who has been diagnosed with mild mental retardation, a cognitive delay, post traumatic stress disorder arising from her molestation as a child, and post-partum depression following M.T.’s birth, was inconsistent in participating in services from the beginning of the CHINS case. Mother attended four in-home visits with M.T. during the first six weeks following M.T.’s birth. However, once the visits were transferred to a visitation facility, Mother only attended two scheduled visits with M.T. Mother’s visitation privileges were eventually suspended due to her non-participation, and the last time she saw M.T. was in November 2009.

Mother also refused to take her prescription depression medication despite suffering with ongoing depression and expressing thoughts of suicide. In addition, although she met regularly with St. Vincent New Hope home-based counselor Monica

Brock for approximately eight months to work on issues such as managing her depression, caring for herself and a baby, and overcoming her fear of bus transportation, Mother made minimal progress with these goals and the service was eventually closed as unsuccessful. Mother also refused to participate in a non-offender sexual abuse program, completed only two job applications during the CHINS case and never submitted them to the prospective employers, and was denied SSI disability benefits. In December 2009, Mother was hospitalized after expressing thoughts of suicide.

MCDCS filed a petition seeking the involuntary termination of Mother's parental rights to M.T. in December 2009. An evidentiary hearing on the termination petition was later held on May 18, 2010. During the termination hearing, evidence was presented indicating that although she had applied for four or five jobs, Mother remained unemployed. In addition, Mother was living rent-free in a federally subsidized apartment and was receiving food stamps, but she still required financial assistance from family members and church friends to pay her utilities. Mother also admitted that she still was not taking any medication to treat her ongoing depression. At the conclusion of the termination hearing, the juvenile court took the matter under advisement and issued an order terminating Mother's parental rights to M.T. several weeks later. Mother now appeals.

Discussion and Decision

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). When reviewing the termination of parental rights, we will neither reweigh

the evidence nor judge witness credibility. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* Moreover, in deference to the juvenile court's unique position to assess the evidence, we will set aside a 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*.

Here, in terminating Mother's parental rights, the juvenile court entered specific findings and conclusions at Mother's request. When a juvenile court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Id.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the juvenile court's decision, we must affirm. *L.S.*, 717 N.E.2d at 208.

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*. These parental interests, however, are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. *Id.* In addition, although the right to raise one's own child should not be terminated solely because there is a better

home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *K.S.*, 750 N.E.2d at 836.

In Indiana, before an involuntary termination of parental rights may occur, the State is required to allege and prove, among other things:

- (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

Ind. Code § 31-35-2-4(b)(2).² “The State’s burden of proof in termination of parental rights cases is one of ‘clear and convincing evidence.’” *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code § 31-37-14-2). If the juvenile court finds the allegations in a petition described in section 4 of this chapter are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

Mother challenges the sufficiency of the evidence supporting the juvenile court’s findings as to both prongs of subsection (b)(2)(B) of the termination statute cited above. *See* Ind. Code § 31-35-2-4(b)(2). Specifically, Mother asserts that “[m]ost of the conditions which prompted removal of M.T. either had been rectified by the time of trial or were likely to be remedied if [Mother] could overcome her treatable depression.” Appellant’s Br. p. 8. Mother therefore contends she is entitled to reversal because the juvenile court’s termination order was “premature.” *Id.*

² Indiana Code section 31-35-2-4 was amended by Pub. L. No. 21-2010, § 8 (effective March 12, 2010). The changes to the statute became effective after the filing of the termination petition involved herein and are not applicable to this case.

We begin our review by observing that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, to properly effectuate the termination of parental rights, the juvenile court need only find that one of the two requirements of subsection (b)(2)(B) has been established by clear and convincing evidence. *See L.S.*, 717 N.E.2d at 209. Because we find it to be dispositive under the facts of this case, we only consider whether MCDCS established, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in M.T.'s removal or continued placement outside of Mother's care will not be remedied. *See Ind. Code § 31-35-2-4(b)(2)(B)(i)*.

A juvenile 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, 512 (Ind. Ct. App. 2001), *trans. denied*. The juvenile court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.* Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. Moreover, 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, 242 (Ind. Ct. App. 2007).

In determining there is a reasonable probability that the conditions leading to M.T.'s removal and/or continued placement outside Mother's care will not be remedied,

the juvenile court made several pertinent findings regarding Mother's past and present inability to provide M.T. with a "safe, stable, and appropriate living environment." Appellant's App. p. 13. The juvenile court further observed that Mother has two older biological children who were also subject to CHINS proceedings and who were ultimately adopted by M.T.'s current foster family after Mother "made little progress" and ultimately failed to successfully complete nearly identical court-ordered reunification services as those ordered in the current case.³

Regarding Mother's mental health, the juvenile court specifically found Mother has "mental health issues that hindered her ability to appropriately care for [M.T]." *Id.* The court further found Mother was "depressed" throughout the duration of the underlying CHINS and termination cases, and, as a result, "had difficulty meeting her own needs," did "not make it to her own appointments," did not take prescribed medication, and had "difficulty getting up in the morning and doing daily tasks such as bathing and combing her hair." *Id.* at 14. The juvenile court also acknowledged Mother had been hospitalized in December 2009 after admitting to "some suicidal thoughts," but she had refused to take her prescribed depression medication. *Id.* at 15.

The juvenile court also found Mother, "by her own admission," rejected multiple offers of help from service providers to accompany her when using the local public transportation system in an attempt to help alleviate Mother's "fear of taking the bus" and facilitate Mother's attendance at scheduled visits with M.T. *Id.* Additionally, the juvenile court found Mother "never turned in her application for the IndyGo [O]pen

³ We observe that in the CHINS cases involving M.T.'s siblings, Mother voluntarily relinquished her parental rights to her two older children after M.T.'s birth.

[D]oor bus to come to her home and transport her to doctor's visits," and that due to "missed visits," the CHINS court suspended Mother's visitation privileges. *Id.* As a result, Mother's last visit with M.T. was in November 2009. *Id.* Finally, the juvenile court found Mother never obtained employment and never participated in non-offender sexual abuse classes.

Based on these and other findings, the juvenile court concluded as follows:

There is a reasonable probability that the conditions that resulted in the removal of [M.T.], or the reasons for continued placement outside the home of [Mother], . . . will not be remedied. [Mother] has experienced suicidal thoughts[,] and at times struggles to complete daily tasks but does not follow through with mental health treatment for her depression. [Mother] has failed to complete her services[,] and she was unable to visit [M.T.] on a consistent basis, resulting in the suspension of her visits. This is the same pattern of behavior that [Mother] exhibited in the CHINS case involving [M.T.'s older siblings].

Id. at 16. A thorough review of the record reveals that these findings are supported by abundant evidence.

Testimony from various caseworkers and service providers makes clear that despite a wealth of services available to Mother, her circumstances remained largely unchanged. During the termination hearing, home-based counselor Brock testified Mother exhibited signs of depression throughout the case such as "lack of motivation, difficulty getting out of bed, . . . [o]verall depressed mood, not wanting to leave the home," and "feelings of hopelessness [and] helplessness." Tr. p. 41. Brock also acknowledged that Mother had been "unable to meet her own personal needs," including going to medical appointments, taking her medication as prescribed, participating in mental health treatment, and even daily tasks such as "getting up in the morning and

working on her goals.” *Id.* at 45-46. Brock further testified that Mother had made “minimal progress with her goals” and had refused multiple offers of help by Brock to ride the bus with Mother in order to help Mother work through her fears of using the public transportation system. *Id.* at 49. When asked whether she could recommend reunification, Brock answered in the negative, stating she remained concerned about Mother’s untreated mental health needs, inability to care for herself, lack of contact and bond with M.T., and history of not being able to care for her children.

Similarly, St. Vincent New Hope home-based case manager Christa Robinson, along with MCDCS case managers Julia Sautter and Andrea Marks, all recommended termination of Mother’s parental rights. Robinson informed the juvenile court that Mother had accomplished “very little” during their weekly meetings, was unable to demonstrate an ability to “meet her own needs” throughout the case, and that home-based services were ultimately discontinued as “unsuccessful.” *Id.* at 74, 77. Similarly, when asked whether she had any concerns about Mother’s ability to parent at the time she stopped working with Mother, Sautter answered, “Yes, I did” *Id.* at 89. Sautter further explained she remained concerned about Mother’s refusal to address her depression issues, lack of motivation, difficulty with daily functioning, and absence of regular contact and parental bond with M.T. Sautter also confirmed that Mother had failed to complete a majority of the court-ordered services in the prior CHINS case involving M.T.’s older siblings and had ultimately signed consents for their adoption. Marks’s testimony echoed that of Robinson’s and Sautter’s, confirming Mother had failed to successfully complete all court-ordered dispositional goals despite a wealth of

services being available to her and that Mother had never demonstrated a willingness or ability to parent any of her children.

Finally, Mother's own testimony during the termination hearing further supports the juvenile court's findings. Mother confirmed that she had not been employed "since '01 or '02" and that her "church family" was helping her pay her utility bills. *Id.* at 5. Mother also admitted MCDCS had not only provided her with bus passes, but that her home-based counselors had even offered to accompany Mother on the bus and show her how to get to the visitation facilities on several different occasions, but that she had refused to "take their offer." *Id.* at 7. In addition, Mother testified that she was still not taking any depression medication despite having ongoing issues with depression. *Id.* at 8. When asked why she never took her medicine, Mother replied, "I wasn't taking it because I didn't think it would help. So[,] I just deal with it. Deal with the depression." *Id.* at 18.

Based on the foregoing, we conclude that MCDCS presented clear and convincing evidence to support the juvenile court's findings and ultimate determination that there is a reasonable probability the conditions resulting in M.T.'s removal and continued placement outside Mother's care will not be remedied. Mother's arguments to the contrary amount to an invitation to reweigh the evidence, which we may not do. *D.D.*, 804 N.E.2d at 264.

Affirmed.

BAKER, J., and BARNES, J., concur.