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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF:	)	
J.T.J., Minor Child, and KRISTIN F.,	)	
Appellants,	)	
vs.	)	No. 02A03-1006-JT-313
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Charles F. Pratt, Judge
Cause No. 02D08-0904-JT-117

February 4, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

K.F. ("Mother") appeals the involuntary termination of her parental rights to her child, J.J., claiming there is insufficient evidence supporting the trial court's judgment. We affirm.

Facts and Procedural History

Mother is the biological mother of J.J., born in April 2007. In April 2008, the Indiana Department of Child Services, Allen County ("ACDCS"), received a referral alleging Mother had left then one-year-old J.J. alone and unsupervised in a motel room for at least forty-five minutes.[1] This was the third referral ACDCS had received involving the family in approximately one month.[2] After investigating the matter, ACDCS took J.J. into emergency protective custody and placed the child in licensed foster care.

Following a hearing in May 2008, J.J. was adjudicated a child in need of services ("CHINS"), and the trial court thereafter proceeded to disposition. The court's dispositional order formally removed J.J. from Mother's care and directed Mother to successfully complete a variety of services previously ordered under a Parent Participation Plan in order to achieve reunification with J.J. Specifically, Mother was

[1] J.J.'s then two-year-old half-sibling, C.D., was also left alone in the hotel room. C.D. was later placed with his biological father and is not subject to the trial court's termination order. In addition, J.J.'s alleged biological father, A.J. ("Father"), whose parental rights were also terminated by the trial court's May 2010 judgment, does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother's appeal of the trial court's judgment terminating her parental rights to J.J.

[2] The two prior referrals involved allegations of domestic battery between Mother and Father in the presence of the children.

directed to, among other things: (1) refrain from all criminal activity; (2) maintain clean, safe, and appropriate housing; (3) participate in a drug and alcohol assessment with Caring About People, Inc. ("CAP") and follow all resulting recommendations; (4) undergo a psychological examination and follow all resulting recommendations; (5) enroll in and successfully complete home-based services with the Park Center Placement Diversion Program ("Park Center"); and (6) consistently visit with J.J. as directed by ACDCS.

A few weeks later, Mother was incarcerated on charges arising from a domestic dispute with Father and remained incarcerated from June through September 2009. Upon her release, Mother began participating in some services and exercising regular visitation with J.J. Mother failed, however, to improve her overall ability to care for J.J. Although Mother participated in weekly sessions with Park Center home-based service provider Lindsay Souder ("Souder") from January 2009 through March 2009 to work on goals such as obtaining stable housing and improving her communication skills, Mother struggled to retain the information she had been taught. In addition, Mother never obtained stable housing, but instead bounced between being living with various family members, shelters and/or hotels.

Mother also participated in a psychological evaluation with Park Center psychologists Dr. Ina Carlson and Dr. Tabitha Carlson.[3] Mother was diagnosed with

[3] At the time of the assessment of Mother, Dr. Tabitha Carlson (no relation to Dr. Ina Carlson) was completing the final supervised clinical hours necessary to obtain her psychology license and was working under the direct supervision of Dr. Ina Carlson.

delusional disorder, major depressive disorder, and alcohol dependency. Testing also revealed that Mother has a full scale IQ score of 87, placing her in the low average range of intellectual functioning, and that there was an imbalance between Mother's cognitive and perceptive abilities, possibly due to either prolonged alcohol usage or brain injury.

In April 2009, Mother was arrested for violating the terms of her probation by violating a no-contact order she had previously obtained against Father. She remained incarcerated until October 2009. In the meantime, the ACDCS filed a petition seeking the involuntary termination of Mother's parental rights. A three-day evidentiary hearing on the termination petition commenced in October 2009 and concluded in February 2010. During the termination hearing, the ACDCS presented evidence showing Mother was unemployed, homeless, and living in a shelter that did not allow children. In addition, case managers and service providers informed the court that Mother continued to have a relationship with Father despite the couple's extensive history of domestic violence, that Mother never participated in the recommended psychiatric examination, and that she never successfully completed home-based counseling services. On May 7, 2010, the trial court entered its judgment terminating Mother's parental rights to J.J. Mother now appeals.

Discussion and Decision

We begin our review by acknowledging that "[t]he 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, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. In re K.S., 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Termination of a parent-child relationship is proper where a child's emotional and physical development is threatened. Id. 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. Id. at 836.

Before an involuntary termination of parental rights can occur in Indiana, 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; and
>
> (C) termination is in the best interest of the child; and
>
> (D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2) (2009).[4] The State's burden of proof for establishing these allegations in termination cases "is one of 'clear and convincing evidence.'" In re G.Y., 904 N.E.2d 1257, 1260-1261 (Ind. 2009) (quoting Ind. Code § 31-37-14-2). If the court finds that the allegations in a petition described in section 4 of this chapter are true, the

[4] Indiana Code section 31-35-2-4 was amended by Pub. L. No. 21-2010, § 8 (eff. March 12, 2010). Because the changes to the statute became effective in March 2010 following the filing of the termination petition herein, they are not applicable to this case.

court *shall* terminate the parent-child relationship. Ind. Code § 31-35-2-8(a). Mother challenges the sufficiency of the evidence supporting the trial court's findings as to subsections (b)(2)(B) through (D) of the termination statute cited above.

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 at 836. When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. 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 that are most favorable to the judgment. Id. Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the court's 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 trial court entered specific factual findings and conclusions. When a trial court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. Bester v. Lake Cnty. 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.

I. Conditions Remedied/Threat

In asserting that the trial court's judgment is not supported by clear and convincing evidence, Mother complains that the trial court's findings concerning her visits with J.J. improperly relied on SCAN restoration worker and visitation supervisor Nell Saul's ("Saul") testimony rather than Kassandra Fuchs's ("Fuchs") testimony because Fuchs supervised significantly more visits than Saul. Mother further asserts the trial court's findings failed to mention that Mother's visitation with J.J. "continued faithfully" following her release from incarceration up until the time of the termination hearing. Appellant's Br. p. 13. In addition, Mother claims the court's specific finding number twelve erroneously states that the CAP home-based services were terminated because she moved to Charis House, rather than because she had "successfully completed substance abuse treatment," and that specific finding number thirteen, although accurate, is not a "complete" summary of all the evidence regarding her participation in the Park Center program. Id. at 13-14.

Initially, we observe 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 trial 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. Here, the trial court determined that both elements had been established. Because we find it to be dispositive under the facts of this case, however, we shall only discuss whether the ACDCS established, by clear and convincing evidence, that there is a reasonable

probability the conditions resulting in the J.J.'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).

When determining whether there is a reasonable probability that the conditions resulting in a child's removal or continued placement outside the family home will not be remedied, 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 evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (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. 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 Cnty. Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. The trial court may also consider any services offered to the parent by the local Indiana Department of Child Services office (here, the ACDCS) and the parent's response to those services as evidence of whether conditions will be remedied. Id. Moreover, the ACDCS 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).

Here, in determining that there is a reasonable probability the conditions resulting in J.J.'s removal and continued placement outside of Mother's care will not be remedied, the trial court made several findings regarding (1) Mother's persistent and ongoing

housing instability, (2) unresolved mental health issues, including delusional disorder and major depressive disorder, and (3) failure to complete court-ordered services, due in large part to repeated periods of incarceration during the underlying proceedings. In addition, the trial court found:

> 12. [Mother] was referred . . . for home[-]based services with CAP case[]manager Tawny Loveless. At the time[,] [Mother] was residing in a hotel. Her treatment plan called for [Mother] to refrain from substance abuse, to resolve he[r] legal issues, to secure employment, to secure housing, and to reunify with her children. [Mother] successfully completed Phase I of that program by remaining drug and alcohol free. Because [Mother] had moved into a local shelter facility, the Charis House, the referral for CAP's home[-]based services was terminated.
>
> 13. [Mother] was also referred to therapeutic home[-]based services through Park Center. Case[]manager Lindsay Souder began meeting with [Mother] in January 2009. Issues to be resolved included parenting skills, communication skills, anger management and coping skills. [Mother] and the case[]manager met ten to fifteen times until [Mother] was jailed in April 2009. From case[]manager Souder's testimony, the Court finds that [Mother] had not successfully completed her goal to address communication skills and had not secured housing. [Mother] did not demonstrate an ability to retain the information she was taught.

Appellant's App. p. 86. The trial court also found Mother's "delusional thinking may adversely impact visitations with the child." Id.

A thorough review of the record leaves us satisfied that clear and convincing evidence supports these findings, which in turn support the trial court's ultimate decision to terminate Mother's parental rights to J.J. At the time of the termination hearing, Mother's circumstances remained largely unchanged. She remained unemployed, lived

in a homeless shelter that could not accommodate children, had failed to submit to three scheduled appointments for the recommended psychiatric evaluation, and had never successfully completed home-based services. In addition, testimony from various caseworkers and service providers makes clear that Mother remained incapable of providing J.J. with a safe and stable home environment.

During the termination hearing, Saul and Fuchs both confirmed Mother consistently visited with J.J. when she was not incarcerated. However, Saul informed the trial court that the three supervised visits she observed in October and November 2008 "did [not] go well," and that J.J. "would cry and refuse to interact with [Mother]" during the first half-hour of every visit. Tr. p. 20. Fuchs likewise acknowledged Mother had "perfect attendance" at scheduled visits when not incarcerated, however, Fuchs reported that Mother "appeared tired most days," and further testified that during one visit, Mother indicated she was "feeling suicidal." Id. at 27-28.

CAP home-based service provider Tawny Loveless ("Loveless") testified that Mother had consistently tested negative on random drug screens and had therefore passed Phase I of the program. Loveless explained, however, that Mother's completion of Phase I was based solely on Mother's clean drug screens, and did not reflect Mother's progress on any other goals, such as obtaining stable housing and employment and/or resolving her legal issues. Although Loveless confirmed that Mother's referral to CAP was discontinued by the ACDCS in March 2009 due to Mother's lack of positive drug screens, Loveless also indicated that services were discontinued because Mother "was

going to be committed to the [Charis House] program . . . and said that she had a goal of staying there." Id. at 63. Souder testified that although she had met and worked with Mother "ten to fifteen" times prior to Mother's April 2009 incarceration on issues such as "parenting skills, communication skills, community resources, [and] stable housing," Mother did "not [make] very much progress" and was unable to retain the information she had been taught from week to week. Id. at 170, 173.

Regarding Mother's mental health issues, Dr. Ina Carlson and Dr. Tabitha Carlson testified that Mother had been diagnosed with delusional disorder, severe major depressive disorder, and alcohol dependency. Dr. Ina Carlson further testified that Mother had significant impairments with regard to language and immediate memory that would "definitely" impact her parenting ability. Id. at 88. She also stated Mother had reported "a great deal of problems" relating to her ability to function, including "a lot of past alcohol[] abuse," social anxiety, a "great deal of paranoia," and "a lot of delusional thinking." Id. at 88-89. Based on their assessment, she and Dr. Tabitha Carlson both recommended Mother undergo a psychiatric evaluation to rule out the possibility of "alcohol induced persistent dementia" and to see if "psychotropic medication [might] be helpful for her." Id. at 91, 111. The record reveals, however, that Mother had failed to do so by the time of the termination hearing, despite having three separately scheduled appointments for psychiatric evaluation.

Finally, ACDCS case manager Amber Hill-Roddy ("Roddy") informed the trial court of Mother's history of domestic violence with Father and prior involvement with

the ACDCS. Roddy also confirmed Mother had "moved multiple times" throughout the underlying proceedings and was currently living in a shelter for homeless women that would "not be appropriate" for J.J. Id. at 182, 185. When asked about Mother's participation in court-ordered services, Roddy acknowledged that Mother did participate in a majority of the services from January 2009 until April 2009, but characterized her overall participation in services as "not in substantial compliance," explaining that Mother had essentially just "gone through the motions" rather than actually benefit from the services. Id. at 188.

As noted earlier, 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. D.D., 804 N.E.2d at 266. Moreover, where a parent's "pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve." In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). After reviewing the record, we conclude that the ACDCS presented clear and convincing evidence to support the trial court's findings and ultimate determination that there is a reasonable probability the conditions leading to J.J.'s removal or continued placement outside of Mother's care will not be remedied. Mother's arguments on appeal amount to an invitation to reweigh the evidence, and this we may not do. D.D., 804 N.E.2d at 265.

II. Best Interests

We next consider Mother's assertion that termination of the parent-child relationship is not in J.J.'s best interests. We are ever mindful that, when determining what is in a child's best interests, a trial court is required to look beyond the factors identified by the Indiana Department of Child Services and to look to the totality of the evidence. McBride v. Monroe Cnty. Office of Family & Children, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, however, the court must subordinate the interests of the parent to those of the child. Id. Moreover, we have previously explained that recommendations from the case manager and child advocate that parental rights should be terminated support a finding that termination is in the child's best interests. Id.

Here, in addition to the findings set forth previously, the trial court also found, "the child's [GAL] has concluded that [J.J.'s] best interests are served by the termination of parental rights. In support of her conclusion, the [GAL] points to the fact that neither parent has been able to secure and maintain safe[,] stable housing . . . ." Appellant's App. p. 87. The trial court thereafter concluded that termination was in J.J.'s best interest stating J.J. had "resided outside [Mother's] care for more than twenty months," that "through termination of the parent child relationship [J.J.] can be placed in a safe [and] permanent home," and because a "sustainable permanency cannot be secured with [Mother], the child's best interests are served by granting the petition to terminate . . . ." Id. at 88. These findings and conclusions, too, are supported by the evidence.

Both case manager Roddy and GAL Emily Szaferski recommended termination of Mother's parental rights as in J.J.'s best interests. In so doing, Szaferski testified that

Mother's history of domestic violence and housing instability had been an "overriding" and "overwhelming concern" throughout the underlying proceedings and that neither issue had been appropriately addressed by Mother. Tr. p. 211. Szaferski further testified that there had been no indication Mother had received "any substantial benefit" from participating in services and that Mother was currently not in a position to provide J.J. with a stable home environment "in any way[,] shape[,] or form." Id. at 215. In addition, Dr. Tabitha Carlson informed the trial court that she believed Mother's failure to participate in the recommended psychiatric treatment would "significantly" impact her ability to provide daily care and supervision for J.J. and reiterated that she believed Mother "really should be followed and monitored by a psychiatrist." Id. at 113.

A court need not wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. In re E.S., 762 N.E.2d 1287 (Ind. Ct. App. 2002). Based on the totality of the evidence, including Mother's failure to complete and benefit from a majority of the trial court's dispositional orders and her untreated mental health issues, coupled with the testimony from case manager Roddy and GAL Szaferski recommending termination of the parent-child relationship, we conclude that the trial determination that termination is in J.J.'s best interests is supported by the evidence. See, e.g., In re A.I., 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding that testimony from child's GAL regarding need for permanency and family case manager recommending termination, coupled with evidence that conditions causing removal will

not be remedied, constitutes sufficient evidence to support termination of parental rights), trans. denied.

III. Satisfactory Plan

Finally, we consider whether sufficient evidence supports the trial court's determination that the ACDCS has a satisfactory plan for the future care and treatment of J.J. Indiana Code section 31-35-2-4(b)(2)(D) provides that before a trial court may terminate a parent-child relationship, it must find there is a satisfactory plan for the future care and treatment of the child. Id.; see also D.D., 804 N.E.2d at 268. It is well-established, however, that this 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 parent-child relationship is terminated. Id. The ACDCS's plan is for J.J. to be adopted by the child's current, pre-adoptive foster parents. This plan provides the trial court with a general sense of the direction of J.J.'s future care and treatment. The ACDCS's plan is therefore satisfactory.

Conclusion

A thorough review of the record leaves us satisfied that clear and convincing evidence supports the trial court's findings, which in turn support the court's ultimate decision to terminate Mother's parental rights to J.J. We therefore find no error.

Affirmed.

FRIEDLANDER, J., and MAY, J., concur.