

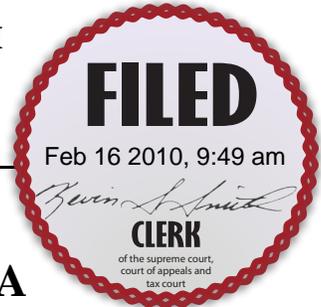
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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF:)
C.B., B.T., and R.A.,)

R.C.,)
Appellant,)

vs.)

THE INDIANA DEPARTMENT OF)
CHILD SERVICES,)

Appellee.)

No. 57A03-0907-JV-341

APPEAL FROM THE NOBLE SUPERIOR COURT
The Honorable Michael J. Kramer, Judge
Cause No. 57D02-0810-JT-17
57D02-0810-JT-18
57D02-0810-JT-19

February 16, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BARNES, Judge

Case Summary

R.C. (“Mother”) appeals the termination of the parent-child relationship with three of her children, C.B., B.T., and R.A. We affirm.

Issues

Mother raises two issues, which we restate as:

- I. whether evidence of Department of Child Services (“DCS”) involvement with the family in another county from 2002 to 2006 was relevant to this termination proceeding; and
- II. whether there is sufficient evidence to support the termination of her parental rights.

Facts

Mother has eight children. Beginning in 2002, DCS was involved with Mother and her family in Blackford County. DCS had contact with Mother again in 2004, 2005, and 2006 in Blackford County. Mother moved to Noble County in 2006. On May 22, 2007, DCS filed petitions alleging that C.B., B.T., and R.A. were children in need of services (“CHINS”). During the summer of 2007, Mother participated in “intensive family preservation.” Tr. p. 85. On August 2, 2007, the trial court authorized the termination of the wardship and CHINS status of C.B., B.T., and R.A.

On August 24, 2007, the trial court authorized the detention of all eight children based on allegations that four of the children were infected with “MRSA” and were not receiving proper care and allegations that Mother had struck one of the children on the

head with a broom handle. App. p. 16. On August 28, 2007, DCS filed another petition alleging that C.B., B.T., and R.A. were CHINS. On December 31, 2007, the trial court determined the children were CHINS and ordered Mother to submit to a psychiatric evaluation and follow all recommendations, complete parenting classes, provide financial support for the children, maintain a safe residence, and participate in supervised visitation with the children. Mother was later ordered to participate in family counseling.

On October 23, 2008, DCS filed petitions to terminate the parent-child relationship between Mother and C.B., B.T., and R.A.¹ On May 28, 2009, the trial court held a hearing on DCS's petition to terminate the parent-child relationships and admitted evidence of DCS's involvement with the family in Blackford County. On June 1, 2009, the trial court terminated Mother's parental rights to C.B., B.T., and R.A. The trial court concluded in part:

5. There is a reasonable probability that the conditions that resulted in the removal of the children will not be remedied because:
 - a. [Mother] has failed to comply with the order of the court,
 - i. Mother failed to regularly attend counseling sessions,
 - ii. Mother failed to regularly attend visitation,
 - iii. Mother failed to make progress or benefit from the services that were provided,

¹ Mother's other five children were not part of this termination proceeding, and the children's fathers are not involved in this appeal.

- iv. Mother failed to make any progress or gain any insight from the counseling sessions she attended, and
- v. Mother has not shown that she will provide a safe home for the children.

* * * * *

- 6. The continuation of the parent-child relationships pose threats to the well-being of the children because:
 - a. They each suffer from various emotional disorders,
 - b. Mother has not shown the ability to care for the problems of their children or the desire to acquire adequate skills to care for their children,
 - c. Mother failed to regularly visit the children which increased the emotional disturbance of at least one child,
 - d. the children have a need to remain together, and
 - e. their need for stability, both physical and emotional, cannot be met by their parents, collectively or individually.
- 7. Termination of the parent-child [sic] is in the best interests of each of the children because:
 - a. The parents are not able and will not be able to adequately care for the needs of the children, individually or collectively,
 - b. the lack of stable home environment will further harm or delay the treatment of the children, and
 - c. the children need permanency, which the parents can [sic] provide.

App. pp. 19-20. Mother now appeals.

Analysis

I. Admission of Evidence

Mother argues that the trial court improperly admitted evidence of DCS's involvement with the family from 2002 to 2006 in Blackford County because it was irrelevant. Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Ind. Evidence Rule 401. "We review the trial court's ruling on the admission of evidence for an abuse of discretion." Decker v. Zengler, 883 N.E.2d 839, 845 (Ind. Ct. App. 2008), trans. denied.

As Mother explains, the 2007 CHINS petition was not based on events that occurred from 2002 to 2006 in Blackford County. Nevertheless, evidence of Mother's involvement with DCS beginning in 2002 tends to show that the conditions resulting in the children's removal from Mother's home will not be remedied. See C.T. v. Marion County Dept. of Child Services, 896 N.E.2d 571, 578, (Ind. Ct. App. 2008) ("The court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child."), trans. denied. It also tends to show that, although Mother has been offered extensive services over the years, she still cannot provide an adequate home environment for her children. Mother has not established that the trial court abused its discretion in admitting this evidence.

II. Sufficiency of the Evidence

Mother also argues that there is not sufficient evidence to support the termination of her parental rights. “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) (2008).²

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.

Mother argues the trial court erroneously concluded that she will not provide a safe home for the children. In support of this argument, Mother points to evidence that the three bedroom, two bathroom trailer she had been living in was clean and safe. Notwithstanding this evidence, this case involves allegations of sexual abuse against the children by Mother's boyfriends and physical abuse against the children by Mother and her boyfriends. The evidence showed that, at the time of the termination hearing, Mother was living with a boyfriend who had not completed a background check as required by

² Effective July 1, 2009, subsection (b)(2)(A)(iii) of this statute was reworded slightly. See P.L. 131-2009 § 65. We quote the version of the statute in effect at the time of the proceedings in this case.

DCS. This boyfriend was also described as a “horrible alcoholic,” who had recently overdosed in Mother’s home. Tr. p. 133. Even if the physical home improved, a police officer testified that four calls had been made to the Andrews Police Department in late 2008 regarding incidents at Mother’s home. There is sufficient evidence to support the trial court’s finding that Mother cannot provide a safe home for the children.

Mother also claims the trial court did not take into consideration the fact that she attempted to improve her financial situation by applying for and receiving social security disability benefits, that she accepted responsibility for the battery of one of her other children by pleading guilty and completing probation, that she completed a psychiatric evaluation, that she participated in counseling and home-based services, and that she completed parenting classes. Mother also points out that she had transportation and communication issues, making it difficult to keep her appointments. She goes on to argue that the trial court should have considered the fact that, at the time of the termination hearing, the parent-child relationship with her five other children had not been severed.

Although the record supports these assertions, it was a task for the trial court, not us, to weigh the evidence. The evidence favorable to the trial court’s judgment shows that, even after being offered extensive home-based services in 2007, there had been a decrease in Mother’s supervision of the children, a decrease in her parental capability, a decrease in the children’s safety, and a decrease Mother’s interactions with the children. After the children were removed from Mother’s custody, Mother attended only eight

counseling sessions in a twenty-nine week period, and Mother did not consistently participate in visitation with the children.

Most significantly, witnesses repeatedly expressed concerns about Mother's relationships with her boyfriends and the children. There was evidence of sexual and physical abuse between Mother's boyfriends and the children. A witness explained that one of the children "hated her mom because she said all [Mother] does is hump and switch." Id. at 129-30. As one counselor explained:

we really poured in a lot of time to help [Mother] to be able to manage her home and her children and . . . she was not able to do it and she gave up the uh, she seemed to be more interested in finding new boyfriends than she did in the children

Id. at 114. There is no evidence to suggest that Mother had improved her relationships with her boyfriends or was able or willing to protect the children from her boyfriends. DCS presented clear and convincing evidence that there is a reasonable probability that the conditions that resulted in the children's removal from Mother's home will not be remedied.³

To the extent that Mother argues there is insufficient evidence that the termination of the parent-child relationship is in the children's best interests, one witness testified that unless the parent-child relationship is terminated the children "don't have permanency, there's always a fear that they're going to be taken again." Id. at 48. This same witness testified that it was her opinion that termination of the parent-child relationship was in the

³ We need not address the trial court's conclusion 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. Thus, DCS was not required to prove both. See Bester, 839 N.E.2d at 148 n.5.

children’s best interests and that the children’s current placements were “more stable.” Id. at 41. She also stated that the children “should be adopted into a permanent home and they need to get on with their lives” Id. at 45. Given the totality of the circumstances, there is clear and convincing evidence that the termination of the parent-child relationship is in the children’s best interests.

Conclusion

The evidence concerning the Blackford County DCS’s involvement with the family beginning in 2002 was relevant, and there is sufficient evidence to support the termination of the parent-child relationship. We affirm.

Affirmed.

MATHIAS, J., and BROWN, J., concur.