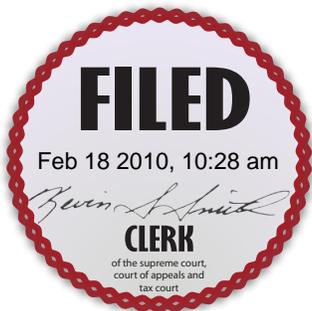


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEY FOR APPELLEE:

BARBARA S. BARRETT
Evansville, Indiana

KIMBERLY NIGHTINGALE
Department of Child Services
Evansville, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF)
Jo.D. AND Ja.D., Minor Children,)
)
Je.D., Mother,)
)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
Appellee-Petitioner.)

No. 82A01-0905-JV-245

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Brett J. Niemeier, Judge
Cause Nos. 82D01-0810-JT-101, 82D01-0810-JT-102

February 18, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

J.E. (“Mother”) appeals the involuntary termination of her parental rights to her children, Jo.D. and Ja.D., claiming there is insufficient evidence to support the judgment. We affirm.

FACTS AND PROCEDURAL HISTORY

Jo.D. was born October 19, 2005, and Ja.D was born May 17, 2007. In September 2007 the Vanderburgh County office of the Indiana Department of Child Services (“VCDCS”) received a referral alleging Mother was neglecting her children. The referral indicated police had been dispatched the night before to the home on a domestic dispute call.

When Officer Sloat arrived, Mother appeared to be intoxicated, was slurring her words, and was unsteady on her feet. Officer Sloat saw Mother permit Jo.D., who was two years old at the time, to leave the home unsupervised and put cigarette butts in his mouth. Mother told Officer Sloat she had taken two Lortabs and one Klonopin earlier that evening.¹ She said the children’s biological father lived with them and constantly “beat on her.” (Appellee’s App. at 27.) The children’s paternal grandmother arrived shortly after Officer Sloat and told him Mother was a drug addict.

Officer Sloat determined Mother was in no condition to care for the children and allowed Grandmother to take the children to her home so Mother could “sleep off” the effects of the medications. (*Id.* at 28.) Mother refused to stay inside her home as instructed by Officer Sloat and continued to cause a disturbance. She was arrested for

¹ Lortab is a narcotic pain medication and Klonopin is often used as an anti-anxiety medication. Both require a prescription and can cause side effects such as dizziness, drowsiness, and unsteadiness.

disorderly conduct.

On receiving the referral, VCDCS caseworker Kari Crane initiated an investigation. Mother provided a valid prescription for the Lortab and Klonopin and she told Crane that Father had a history of physically abusing her. Father acknowledged shoving Mother during family altercations, but denied hitting her. Crane decided to offer Mother and Father home-based services through an Informal Adjustment.² Mother and Father agreed to participate and were referred for counseling, random drug screens, and substance abuse evaluations.

During the Informal Adjustment, Mother made little progress. She began participating in a drug treatment program in 2007 at Stepping Stone, but was discharged when she would not submit to a drug screen after appearing intoxicated and falling asleep during a therapy session. Neither would she consistently submit to random drug screens. On other occasions, Mother tested positive for alcohol and prescription medications for which she was unable to provide a prescription.

Mother's participation in in-home therapy was likewise sporadic, and she did not follow the recommendation of her home-based therapist, Ray Graham, to pursue mental health treatment. Graham had recommended a psychiatric evaluation due to Mother's history of depression, anxiety, and other mental health issues. Home-based services were

² An Informal Adjustment is a negotiated agreement between a family and the Department of Child Services ("DCS") whereby the family agrees to participate in various services in an effort to prevent the child or children from formally being deemed children in need of services ("CHINS"). *See* Ind. Code ch. 31-34-8.

discontinued in January 2008 due to non-participation.

At the end of February 2008, Mother did not contact Crane and other service providers for approximately two-and-a-half weeks. During this time, the children were in Mother's custody, and VCDCS did not know where they were because Mother did not provide an updated address or phone number.

On March 12, 2008, Mother tested positive for opiates and Darvocet, for which she did not have a prescription. As Father's whereabouts were unknown, the children were taken into emergency protective custody the same day.

On March 13, 2008, the VCDCS alleged Jo.D. and Ja.D. were CHINS based on Mother's unresolved addiction to prescription medications, inability to properly supervise the children, and failure to provide the children with a safe and stable home environment. Mother admitted the allegations, and the children were adjudicated CHINS. A dispositional hearing was held on April 15, 2008, during which Mother agreed to abide by the terms of the parent participation plan. The trial court thereafter issued an order formally removing the children from Mother's care and incorporating the parent participation plan into the dispositional order.

The parent participation plan directed Mother to participate in a variety of services in order to achieve reunification with her children. She was to (1) participate in in-home therapy and parent aide programs, follow the recommendations of the therapist and parent aide, and demonstrate any knowledge obtained from these programs; (2) successfully complete parenting classes; (3) provide the children with adequate

supervision and a safe, nurturing, drug and alcohol free environment at all times; (4) submit to random drug screens; (5) attend, comply, and complete Drug Court if ordered to do so; (6) successfully complete substance abuse treatment; (7) participate in scheduled visits with the children; (8) obtain and maintain employment; (9) attend all court hearings; and (10) maintain regular contact with the VCDCS and inform caseworkers of any changes in address, phone number, employment, or household composition within twenty-four hours.

Mother's participation in court-ordered services continued to be inconsistent and she was generally non-compliant during the following months. Mother repeatedly failed to attend home-based counseling appointments and did not schedule a psychiatric evaluation at Southwest Indiana Mental Health Center. She had relapses with prescription medications and alcohol and was unsuccessfully discharged from the CHINS Drug Court program. She did complete a twelve-day residential drug treatment program, but did not complete the after-care portion of the program. Her relapses continued. Mother attended most of the scheduled supervised visits with the children when she was not incarcerated, but she often was late, tired, and unfocused, and she struggled with discipline issues.

On October 28, 2008, the VCDCS petitioned for involuntary termination of Mother's parental rights to Jo.D. and Ja.D. After a hearing, the trial court terminated

Mother's parental rights to both children.³

DISCUSSION AND DECISION

We apply 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). We do 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.* In deference to the trial 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*.

The trial court entered specific findings and conclusions. When a 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 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.*,

³ The trial court also terminated Father's parental rights, but he does not participate in this appeal.

666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. A trial court must subordinate the interests of the parents to those of the child, however, when evaluating the circumstances surrounding a termination. *K.S.*, 750 N.E.2d at 837. The right to raise one’s own child should not be terminated solely because there is a better home available for the child, but parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

“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), *reh’g denied*. To terminate a parent-child relationship, the State is required to allege and prove

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)(B) (2008).⁴

When determining whether there is a reasonable probability the conditions resulting in the children’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, while taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*.

However, the court must also “evaluate the parent’s habitual patterns of conduct to

⁴ Indiana Code § 31-35-2-4(b)(2)(B) is written in the disjunctive. It therefore requires the trial court to find only one of the two requirements of subsection 2(B) is established by clear and convincing evidence. *See L.S.*, 717 N.E.2d at 209.

determine the probability of future neglect or deprivation of the child.” *Id.* The court may consider a parent’s 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*. It may also consider the services offered to the parent by the county department of child services, and the parent’s response to those services. *Id.* A county department of child services is not required rule out all possibility of change; rather, it need establish only a reasonable probability that the parent’s behavior will not change. *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

Mother asserts the State “wholly failed to provide [her] with meaningful services[,] such as psychiatric care, or to meaningfully develop and engage in a plan to reunite [Mother] with her two (2) children.” (Appellant’s Br. at 32.) Mother acknowledges she “had addiction problems” in the past, but she asserts she has been “clean and sober for seventy days,” and she was “finally getting her life together” at the time of the termination hearing. (*Id.* at 29-30, 32.) Mother therefore contends the trial court erred in finding a reasonable probability the conditions resulting in the children’s removal will not be remedied.

In finding a reasonable probability the conditions resulting in the children’s removal or continued placement outside of Mother’s care would not be remedied, the trial court noted the many services offered to Mother and her lack of participation. During the Informal Adjustment, Mother was provided in-home therapy, random drug screens, and

counseling with the primary goals of helping Mother obtain sobriety and maintain a safe and stable home environment. When in-home therapy services ended in January 2008, Mother had not completed a substance abuse treatment program, had not submitted to multiple random drug screen requests, and had not contacted Southwestern Indiana Mental Health Center as recommended by Graham.

Mother had been provided with a parent aide to assist her with housing, employment, development of parenting skills, budgeting, supervised visits, and any other need that might arise, but when parent aide services were suspended in October 2008 “none of the goals set by Mother and the parent aide had been met.” (App. at 16.) Mother’s participation in random drug screens had been inconsistent, she relapsed to prescription medications and alcohol, and she was unsatisfactorily discharged from the Drug Court program in October 2008.

The trial court’s findings pertaining to visitation with Jo.D. and Ja.D. indicate Mother arrived late for visits on numerous occasions and often failed to provide appropriate supplies and necessities for the children. Mother often “appeared tired,” at times had “to be awakened during visits”; at other times her focus did not appear to be on the children and she would have to be “redirected to interact with the children.” (*Id.* at

16.) The trial court further found:

31. Mother had several periods of incarceration during the pending CHINS matters. . . . In August 2007, a charge was filed against Mother for minor consumption; a day later, she was charged with driving under the influence (DUI). Mother was offered the opportunity to complete a diversion program, but was not compliant with the program. Mother was

arrested on outstanding warrants in that case on her way to a visitation with the children in October of 2008. . . . Mother continued to be incarcerated on the first day of trial in the termination of parental rights case, but was released on February 13, 2009. Mother will not be sentenced in that matter until May of 2009, and it is possible that she could serve up to four (4) months in jail. Mother's visitation with the children was suspended in October 2008 following her incarceration. Periods of incarceration prevent Mother from providing appropriate supervision to the children. The fact that Mother has continued to make decisions that may lead to incarceration during the pending CHINS matters, such as failing to appear for court hearings and using substances which lead to her Intoxication indicate poor parenting decisions and place the children at risk.

32. Mother has overdosed on prescription medications several times, both intentionally and accidentally. These overdoses demonstrate the nature and severity of Mother's misuse of substances, as well as her need for both substance abuse treatment and mental health treatment

33. Mother's long term abuse of prescription medications and alcohol has affected her ability to provide for herself and her children in many ways. . . . Mother has been observed appearing intoxicated and unable to supervise her children while the children are in her care. Mother is unable to complete even small tasks such as filling out an application while under the influence of medications. Use of alcohol and prescription medications has been the direct source of incarceration for Mother on multiple occasions [D]uring her incarcerations, Mother has not been able to have contact or visitation with the children.

34. Mother has relapsed on prescription medications and alcohol multiple times during the pending CHINS matters. Mother most recently relapsed in November of 2008, just before her return to incarceration. This relapse occurred subsequent to Mother having previously been found in contempt of court twice during the CHINS matters and incarcerated as a result, and after the petitions to terminate her parental rights were filed.

35. As of the time of trial, Mother believes that she still has an addiction problem and mental health conditions that need to be addressed, but she has never followed through with treatment or assistance provided to her.

(*Id.* at 18-19.) The trial court concluded that because Mother had failed to successfully

comply “with any of the court orders and recommendations issued at disposition, there is a reasonable probability that the conditions that resulted in [the children’s] removal from, and continued placement outside the care and custody of [Mother] will not be remedied.” (*Id.* at 20.)

Clear and convincing evidence supports the findings and conclusion set forth above, which in turn support the decision to terminate Mother’s parental rights to Jo.D. and Ja.D. Despite a wealth of services available to her, Mother did not successfully complete a single dispositional goal for approximately two years. Because she did not participate in or successfully complete court-ordered services, particularly psychiatric counseling and substance abuse treatment, the record does not reflect Mother could provide the children with a safe, stable, and drug-free home environment at the time of the termination hearing.

“[T]he time for parents to rehabilitate themselves is during the CHINS process, prior to the filing of the termination petition.” *Prince v. Dep’t of Child Servs.*, 861 N.E.2d 1223, 1230 (Ind. Ct. App. 2007). Mother has demonstrated unwillingness to take the actions necessary to become capable of providing the children with the safe, stable, and drug-free home environment they need. At the time of the termination hearing, Mother was still unemployed, did not have stable living conditions, had not completed a substance abuse treatment program, had not visited with the children since October 2008, had not submitted to a psychiatric evaluation, and was awaiting sentencing on yet another alcohol-related offense.

We observed in *Matter of D.T.*, 547 N.E.2d 278, 286 (Ind. Ct. App. 1989), *reh'g denied, trans. denied*, that “children continue to grow up quickly; their physical, mental, and emotional development cannot be put on hold while [a] recalcitrant parent fails to improve the conditions that led to [the child] being harmed and that would harm [the child] further.” VCDCS presented clear and convincing evidence that there is a reasonable probability the conditions leading to the children’s removal or continued placement outside Mother’s care will not be remedied.

CONCLUSION

The trial court’s judgment is supported by clear and convincing evidence. Accordingly, we find no error.

Affirmed.

KIRSCH, J., and DARDEN, J., concur.