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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE TERMINATION OF THE)
PARENT-CHILD RELATIONSHIP OF)

L.S.,)

and)

A.S. (MOTHER),)

Appellant-Respondent,)

vs.)

THE INDIANA DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner.)

No. 02A03-1007-JT-385

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Thomas P. Boyer, Judge Pro Tempore
The Honorable Lori K. Morgan, Magistrate
Cause No. 02D08-0906-JT-167

February 22, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

A.S. (“Mother”) appeals the trial court’s termination of the parent-child relationship with her daughter, L.S., on the petition of the Allen County Department of Child Services (“DCS”). For our review, Mother raises two issues which we consolidate and restate as whether clear and convincing evidence supports the termination. Concluding clear and convincing evidence supports the trial court’s determination that there is a reasonable probability that the conditions resulting in L.S.’s removal and continued placement outside Mother’s care will not be remedied, we affirm.

Facts and Procedural History

L.S. was born in July 2008. At the time of her birth, both L.S. and Mother tested positive for cocaine. Upon her release from the hospital, L.S. was removed from Mother and placed in licensed foster care, where she has remained ever since.

In August 2008, L.S. was adjudicated a child in need of services (“CHINS”). L.S.’s medical providers diagnosed her with fetal alcohol syndrome and sensory processing disorder. In her first year of life, L.S. had difficulty feeding and gaining appropriate weight.

Her pediatrician referred her to a speech therapist to help with feeding, and to physical and occupational therapy. L.S. required physical therapy from November 2008 through the beginning of the termination hearing in December 2010. She suffered from weakness in her upper extremities, muscle imbalances in her neck, and general weakness in the left side of her body, which she could not use as well as the right side. Since April 2009, L.S. has also required occupational therapy to develop her fine motor skills and sensory skills. Her occupational therapist has worked with her foster parents to instruct them concerning L.S.'s physical environment and play routines, and testified it is important for L.S.'s caregiver to follow through consistently with directions. L.S. has continued to see a speech therapist regarding her feeding difficulties, and the speech therapist testified L.S. will continue to need such therapy in the foreseeable future.

In August 2008, the trial court issued a CHINS dispositional decree with a parent participation plan. The parent participation plan ordered Mother to, among other things, refrain from criminal activity; maintain appropriate housing at all times; cooperate with DCS by maintaining contact and attending case conferences as directed; notify DCS within forty-eight hours of all changes in household composition, housing, or employment; obtain a drug and alcohol assessment and follow its recommendations; establish paternity; obtain a family functioning assessment at Caring About People, Inc. ("CAP") and follow the recommendations; complete a CAP home-based services program; submit to random drug testing as required by DCS; refrain from illegal drugs; provide clean and appropriate clothing for L.S. at all times; and attend and participate in all visits with L.S.

The DCS case manager testified that during the overall course of the case, Mother failed to comply with the parent participation plan. Mother complied only insofar as she refrained from criminal activity, established paternity, submitted to drug screens, had housing that was appropriate to the extent DCS was able to verify it, and obtained a family functioning assessment. While Mother obtained a drug and alcohol assessment, she did not follow its recommendations. She had multiple drug screens that were positive for marijuana, the latest one in September 2009. Mother did not complete and was not compliant with the CAP home-based services program, despite receiving multiple referrals for it. Mother had multiple lapses in her contact with DCS, including when she was evicted from her apartment at the end of February 2009, moved in with her sister and shortly thereafter to a hotel, but did not notify DCS of her new addresses. Mother's whereabouts remained unknown to DCS until May 12, 2009, when Mother called to say she had gone to Michigan for a family emergency. Mother also had no contact with DCS between September 22 and November 30, 2009; while she became ill in late September, she was cleared to return to work with no restrictions as of October 19. Mother also had multiple lapses in her supervised visitation with L.S. For instance, no visits happened from February 20 through July 7, 2009. Between July 14 and September 15, 2009, Mother failed to show up for five of twelve scheduled visits. After that, visits were put on hold because the service provider supervising them was unable to contact Mother. She did not request that visits be restarted until November 30, 2009, the day before the start of the termination hearing. Mother provided clothing for L.S. some of the time, but not on a consistent basis.

On June 26, 2009, DCS filed its petition to terminate the parent-child relationship between L.S. and Mother.¹ The trial court held a hearing on the termination petition which concluded on March 26, 2010. On June 23, 2010, the trial court issued its order granting the termination. The trial court entered findings and conclusions including:

The child's foster parent testified that caring for the child is a full-time job because of her multiple diagnoses and that she had to quit her job in order to provide full time care for the child because of her extensive special needs. Evidence presented at trial revealed that the child is in need of a caregiver who is accepting of the child's disabilities, able to work with a network of support persons and service providers, one who can provide the child with a stable environment and routine, and who is able to provide twenty-four hour care for the child and her special needs.

Based upon her interaction with the parents and her two year involvement with the child, the foster parent has expressed concerns about the mother's ability to understand the child's limitations and her willingness and/or ability to accept the child's disabilities. Despite the diagnosis of Fetal Alcohol Syndrome from Dr. Patricia Bader, a geneticist, the mother has indicated that she disagrees with said diagnosis. The mother testified at trial that she believes that the child is developmentally appropriate. Additionally, evidence presented at trial revealed that the mother has not been involved in the child's treatment and therapy. She was offered the opportunity to have in-home visits and to have the child's therapy sessions occur in her home, but she refused to allow them to occur because she did not want the service providers in her home. . . .

The mother has been inconsistent with her visitations with the child At the hearing held on March 23, 2010, the case manager testified that the mother's [supervised] visits once again had been placed on hold because she missed three visits in a row. As a result of the missed and inconsistent visits, the child does not know that [Mother] is her mother

The Court finds that based upon the mother's failure to regularly visit the child, her failure and refusal to comply with services designed to assist her in remedying the reasons for removal of the child from her home and her

¹ DCS also filed a petition to terminate the parental rights of L.S.'s father. The trial court deferred ruling on the termination of Father's rights because Father indicated his willingness to voluntarily terminate his rights pending an agreement for open adoption by L.S.'s prospective adoptive parents. Father is not a party to this appeal.

instability, that [DCS] has proven by clear and convincing evidence that there is a reasonable probability that conditions that resulted in the child's removal from the home will not be remedied and/or that continuation of the parent/child relationship poses a threat to the well being of the child.

Appellant's Appendix at 4-5. Mother now appeals.

Discussion and Decision

I. Standard of Review

When reviewing the sufficiency of the evidence to support involuntary termination of a parent-child relationship, we neither reweigh the evidence nor judge the credibility of witnesses. In re G.Y., 904 N.E.2d 1257, 1260 (Ind. 2009). We consider only the evidence most favorable to the judgment and the reasonable inferences therefrom. Id. Where, as here, the trial court entered findings of fact and conclusions of law, we apply a two-tiered standard of review: first we determine whether the evidence supports the findings, and second we determine whether the findings support the judgment. Id. We will set aside the trial court's judgment only if it is clearly erroneous. Id.

To terminate Mother's parent-child relationship, DCS must prove by clear and convincing evidence that, among other things, there is a reasonable probability that (1) the conditions that resulted in L.S.'s removal or the reasons for her placement outside Mother's home will not be remedied, or (2) continuation of the parent-child relationship poses a threat to the well-being of L.S. See Ind. Code § 31-35-2-4(b)(2)(B) (2009);² G.Y., 904 N.E.2d at 1260. Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, such that DCS

² Indiana Code section 31-35-2-4(b) was amended effective March 12, 2010. P.L. 21-2010, § 8. The changes to the statute took effect after the filing of the present termination petition and do not apply to this case.

need only prove one of these two elements. In re L.S., 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), trans. denied, cert. denied, 534 U.S. 1161 (2002).

II. Conditions Not Remedied

Mother argues the trial court erred when it determined there was a reasonable probability that the conditions that resulted in L.S.'s removal would not be remedied. Mother contends: "Given that the basis for the CHINS determination in this case was alleged substance abuse, Mother's demonstration of consistent sobriety over . . . an extended period of time established that the reason for her child's removal had been satisfactorily remedied." Brief of Appellant at 11. However, the termination statute provides that it is not only the basis for the child's initial removal that may be considered for purposes of a termination petition, but also the conditions resulting in the child's continued placement outside the home of the parent. In re A.I., 825 N.E.2d 798, 806 (Ind. Ct. App. 2005) (citing Ind. Code § 31-35-2-4(b)(2)(B)(i)), trans. denied. Given that the trial court's detailed findings focus on a number of conditions arising after L.S.'s removal from Mother, and in light of the statutory language, we read the trial court's ultimate determination as one that the conditions that resulted in L.S.'s removal or her continued placement outside Mother's care would not be remedied.

To determine whether there is a reasonable probability conditions will not be remedied, the 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. The trial court may consider such factors as the parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. See A.F. v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. The trial court may also consider the parent's response to services offered through DCS. Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied. "A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change." Id. (quotation omitted). Further, the failure to exercise the right to visit one's child "demonstrates a lack of commitment to complete the actions necessary to preserve the parent-child relationship." Id. (quotation and alteration omitted). DCS need not provide evidence ruling out all possibilities of change; it need only prove 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).

Turning to the facts of this case, Mother's visits with L.S. have remained inconsistent to the point that L.S. does not recognize her as her mother. Mother has been sporadic and haphazard in her participation in services and her cooperation and contact with DCS and service providers. The DCS case manager testified that among the reasons for L.S.'s continued placement outside of Mother's care are her "non-compliance with regards [sic] to services" and "lack of cooperation with the Department and the Court's orders." Transcript

Volume II, at 156. The trial court's factual findings quoted above, which upon review are amply supported by the record, reflect that L.S. due to her special needs requires a caregiver who is able and willing to cooperate with a network of service providers and therapists. Yet Mother has not been accepting of L.S.'s special needs and has shown reluctance to cooperate in her treatment and therapy. As of the start of the termination hearing, L.S. had been placed outside of Mother's care for sixteen continuous months. Mother tried but never successfully progressed to having either at-home or unsupervised visitation. Considering the totality of the facts and circumstances, the evidence in the record and the trial court's factual findings support its ultimate determination there is a reasonable probability that the conditions leading to L.S.'s removal and, particularly, her continued placement outside Mother's care, will not be remedied.

III. Threat to Child's Well-Being

Mother argues the trial court erred when it found there was a reasonable probability that continuation of the parent-child relationship posed a threat to the well-being of L.S. However, we need not address this issue in light of our dispositive conclusion above that the evidence supports the trial court's determination there is a reasonable probability that the conditions resulting in L.S.'s removal and continued placement outside Mother's care will not be remedied. This determination, in conjunction with the trial court's other findings not challenged by Mother, including that termination is in L.S.'s best interest, supports its

judgment terminating the parent-child relationship.

Conclusion

Clear and convincing evidence supports the trial court's determination there is a reasonable probability that the conditions resulting in L.S.'s removal and continued placement outside Mother's care will not be remedied. The termination of Mother's parent-child relationship with L.S. is affirmed.

Affirmed.

RILEY, J., and BROWN, J., concur.