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.

ATTORNEYS FOR APPELLANT:

RUTH A. JOHNSON
Marion County Public Defender

LILABERDIA BATTIES
Batties & Associates
Indianapolis, Indiana

ATTORNEY FOR APPELLEE INDIANA DEPARTMENT OF CHILD SERVICES:

ELIZABETH G. FILIPOW
Indianapolis, Indiana

FILED
Feb 26 2010, 9:09 am
CLERK
of the supreme court, court of appeals and tax court

IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF: The Involuntary Termination of the Parent-Child Relationship of the Minor Child C.B. and the Parent, A.B.	)	
Parent, A.B.,	)	
Appellant/Respondent,	)	
vs.	)	No. 49A02-0907-JV-650
DEPARTMENT OF CHILD SERVICES,	)	
Appellee/Petitioner,	)	
and	)	
CHILD ADVOCATES, INC.,	)	
Co-Appellee/Guardian Ad Litem.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Larry E. Bradley, Magistrate
Cause No. 49D09-0902-JT-6184

February 26, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

A.B. ("Mother") challenges the sufficiency of evidence to sustain a juvenile court judgment terminating her parental relationship with her minor child, C.B. We affirm.

C.B. is the youngest of five children born to Mother.[1] He was born on July 12, 2008, at the Indiana Women's Prison, where Mother was serving a sentence for class D felony theft. On July 14, 2008, Mother was released from prison, and C.B. was placed in foster care. On July 15, 2008, the Marion County Department of Child Services ("DCS") filed a petition alleging that C.B. was a child in need of services ("CHINS"). Mother appeared at the initial hearing on that date and admitted to the CHINS allegations. C.B. was formally removed from Mother pursuant to a July 17, 2008 dispositional order. The order required her to participate in home-based counseling, seek and maintain stable housing and employment, and pass drug screenings. Tr. at 102-04.

During the pendency of the CHINS proceedings, DCS assigned family case manager ("FCM") Autumn Sprecher to work with Mother to set up drug screenings and secure home-based counseling. Social worker Jennifer Hammons counseled Mother from July 2008 to February 2009, assisting her in the areas of parenting education, relapse prevention, anger management, and conflict resolution. Despite Hammons's efforts to assist her with employment, Mother remained unemployed during the summer and fall of 2008 except for a

[1] Mother's four older children were the subjects of previous CHINS proceedings, based in part on Mother's continued drug use and periodic incarceration. Due to Mother's failure to successfully complete counseling, secure stable housing and employment, and pass drug screenings, the Department of Child Services changed the permanency plan for the four older children from reunification to adoption, and Mother signed adoption consents for all of them. The older children are not the subject of this appeal, but we refer to them where relevant to our discussion regarding the services offered to Mother and her habitual patterns of conduct.

two-week period during which she worked for a catering company. Mother admitted that she forged pay stubs and presented them to Hammons and Sprecher at an October 2008 meeting in an attempt to demonstrate employment. Tr. at 42. As of the May 2009 termination hearing, she testified that she had finished certified nurse's assistant training and was working through Nurse Finders. *Id*. at 46.

Mother missed four of the ten drug screenings during the summer and fall of 2008 and tested positive for marijuana in October and November. As a result, FCM Sprecher referred her for intensive outpatient treatment, and Hammons attempted to assist her by providing transportation and scheduling appointments. Chemical dependency counselor Kyle Ciresi performed a substance abuse assessment on Mother in January 2009, and Mother again tested positive for marijuana. Mother agreed to participate in the intensive outpatient program, but never attended. At the May 2009 termination hearings, she stated that she was undergoing treatment through a different facility. *Id*. at 56.

Despite Hammons's help, Mother was unable to obtain subsidized housing due to her criminal record. She was incarcerated for one month in 2007 for theft. From December 2007 to the time of the 2009 termination hearings, she lived with friends, with a boyfriend, in the Marion County Jail, in the Indiana Women's Prison, with her grandmother, and at a motel. At the hearing, she testified that she had been living at her own residence for approximately two weeks but had not notified DCS of this change. *Id*. at 48-50.

On February 10, 2009, DCS filed a petition to terminate the parental relationship between Mother and C.B. The juvenile court conducted a two-day termination hearing on

May 15 and May 26, 2009. At the hearing, the guardian ad litem recommended that Mother's parental rights be terminated. On May 26, 2009, the juvenile court entered findings of fact and conclusions thereon, terminating the parent-child relationship between Mother and C.B. This appeal ensued.

Mother challenges the sufficiency of evidence to support the juvenile court's judgment terminating her parental rights to C.B. When reviewing a juvenile court's order terminating a parent-child relationship, we will not set it aside unless it is clearly erroneous. *Castro v. State Office of Family & Children*, 842 N.E.2d 367, 372 (Ind. Ct. App. 2006), *trans. denied*. We will neither reweigh evidence nor judge witness credibility; rather, we will consider only the evidence and inferences most favorable to the judgment. *In re A.I.*, 825 N.E.2d 798, 805 (Ind. Ct. App. 2004), *trans. denied*.

In *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143 (Ind. 2005), our supreme court stated,

> The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. A parent's interest in the care, custody, and control of his or her children is perhaps the oldest of the fundamental liberty interests. Indeed the parent-child relationship is one of the most valued relationships in our culture. We recognize of course that parental interests are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. Thus, parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities.

Id. at 147 (citations, quotation marks, and alteration omitted). In recognition of the seriousness with which we address parental termination cases, Indiana has adopted a clear and convincing evidence standard. *Castro*, 842 N.E.2d at 377.

To obtain a termination of the parent-child relationship, DCS must establish that

(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) (emphasis added).

The juvenile court entered extensive findings of fact, which include the following:

6. [Mother] started random urine screens in August 2008 with Mosaic Recovery. Of ten [10] random screens, [Mother] missed four and tested positive for THC on two screens, one in October 2008, and one in November 2008.

….

8. [Mother's] history of marijuana use included her starting at age sixteen or seventeen, smoking a "blunt" a day, and having two children born THC positive.
9. [Chemical dependency counselor] Ms. Ciresi found [Mother] to be in denial of the negative effects [and] consequences marijuana use would have on her.

….

11. [Mother] refused to enroll in the [intensive outpatient drug treatment] program. She was given a second chance with the intervention of [DCS] but did not attend.
12. [Mother] tested positive for THC at her drug and alcohol assessment in January 2009.

13. [Mother] has never tendered proof of employment or evidence of housing to [DCS] during the CHINS matter, except for falsified check stubs at one point and announcing she had, or was signing a lease. [Mother] has not had stable housing and the only address given to [DCS] was her grandmother's residence.
14. [Mother] has a history of non-compliance with [DCS] services toward reunification which has resulted in [C.B.'s] four siblings being in pre-adoptive placement.
15. There is a reasonable probability that the conditions that resulted in the removal and continued placement of [C.B.] outside the home will not be remedied by his mother. [Mother] has been provided the opportunity through multiple referrals to work toward remedying conditions of instability and substance use to reunify, during [C.B.'s] CHINS case and before. [Mother] has refused to participate in [the intensive outpatient program], and has not been successful in home based counseling. No evidence has been presented which would show any attempts on [Mother's] part to secure employment or housing. Given [Mother's] lack of progress in the amount of time she has dealt with [DCS], it is evident she is unwilling or unable to remedy conditions.
16. Continuation of the parent-child relationship poses a threat to the well-being of [C.B.] Placing [C.B.] back with his mother would be placing him in an unstable environment where his needs would not be met. Further, without addressing her marijuana use, there is the concern that she would have slowed responses and an inability to make safe and good decisions on behalf of [C.B.], still a small child.

Appellant's App. at 10-11.

Mother claims that the evidence is insufficient to support the juvenile court's findings and conclusions regarding the reasonable probability of remedied conditions and the threat to C.B.'s well-being. We note, however, that subsection (b)(2)(B) is written in the disjunctive. Thus, DCS was required to establish, by clear and convincing evidence, only one of the two requirements of subsection (B). *In re I.A.*, 903 N.E.2d 146, 154 (Ind. Ct. App. 2009). As such, we address only the requirements of subsection (b)(2)(B)(i).

When assessing whether there is a reasonable probability that the reasons for placement outside the parent's home will not be remedied, juvenile courts must consider the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. In this regard, courts have properly considered evidence concerning the parent's history of criminal conduct, substance abuse, neglect, and lack of adequate housing and employment. *Id*. In making its case, the "DCS need not rule out all possibilities of change; rather, [it] need establish only that there is 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).

Here, Mother's habitual patterns of conduct indicate that the conditions leading to C.B.'s removal are not likely to be remedied. First, she has not demonstrated a sincere effort to break her pattern of substance abuse, which played a major role in C.B.'s removal. The record shows that she failed to show up for four of her ten drug tests during the summer and fall of 2008, and, of the six tests she took, she failed two. When she tested positive again in January 2009, she indicated to chemical dependency counselor Ciresi that she did not intend to quit using marijuana, that she did not view her drug use as a problem, and that she had neither the time nor the need to participate in the intensive drug treatment program. Although she eventually agreed to enroll, she did not attend the classes. Overall, she has not demonstrated the willingness to take responsibility for her drug use, testifying that it was DCS's fault for removing the children and not her fault for using marijuana. Tr. at 52. At

the termination hearings, she described her current marijuana use as "extracurricular," and said she used marijuana "when I want to." *Id*. at 53.

In addition, Mother demonstrated a pattern of dishonesty in her dealings with those who attempted to assist her. For example, she provided forged pay stubs to FCM Sprecher and counselor Hammons in an attempt to deceive them regarding her employment situation. Moreover, she misappropriated cash that foster mother Denise Wilbourn had given her to buy Christmas gifts for C.B. and her other children.[2] Finally, the record indicates that certain unauthorized charges on Wilbourn's debit card were traced to Mother, including Mother's use of the card to purchase a cell phone. *Id*. at 84-85. When combined with her prior theft convictions, this evidence demonstrates a pattern of dishonest, unlawful conduct that is unlikely to be remedied.

In sum, Mother has demonstrated habitual patterns of conduct that are unlawful and detrimental to her ability to parent. She has been a consistent substance abuser both during her pregnancies and after the births of her children. Two of her children tested positive for marijuana at birth. *Id*. at 14, 18. She continued to test positive for marijuana even though her older children, and later C.B., had been removed from her care. Moreover, she demonstrated a mindset of denial that is both inconsistent with her stated desire to remedy the conditions leading to C.B.'s removal and detrimental to C.B.'s emotional and physical well-

[2] Wilbourn is the paternal grandmother of one of Mother's older children. The permanency plan is for Wilbourne to adopt all five of the children.

being. This evidence, when combined with evidence of her criminal history,[3] her continued pattern of dishonest and unlawful behavior, and her failure to complete services, supports the juvenile court's judgment terminating her parental relationship with C.B. Accordingly, we affirm.

Affirmed.

RILEY, J., and VAIDIK, J., concur.

[3] To the extent Mother relies on *In re G.Y.*, 904 N.E.2d 1257 (Ind. 2009), and *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615 (Ind. Ct. App. 2006), *trans. denied*, we note that those cases are factually distinguishable. In those cases, the incarcerated parent either completed the required parenting programs and services while incarcerated (*G.Y.*) or had not been afforded the opportunity to participate in services prior to the termination order (*Rowlett*). Here, Mother was afforded numerous opportunities to participate in parenting and substance abuse programs after her release from prison and failed to complete the programs.