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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF G.F., B.W., F.W., K.W., and Z.W., Minor Children, and	)	
H.W. (Mother) and C.W. (Father),	)	
Appellants-Respondents,	)	
vs.	)	No. 45A05-0909-JV-550
INDIANA DEPARTMENT OF CHILD SERVICES and LAKE COUNTY COURT APPOINTED SPECIAL ADVOCATE,	)	
Appellees-Petitioners.	)	

APPEAL FROM THE LAKE SUPERIOR COURT

The Honorable Mary Beth Bonaventura, Judge
Cause Nos. 45D06-0807-JT-321, 45D06-0807-JT-322, 45D06-0807-JT-323, 45D06-0807-JT-324, and 45D06-0807-JT-325

February 26, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

H.W. ("Mother") and C.W. ("Father") appeal the juvenile court's involuntary termination of their parental rights as to G.F., Z.W., F.W., K.W., and B.W. We affirm.

Issues

I. Is the evidence sufficient to support the juvenile court's decision to terminate Mother's and Father's parental rights?

II. Did the juvenile court commit reversible error by admitting certain hearsay evidence?

Facts and Procedural History

In June 2006, four-year-old K.W. was found walking by herself along Old Ridge Road in Hobart. Indiana Department of Child Services ("DCS") was called to investigate. DCS prepared a written safety plan for K.W.'s family in an attempt to prevent other incidents that might endanger her and/or the four other children living in the home: thirteen-year-old G.F., eight-year-old Z.W., six-year-old F.W., and two-year-old B.W. Mother and Father agreed to implement the safety plan.

In August 2006, K.W. was again seen wandering outside alone, this time in a schoolyard. School officials called the Hobart Police Department, which contacted DCS. A DCS caseworker reported that when K.W. was found near the school, she had "soiled, urinated on her blue jeans, t-shirt, and [had] no shoes or socks on. Her teeth look like they are rotten." DCS's Exhibit 1. K.W. told the caseworker that Mother "sleeps all day long" and that she left her home because Mother was sleeping. *Id*. Mother stated that she had watched K.W. walk down the street to her friend's house, but later stated that she was in the bathroom when K.W. left the house. DCS removed all five children from the home due to evidence of neglect.

On August 31, 2006, a detention hearing was held, and the juvenile court granted DCS's petition to make G.F., Z.W., F.W., K.W., and B.W. temporary wards of the State. The juvenile court ordered the following services: drug/alcohol evaluation and any recommended treatment for Mother and Father, parenting classes for Mother and Father, and anger management classes for Mother. The children were returned home in September 2006, and Mother and Father began to participate in the services. On October 18, 2006, DCS filed Child in Need of Services ("CHINS") petitions for all five children. On November 15, 2006, the juvenile court held an initial CHINS hearing, and Mother and Father denied DCS's allegations of neglect. On March 14, 2007, a CHINS factfinding hearing was held, and the juvenile court granted DCS's petition, making G.F., Z.W., F.W., K.W., and B.W. wards of the State retroactive to August 30, 2006. DCS's stated goal at that time was reunification of the children with Mother and Father. On June 14, 2007, however, DCS placed the children

in foster care due to signs of continued neglect and Mother's failure to enroll them in summer school. Mother had generally complied with DCS-ordered services but with "minimal effort and [no apparent] motivation to complete the services." Tr. at 41. Due to his busy work schedule, Father "wasn't available often for services." *Id*.

In November 2007, the children were returned to Mother and Father's home, but the DCS caseworker continued to have concerns about Mother's and Father's parenting skills and the general well-being of the children. In December 2007, the family was evicted from their home, and DCS again removed the children and placed them in foster care. On March 26, 2008, DCS amended its permanency plan for termination rather than reunification. On June 26, 2008, DCS filed a petition for involuntary termination of parental rights as to K.W. On July 1, 2008, the juvenile court authorized the filing of petitions to terminate parental rights for G.F., Z.W., F.W., K.W., and B.W.

On July 8 and July 15, 2009, the juvenile court held a termination hearing. At the hearing, the children's foster father of approximately eighteen months, Mark Pressig, testified that each of the children had made progress in his or her development since living with him and his wife Marie. He testified that if given the opportunity, they would adopt all five children "in a New York second." *Id*. at 120. He also testified that thirteen-year-old G.F. had made the following statements to him:

> She's expressed a lot of concerns. She says she's been in a lot of schools, twelve, thirteen, fourteen schools. She's made [sic] a lot of concerns about when she was at home, making friends, because she was moving, for the first time in her life she feels very established, she's made friends, she started modeling school. You know, she feels like she really belongs somewhere right now. And she's expressed concern to me saying that there's a fear of losing

> that. You know, going back and wondering if they are going to keep their house and stuff like that.

Id. at 118. Father objected to the testimony as hearsay, and the juvenile court overruled the objection and admitted the evidence. The current DCS caseworker, Dwaine Terry, testified that he thought termination was in the children's best interest, as did Melissa Sanchez, a counselor who provided services to Mother, Father, and three of the children, and Avita Robey, a therapist who also worked with the family. After hearing the evidence of all parties, the juvenile court took the matter under advisement. On July 16, 2009, the juvenile court issued its order terminating Mother's and Father's parental rights as to all five children. Mother and Father now appeal.[1]

Discussion and Decision

I. Sufficiency of Evidence

Indiana Code Section 31-35-2-4(b) provides that in order to terminate a parent-child relationship, DCS must prove:

> (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;
>
> . . .
>
> (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

[1] G.F.'s biological father is M.F., whose whereabouts were unknown throughout the course of this case. According to the trial court order, M.F. has had no contact with G.F. and has not participated in any DCS services. He provides no emotional or financial support for G.F. His parental rights were also terminated in the court's order of July 16, 2009, and he does not appeal.

(D) there is a satisfactory plan for the care and treatment of the child.

Indiana Code Section 31-34-12-2 further provides that DCS must establish the elements of Indiana Code Section 31-35-2-4 by clear and convincing evidence. Mother and Father concede that the children were removed from them for at least six months pursuant to a dispositional decree. They argue that DCS failed to present clear and convincing evidence of the three remaining elements, however.

> In reviewing termination proceedings on appeal, this court will not reweigh the evidence nor assess the credibility of the witnesses. We consider only the evidence that supports the trial court's decision and reasonable inferences drawn therefrom. Where, as here, the trial court enters findings of fact and conclusions of law in its termination of parental rights, our standard of review is two-tiered. First, we determine whether the evidence supports the findings, and second, whether the findings support the conclusions of law.
>
> In deference to the trial court's unique position to assess the evidence, we set aside the trial court's findings and judgment terminating a parent-child relationship only if they are clearly erroneous. A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it. A judgment is clearly erroneous only if the conclusions of law drawn by the trial court are not supported by its findings of fact or the conclusions of law do not support the judgment.
>
> It is axiomatic that the traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution. However, the trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination of the parent-child relationship. Parental rights may therefore be terminated when the parents are unable or unwilling to meet their parental responsibilities.

In re J.H., 911 N.E.2d 69, 73 (Ind. Ct. App. 2009) (citations and quotation marks omitted), *trans. denied*.

First, Mother and Father argue that DCS failed to prove by clear and convincing

evidence either that the conditions that resulted in the children's removal from their home will not be remedied or that the continuation of a parent-child relationship poses a threat to the well-being of the children. Pursuant to the statute, DCS was required to prove only one of these two factors, but the trial court found that it had proven both. We will address the former determination in our analysis.

Mother admits that four-year-old K.W. was found wandering the streets alone on two occasions, but she says "the court failed to take into consideration the logical reasoning for the wandering[.]" Mother's Appellate Br. at 10. Mother blames her alleged "serious medical problems" for one of these incidents as well as for her children's severe truancy problems and unstable living conditions. *Id*. She claims that she completed the services ordered by DCS and that the trial court "failed to recognize that [Mother] has changed her life." *Id*. Father similarly contends that he complied "to the best of his ability" with DCS's requirements. Father's Appellate Br. at 7. He claims that the family's two evictions[2] do not amount to ample evidence of an ongoing problem that will not be remedied.

To determine whether a reasonable probability exists that the conditions justifying a child's continued placement outside the home will not be remedied, the juvenile court must

[2] In his appellate brief, Father states that the family was evicted twice during the case plan. He claims that the first eviction occurred because the landlord decided to sell the property and thus "was not directly attributable to acts or omissions of Father." Father's Appellate Br. at 8. Father concedes that the second eviction, which prompted the children's final removal from the home in December 2007, was due to Mother and Father's failure to pay rent. We wish to dispel Father's apparent belief that his children were taken away primarily because of the "financial hardship exacted upon the family by virtue of their socio-economic status, in this oppressed economy." *Id*. at 11. While the juvenile court noted that the children lacked "stable housing[,]" the vast majority of the findings in support of termination had to do with "[t]he educational, medical, nutritional, physical and mental neglect of the children." Appellant Mother's App. at 3.

judge a parent's fitness to care for his or her children at the time of the termination hearing and take into consideration evidence of changed conditions. *In re D.D.*, 804 N.E.2d 258, 266 (Ind. Ct. App. 2004), *trans. denied*. The juvenile court must also evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. *Id*. First, we acknowledge, as did the juvenile court, that Mother and Father did technically complete most if not all of the services provided by DCS. It appears that they even took the parenting classes twice. However, the caseworkers and therapists who were involved with the family testified that Mother and Father did not appear to be invested in the services and failed to put into action what they had been taught. After being returned to the care of Mother and Father, the children continued to have severe dental and medical issues that were not addressed. Even though DCS provided transportation services for the children's dental and doctor appointments, Mother and Father continued to miss such appointments. The family's TANF benefits were terminated because Mother failed to keep required appointments. Mother and Father often failed to provide proper nutrition for the children, who were seen on many occasions feeding themselves raw hot dogs and bologna. One child had an eating disorder resulting from nutritional neglect, which caused him to regurgitate his food; this problem was only addressed and diagnosed after the child was placed in foster care. Another child suffered for months or years with uncontrolled bowel movements due to an intestinal blockage that was quickly diagnosed and treated while he was in foster care. The children had severe truancy issues and would often arrive at school late, dirty, and hungry. They continued to wander the neighborhood unsupervised. Mother

refused to help the children with their homework, and their poor grades did not improve. In sum, we agree with the juvenile court's findings that "[t]he household situation was chaotic" and the family "continued to live in crisis." Appellant Mother's App. at 3.

By all accounts, Father attempted to provide nutritious meals and assist the children with their homework when he was at home. The evidence is that the children love him and enjoy spending time with him. We recognize (and we think the juvenile court did as well) that Father had limited time with the children because he was working hard outside the home to financially support them and Mother. Unfortunately, the fact remains that his efforts at home were not enough to significantly improve any of the issues which caused removal of the children in the first place.

Finally, Mother directs us to testimony of three friends who stated that she and Father love their children and have not neglected them. As stated above, however, only the trial court may assess the credibility of the witnesses, and we cannot accept Mother's invitation to reweigh the evidence. There was ample evidence demonstrating that Mother and Father had failed to make significant improvements in their care of the children and that Mother and Father's habitual patterns of conduct over the course of this case indicated a probability of future neglect and deprivation. The juvenile court need not wait until a child's physical, mental and social growth is permanently impaired before terminating parental rights. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). The trial court's finding of a reasonable probability that the reasons for the children's continued placement outside Mother and Father's home will not be remedied is not clearly erroneous, and therefore we must affirm

that finding.[3]

Mother also contends that DCS failed to prove by clear and convincing evidence that termination of her parental rights is in the best interests of the children. She thinks that the children will experience "severe mental anguish" as a result. Mother's Appellate Br. at 12. Certainly, the children may suffer some emotional distress because of this termination process. As noted above, however, DCS presented evidence that the children are thriving in foster care and have bonded with their foster parents. Failure to terminate the children's relationship with Mother and Father would deny the children the stability and permanency of a loving and safe adoptive home, which is in their best interests.

Mother also argues that DCS failed to prove by clear and convincing evidence that it has a satisfactory plan for the care and treatment of the children. Mother points to an incident in which G.F. was physically assaulted in the Pressigs' home. Mark Pressig testified that another foster child injured G.F.'s teeth and lip during an altercation. The Pressigs contacted DCS immediately after the incident and had the assaulting child (unrelated to G.F.) removed from their home. They also sought appropriate medical treatment for G.F., including plastic surgery in light of her plan to pursue modeling, and she has recovered. Pressig also testified that K.W. seemed depressed, but there is no indication, as Mother suggests, that her depression stems from circumstances in her foster home; more likely, it has to do with her past. There is ample evidence that the children's foster home of eighteen

[3] In our view, the trial court's conclusion that a continued relationship with Mother would be a threat to the children's well-being is supported by all of the trial court's findings as well.

months is a stable environment and that they have bonded to their foster parents, who want to adopt them. DCS's plan gave a general sense of direction for the care and treatment of the children after the termination of Mother's and Father's parental rights, and thus it was satisfactory. *See In re D.D.*, 804 N.E.2d at 268 (holding that DCS's plan for child to be adopted by current foster parents or another family constituted a suitable plan for child's future care).

II. Admission of Hearsay Evidence

Mother also alleges that the trial court committed reversible error by admitting foster father Mark Pressig's hearsay testimony about statements made to him by G.F. The improper admission of hearsay evidence does not warrant reversal unless it affects the parents' substantial rights. *In re W.B.*, 772 N.E.2d 522, 533 (Ind. Ct. App. 2002). There is no indication in the record that the court based its decision to terminate upon this particular testimony. In fact, it is not even noted in the trial court's findings. Rather, the findings focus upon the evidence presented by DCS caseworkers and counselors as to the ongoing "lack of parenting" by Mother and Father and the detrimental effects on the children's health, education, and general well-being. Appellant Mother's App. at 3. Therefore, even if the trial court erred by admitting the evidence in question, it was harmless error.

Affirmed.

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