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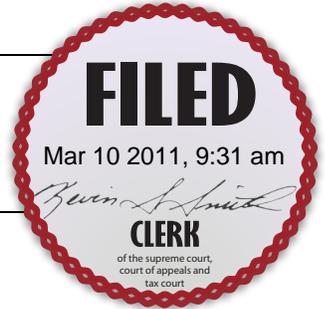
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**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF PARENT-CHILD)
RELATIONSHIP OF P.L.,)
Minor Child,)
And)
A.L., Mother,)
Appellant,)
vs.)
INDIANA DEPARTMENT OF CHLD)
SERVICES,)
Appellee.)

No. 20A04-1008-JT-00483

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
The Honorable Deborah A. Domine, Magistrate
Cause No. 20C01-1003-JT-00022

March 10, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

A.L. (“Mother”) appeals the involuntary termination of her parental rights to her child, P.L., claiming there is insufficient evidence supporting the trial court’s judgment. We affirm.

Facts and Procedural History

Mother is the biological mother of P.L., born in April 2008. In January 2009, the Indiana Department of Child Services, Elkhart County (“ECDCS”), received a referral alleging Mother had left then eight-month-old P.L. with a friend for six days and could not be contacted.¹ After investigating the matter, ECDCS took P.L. into protective custody and filed a petition with the trial court alleging P.L. was a child in need of services (“CHINS”).

Mother admitted to the allegations of the CHINS petition during a hearing in January 2009, and P.L. was adjudicated a CHINS. The trial court thereafter proceeded to disposition. The court’s dispositional order formally removed P.L. from Mother’s care and directed Mother to successfully complete a variety of tasks and services in order to achieve reunification with P.L. Specifically, Mother was directed to, among other things: (1) participate in a psychological parenting assessment and follow all of the resulting

¹ We note that P.L.’s biological father, R.L. (“Father”), voluntarily relinquished his parental rights to P.L. in April 2010. Father’s parental rights were terminated by the trial court in its July 2010 judgment, and Father does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother’s appeal.

recommendations; (2) complete a drug and alcohol assessment and follow all resulting recommendations; (3) submit to random drug screens; (4) participate in parenting education and follow all recommendations; (5) pay \$40 per week as child support; and (6) exercise regular visitation with P.L. as directed by ECDCS.

Mother initially participated in several reunification services, such as regular visitation with P.L. and random drug screens. Mother also submitted to several of the recommended assessments, including a parenting assessment and a drug and alcohol assessment. Mother's participation in these services, however, quickly began to wane and was ultimately unsuccessful. For example, although Mother's visitation privileges with P.L. were quickly increased to two visits per week due to her positive interaction with P.L. and initial "stable and dependable" attendance at visits at the beginning of the CHINS case, Mother soon began missing visits, resulting in her visitation privileges returning to only one supervised visit per week. Tr. p. 136. By January 2010, Mother had missed thirty-four scheduled visits with P.L. Mother then moved to Wisconsin in search of employment and failed to visit P.L. at all for approximately four months. After returning to Indiana in May 2010, Mother's participation in scheduled visits remained sporadic, attending only five of ten visits. In addition, Mother never paid any child support for P.L.

Mother submitted to a total of twelve drug screens throughout the underlying proceedings. She tested positive for marijuana in March 2009, positive for cocaine in April 2009, and positive for marijuana again in May 2009. As a result of these positive

drug screens, as well as a drug and alcohol assessment in May 2009, ECDCS recommended that Mother participate in outpatient substance abuse treatment and aftercare classes. Mother attended only one class, however, before refusing to go back. Mother also refused to submit to ECDCS's requests for hair follicle drug screens in May and June of 2010 after her return from Wisconsin, even though Mother was informed that her refusal would be deemed to be a positive result.

Mother also failed to successfully complete various other court-ordered services. Mother either cancelled or failed to show for at least four scheduled appointments for parenting education with Dr. Berardi before finally undergoing a psychological parenting assessment. Tr. p. 163. Mother thereafter failed to successfully complete the parenting education services recommended by Dr. Berardi despite ECDCS's referrals to three different service providers. Mother also refused to take her prescription anxiety medication as prescribed. Mother further failed to meaningfully engage in recommended individual therapy, repeatedly canceling and/or failing to attend multiple scheduled appointments with three different therapists throughout the CHINS case.

In March 2010, ECDCS filed a petition seeking the involuntary termination of Mother's parental rights. An evidentiary hearing on the termination petition was held on July 9, 2010. During the termination hearing, ECDCS presented evidence showing Mother's unresolved housing, mental health, substance abuse, and relational instability prevented reunification of the family. The trial court entered its judgment terminating Mother's parental rights to P.L. the same day. Mother now appeals.

Discussion and Decision

We begin our review by acknowledging that this court has long had 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). When reviewing a termination of parental rights, we will 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. Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the court's 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.

Here, in terminating Mother's parental rights, the trial court entered specific factual findings and conclusions. When a trial court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. Bester v. Lake Cnty. 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 juvenile court's 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.,

666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. K.S., 750 N.E.2d at 837. Termination of a parent-child relationship is proper where a child's emotional and physical development is threatened. Id. Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. Id. at 836.

Before an involuntary termination of parental rights can occur in Indiana, the State is required to allege and prove, among other things:

- (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; and
- (C) termination is in the best interest of the child; and
- (D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2) (2009).² The State's burden of proof for establishing these allegations in termination cases "is one of 'clear and convincing evidence.'" In re G.Y., 904 N.E.2d 1257, 1260-1261 (Ind. 2009) (quoting Ind. Code § 31-37-14-2). If the court

² Indiana Code section 31-35-2-4 was amended by Pub. L. No. 21-2010, § 8 (eff. March 12, 2010). Because the changes to the statute became effective following the filing of the termination petition herein, they are not applicable to this case.

finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship. Ind. Code § 31-35-2-8(a). Mother challenges the sufficiency of the evidence supporting the trial court’s findings as to subsections (b)(2)(B) through (D) of the termination statute cited above.

I. Conditions Remedied/Threat

Initially, we observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, to properly effectuate the termination of parental rights, the trial court need only find that one of the two requirements of subsection (b)(2)(B) has been established by clear and convincing evidence. See L.S., 717 N.E.2d at 209. Here, the trial court determined that both elements had been established. Because we find it to be dispositive under the facts of this case, however, we shall only discuss whether ECDCS established, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in P.L.’s removal or continued placement outside of Mother’s care will not be remedied. See Ind. Code § 31-35-2-4(b)(2)(B)(i).

When making such a determination, a 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. Pursuant to this rule, courts have properly considered evidence of a parent’s prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of

adequate housing and employment. A.F. v. Marion Cnty. Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. The trial court may also consider any services offered to the parent by the local Indiana Department of Child Services office (here, ECDCS) and the parent's response to those services, as evidence of whether conditions will be remedied. Id. Moreover, ECDCS is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that 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).

In determining that there is a reasonable probability the conditions resulting in P.L.'s removal and continued placement outside of Mother's care will not be remedied, the trial court made multiple findings regarding Mother's persistent and ongoing lack of stability with regard to her housing, mental health, personal relationships, and sobriety. In so doing, the trial court noted Mother had "moved repeatedly" throughout the duration of the underlying proceedings, providing ECDCS case manager Nicole Bartlette with at least nine different residences, and that Mother currently did not have stable housing and was living with a friend. Appellant's App. p. 8. The court also noted Barlette's testimony concerning Mother's failure "to follow through with any of the services recommended as the result of the assessments . . . ordered in this case," including "drug treatment, medication management, individual therapy, [and] parenting classes." Id. at 9. In addition, the trial court made extensive findings regarding Mother's missed visits with P.L., noting Mother had failed to consistently visit with P.L. "[s]ince the start of this

case,” having missed thirty-four scheduled visits prior to January 2010, participating in “no visits whatsoever” with P.L. between January 14 and May 12, 2010, and missing fifty percent of the scheduled visits with P.L. after returning to Indiana approximately two months before the termination hearing. Id. at 8-9.

In asserting she is entitled to reversal, Mother argues, among other things, that the trial court’s admission in its specific findings that it was “well aware that a scant amount of evidence was presented in support of termination of rights in this case, at least when the evidence is compared to other cases in which the [S]tate is seeking the termination of parental rights,” but that in this case, “only a scant amount of effort was made to rectify the reason that two-year-old [P.L.] was removed from the home” proves that ECDCS failed to satisfy its burden of establishing, by clear and convincing evidence, each of the elements of the termination petition. See Appellant’s App. p. 25.

“Scant” is an unfortunate word choice, whether used to describe the quantity of the State’s evidence or the quality of Mother’s conduct and participation in reunification services. Nevertheless, a thorough review of the record leaves us satisfied that clear and convincing evidence supports the trial court’s findings, which in turn support the trial court’s ultimate decision to terminate Mother’s parental rights to P.L.

At the time of the termination hearing, Mother’s circumstances remained largely unchanged. She was living with a friend, had failed to pay any child support, was only visiting sporadically with P.L., had recently refused to submit to two requests for drug screens, and had failed to successfully complete all recommended reunification services

including substance abuse treatment, medical management, individual counseling, and parenting classes. Moreover, testimony from various caseworkers and service providers makes clear that Mother remained incapable of providing P.L. with a safe and stable home environment.

During the termination hearing, case manager Bartlette informed the trial court that the reason for P.L.'s removal and continued placement outside of Mother's care was Mother's "instability" and "inconsistency." Tr. p. 161. Bartlette went on to explain that, due to this instability, ECDCS "was never able to move beyond supervised visits with [Mother]." Id. Bartlett also confirmed that Mother never paid child support for P.L., produced several positive drug screens during the CHINS case, recently refused two separate requests for hair follicle drug screens, and failed to participate in and/or successfully complete virtually all court-ordered reunification services, including substance abuse and parenting classes. In addition, Bartlett testified that she believed Mother "really hasn't taken responsibility for what had happened with [P.L.]," and makes "lots of different excuses for why she hasn't been able to participate" in services. Id. at 175.

When asked to describe her current concerns regarding Mother's ability to care for P.L., Bartlette replied:

I think one of the major concerns is [Mother's] instability throughout this case. I mean She's lived in numerous homes[,] and I don't even know all of the homes that she's lived in. She made a choice to move to Wisconsin knowing that [P.L.] . . . was here. She hasn't been dependable through this case and consistent with services. . . . I think every services . . .

that she participated in she either missed, cancelled, or no-showed several times.

I have concerns about her mental health. She admits to having . . . panic attacks, . . . and the doctor has prescribed her . . . medication, and she - she hasn't followed through with those appointments on meeting with the doctor.

I have concerns about her relational stability. She's been with several different guys since I've been in this case . . . and even had several miscarriages

I'm concerned about the addictions issue. [Mother] never followed through with the treatment for addictions[,] . . . and [w]hen she did come back [from Wisconsin], she would not let me take a hair follicle screen

And since she's been back, she hasn't been consistent with her providers. She's still missing appointments, she's still missing visits, . . . she's missed, umm, therapy and cancelled on case management. . . . I'm just concerned because I feel like [Mother] was never able to demonstrate that she could be an appropriate caregiver and not make the same mistakes she did with why we got involved.

Id. at 178-80. Many of these sentiments were echoed by the visit supervisor, as well as the court-appointed special advocate (“CASA”) Barbara Vernon. When asked whether she believed Mother had benefitted from services, Vernon answered in the negative and stated, “I feel that there is continued instability in [Mother’s] life.” Id. at 198. Vernon also indicated that she remained concerned about Mother’s “stability with housing, with employment, emotional and mental stability, environment, [and] the people that [Mother] has around” given Mother’s “history of drug use especially.” Id.

As noted earlier, a 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 the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. D.D., 804 N.E.2d at 266. Moreover, where a parent’s “pattern of conduct shows

no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve.” In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). After reviewing the record, we conclude that ECDCS presented clear and convincing evidence to support the trial court’s findings and ultimate determination that there is a reasonable probability the conditions leading to P.L.’s removal or continued placement outside of Mother’s care will not be remedied. Mother’s arguments on appeal amount to an invitation to reweigh the evidence, and this we may not do. D.D., 804 N.E.2d at 265.

II. Best Interests

We next consider Mother’s assertion that termination of the parent-child relationship is not in P.L.’s best interests. We are ever mindful that, when determining what is in a child’s best interests, a trial court is required to look beyond the factors identified by the Indiana Department of Child Services and to look to the totality of the evidence. McBride v. Monroe Cnty. Office of Family & Children, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, however, the court must subordinate the interests of the parent to those of the child. Id. Moreover, we have previously explained that recommendations from the case manager and child advocate that parental rights should be terminated support a finding that termination is in the child’s best interests. Id.

Here, in addition to the findings set forth previously, the trial court also took note of the foster mother’s testimony that P.L. “likes consistency.” Appellant’s App. p. 10. Moreover, the court acknowledged CASA Vernon’s testimony that P.L. “needs a

loving[,] stable, [and] safe home,” and that there is “no indication” Mother can provide the type of home that P.L. needs. Id. The court went on to find that P.L. has “waited for [M]other for eighteen months[,] and to this day [Mother] is not even consistently visiting with the child. [P.L.] cannot wait forever. For that reason as well, termination is in [P.L.’s] best interest[s].” Id. These findings and conclusions, too, are supported by the evidence.

Both case manager Bartlette and CASA Vernon recommended termination of Mother’s parental rights as in P.L.’s best interests. In so doing, Bartlette testified that “it just didn’t seem like [Mother] was very invested in getting [P.L.] back.” Id. at 170. Bartlette went on to say that she believed termination of parental rights was in P.L.’s best interests because P.L. “needs to be in a safe, stable home and at this time, Mother’s not able to provide that[.]” Id. at 180. Similarly, Vernon testified that P.L. needs “a loving, stable, safe home, and there has been no indication that [Mother] can provide that.” Id. at 199.

A trial court need not wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. In re E.S., 762 N.E.2d 1287 (Ind. Ct. App. 2002). Mother’s untreated mental health conditions, unresolved substance abuse issues and her failure to complete and benefit from a majority of the trial court’s dispositional orders, coupled with the testimony from Bartlette and Vernon recommending termination of the parent-child relationship, lead us to conclude that the

trial court's determination that termination of Mother's parental rights is in P.L.'s best interests is supported by the evidence. See, e.g., In re A.I., 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding that testimony from child's court-appointed advocate and family case manager regarding child's need for permanency and recommendation to terminate parental rights, coupled with evidence that conditions causing removal will not be remedied, constitutes sufficient evidence to support termination of parental rights), trans. denied.

III. Satisfactory Plan

Finally, we consider whether sufficient evidence supports the trial court's determination that ECDCS has a satisfactory plan for the future care and treatment of P.L. Indiana Code section 31-35-2-4(b)(2)(D) provides that before a trial court may terminate a parent-child relationship, it must find there is a satisfactory plan for the future care and treatment of the child. Id.; see also D.D., 804 N.E.2d at 268. It is well-established, however, that this plan need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated. Id. ECDCS's plan is for P.L. to be adopted either by the child's current foster parents, or some other adoptive family. This plan provides the trial court with a general sense of the direction of P.L.'s future care and treatment. ECDCS's plan is therefore satisfactory.

Conclusion

This Court will reverse a termination of parental rights “only upon a showing of ‘clear error’– that which leaves us with a definite and firm conviction that a mistake has been made.” In re A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting Egly v. Blackford Cnty. Dep’t of Public Welfare, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Affirmed.

FRIEDLANDER, J., and MAY, J., concur.