

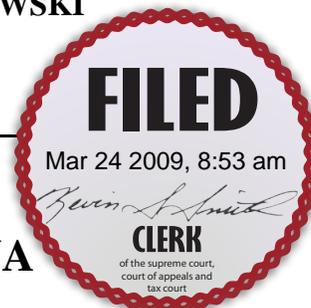
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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF L.S.R.,)
)
Lee Shawn L. W., Mother,)
)
Appellant-Respondant,)
)
vs.)
)
ELKHART COUNTY DEPARTMENT)
OF CHILD SERVICES,)
)
Appellee-Petitioner.)

No. 20A05-0807-JV-436

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Deborah A. Domine, Juvenile Magistrate
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0803-JT-64

March 24, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

L.S.W. (“Mother”) appeals the trial court’s involuntary termination of her parent-child relationship with L.S.R., her minor child. On appeal, Mother raises one issue which we restate as whether the Elkhart County Department of Child Services (“ECDCS”) presented sufficient evidence to support the trial court’s determination. Concluding that sufficient evidence was presented, we affirm.

Facts and Procedural History

When L.S.R. was eleven years old, Mother, who had ten children, told L.S.R. and a brother that she did not have room for them in her new apartment. Accordingly, she locked them out, and they had to spend the night at a friend’s house. A report was made to ECDCS, and the boys were placed in foster care.

A Child in Need of Services (“CHINS”) petition was filed and L.S.R. was adjudicated a CHINS in September of 2005. The CHINS order noted that Mother admitted that she was unable to care for L.S.R. and that she could not control his behavior. On March 14, 2008, a petition was filed to terminate Mother’s parental rights and to place L.S.R. with E.W., the man who has been a father figure to L.S.R.¹

Between 2005 and the July 11, 2008 termination hearing, L.S.R. had been placed in at least twelve different facilities, including two foster homes and various types of juvenile treatment centers. Mother had completed some of the court-ordered programs designed to reunite her with L.S.R., such as a parenting assessment and drug screening. However, she

¹ Until a blood test administered as part of the CHINS proceedings proved otherwise, L.S.R. believed E.W. was his natural father.

repeatedly failed to meet with the case manager and pay court-ordered child support. She also missed a large number of visitations with L.S.R; indeed, she had not had contact with him for seven weeks prior to the termination hearing. As L.S.R. entered his teens, he became withdrawn and troubled, and his actions resulted in a stay at a juvenile detention center. Mother has shown no capability of providing L.S.R. with the structure that he needs.

After an evidentiary hearing, the trial court made specific findings in support of terminating Mother's parental rights. These findings are discussed below.

Discussion and Decision

I. Standard of Review

Mother contends that ECDCS failed to present sufficient evidence to support termination of her parental rights under Indiana law.

The traditional right of a parent to establish a home and raise her child is protected by the Fourteenth Amendment of the United States Constitution. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). Parental rights may be terminated when a parent is unable or unwilling to meet her parental responsibilities. Id. The purpose of terminating parental rights is not to punish a parent, but to protect the child. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied, cert. denied, 534 U.S. 1161 (2002).

When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. Bester, 839 N.E.2d at 147. We will consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. Id. When reviewing findings of fact and conclusions thereon entered in a case involving a

termination of parental rights, we apply a two-tiered standard of review. Id. First, we determine whether the evidence supports the findings. Id. Then, we determine whether the findings support the judgment. Id. The trial court’s judgment will be set aside only if it is clearly erroneous. Id. “A judgment is clearly erroneous if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment.” Id. (quoting In re R.J., 829 N.E.2d 1032, 1034 (Ind. Ct. App. 2005)).

Indiana Code section 31-35-2-8(a) provides that “if the court finds that the allegations in a petition described in [Indiana Code section 31-35-2-4] are true, the court shall terminate the parent-child relationship.” Indiana Code section 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege that:

(A) [O]ne (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 I.C. § 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.

The State must establish these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234-35 (Ind. 1992); Doe v. Daviess County Div. of Children & Family Servs., 669 N.E.2d 192, 194 (Ind. Ct. App. 1996), trans. denied.

II. Remedy of Conditions

Mother contends that ECDCS failed to prove that the conditions that precipitated L.S.R.'s removal from her home – namely, her inability to provide care or control – could not be remedied. Specifically, Mother contends that she had shown improvement in the weeks before the termination hearing, and the trial court improperly relied on her past behavior.

The trial court concluded, “There is a reasonable probability that the conditions that resulted in [L.S.R.'s] removal or the placement outside of the home of the parents will not be remedied and that a continuation of the parent child relationship poses a threat to the well being of the child.” Appellant’s Appendix at 12. In support of this conclusion, the trial court found that L.S.R. has been diagnosed with Attention Deficit Hyperactive Disorder, Bipolar Disorder, and Oppositional Defiant Disorder. The trial court also found that the preparer of a treatment plan had noted that changes in placement “were ‘due to mom’s inconsistency with visits and services and the child’s behaviors’” and that Mother’s lack of cooperation and her inconsistency were addressed repeatedly during court hearings and outside the court. Id. The

trial court further found that Mother “cooperated with services offered in the home only minimally” and that while Mother did occasionally cooperate with services “more often than not, she did not.” Id.

The trial court found that on one occasion, Mother told L.S.R. “that if he improved his behaviors she would visit him; [L.S.R.’s] behaviors improved, but [Mother] never came for the promised visit.” Id. at 13. The trial court additionally found that Mother “attended only one of the case conferences which were held in this case every six months in the more than three years since the case was opened” Id. Further, the trial court found that Mother’s behavior “contributed to [L.S.R.’s] acting out and ultimate removal from [a] facility, and possible criminal charges.” Id. The trial court concluded that L.S.R. was currently stable and that Mother had not visited him in the immediate past. Id. at 14. Finally, the trial court concluded that at the time of the termination hearing, Mother and Father “are still not there when [L.S.R.] needs them. Neither parent has visited [L.S.R.] for months, and the evidence presented supports a finding that when they are part of [his] life it is contrary to [his] well being [T]he parents’ history suggests that that is not likely to change.”² Id. at 14.

To determine whether a reasonable probability exists that the conditions justifying a child’s continued placement outside the home will be remedied, the trial court must judge a parent’s fitness to care for her child at the time of the termination hearing. In re D.D., 804 N.E.2d 258, 266 (Ind. Ct. App. 2004), trans. denied. However, the trial court must also “evaluate the parent’s habitual patterns of conduct to determine the probability of future

² L.S.R.’s biological father is not a party to this appeal.

neglect or deprivation of the child.” Id. (quoting In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied).

Our examination of the record discloses that there is sufficient evidence to support the trial court’s findings. Further, the findings support the trial court’s conclusion that the conditions necessitating removal of L.S.R. from the home will not change. What progress, if any, that Mother has made is belied by her habitual patterns of conduct. Therefore, ECDCS has proven by clear and convincing evidence that the termination is warranted.³

III. Best Interests

Mother contends that the trial court erred in determining that termination of her parental rights was in L.S.R.’s best interests. Specifically, she argues that her inability to care for L.S.R. was irrelevant because he would continue in residential placement after termination. She also argues that the record does not reflect that termination of her rights was necessary to accomplish placement of L.S.R. with E.W. Mother notes that although L.S.R. wants to live with E.W., he also wants to maintain a relationship with Mother.

The “best interests” determination is not an independent decision that the child will be better off with another parent. Matter of Tucker, 578 N.E.2d 774, 779 n. 5 (Ind. Ct. App. 1991), trans. denied. In determining the best interests of the child, the trial court must subordinate the interest of the parent to those of the child and, in doing so, look to the totality

³ Because we have determined that clear and convincing evidence supported the trial court’s determination that there was a reasonable probability that conditions that resulted in L.S.R.’s removal will not be remedied, we need not address the alternative conclusion that continuation of the parent-child relationship posed a threat to L.S.R.’s well being. See In re J.W., 779 N.E.2d 954, 962 (Ind. Ct. App. 2002), trans. denied.

of the evidence. McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003).

The evidence discloses that L.S.R. has responded favorably to the stability and structure that living with E.W. brings. The evidence also discloses that Mother undermined a previous attempt to establish a guardianship that would have allowed L.S.R. to live with E.W. The trial court found that Mother testified at the termination hearing that “she now agrees with the guardianship, but history suggests that there is no guarantee that she will follow through with that agreement.” Appellant’s App. at 15. Therefore, the trial court determined, “Termination is necessary for [L.S.R.] to be placed with [E.W].” Id. Most importantly, the trial court concluded, “Termination is necessary for [L.S.R.] to have the hope of placement with someone who cares, rather than nothing but the promise of placement in one institution after another, which is the life [L.S.R.] has lead [sic] while waiting for [Mother] to step up and be there when he needs her.” Id.

We hold that the trial court properly concluded that termination was in L.S.R.’s best interests. L.S.R., who is now a teenager, cannot be “put on a shelf” while waiting for Mother to become capable of providing proper care. See In re Campbell, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989).

Conclusion

Clear and convincing evidence supports the trial court’s termination of Mother’s

parental rights to L.S.R. The judgment of the trial court is affirmed.

Affirmed.

CRONE, J., and BROWN, J., concur.