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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF S.W. (Minor Child) and)
)
C.W. (Mother),)
)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner,)
)
and)
)
CHILD ADVOCATES, INC.,)
)
Appellee-Guardian ad Litem.)

No. 49A02-1007-JT-913

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary Chavers, Judge Pro Tem
The Honorable Larry Bradley, Magistrate
Cause No. 49D09-1003-JT-11869

March 25, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

C.W. (“Mother”) challenges the sufficiency of the evidence supporting the juvenile court’s order involuntarily terminating her parental rights to her daughter, S.W. We affirm.

Facts and Procedural History

On March 16, 2010, the Marion County Department of Child Services filed a petition for the involuntary termination of Mother’s parental rights to S.W. An evidentiary hearing was held on June 16, 2010. On July 1, 2010, the juvenile court issued an order in which it found the following facts and stated the following conclusions thereon:

FINDINGS OF FACT

Upon evidence presented, the Court now finds by *clear and convincing evidence* that:

1. [Mother] is the mother of [S.W.], a minor child born on August 13, 1998.
2. A Child in Need of Services Petition “CHINS” was filed on [S.W.] on May 14, 2009, ... as a result of allegations that [Mother] failed to provide [S.W.] an appropriate home free from excessive alcohol consumption, with working utilities, and appropriate supervision.
3. Prior to the CHINS proceeding, [Mother] was involved with the IDCSMC [Indiana Department of Child Services Marion County] in an Informal Adjustment Agreement which started in December 2008. Cleanliness and unsafe conditions in the home were issues, including the home containing at least a dozen cats and some dogs.

4. Intensive family preservation was started with the family within the Informal Adjustment, as well as home based services through Adult and Child with therapist Lora Patterson and case manager Josie Mitchell.
5. A safety plan for [S.W.] was put in place during the Informal Adjustment to protect her against [Mother's] boyfriend's alcohol use. [Mother] made a number of crisis calls to the home based service providers.
6. In May 2009, [Mother's] home was without electricity for two days when police were called out to the home as a result of [S.W.] being scared of threatening behavior of [Mother's] intoxicated boyfriend, Rick. [S.W.] was removed from the home.
7. Home based therapist Patterson worked with [Mother], until services ended in August 2009, on goals of home cleanliness, financial stability, and parenting skills. Improvements were made, including lowering the home's animal level to one cat and one dog with the help of IMPD [Indianapolis Metropolitan Police Department]. Although improvements were made, there was not enough improvement for a recommendation that [S.W.] be returned, especially with the consideration of safety concerns.
8. [Mother] knew she could not have Rick in the home due to his drinking and [S.W.] being afraid of him, and later [Rick's brother and sister-in-law] because of domestic violence concerns, and have [S.W.] placed back. Month after month went by without their leaving, demonstrating [Mother's] lack of insight and poor judgment.
9. Ms. Patterson characterized [Mother] as making progress, then going backwards.
10. Case manager Mitchell worked with [Mother] on issues of cleanliness, parenting skills, and appropriate interaction between [Mother] and [S.W.].
11. Parental supervision was an issue due to [Mother] leaving overnight or at times not knowing where [S.W.] was.
12. Ms. Mitchell observed the parent-child relationship to be hostile and withdrawn, both in the home and during parenting time.

13. [Mother] blamed [S.W.] over Rick, for [S.W.] being removed, and left several inappropriate messages for [S.W.].
14. [Mother] again demonstrated her lack of insight by describing her relationship with [S.W.] as being a “good, loving relationship”.
15. Overall, Ms. Mitchell saw minimal improvement on parenting skills and had concerns whether [S.W.’s] emotional needs could be met by [Mother].
16. After a Fact-Finding hearing on July 22, 2009, [S.W.] was found to be in need of services. She was formally removed on that date pursuant to a dispositional order. She has now been removed for at least six (6) months.
17. Due to [Mother] being diagnosed as being Moderate Mental Retardation [sic], with an I.Q. of 50, home based services were transferred to St. Vincent, New Hope. Services were commenced in September 2009 with home based therapist Abbe Sechrist.
18. Home based services were closed with St. Vincent, New Hope, in November 2009. Ms. Sechrist felt [Mother] was lacking effort and little progress was made in the goals of home improvement, budgeting, parenting skills, and communication skills. Ms. Sechrist would observe [Mother] as being okay in services, then become resistant.
19. Ms. Sechrist remained concerned over [Mother’s] lack of insight in her role in creating an unsafe home.
20. Ms. Sechrist remains [S.W.’s] therapist. In January, due to [S.W.’s] fear of Rick, her request, and inappropriate voice messages from [Mother], Ms. Sechrist recommended supervised parenting time stop. [Mother] also missed parenting time sessions, and once came with Rick, which was prohibited.
21. Because of [Mother’s] outbursts toward [S.W.] and service providers, it was recommended that parenting time not restart until [Mother] engaged in anger management classes. Parenting time was never restarted.
22. After St. Vincent, New Hope closed services, [Mother] sought out home based services on her own. She commenced services with Family Empowerment Support Services on February 10, 2010. Progress was

made which included house cleaning, working on house repairs, and getting rid of excess animals. This service was closed in April after two to three weeks of no contact with [Mother]. [Mother] still seemed to lack insight as to the involvement of IDCSCMC and her need to end her relationship with Rick, and the work to be done.

23. Prior to the Informal Adjustment in December 2008, there is no evidence of contact with the [W.] family and IDCSCMC. [Mother's] husband passed away in the year 2007, and Ms. Patterson thought [S.W.'s] older sister's role was then to provide supervision and discipline to [S.W.], and be in charge of finances. [S.W.'s] sister left the residence after turning age eighteen in February 2009.
24. During the life of the CHINS proceeding, Rick and his family [were] a major barrier to reunification. The CHINS Court ordered in July 2009, there be no contact between Rick and [S.W.]. As of the date of trial, [Mother] testified that they were together for one and one half years until the prior week and may make up. [Mother] loves Rick and felt he was loving and caring with [S.W.], arguing with her one time.
25. Rick's mother is [Mother's] payee on Social Security Benefits, despite provider requests to change the payee due to concerns that [Mother] was being taken advantage of.^[1]
26. [Mother's] lack of insight as to the reason IDCSCMC became involved with the family was expressed to service providers and demonstrated in court when she testified it was the result of "some busybody who dug up dirt that is not true".
27. [Mother's] blame of [S.W.] for problems was expressed by her to service providers.
28. There is a reasonable probability that the conditions that resulted in [S.W.'s] removal and continued placement outside the home will not be remedied by her mother. Housing environment issues, parenting and supervision issues, and most of all, safety issues remain since the Informal Adjustment was commenced one and one half years ago. [Mother] has participated with three home based providers, unsuccessfully. She demonstrated a pattern of commencing services and

¹ Unfortunately, there is no indication in the record before us that the matter has been reported to or investigated by the proper law enforcement authorities.

then “going backward” or dropping off. It is an unfortunate fact that [Mother] suffers from a cognitive deficit which interferes with her learning and insight. However, the home based providers knew of the impairment and took repetitive steps and other methods to overcome the impairment, to no avail. Given [Mother’s] continued lack of insight into the underlying reasons for IDCSCMC’s involvement, it is not probable that conditions will be remedied in the future.

29. [S.W.] is in a pre-adoptive home. Guardian ad Litem Alane Singleton has observed her as being affectionate with her foster family and “doing great”. Ms. Sechrist has observed [S.W.] as being more affectionate with her foster mother than [Mother], where the relationship is strained, detached, and lacks communication.
30. The continuation of the parent-child relationship poses a threat to the well-being of [S.W.]. Concerns remain as to [Mother’s] parenting ability, her ability to meet [S.W.’s] emotional needs, and [Mother’s] lack of insight and poor judgment. If placed back in the home. [S.W.’s] safety would be placed at risk, as well as her emotional development. [S.W.] is aware of the situation and wants the stress she is experiencing over. Termination will accomplish this.
31. Termination of the parent-child relationship is in [S.W.’s] best interests. Waiting additional time will only prolong [S.W.’s] sense of frustration with the case that has already lingered. Termination would provide the opportunity for [S.W.] to be adopted into a loving and safe home where her needs will be met and permanency achieved.
32. There exists a satisfactory plan for the future care and treatment of [S.W.], that being adoption. [S.W.] will be turning age thirteen and wishes to be adopted by her current foster mother.
33. In considering [S.W.’s] wishes, the lack of progress that [Mother] has made in the long time this matter has been pending, and [S.W.’s] opportunity for placement in a safe secure environment where her needs will be met and she will know how she is supposed to live, Guardian ad Litem Singleton agrees with the plan of termination and adoption as being in [S.W.’s] best interests.

CONCLUSIONS

Therefore, the Court concludes that:

1. IDCSMC has proved by clear and convincing evidence that [S.W.] has been removed from [Mother] for at least six (6) months under a dispositional order, dated July 22, 2009
2. IDCSMC has proved by clear and convincing evidence that there is a reasonable probability that conditions that resulted in [S.W.'s] removal and placement outside the home will not be remedied by [Mother] given the lack of progress made and lack of insight.
3. IDCSMC has proved by clear and convincing evidence that the continuation of the parent-child relationship poses a threat to the well-being of [S.W.] with parenting and safety issues that remain, and [S.W.'s] frustration with the case lingering for so long.
4. IDCSMC has proved by clear and convincing evidence that termination is in the best interests of [S.W.] to provide her permanency within a safe and loving environment where her needs will be met.
5. IDCSMC has proved by clear and convincing evidence that there is a satisfactory plan for the care and treatment of [S.W.], that being adoption.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED [that the] parent child relationship between [S.W.] and her mother ... is hereby terminated.

Appellant's App. at 8-12. Mother now appeals.

Discussion and Decision

“The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children.” *In re A.K.*, 924 N.E.2d 212, 219 (Ind. Ct. App. 2010), *trans. dismissed*. A parent's interest in the care, custody, and control of her child is arguably one of the oldest of our fundamental liberty interests. *Id.* “However, these parental interests are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights.” *Id.*

Parental rights may therefore be terminated when the parent is unable or unwilling to meet her parental responsibilities. *Id.*

To involuntarily terminate a parent-child relationship, the Department of Child Services (“DCS”) must allege and prove

(A) that one (1) of the following is true:

(i) The child has been removed from the parent for at least six (6) months under a dispositional decree.

...

(B) that one (1) of the following is true:

(i) There is a reasonable probability that the conditions that resulted in the child’s removal or the reasons for placement outside the home of the parents will not be remedied.

(ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.

...

(C) that termination is in the best interests 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) (inapplicable provisions omitted). DCS must prove these elements by a preponderance of the evidence. Ind. Code § 31-37-14-2. “Clear and convincing evidence need not show that the custody by the parent is wholly inadequate for the child’s survival. Instead, it is sufficient to show by clear and convincing evidence that the child’s emotional and physical development would be threatened by the parent’s custody.” *In re A.B.*, 924 N.E.2d 666, 670 (Ind. Ct. App. 2010) (citation omitted).

Our standard of review is well settled:

When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. We consider only the evidence and reasonable inferences that are most favorable to the judgment. Where, as here, a trial court enters findings and conclusions granting a petition to terminate parental rights, we apply a two-tiered standard of review. First, we determine whether the evidence supports the findings. Then we determine whether the findings support the judgment. We will set aside a judgment only when it is clearly erroneous. A judgment is clearly erroneous when the findings do not support the trial court's conclusions or the conclusions do not support the judgment.

Id. at 670 (citations and quotation marks omitted).

Here, Mother challenges only the sufficiency of the evidence supporting elements (B)(i) and (B)(ii). Because the statute is written in the disjunctive, the juvenile court is required to find that only one of these elements has been established by clear and convincing evidence. *In re A.K.*, 924 N.E.2d at 220. Mother does not dispute the correctness of the juvenile court's findings, and her arguments are essentially invitations for us to reweigh evidence and judge witness credibility in her favor, which we may not do. The gist of her arguments seems to be that, given her cognitive deficits, she has not been given enough time to remedy the issues that resulted in S.W.'s removal from the home and threatened her well-being. We have often said that a juvenile court "need not wait until a child is irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship." *Id.* at 224. Even Mother admits that her progress has been "minimal" to date, Appellant's Br. at 13, and nothing indicates that this

would be likely to change. In sum, Mother has failed to establish that the juvenile court's termination order is clearly erroneous, and therefore we affirm.²

Affirmed.

ROBB, C.J., and NAJAM, J., concur.

² DCS asserts "that since Mother has conceded that DCS proved by clear and convincing evidence that termination was in [S.W.'s] best interest, she therefore concedes that the court's termination order was not clearly erroneous." Appellee's Br. at 11. Given that DCS must prove each element of Indiana Code Section 31-35-2-4(b)(2) by clear and convincing evidence, we emphatically reject the notion that a parent's concession regarding the sufficiency of evidence as to one element amounts to a concession as to all elements.