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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF PARENT-CHILD RELATIONSHIP OF M.W., C.S., and D.C., Minor Children,	)	
and,	)	
A.C., Mother,	)	
Appellant-Respondent,	)	
vs.	)	No. 71A05-1009-JT-655
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
Cause No. 71J01-1003-JT-41, 71J01-1003-JT-42, 71J01-1003-JT-43

March 31, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BARNES, Judge

Case Summary

A.C. ("Mother") appeals the trial court's order terminating her parental rights to her children, M.W., D.C., and C.S. We affirm.

Issue

The sole issue before us is whether there is sufficient evidence to support the termination of Mother's parental rights.

Facts

In December 2008, Mother was living with M.W., born in 2002, D.C., born in 2008, and C.S., born in 2007, in a home in South Bend with her father and brother. The Department of Child Services ("DCS") began receiving phone calls in the beginning of that month alleging that there was drug use in the home and a lack of electricity and food. On December 21, 2008, DCS received a call that C.S., who was twenty-three months old, was wandering outside wearing nothing but a diaper and undershirt. The temperature that day was -2º F, with a wind chill of -19º F. C.S. was taken to a hospital, where he was found to have frost nip, a slightly less severe condition than frost bite, on his feet. It was estimated that C.S. had been outside for fifteen to thirty minutes. Mother was not at the home when C.S. was found outside; she claimed she had left her children in the care of a

friend while she had gone to her cousins' house for no more than ten minutes, and that the friend had left the children alone.

DCS immediately removed C.S. from Mother's custody. On the next day, a DCS caseworker visited Mother's home and found very little food in the house and that it was being heated by space heaters and the stove, even though there was a gas leak in the house. Although Mother claimed to not be using drugs, DCS later learned that Mother had taken a drug test on December 18, 2008, in another case, which was positive for cocaine. Mother's father admitted to smoking marijuana. DCS then also removed M.W. and D.C. from Mother's custody and initiated CHINS proceedings as to all three children.

The CHINS dispositional order required Mother, among other things, to visit the children regularly, to complete a parenting assessment and follow all recommendations, to maintain stable and adequate housing, to complete a drug and alcohol evaluation and follow all recommendations, and to remain drug free.

Mother did complete a parenting assessment and the resulting parenting classes. However, between December 2008 and January 2010, Mother had forty-one positive random drug screens out of a total of seventy-four screens. The drugs included cocaine, THC, methadone (for which she did not have a prescription), and opiates. Apparently, Mother claimed to have prescriptions for some of the opiates, although she did not always provide proof to that effect. Mother was referred to a total of seven substance abuse treatment programs during the CHINS proceedings, from early 2009 to August 2010. She failed to complete any of them for various reasons, from failing to follow

program rules to continuing to test positive for drugs while in treatment. Mother's last drug screen was on August 11, 2010, and it returned positive for cocaine.

Mother's continued drug use impacted her visitation with her children. A visitation supervisor suspected that Mother often showed up to visitations while impaired because she "was extremely agitated, not able to pay attention, profuse sweating frequently. Sometimes you could just see her eyes were extremely dilated. She wasn't able to speak coherently . . . ." Tr. p. 19. In April 2009, further visitation was suspended until Mother could produce three consecutive clean drug screens.

Supervised visitation finally resumed in October 2009, after a period when Mother apparently produced several negative drug screens. Visitations still were a struggle, however, and were strictly supervised. Although Mother was affectionate toward her children, she tended to be inattentive to supervising them, especially when more than one child was present. A visitation supervisor frequently would have to intervene to prevent situations from arising that would be dangerous to the children. Also, Mother often failed to follow rules at the visitation facility with respect to things such as not taking phone calls during the visit, cleaning up afterwards, and bringing healthy food for the children to eat. Mother also failed to follow the visitation supervisor's suggestions for proper parenting and discipline techniques.

Meanwhile, on December 1, 2009, Mother gave birth to a fourth child, J.C.[1] DCS never acted to remove J.C. from Mother's care, because it had not received any express reports that J.C. was being mistreated or not adequately cared for. There was evidence that Mother has never had a job during the entirety of the CHINS proceedings and has never lived anywhere for more than four months. Her living arrangements had consisted of living with her parents, an aunt, and various treatment centers. She also was arrested more than once during the CHINS proceedings on suspicion of criminal conversion.

On March 10, 2010, DCS filed a petition to terminate Mother's parental rights to M.W., D.C., and C.S. The trial court conducted a hearing on the petition on August 20, 2010. At the conclusion of this hearing, the trial court sua sponte removed J.C. from Mother's custody and placed him in foster care to be arranged by DCS. On August 25, 2010, the trial court entered an order terminating Mother's parental rights to M.W., D.C., and C.S. Mother now appeals.

Analysis

Mother contends there is insufficient evidence to support the termination of her parental rights.[2] The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. In re I.A., 934 N.E.2d 1127, 1132 (Ind. 2010). "A parent's interest in the care, custody, and control of

[1] It appears from the evidence in the record that Mother was testing positive for cocaine and methadone in, at the very least, the summer of 2009, when she would have been several months pregnant with J.C. DCS has made no allegations to that effect, however.

[2] Mother does not contest the trial court's sua sponte removal of J.C. from her custody.

his or her children is 'perhaps the oldest of the fundamental liberty interests.'" Id. (quoting Troxel v. Granville, 530 U.S. 57, 65, 120 S. Ct. 2054 (2000)). "Indeed the parent-child relationship is 'one of the most valued relationships in our culture.'" Id. (quoting Neal v. DeKalb County Div. of Family & Children, 796 N.E.2d 280, 285 (Ind. 2003)). Parental interests are not absolute, however, and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. Id. (citing In re D.D., 804 N.E.2d 258, 264-65 (Ind. Ct. App. 2004), trans. denied)). Thus, "[p]arental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities." Id. (quoting D.D., 804 N.E.2d at 265).

When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. Id. We consider only the evidence and reasonable inferences that are most favorable to the judgment. Id. We must also give "due regard" to the trial court's unique opportunity to judge the credibility of the witnesses. Id. (quoting Ind. Trial Rule 52(A)). Here, the trial court entered findings of fact and conclusions thereon in granting DCS's petition to terminate Mother's parental rights. 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. First, we determine whether the evidence supports the findings, and second we determine whether the findings support the judgment. Id. We will set aside the trial court's judgment 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.

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)[3] provides that a petition to terminate a parent-child relationship involving a child in need of services must allege, in part, that:

> (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 (Ind. 1992); see also I.C. § 31-34-12-2.

Mother claims there is insufficient evidence to support the trial court's finding that there was a reasonable probability that the conditions resulting in the removal of M.W.,

[3] Indiana Code Section 31-35-2-4 was amended effective March 12, 2010 by Pub. L. No. 21-2010, § 8. However, the amendment is not applicable here, as the petition to terminate was filed before that date.

D.C., and C.S. would not be remedied.[4] She does not challenge the trial court's findings regarding the best interests of the children and the existence of a satisfactory plan for the children.

A trial court considering a petition to terminate parental rights must evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. In re I.A., 903 N.E.2d 146, 154 (Ind. Ct. App. 2009). Courts may properly consider evidence of a parent's criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. Id. The trial court may also consider the services offered to the parent by DCS and the parent's response to those services as evidence of whether conditions will be remedied. Id. Finally, DCS 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. Id.

The reason for the children's removal from Mother's custody was the poor conditions and lack of food in the home, as well as inadequate supervision of C.S. It is reasonable to infer that Mother's illicit drug use contributed to those issues. There was scant indication that Mother made any meaningful progress toward eliminating that drug

[4] Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. Consequently, DCS was required to demonstrate by clear and convincing evidence a reasonable probability that either: (1) 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 (2) the continuation of the parent-child relationship poses a threat to the well-being of the child. See, e.g., Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 148 n.5 (Ind. 2005); In re T.F., 743 N.E.2d 766, 774 (Ind. Ct. App. 2001), trans. denied. Thus, although the trial court here alternately found that continuation of the parent-child relationship poses a threat to the children and Mother challenges that finding, we need not address it.

use throughout the entirety of the CHINS proceedings. She was referred to substance abuse programs on seven occasions and never completed a single one of them. Although Mother often attempted to place the blame for these failures on other persons, there was ample evidence that she did not complete these programs because of her own inability to follow the rules of the programs, or because she continued using drugs while enrolled in them. She had numerous positive drug test results, often for cocaine and methadone. The most recent positive result occurred just nine days before the termination hearing.

There was a strong suspicion that Mother frequently attended supervised visitation with her children while under the influence of drugs. Ultimately, her drug use caused a several-month long suspension of visitation. And even when visits resumed and suspicion of drug use before visits was lacking, she demonstrated an inability to properly care for and supervise all three of the children (four, after J.C. was born) at the same time. Furthermore, Mother disregarded rules of the visitation facilities and disregarded efforts to improve her parenting skills.

With respect to Mother's living situation, there also was no indication in any improvement in that area since the beginning of the CHINS proceedings. During that time, which spanned approximately twenty months, Mother never lived in any one place more than four months. She was in and out of several treatment facilities, and when she was not, she apparently often lived with her father, who had admitted to his own illegal drug usage. She never had any kind of employment. Instead, she was arrested more than once for criminal conversion. Drug use or not, there is sufficient evidence that Mother's

haphazard living situation was no better in August 2010 than it had been in December 2008. Given the substantial evidence of no improvement in Mother's drug abuse or living situation since M.W., D.C., and C.S. were removed from her care, the trial court's finding that there was a reasonable probability that the conditions resulting in the children's removal would not be remedied was not clearly erroneous. Mother's habitual patterns of detrimental conduct and failure to respond to services offered by DCS or other related entities, such as substance abuse programs, supports the termination of her parental rights.

Despite this evidence, Mother seems to rely heavily upon the fact that DCS never attempted to remove J.C. from her care as directly contradicting DCS's insistence that her parental rights be terminated as to M.W., D.C., and C.S. It is, admittedly, somewhat unusual that DCS apparently undertook no action with respect to determining whether J.C. was a CHINS, given the evidence we have described that occurred both before and after he was born. Indeed, the trial court also found it unusual, because it sua sponte ordered J.C. removed from Mother's custody after hearing the same evidence. Nonetheless, J.C. was not born until eleven months into the CHINS proceeding. Nothing about his birth, and DCS's decision not to attempt to initiate a CHINS proceeding as to him, changes the clear evidence of Mother's parental inadequacies with respect to M.W., D.C., and C.S. There also was evidence presented, with respect to Mother's supervised visitations, that her ability to take care of the children declined drastically when more

than one child was present. Thus, J.C.'s status does not dictate reversal of the termination of her parental rights with respect to M.W., D.C., and C.S.

Conclusion

There is sufficient evidence to support the trial court's termination of Mother's parental rights with respect to M.W., D.C., and C.S. We affirm.

Affirmed.

RILEY, J., and DARDEN, J., concur.