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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF M.H. (minor child) and R.S. (mother),	)	
Appellant,	)	
vs.	)	No. 79A02-1009-JT-1166
THE INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta H. Rush, Judge
Cause No. 79D03-1006-JT-66

April 13, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

R.S. ("Mother") appeals the termination of her parental rights as to her minor child, M.H.[1]

We affirm.

ISSUE

Whether there was clear and convincing evidence to support the termination of Mother's parental rights.

FACTS

M.H. was born on April 2, 2008. At some point prior to September 24, 2009, Mother, Father, and M.H. were staying at a shelter in Lafayette. When the shelter made the family leave after Mother and Father got into an altercation, Father took M.H. with him to stay at a friend's house, and Mother went to a "night shelter . . . ." (Tr. 50). Mother did not take M.H. with her because she preferred M.H. to "be somewhere where she didn't have to wake up at six in the morning . . . ." (Tr. 50).

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[1] The trial court also terminated the parental rights of L.H. ("Father"). He does not appeal the termination.

On September 24, 2009, officers arrested Father for public intoxication, thereby leaving M.H. in Mother's care. Tippecanoe County's office for the Indiana Department of Child Services ("DCS") removed M.H. from Mother's care after no shelters agreed to take Mother and M.H. Although the State dismissed the public intoxication charge against Father, he subsequently pleaded guilty to class B felony child molesting under a separate cause number.

On September 28, 2009, DCS filed a petition, alleging M.H. to be a child in need of services ("CHINS") due to her parents' failure to provide her with "necessary food, clothing, shelter, medical care, education or supervision[.]" (App. 199). Mother denied the allegations set forth in the petition.

On November 4, 2009, the trial court determined M.H. to be a CHINS and entered a parental participation decree. Among other things, the trial court ordered Mother to attend all "hearings, case conferences, visitations, and appointments as scheduled"; contact DCS "at least twice per month"; notify DCS of any change in address, telephone number, or employment; "[o]btain and maintain safe housing suitable for [M.H.]"; "[o]btain and maintain a legal and stable source of income," including, if necessary, public assistance; and attend individual therapy on a weekly basis. (App. 191).

Mother attended five therapy sessions. She failed to attend her last scheduled session on November 30, 2009, and did not return to therapy. Mother consistently attended visitation until November 24, 2009, after which she missed all scheduled visitations with M.H.

Despite DCS's recommendation against it, Mother commenced an eight-month residential program with the Job Corps Center in Johnson County on December 1, 2009. Mother did not get permission from the trial court to leave Tippecanoe County or notify DCS of her whereabouts. On December 9, 2009, DCS filed a request for rule to show cause. Mother finally contacted DCS on December 28, 2009.

On January 8, 2010, the trial court held a review and show cause hearing. Mother did not appear at the hearing. Thereafter, the trial court entered an order, suspending Mother's services and visitation for failure to comply with the parental participation decree.

Following a hearing on February 24, 2010, at which Mother appeared, the trial court found that Mother had failed to comply with the parental participation order by "failing to provide notice of changes of residence and failing to attend case management, visitation and therapy." (DCS Ex. 5). The trial court admonished Mother "for failing to comply" with the trial court's orders and "advise[d] her that noncompliance . . . could result in a permanency plan to terminate her parental rights." *Id.*

The trial court held a permanency plan hearing on June 1, 2010, which Mother did not attend. Also on June 1, 2010, DCS filed a petition to terminate parental rights. The trial court held a termination hearing on August 5, 2010.

Mother testified that she graduated from Job Corps and returned to Lafayette on July 5, 2010. While in the Job Corps program, she earned her general education degree ("GED") and obtained her driver's license. She further testified that she was living in an

apartment provided by the "Seeds of Hope Program," but was not employed. (Tr. 63). According to Mother, she could stay in the apartment until she "g[o]t on [her] feet." (Tr. 63). Mother admitted that she did not complete the court-ordered services. Mother also acknowledged that "[i]f she had to do it all over again," she would "leave for Job Corp[s.]" (Tr. 58).

Abby Wright, the clinical coordinator for the Community and Family Resources Center (the "Center"), testified that Mother initially participated in the Center's Babies Can't Wait program, which provided home-based case management services, visitation services, and individual therapy for Mother. (Tr. 77). The case-management services included assisting Mother in establishing permanent housing; obtaining her GED; and finding employment.

Wright testified that Mother exercised consistent visitation until she "left the county" to attend the Job Corps program without informing the Center. (Tr. 90). Thereafter, Mother failed to exercise visitation or communicate with M.H. in any way.

Wright also testified that when Mother did visit with M.H., prior to joining Job Corps, she was "appropriate." (Tr. 94). Wright, however, expressed concern that Mother did not attend a scheduled doctor's appointment for M.H.

Wright recommended that Mother's parental rights be terminated. Specifically, she expressed concern that Mother had missed one of M.H.'s medical appointments and never contacted the Center after November of 2009 "to get any kind [sic] updates on her child . . . ." (Tr. 95).

Kristen Meadows, M.H.'s DCS-appointed case manager, testified that those involved in Mother's case management advised her not to join the Job Corps program because it would require separation from M.H. Initially, Mother indicated that "she would stay and be with [M.H.] instead of leaving for Job Corp[s]." (Tr. 112). One month later, however, Mother joined Job Corps. Meadows further testified that during the hearing in February of 2010, she advised Mother that "the permanency plan could change if [Mother] chose to remain out of the county." (Tr. 112). Meadows had no further contact with Mother; she testified that although Mother "left several voicemails after she returned to Lafayette in July" of 2010, she did not leave any contact information. (Tr. 113).

Meadows testified that Mother's conduct in "just leav[ing]" and failing to contact or communicate with M.H. for at least seven months concerned her. (Tr. 110). Meadows further testified that she believed termination of Mother's parental rights to be in M.H.'s best interests given Mother's instability, including "unemployment, homelessness, having no income to support or take care of [M.H.]," and "pattern of poor decision-making[.]" (Tr. 109). Meadows testified that adoption is the permanency plan for M.H.

Debbie Massengill, the court-appointed special advocate ("CASA"), testified that she believed termination of Mother's parental rights to be in M.H.'s best interests because Mother has failed to provide M.H. with stability and cannot provide stability because "[s]he has no income, no housing." (Tr. 134). Massengill further testified that

Mother's participation in Job Corps was detrimental to M.H. because "[s]he's not had a mom for eight months." (Tr. 135). She testified that M.H. "deserves a permanent loving home" and did not believe Mother could provide that. (Tr. 134). According to Massengill, M.H.'s maternal aunt and uncle had initiated adoption proceedings.

On August 31, 2010, the trial court entered its finds of fact and conclusions of law. The trial court found, in pertinent part, as follows:

> 2. [DCS] received a report on September 24, 2009 alleging that Father was arrested for Public Intoxication near the library after being loud and belligerent. The child was left in the care of Mother. Investigation revealed that Mother had previously placed the child in Father's care because she was homeless and without income.
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> . . . .
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> 5. The child had remained in protective custody pursuant to a CHINS Detention Hearing Order issued on or about September 28, 2009. The child was placed in foster care where the child remains. A CASA was appointed to represent the best interests of the child. The child was found to be a [CHINS] and a dispositional order was issued on or about November 2, 2009. The child has remained out of [Mother's] care continuously since that date.
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> . . . .
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> 7. Pursuant to dispositional orders, Mother was offered the following services: individual counseling, visitation, and case management/family preservation services. . . . These services were exhaustive and were designed to address [Mother's] difficulties. Evaluations revealed no barriers to [Mother's] ability to participate in services and achieve reunification. At the time of the Dispositional hearing on November 2, 2009, it had been determined that the child had no special needs. The child was adjusting to foster care and visiting her parents four (4) to five (5) times per week to maintain a bond. . . . Mother had been cooperative with preliminary services but had expressed a desire to join Job Corps. Mother requested that the child be reunified with Father . . . .

8. Review hearings were held on January 8, 2010 and February 24, 2010. . . . Mother had been participating in visitation and case management but was unmotivated to obtain housing and employment. Mother was resistant to therapy and left the area in early December without notice. Mother contacted DCS on December 28, 2009 reporting she had joined Job Corps . . . . Mother acknowledged that DCS did not recommend leaving for Job Corps but believed DCS was not providing enough assistance regarding education and employment. . . . By February, [Mother] had been found in contempt for failing to comply with services. . . . Mother had failed to initiate contact with DCS to inquire about the child's welfare or to request visitation. Mother was admonished that failure to participate in services as ordered could result in termination of her parental rights. Mother chose to remain in Job Corps.

9. A permanency hearing was initially scheduled for May 14, 2010 but was continued to June 1, 2010 . . . . Mother remained absent in Job Corps and had had no contact with the child since November 24, 2009.

10. . . . While in Job Corps, Mother did obtain a GED and a vocational diploma . . . . After completing Job Corps on July 5, 2010, Mother . . . has . . . resided in an apartment in Lafayette through the Seeds of Hope program. Mother was seeking employment . . . .

Mother has exhibited a pattern of poor choices in abandoning the child. Mother left the child in the care of the Father who was no more stable than Mother and then left the child in foster care while she pursued the Job Corps. While Mother's completion of Job Corps may ultimately serve beneficial to Mother, her sudden departure and eight (8) month absence negatively impacted the child. Mother's attempt to maintain a bond with the child was minimal at best. Mother was offered services similar to those provided by Job Corps in the Lafayette area where she could have maintained visitation with her child.

. . . .

12. Although the parents love this child, neither has demonstrated the ability to meet the child's needs. . . . Mother's history of instability continues. All imaginable services have been offered and nothing is singularly different in today's circumstances since the time of removal. To continue the parent-child relationship would be detrimental to the child. The child needs permanency now.

(App. 328-31). Concluding that there is a reasonable possibility that conditions that resulted in M.H.'s removal will not be remedied; the continuation of the parent-child relationship poses a threat to M.H.'s well-being; and termination of parental rights is in M.H.'s best interests, the trial court terminated Mother's parental rights.

DECISION

Although parental rights are of a constitutional dimension, the law allows for termination of these rights when parties are unable or unwilling to meet their responsibility. *In re A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). The purpose of termination of parental rights is not to punish parents but to protect children. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

In reviewing the termination of parental rights, we will neither reweigh the evidence nor judge the credibility of witnesses. *In re I.A.*, 934 N.E.2d 1127, 1132 (Ind. 2010). We consider only the evidence most favorable to the judgment. *Id.* Where the trial court has entered findings of fact and conclusions of law, we apply a two-tiered standard of review. *Id.* We must determine whether the evidence supports the findings and then whether the findings support the judgment. *Id.* We will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.* A judgment is clearly erroneous if the findings do not support the conclusions or the conclusions do not support the judgment. *Id.*

When DCS seeks to terminate parental rights, it must plead and prove in relevant part that:

> (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[.]

Ind. Code § 31-35-2-4(b)(2). These allegations must be established by clear and convincing evidence. *I.A.*, 934 N.E.2d at 1133.

Mother argues that the trial court's "conclusion that there was a reasonable probability that the conditions that resulted in [M.H.]'s removal would not be remedied" and the trial court's "finding that the continuation of the parent-child relationship poses a threat to the well being of [M.H.]" are clearly erroneous. Mother's Br. at 5. Because subsection (b)(2)(B) is written in the disjunctive, however, DCS need prove only one of the two elements by clear and convincing evidence. *See I.A.*, 934 N.E.2d at 1133. Thus, if we hold that the evidence sufficiently shows that the conditions resulting in removal will not be remedied, we need not address whether the continuation of the parent-child relationship poses a threat to the well-being of the children. *See* I.C. § 31-35-2-4(b)(2)(B); *A.N.J.*, 690 N.E.2d at 721 n.2.

To determine whether the conditions are likely to be remedied, the trial court must examine the parent's fitness to care for the child "as of the time of the termination hearing and take into account any evidence of changed conditions." *In re S.P.H.*, 806

N.E.2d 874, 881 (Ind. Ct. App. 2004). The trial court, however, also must determine whether there is a substantial probability of future neglect or deprivation. *Id.* In so doing, the trial court "may properly consider 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." *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003).

The trial court may also consider the services offered to the parent and the parent's response to those services. *Id.* "Finally, we must be ever mindful that parental rights, while constitutionally protected, are not absolute and must be subordinated to the best interests of the child when evaluating the circumstances surrounding termination." *Id.* Thus, the trial court need not wait until a child is irreversibly harmed such that the child's physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

In this case, several factors weigh in favor of the trial court's conclusion that the conditions resulting in M.H.'s removal will not be remedied. DCS initiated the CHINS proceedings because Mother, who had no source of income, could not meet M.H.'s basic needs, including shelter. Notwithstanding the employment and educational services offered in Tippecanoe County, Mother left the county to attend a job-training program; she did so against DCS's recommendations and without the trial court's approval.

Mother then failed to contact DCS for several months; missed all subsequent visitations with M.H.; did not attend therapy; and failed to appear at hearings. Despite an

admonishment from the trial court that failure to comply with the trial court's orders would result in termination of her parental rights, Mother remained in the Job Corps program until July of 2010, eschewing court-ordered services.

As of the final hearing, Mother remained unemployed and had no source of income. Mother had established housing only one month prior to the final hearing and testified that it was not permanent. Finally, Mother's last contact with M.H. had been in late November of 2009, approximately eight months prior to the final hearing.

While we commend Mother for obtaining her GED and job training, she did so at the expense of her relationship with M.H. Her abrupt and lengthy absence has contributed to the instability in M.H.'s life. Moreover, Mother has not remedied the conditions that led to the removal of M.H.; she remains unemployed, has no source of income, and has not established permanent housing.

Accordingly, we find that the evidence clearly and convincingly supports the findings, which clearly and convincingly support trial court's conclusion that the conditions that resulted in M.H.'s removal will not be remedied. We therefore cannot say the trial court's judgment is clearly erroneous.

Affirmed.

RILEY, J., and BARNES, J., concur.