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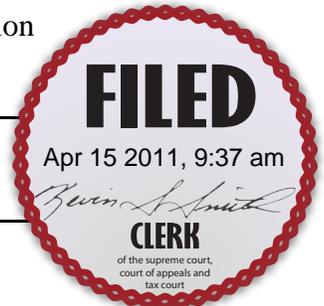
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**IN THE
COURT OF APPEALS OF INDIANA**



In the Matter of the Termination of the Parent-Child Relationship of P.W., S.W., L.W., C.W., and Ch.W., minor children, and S.W., mother,

S.W.,
Appellant-Respondent,

vs.

INDIANA DEPARTMENT OF CHILD SERVICES,

Appellee-Petitioner.

No. 49A05-1010-JT-623

APPEAL FROM THE MARION COUNTY SUPERIOR COURT, JUVENILE DIVISION

The Honorable Marilyn Moores, Judge
The Honorable Larry Bradley, Magistrate

Cause Nos. 49D09-0912-JT-58712, 49D09-0912-JT-58713, 49D09-0912-JT-58714,
49D09-0912-JT-58715, and 49D09-0912-JT-58716

April 15, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

S.W. (“Mother”) appeals the involuntary termination of her parental rights to her children, P.W., S.W., L.W., C.W., and Ch.W. In so doing, Mother claims the juvenile court committed reversible error in failing to admit certain supervised visitation records into evidence during the termination hearing.

We affirm.

FACTS AND PROCEDURAL HISTORY

Mother is the biological mother of P.W., S.W., L.W., C.W., and Ch.W. (collectively referred to as “the children”), born in October 1999, July 2001, December 2003, August 2006, and September 2007, respectively.¹ The facts most favorable to the juvenile court’s termination order reveal that in April 2008, the Indiana Department of Child Services, Marion County (“MCDCS”), took the children into emergency protective custody and filed a petition alleging all five children were children in need of services (“CHINS”) because Mother had failed to pick up the children from daycare, her whereabouts remained unknown two days later, and MCDCS had received reports that Mother was “going through some problems, [was] depressed, and [might] be suicidal.” *Appellant’s App.* at 25.²

¹ Mother’s sixth biological child, C.W.3, was born in June 2009 after the initiation of the underlying proceedings and is not subject to the juvenile court’s June 2010 termination order. The trial court also terminated the parental rights of the children’s respective biological fathers. None of the biological fathers participates in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother’s appeal of the termination order pertaining to P.W., S.W., L.W., C.W., and Ch.W.

² This was not Mother’s first encounter with MCDCS, as P.W. had been determined to be a CHINS previously in 2000. The CHINS case was later dismissed in February 2001, after Mother completed reunification services.

A detention hearing was held the next day, after which the juvenile court determined there was probable cause to believe the children were CHINS in that Mother had “abandoned” the children. *Id.* at 36. The children were made temporary wards of MCDCS and placed in relative care. Mother was subsequently ordered to pay \$30.00 in weekly child support to the relative care provider but made only one payment and later cut off food stamps for the children. In addition, Mother was convicted of operating a vehicle while intoxicated in May 2008.

Pursuant to court-ordered provisional services, Mother submitted to a parenting assessment during which she tested positive for illegal substances. As a result, Mother was referred for random drug screens that began in July 2008. An evidentiary hearing on the CHINS petition was held in September 2008. During the CHINS hearing, Mother admitted to the material allegations of the CHINS petition, including the specific allegation that she had been diagnosed with Bipolar Disorder and was in need of “continued treatment and assistance” to appropriately parent her children. *Id.* at 53. The juvenile court adjudicated the children CHINS, proceeded to disposition, and entered an order formally removing the children from Mother’s care and custody. The court’s dispositional order also directed Mother to continue participating in and successfully complete a variety of tasks and services in order to achieve reunification with the children, including the following: (1) obtain adequate income and housing to support all household members; (2) submit to random drug screens; (3) maintain weekly contact with MCDCS case workers; and (4) complete home-based counseling services.

Mother's participation in court-ordered services during the ensuing months was inconsistent and ultimately unsuccessful. Although Mother initially participated in random drug screens, by the latter part of 2008, she had ceased all communication with MCDCS, stopped visiting with the children, and failed to complete the random drug-screen referral. In January 2009, the juvenile court ordered Mother's visitation privileges suspended.

After approximately six months of no contact, Mother reengaged with MCDCS in April 2009. She thereafter began participating in home-based counseling services and completed the random drug screen referral. In addition, Mother resumed regular supervised visits with the children. By late October 2009, Mother had progressed to the point of being allowed to have L.W., and C.W., and Ch.W. returned to her care as part of a trial home visit. At the time of the trial home visit, C.W.3 had been born and was also residing with Mother.

Approximately two weeks after the younger children's return home, Mother was arrested and incarcerated on multiple alcohol-related charges including operating a vehicle while intoxicated with a prior conviction, resisting law enforcement, driving with a suspended license, and public intoxication. Consequently, all four children were removed, and a separate CHINS petition was filed as to C.W.3. In December 2009, MCDCS filed a petition seeking the involuntary termination of Mother's parental rights to the five older children. A two-day evidentiary hearing on the termination petition was commenced in May 2010.

During the termination hearing, MCDCS presented evidence showing Mother had failed to successfully complete a number of the juvenile court's dispositional goals,

including home-based counseling and substance abuse treatment. Mother was also unemployed and had failed to provide any meaningful financial support for the children for approximately two years. Regarding Mother's mental health status, Mother denied she had any mental health issues and informed the court that she was not taking her prescribed medications. In addition, Mother had been incarcerated on three separate occasions during the underlying proceedings on alcohol-related charges and had recently been incarcerated for a pretrial probation violation of an alcohol monitoring system. In addition, Mother was still awaiting trial on the operating a vehicle while intoxicated with a prior conviction, resisting law enforcement, driving with a suspended license, and public intoxication charges. Nevertheless, Mother denied having a problem with alcohol consumption.

At the conclusion of the termination hearing, the juvenile court took the matter under advisement. The juvenile court entered its judgment terminating Mother's parental rights to all five children on June 9, 2010. Mother now appeals.

DISCUSSION AND DECISION

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*. These parental interests, however, 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.* In addition, 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. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001).

Before an involuntary termination of parental rights may occur, the State is required to allege and prove, among other things, 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; [and]
- (C) termination is in the best interests of the child[.]

Ind. Code § 31-35-2-4(b)(2)(B) and (C) (2008).³ Moreover, “[t]he State’s burden of proof in termination of parental rights cases is one of ‘clear and convincing evidence.’” *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code § 31-37-14-2 (2008)). Finally, we acknowledge that this court has long had a highly deferential standard of review in cases concerning the termination of parental rights. *K.S.*, 750 N.E.2d at 836. When reviewing a termination of parental rights case, 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 juvenile court’s unique position to assess the evidence, we will set aside the court’s judgment terminating a

³ Indiana Code section 31-35-2-4 was amended by Public Law No. 21-2010, § 8 (eff. March 12, 2010). Because the changes to the statute became effective after the filing of the termination petition herein, they are not applicable to this case.

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*.

Mother's sole allegation on appeal is that the juvenile court abused its discretion and ultimately committed fundamental error by denying her request to admit certain visitation records into evidence during the termination hearing. In so doing, Mother vehemently asserts the visitation documents were admissible under Indiana Rule of Evidence 801 or, in the alternative, pursuant to several specified Indiana CHINS and/or termination statutes and further argues that said records "were critical to [Mother's] case because they show positive interactions between [Mother] and the children[,] as well as indications that [Mother] made progress in appropriately disciplining and redirecting the children." *Appellant's Br.* at 5. MCDCS counters that Mother "does not challenge a single finding of the juvenile court's order, nor does she in any way articulate how the court's exclusion of [Mother's proposed exhibit] negated any of the elements that [MCDCS] was required to prove in order to terminate the parent-child relationship." *Appellee's Br.* at 23.

Decisions regarding the admission of evidence are entrusted to the sound discretion of the trial court. *In re A.J.*, 877 N.E.2d 805, 813 (Ind. Ct. App. 2007), *trans. denied*. An abuse of discretion occurs only if a trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.* Moreover, "[e]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected" Ind. Evidence Rule 103(a). Assuming without deciding that the visitation records should have been admitted into evidence, the exclusion of said documents was harmless under the facts of this case where it is clear from the language of

the termination order that the juvenile court's decision was not based on Mother's conduct during her visits with the children, but rather on Mother's unresolved mental health issues, substance abuse problems, ongoing criminal activity, and extended disappearance during the underlying CHINS case.

Here, in terminating Mother's parental rights, the juvenile court's termination order acknowledged the testimony from various service providers and Mother's own relatives describing Mother as "unpredictable, angry, and threatening," as well as Mother's failure to complete mental health counseling. *Appellant's App.* at 36. The juvenile court also specifically found that "Mother abuses alcohol" and detailed Mother's multiple arrests and periods of incarceration during the underlying proceedings, as well as her pending charges for alcohol-related offenses. *Id.* In addition, the juvenile court found:

21. [Mother] has been involved with home[-]based services since April 2009. At no time has home[-]based recommended reunification. Parenting skills, mental health issues, and alcohol use are still concerns.
22. [Mother] has a history of poor decision making such as leaving her children with relatives for periods of time, shoplifting with her baby, and becoming incarcerated on alcohol[-]related charges.
23. There is a reasonable probability that the conditions that resulted in the removal and continued placement of the children out of the home will not be remedied by their mother. It has been over two years since the CHINS was filed and [Mother] has made little, if any progress. She would have to undergo substance abuse treatment and successfully complete home [-]based counseling and obtain coping and appropriate decision[-]making skills. With the underlying mental health concerns and the blaming of others for her involvement with [MCDCS] and not taking responsibility, it is not probable that [Mother] can complete services. Nothing in [Mother's] behavior suggests that she will go forward if given additional time.

* * * *

27. Termination of the parent-child relationship is in the best interests of the children. With the exception of two weeks in 2009, all the children have resided with [Foster Mother] since April 2008. She is willing to adopt the children. [Foster Mother] is providing a safe[,] stable environment for the children, and meeting their needs. The children have been observed as doing very well and are interacting positively in their structured placement. . . .

* * * *

29. Based on the parents' lack of progress in two years, the children's wishes, their progress in relative care, and the need for permanency, both Guardians ad Litem agree with the plan of adoption as being in the children's best interests.

Id. at 36-37. Mother fails to challenge a single one of the juvenile court's findings set forth above. Moreover, a thorough review of the record reveals that these findings are supported by clear and convincing evidence. Thus, even assuming, *arguendo*, that the juvenile court's refusal to admit the visitation reports proffered by Mother constituted error, said error would amount to harmless error in the present case because there is nothing in the record to suggest that Mother's substantive rights were adversely affected. *See A.J.*, 877 N.E.2d at 813.

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.” *Matter of A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting *Egley v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here. Affirmed.

CRONE, J., and BRADFORD, J., concur.