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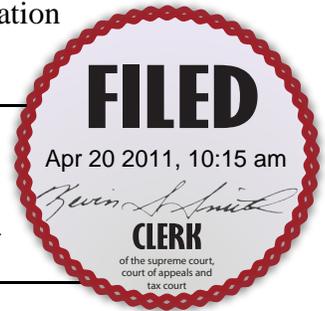
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**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF PARENT-CHILD)
RELATIONSHIP OF:)
)
C.S. & C.S.¹, Minor Children)
)
and)
)
K.L., Mother,)
)
Appellant-Respondent,)
)
vs.)
)
THE INDIANA DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner.)

Cause No. 57A03-1009-JT-464

¹ As set forth below, we hereinafter indentify one of the “C.S.” children as “C.L.”

APPEAL FROM THE NOBLE SUPERIOR COURT
The Honorable Michael J. Kramer, Judge
Cause No. 57D02-0809-JT-14
Cause No. 57D02-0809-JT-15

April 20, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-respondent K.L. (Mother) appeals the trial court's judgment terminating her parental rights as to her minor children, C.S. and C.L., claiming that there is insufficient evidence to support the termination order. In essence, Mother claims that the appellee-petitioner, Indiana Department of Child Services (DCS) failed to sufficiently demonstrate that the reasons for the children's removal would not be remedied. Mother also asserts that the trial court overlooked certain facts and evidence in its findings and failed to give sufficient weight to the efforts that she made to achieve reunification with the children. Finding no error, we affirm the trial court's judgment terminating Mother's parental rights as to C.S. and C.L.

FACTS

Mother gave birth to her daughter, C.S., on February 3, 2001, and to C.L., a son, on December 12, 2002. The DCS placed the children in licensed foster care and filed Children in Need of Services (CHINS) petitions on March 2, 2007. At the time of the children's detention, Mother's whereabouts were unknown and Father was incarcerated.

Father admitted to the allegations in the CHINS petition and the trial court entered dispositional orders on August 3, 2007. The trial court ordered various services for Father but none for Mother because her whereabouts were still unknown.

Following an investigation, DCS located Mother in Texas in August 2007. Mother expressed a desire to reconnect with the children and promised to attend future CHINS hearings in Indiana. Various court documents were sent to Mother, her receipt of which was confirmed.

The trial court conducted a review hearing on January 11, 2008. Although Mother did not appear, the trial court ordered DCS to explore potential placement for the children in Texas. The trial court also determined that Mother could have supervised telephone visitation with the children. However, Mother's next contact with DCS was not until August 2009, because the contact information that Mother had initially provided to the agency failed. And her only contact with the children during the pending CHINS case was a letter that she wrote to them in September 2009.

Both C.S. and C.L. had been diagnosed with disruptive behavior disorder. The children also exhibited many episodes of "bed wetting, poor boundaries, lying and moodiness." Appellant's App. p. 19. C.S. and C.L. also underwent counseling sessions. Although the prognosis for the children was very positive, the therapist recommended against moving the children from the foster home.

At a fact-finding hearing that was conducted on October 16, 2009, Mother participated by telephone, and Father voluntarily consented to the children's adoption.

On May 12, 2010, DCS filed petitions for the involuntary termination of parental rights as to both children.² Until June 18, 2010, Mother had not participated in any of the CHINS hearings, family case planning conferences, or family team meetings regarding the children. Thereafter, on August 12, 2010, the final hearing was conducted and Mother participated telephonically.³

The trial court entered judgment on August 16, 2010, terminating Mother's parental rights as to C.S. and C.L. The trial court's findings of fact and conclusions of law stated, among other things, that Mother made no effort to care for the children and failed to follow through on promises to gain custody or participate in hearings in the CHINS cases. Mother now appeals.

DISCUSSION AND DECISION

I. Standard of Review

We initially observe that the Fourteenth Amendment to the United States Constitution protects the traditional right of parents to raise their children. In re Involuntary Termination of Parent-Child Relationship of I.A., 934 N.E.2d 1127, 1133 (Ind. 2010). However, parental rights are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental

² DCS originally filed the petitions for involuntary termination of Mother and Father's rights on September 30, 2008. Even though Mother's parental rights were involuntarily terminated on October 16, 2009, Mother appealed, and it was discovered during the briefing process that DCS did not have service on Mother when Mother's rights were read and counsel was offered in the termination proceedings. Thus, DCS moved to vacate the termination order as to Mother and re-filed the petition in May 2010.

³ Mother was also represented by counsel at the hearing.

rights. In re D.D., 804 N.E.2d 258, 264-65 (Ind. Ct. App. 2004). The purpose of terminating parental rights is not to punish parents but to protect their children. In re S.P.H., 806 N.E.2d 874, 880 (Ind. Ct. App. 2004). Thus, parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. In re D.D., 804 N.E.2d at 265.

When reviewing the termination of parental rights, we neither reweigh the evidence nor judge witness credibility, considering instead only the evidence and reasonable inferences that are most favorable to the judgment. In re I.A., 934 N.E.2d at 1133. Because the trial court entered specific findings of fact and conclusions thereon in its order terminating Mother's parental rights, we apply a two-tiered standard of review. Bester v. Lake Cnty. Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005).

First, we determine whether the evidence supports the findings, and then consider whether the findings support the judgment. Id. We will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). A judgment is clearly erroneous when the evidence does not support the findings or the findings do not support the result. In re I.A., 934 N.E.2d at 1133.

To effect the involuntary termination of a parent-child relationship, DCS must present clear and convincing evidence establishing the following elements:

(A) one (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 . . . 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) 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.

Ind. Code § 31-35-2-4(b)(2).

II. Mother's Contentions

Mother's only issue in this appeal is whether DCS sufficiently proved that the reasons for the children's removal would not be remedied. Mother maintains that the trial court failed to give sufficient weight to her purported efforts at reunification with the children.

In determining whether the conditions will be remedied, the juvenile court must judge the parent's fitness to care for the child at the time of the termination hearing,

taking into consideration evidence of changed conditions. In re D.J., 755 N.E.2d 679, 684 (Ind. Ct. App. 2001). However, a parent's habitual patterns of conduct must also be evaluated to determine the probability of future neglect. Id. Evidence of a parent's pattern of unwillingness or lack of commitment to address parenting problems supports a termination decision. Lang v. Starke Cnty. OFC, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007).

In determining whether 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 pursuant to Indiana Code section 31-35-2-4(b)(2)(B)(i), DCS need only establish that there is a reasonable probability that the parent's behavior will not change. In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

As discussed above, Father was incarcerated and DCS did not know Mother's location when the CHINS petitions were filed. Mother's whereabouts were still unknown when the dispositional hearing was held. DCS eventually located Mother when she was incarcerated in a Texas jail. Mother was advised to contact DCS and she did so in August 2007. At that time, Mother was told that the children were in foster care. Although Mother indicated that she would attend subsequent hearings and file for custody of the children, she did not contact the DCS again until August 2009. Tr. p. 70, 109. Additionally, even though DCS sent Mother notices of all court hearings, case planning conferences, and family team meetings, Mother never attended any of the

CHINS hearings either in person or by telephone until DCS had filed the petitions seeking termination of her parental rights. Id. at 134.

As discussed above, both C.S. and C.L. had been diagnosed with various behavioral disorders, including lying, moodiness and episodes of bedwetting. Appellant's App. p. 19. The counseling sessions revealed positive results, and the caseworkers and therapists recommended against moving the children from foster care.

The evidence supports the trial court's finding that Mother made no efforts to care for the children because she had not participated in the case planning conferences or family team meetings for the children. An attempt at an interstate compact with Texas could not be completed because Mother did not provide a forwarding address. The mail that was sent to Mother had been returned and attempts to contact her by telephone failed because the numbers had been disconnected. Tr. p. 78, 101, 105-06. Additional searches for Mother were conducted and it was discovered that there were a number of outstanding arrest warrants for her.

Even after learning that her children were in foster care, Mother did not contact DCS for nearly two years. And while DCS made initial contact with Mother in the fall of 2009, Mother again failed to contact DCS for eight additional months. At the time of the termination hearing, the children had been in foster care for forty-two months. Id. at 127. In light of these circumstances, the trial court determined that Mother is a "stranger" to the children. Appellant's App. p. 20.

In sum, the record supports the trial court's determination that the children could not be placed with Mother as a result of her own action and/or inaction. More specifically, Mother had been arrested on outstanding warrants for probation violations, drug possession charges, and "bail jumping." Tr. p. 112-13. Mother admitted that she had abused substances and did not complete a formal drug treatment program. Mother also could not provide any documentation that she was "clean." Id. at 140.

Although Mother testified at the termination hearing that she is "stable," and living in a two-bedroom mobile home with her fiancé and his thirteen-year-old son, her fiancé owns the residence. Mother is unemployed and her fiancé supports her financially. Id. at 122, 124, 144, 157. Mother also testified that the financial situation "around the house was tight," their vehicle was broken, and the "water-well had gone out." Id. at 122-23. In short, the evidence of Mother's alleged progress was self-reported and otherwise unsupported. It remains unknown if Mother is able to provide anything for the children.

C.S. implored the trial court to "please save me from [Mother] and Texas." Id. at 60. And C.L. has no memory of Mother. As discussed above, the children's mental health provider recommended against moving them from their foster home. Id. at 42-43.

When considering the evidence that was presented at the final hearing, the trial court properly found that the conditions that caused the children's removal would not be remedied. Mother has made no efforts to care for the children and has failed to follow through on promises to gain custody or participate in CHINS hearings. As the trial court

observed, Mother has not even seen the children “in well over four years.” Appellant’s App. p. 20. Thus, it is apparent that Mother has never been willing or able to provide the permanency that the children require. As a result, we conclude that the evidence was sufficient to support the trial court’s order terminating her parental rights as to the children.

The judgment of the trial court is affirmed.

MAY, J., and BRADFORD, J., concur.