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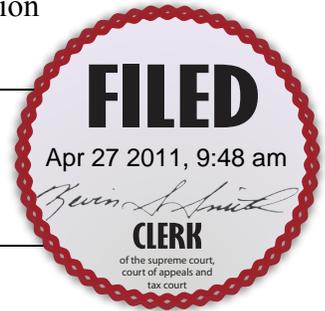
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**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF THE TERMINATION)
OF PARENT-CHILD RELATIONSHIP OF)
J.C., C.C., and M.C.,)
Minor Children,)
And)
Cy.C, Mother,)
Appellant,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
Appellee,)
And)
CHILD ADVOCATES, INC.,)
Co-Appellee (Guardian ad Litem).)

No. 49A02-1008-JT-01018

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary Chavers, Judge Pro Tem
The Honorable Larry Bradley, Magistrate
Cause Nos. 49D09-1001-JT-3418, 49D09-1001-JT-3419, and 49D09-1001-JT-3420

April 27, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

C.C. (“Mother”) appeals the involuntary termination of her parental rights to her children, claiming there is insufficient evidence supporting the juvenile court’s judgment. We affirm.

Facts and Procedural History

Mother is the biological mother of J.C., born in November 2003, C.C., born in December 2005, and M.C., born in July 2008. In September 2008, the Marion County office of the Indiana Department of Child Services (“MCDCS”), filed petitions under separate cause numbers alleging all three children had been taken into emergency protective custody and were children in need of services (“CHINS”) due to the unsafe and “deplorable” sanitary conditions of the family home.¹ Ex. Vol., Pet.’s Ex. 1, p. 2. The CHINS petition further detailed that, at the time of the children’s removal, the family home was observed to be littered with trash and infested with roaches. There was also no food in the refrigerator or pantry, “uncooked meat on the stove with flies and gnats surrounding it,” the “stool” in the bathroom had overflowed, and C.C. “had ringworm

¹ At the time of the children’s removal, the whereabouts of J.F., alleged biological father of J.C. and C.C., were unknown. J.F. did not participate in the underlying proceedings, and MCDCS sought involuntary termination of J.F.’s parental rights through separate default proceedings. R.A. is the alleged biological father of M.C. R.A.’s parental rights to M.C. were involuntarily terminated by the juvenile court in its August 2010 judgment. Neither father participates in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother’s appeal.

and head lice.” Id. The children were subsequently adjudicated CHINS, following a hearing on the matter in March 2009.

Following a dispositional hearing in April 2009, the juvenile court issued an order formally removing the children from Mother’s custody and making them wards of MCDCS. The dispositional order also directed Mother to successfully complete a variety of tasks and services designed to facilitate her reunification with the children. Specifically, Mother was directed to, among other things: (1) secure and maintain a stable source of income, including public assistance, adequate to support all household members, including the children; (2) obtain and maintain safe, clean, and appropriate housing with adequate bedding, functioning utilities, and food for all household members; (3) exercise consistent, regular visitation with the children, (4) participate in and successfully complete home-based counseling services, as well as any recommendation of the home-based counselor; and (5) follow the recommendations of both the psychological and the psychiatric evaluations.

Despite Mother’s initial participation in several of these court-ordered services, including a psychological examination, supervised visits with the children, parenting classes, and home-based counseling, Mother failed to internalize and apply the parenting instruction she was receiving during visits with the children. Mother also refused to participate in the recommended psychiatric evaluation. Over time, Mother grew openly hostile toward services providers. She resented being given parenting advice and

repeatedly verbalized that she did not need help, eventually resulting in several service offerings to her being closed as unsuccessful.

In January 2010, MCDCS filed petitions seeking the involuntary termination of Mother's parental rights to all three children. A consolidated evidentiary hearing on the termination petitions was held in August 2010. During the termination hearing, MCDCS presented evidence showing Mother's unresolved parenting and mental health issues were unlikely to be remedied and thus prevented a safe reunification of the family. The juvenile court thereafter took the matter under advisement. On August 23, 2010, the juvenile court entered its judgment terminating Mother's parental rights to J.C., C.C., and M.C. Mother now appeals.

Discussion and Decision

We begin our review by acknowledging that this court has long had a highly deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). When reviewing a termination of parental rights, 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 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.

Here, in terminating Mother’s parental rights, the juvenile court entered specific factual findings and conclusions. When a juvenile court’s judgment contains specific findings of fact and conclusions thereon, 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 second, we determine whether the findings support the judgment. Id. “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the juvenile court’s decision, we must affirm. L.S., 717 N.E.2d at 208.

We are always mindful that “[t]he 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. However, a juvenile court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. K.S., 750 N.E.2d at 837. Termination of a parent-child relationship is proper where a child’s emotional and physical development is threatened. Id. 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. Id. at 836.

Before an involuntary termination of parental rights can occur in Indiana, the State is required to allege and prove, among other things, that 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,” or that “continuation of the parent-child relationship poses a threat to the well-being of the child.” Ind. Code § 31-35-2-4(b)(2)(B)(i) & (ii) (2009).² The State’s burden of proof for establishing these allegations in termination cases “is one of ‘clear and convincing evidence.’” In re G.Y., 904 N.E.2d 1257, 1260-1261 (Ind. 2009) (quoting Ind. Code § 31-37-14-2). Moreover, if the court finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

Mother challenges the sufficiency of the evidence supporting the juvenile court’s findings as to subsection (b)(2)(B) of the termination statute cited above, asserting that Mother “maintains an appropriate home,” her children are “adequately fed and clothed,” she has a “stable source of income,” and that her parental rights were improperly terminated simply because “she did not react when one of her children spilled a drink, she fed her children too much candy and soda pop[,] and she sometimes watched television or went into the kitchen when her children were visiting.” Appellant’s Br. p. 3; see also Ind. Code § 31-35-2-4(b)(2)(B).

Initially, we observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, to properly effectuate the termination of parental rights, the juvenile court need only find that one of the two requirements of subsection (b)(2)(B) has been

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

established by clear and convincing evidence. See L.S., 717 N.E.2d at 209. Here, the juvenile court determined that both elements had been established. Because we find it to be dispositive under the facts of this case, however, we shall only discuss whether MCDCS established, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in the children’s removal or continued placement outside of Mother’s care will not be remedied. See Ind. Code § 31-35-2-4(b)(2)(B)(i).

When making such a determination, a juvenile court must judge a parent’s fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. The court must also “evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child.” Id. Pursuant to this rule, courts have properly considered 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. A.F. v. Marion Cnty. Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. The juvenile court may also consider any services offered to the parent by the local Indiana Department of Child Services office (here, MCDCS) and the parent’s response to those services, as evidence of whether conditions will be remedied. Id. Moreover, MCDCS 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. In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

Here, the juvenile court made multiple findings in its judgment regarding Mother's unresolved parenting and mental health issues. In so doing, the juvenile court found that Mother had originally been referred to Gallahue Mental Health Services for home-based counseling, was evaluated for three months, and "as a result of her low functioning," was "switched to St. Vincent New Hope, which gear[s] [its] services more toward the developmentally disabled." Appellant's Appendix p. 11. The court thereafter found Mother had successfully completed only two of eight goals set by the St. Vincent New Hope program, namely, maintaining a clean home and achieving housing stability. In addition, the court found Mother "had trouble applying the skills" she had learned during parenting classes when visiting with the children, "never accepted recommendations from service providers to undergo a psychiatric evaluation for possible medication," became "angry during discussions regarding psychiatric help," was observed by case workers and services providers as "failing to show appropriate affection toward the children, interacting with the children, or meeting the children's needs," and denied needing parenting or mental health help. Id. at 11-12. The court also noted in its findings that Mother "eventually did not want to work on the parenting skills curriculum, and she became defensive and shut down on feedback and redirection." Id. at 11.

As for Mother's ability to properly supervise the children, the juvenile court found that this issue "was also a concern" because oftentimes during visits Mother failed to "respond[]" to the children, choosing instead to "be away watching television, or be in another room, instead of interacting and supervising" them. Id. at 12. The court also

noted that, in the Fall of 2009, home-based counselor Bruce Joray recommended to “lower visits to one time a week, feeling the lack of emotional engagement was detrimental to the children,” and that by January 2010, home-based case manager Christa Robinson had recommended all services be discontinued due to Mother’s “lack of progress” and the “damaging” affect visits had on the children. Id. Finally, the juvenile court found that “[a]fter nine months of working with home[-]based services, [Mother] had not made enough progress to remedy the reasons for the children’s continued placement outside the home,” further noting that Mother continued to deny “needing parenting or mental help” and that “[i]ssues of engagement and supervision to provide for the safety of the children ha[d] not been successfully addressed.” Id.

A thorough review of the record leaves us satisfied that clear and convincing evidence supports the juvenile court’s findings, which in turn support the court’s ultimate decision to terminate Mother’s parental rights to J.C., C.C., and M.C. At the time of the termination hearing, Mother’s circumstances remained largely unchanged. Although Mother had obtained stable housing and maintained the home’s cleanliness, she had refused to undergo the recommended psychiatric evaluation, had completed only half of the recommended parenting classes, and had failed to successfully complete and/or benefit from home-based counseling services. Moreover, testimony from various caseworkers and service providers makes clear that Mother remained incapable of providing the children with a safe and stable home environment.

During the termination hearing, MCDCS case Heather McNabney (“McNabney”) informed the juvenile court that she was assigned to Mother’s case from November 2008 through May 2010. McNabney confirmed that although Mother had achieved a “clean and livable” home during the CHINS case, MCDCS did not return the children to Mother’s care because:

[MCDCS] had severe concerns with [Mother’s] mental health and the fact that the visits were not going very well. The fact that [Mother] wasn’t engaging with the children. She wasn’t addressing their needs. There was a number of times where things were unsafe at the visits. A lot of the times [Mother] had to be prompted to engage with the children at the visits[,] and we were concerned for [the] safety of the kids.

Tr. p. 101. McNabney further testified that Mother “wasn’t making the progress that [her home-based counselors] felt that she needed,” in order to safely return the children to her care, and that Mother “wasn’t willing to accept [the] help [MCDCS] was offering her.” Id. In addition, McNabney indicated Mother’s communication with MCDCS “varied [from] month to month,” and further stated that oftentimes when Mother telephoned “actual communication didn’t really occur because when we would try to talk about the case, [Mother] would become very hostile and angry, and start screaming and cussing” because McNabney “wouldn’t return the kids.” Id. at 100.

Many of these sentiments were echoed in the testimony of St. Vincent New Hope Services home-based counselors Bruce Joray (“Joray”) and Christa Robinson (“Robinson”). Joray confirmed that Mother had successfully completed only two of the eight goals created with and for Mother to help her improve her ability to care for the

children. Joray also confirmed that although Mother made some initial progress in the case, as time progressed she “became defensive,” “kind of shut down to feedback that I was giving her,” and eventually “became combative.” Id. at 43-44.

Joray also explained that during Mother’s supervised home visits, even though the children threw tantrums, climbed and jumped off furniture, threw the cat, refused to eat their dinner until Mother relented and gave them sweets, and even physically hit Mother, Mother would not engage with the children and was unable to successfully redirect them or set appropriate behavioral boundaries. Joray also testified that Mother needed repeated reminders about properly feeding the children, encouraging them to finish their meals, not providing the children with soda and candy, and emotionally engaging with the children during visits.

Similarly, in recommending termination of Mother’s parental rights, Robinson informed the juvenile court that she believed visits with Mother had been “more damaging than rewarding” to the children, explaining that Mother continually refused to communicate with the children or to show them any affection during visits, even when the children tried “to hug and kiss on her.” Id. at 127. Robinson also testified that Mother gave one-year-old M.C soda during visits, “would turn her head” and not engage with the children or answer their questions, and that “[p]retty much during visits, the children watched [television] or play[ed] among themselves” while Mother “sat on the bed or sometimes she even sat in the kitchen, not even with the children.” Id. at 125. When asked about Mother’s “attitude towards any kind of re-direction” from Robinson

during visits with the children, Robinson replied, “[Mother] did not want my redirection. She did not want my opinion. She didn’t want anything from me.” Id. at 126.

Mother’s own testimony further supports the juvenile court’s findings. Mother admitted during the termination hearing that she never participated in a psychiatric evaluation. Mother also informed the court that she did not believe there was “any reason” for MCDCS to have become involved in her life “at all,” and that she doesn’t need “any help” as a parent stating, “I think I take good care of my kids.” Id. at 11.

As noted earlier, a juvenile court must judge a parent’s fitness to care for his or her child at the time of the termination hearing, taking into consideration the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. D.D., 804 N.E.2d at 266. Moreover, where a parent’s “pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve.” In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). After reviewing the record, we conclude that MCDCS presented clear and convincing evidence to support the trial court’s findings and ultimate determination that there is a reasonable probability the conditions leading to the children’s removal or continued placement outside of Mother’s care will not be remedied. Mother’s arguments on appeal amount to an invitation to reweigh the evidence, and this we may not do. D.D., 804 N.E.2d at 265.

In sum, 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.” In re A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting Egly v. Blackford Cnty. Dep’t of Public Welfare, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.