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ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

ROBERTA L. RENBARGER
Renbarger Law Firm
Fort Wayne, Indiana

REBECCA L. MOSES
DCS, Henry County Office
New Castle, Indiana

ROBERT J. HENKE
DCS Central Administration
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF)
I.A., E.L., and E.L.L, Minor Children,)

K.B., Mother,)
Appellant-Respondent,)

vs.)

INDIANA DEPARTMENT OF CHILD)
SERVICES,)

Appellee-Petitioner.)

No. 02A03-1008-JT-437

APPEAL FROM THE ALLEN SUPERIOR COURT

The Honorable Charles F. Pratt, Judge

Cause Nos. 02D08-0905-JT-128, 02D08-0905-JT-130, 02D08-0905-JT-132

April 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

K.B. (Mother) appeals the involuntary termination of her parental rights to her children. She claims the evidence is insufficient to support the trial court's judgment. We affirm.

FACTS AND PROCEDURAL HISTORY

Mother gave birth to I.A. in March 2000, E.L. in July 2003, and E.L.L. in March 2006.¹ In January 2008, the Allen County office of the Indiana Department of Child Services (DCS) received an allegation that then four-year-old E.L. had suffered multiple physical injuries while in Mother's care. Mother had not sought medical treatment even though E.L. had a sprained ankle, adult-sized bite marks on his thighs, a long laceration to his head, and bruising on his lower back in the shape of belt marks. DCS took all three children into emergency protective custody.

DCS took E.L. to an emergency room. E.L. had a fractured and displaced right ankle and doctors estimated his injuries had occurred approximately one to two weeks earlier. The children confided that Mother spanked E.L. with a belt. Mother also had made E.L. sit in a garbage bag for hours with no pants on as punishment for wetting the bed. When a relative discovered E.L., the child and the garbage bag were soaked with urine. DCS also learned Mother's brother, D.C., lived with Mother and the children, and Mother's boyfriend, S.C., frequently stayed overnight. The children told caseworkers that D.C. and S.C. frequently physically abused E.L.

DCS filed petitions alleging I.A., E.L., and E.L.L. were children in need of services (CHINS) and later amended those petitions. Mother admitted several allegations in the amended petitions, including that she had not sought medical attention for E.L., even though she knew about the bite marks, bruises, and injured ankle. Mother admitted using marijuana at home “on a frequent basis to ease her anxiety,” (App. at 59), and needing help in caring for and supporting her children. The trial court adjudicated all three children CHINS but did not remove them from Mother’s care.

A few months later, DCS filed a second amended CHINS petitions alleging one of Mother’s boyfriends was under investigation for sexually abusing I.A.² The court held a dispositional hearing in June 2008, removed all three children from Mother’s custody, and made the children wards of DCS.

The trial court’s dispositional order directed Mother to, among other things: (1) refrain from all criminal activity; (2) maintain clean, safe, and appropriate housing at all times; (3) obtain a drug and alcohol assessment and follow all resulting recommendations; (4) submit to random drug screens; (5) undergo a family functioning assessment and follow all resulting recommendations; (6) participate in and successfully complete individual counseling; (7) submit to a psychological evaluation and follow all resulting recommendations; and (8) exercise regular visitation with the children.

¹ The fathers of the children are not involved in this appeal.

² He eventually was convicted of molestation.

Mother participated in some services, but her participation was incomplete and ultimately unsuccessful. Mother initially completed a family functioning assessment, but did not participate in parenting classes or obtain gainful employment. Mother was diagnosed with bi-polar disorder not otherwise specified (NOS), depression, anxiety disorder NOS, cannabis dependence, and obsessive compulsive personality disorder. The doctor noted Mother also exhibited anti-social personality and paranoid traits, and her test scores revealed that she has a “significant disturbance in functioning.” (Tr. at Vol. 2, p. 114.) The doctor recommended Mother participate in individual and family counseling, complete an addictions treatment program, and take prescribed medication.

Mother disagreed with the diagnoses and refused to take her medication as prescribed or to complete the recommended counseling. Mother did complete an intensive out-patient substance abuse program (IOP), but was arrested a few weeks later for driving while intoxicated with a .13% BAC. After she was convicted of that offense, DCS referred Mother to relapse prevention classes, but she was noncompliant and continued to test positive on drug screens.

Mother regularly participated in scheduled visits with the children until January 2009, when she contracted MRSA and could not be near the children for several months. Then in April 2009, the court suspended Mother’s visitation with the children because the visits had a marked negative impact on the children’s behavior. After Mother’s visits were suspended, she stopped participating in reunification services.

In May 2009, DCS sought involuntary termination of Mother's parental rights. After hearings, the trial court terminated Mother's parental rights to all three children.

DISCUSSION AND DECISION

We have a highly deferential standard of review in cases terminating parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* Because of the trial court's unique position to assess the evidence, we will set aside the court's judgment only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

The trial court entered specific findings and conclusions. In this situation, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). We determine first whether the evidence supports the findings and then 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 trial court's decision, we must affirm. *L.S.*, 717 N.E.2d at 208.

"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*. However, parental rights may be

terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *K.S.*, 750 N.E.2d at 836.

“The 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) (citing Ind. Code § 31-37-14-2 (2008)). To terminate a parent-child relationship, the State is required to allege and prove, among other things, 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

Ind. Code § 31-35-2-4(b)(2)(B) (2009).³

Because it is dispositive,⁴ we consider only whether the record supports the determination that continuation of the parent-child relationship posed a threat to the children’s well-being. Termination of parental rights is proper where the children’s emotional and physical development is threatened. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct.

³ Indiana Code § 31-35-2-4 was amended by Pub. L. No. 21-2010, § 8 (effective March 12, 2010). Because the changes to the statute became effective following the filing of these termination petitions, they are not applicable to this case. *See Conseco Finance Servicing Corp. v. Friendly Village of Indian Oaks*, 774 N.E.2d 87, 96 n.9 (Ind. Ct. App. 2002) (statute in effect at time action filed governs the action, and, “absent an express indication otherwise, we presume that the legislature intends statutes and amendments to apply prospectively.”), *trans. denied*.

⁴ The trial court found the State proved both prongs of subsection (b)(2)(B), and Mother challenges the sufficiency of the evidence supporting both prongs. However, that subsection is written in the disjunctive, so the court needs find only one requirement established before terminating parental rights. *See L.S.*, 717 N.E.2d at 209. Similarly, we may affirm if we find the record supports the court’s decision under one prong.

App. 2001), *trans. denied*. The court need not wait until the children are harmed irreversibly such that their physical, mental, and social development is permanently impaired. *Id.*

In determining continuation of the parent-child relationship poses a threat to the children's well-being, the trial court made specific findings concerning the extent and nature of E.L.'s injuries at the time of the children's removal and Mother's failure to seek any medical treatment.⁵ It made detailed findings regarding the children's physical and sexual abuse by two of Mother's brothers and two of her former boyfriends. The trial court noted the children told Mother about the abuse, but she refused to believe them and did not protect them. For assistance with the children, Mother continued to rely on D.C., who had abused the children, and the children's maternal grandmother, "who had attempted to murder her own male children when they were younger by pouring gasoline on them and setting them on fire." (App. at 24.) The trial court found Mother had a number of mental health issues, but she would not obtain treatment or take medications. The trial court also found:

The children are extremely fearful of returning to [Mother's] home and are fearful that she will not protect them from harm from friends and family members. During the CHINS proceedings in the underlying cause, Dr. Anthony Flores, the children's counselor[,] recommended that the visitations between [Mother] and children be placed on hold because of the effect that the visits were having upon the children. After visitations between [Mother] and

⁵ The trial court issued separate judgments terminating Mother's parental rights for each child. We cite to only one, as the language in all three judgments is substantially the same, aside from the headings and other specific information pertaining to each child such as names, birth dates, etc. We note copies of the judgments were not included in the Appellant's appendices as required by Ind. Appellate Rule 50(A)(2)(b) (providing that the Appellant's appendix "shall contain . . . the appealed judgment or order, including any written . . . findings of fact and conclusions thereon relating to the issues raised on appeal"). We accordingly cite the copies included in the Appellant's brief.

[the] children ended, the foster parents, school[,] and other persons working with the boys noted marked improvement in their functioning and behavior. During the termination trial, Dr. Flores testified that the children do not have a bond or emotional attachment with [Mother][,] and that they do not trust her and are concerned that she will allow them to be victimized. He further testified that the children are in need of a stable home environment where they receive nurturing guidance from an understanding parent. [Mother's] diagnoses and symptomatology are so significant that returning the children to her care without her participation in and successful completion of services could seriously endanger their mental and physical well[-]being as [Mother] has demonstrated an inability to provide the children with a stable environment where they are safe from victimization from friends and family members.

* * *

[DCS has] proven by clear and convincing evidence . . . that continuation of the parent-child relationship poses a threat to the well[-]being of the children.

(Id. at 24-25.)

Our review of the record leaves us satisfied that clear and convincing evidence supports the findings and conclusion set forth above, which in turn support the ultimate decision to terminate Mother's parental rights. Despite a wealth of services available to Mother for approximately two and a half years, she struggles with substance abuse, refuses prescribed medications, does not engage in counseling for her significant mental health issues, and remains incapable of providing the children with a stable home environment that is free from physical and sexual abuse.

DCS family case manager Molly Hall confirmed Mother does not believe D.C. ever physically harmed her children, does not believe she was diagnosed with bi-polar disorder, and would not go for a second mental health evaluation with Hall. Hall was concerned that Mother would allow D.C. to move back in with the children once DCS was no longer

monitoring the situation, and Hall's concern is supported by the fact that Mother is again having contact with D.C. Hall also testified that once Mother's visitation was suspended, the children "were so much more calm," and E.L.'s progress, in particular, "was just exceptional." (Tr. at 36.) She further described E.L. as having a "completely different . . . personality." (*Id.*)

Hall's testimony was echoed by that of Dr. Flores, who confirmed that I.A. and E.L. both suffer from post-traumatic stress disorder (PTSD) because they were victimized or had seen repeated incidents of physical and/or sexual abuse of siblings. Because Mother refused to believe the children's reports of abuse or to protect them, the children have "no emotional attachment" or "bonding" with Mother. (*Id.* at 172.) I.A. and E.L. "don't trust their mother. . . . There's concern about [Mother's] ability to protect them, [and] there's also concerns about [Mother's] boyfriends." (*Id.* at 173.) Dr. Flores expressed concerns about Mother's ability to "understand the children's needs," to "put the children's needs first," and to focus more on the children and not so much on the males in her life." (*Id.*) Dr. Flores stated Mother posed a threat to I.A.'s and E.L.'s "physical" and "psychological integrity." (*Id.* at 191.)

When the evidence shows, as it does here, that continued relationship with a parent threatens the emotional and physical development of a child, termination of the parent-child relationship is appropriate. *See In re E.S.*, 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002). Because clear and convincing evidence supports the trial court's judgment, we affirm.

Affirmed.

BAKER, J., and BRADFORD, J., concur.