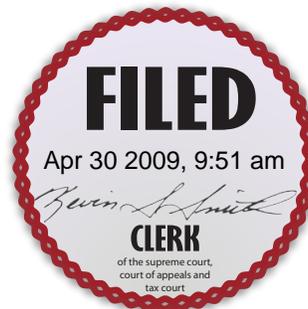


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ATTORNEY FOR APPELLANT:

MICHAEL J. SPENCER
Bloomington, Indiana

ATTORNEYS FOR APPELLEES,

Indiana Department of Child Services, Monroe County Office:
KARA A. HANCUFF
Bloomington, Indiana

Court Appointed Special Advocate:
KENDRA G. GJERDINGEN
Mallor Clendening Grodner & Bohrer, LLP
Bloomington, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF:)
K.M., K.M.M., K.J.M., R.V.M., and R.E.M.,)
)
The Children,)
and,)
)
M.K.B.,)
)
Appellant-Respondent,)
)
vs.)
)
MONROE COUNTY DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner.)

No. 53A01-0810-JV-463

APPEAL FROM THE MONROE CIRCUIT COURT
The Honorable Stephen R. Galvin, Judge
Cause No. 53C07-0712-JT-853

April 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

M.K.B. (“Mother”) appeals the termination of parental rights to her children K.M., K.M.M., K.J.M., R.V.M., and R.E.M. We affirm.

Issue

The restated issue is whether there is sufficient evidence to support the termination of Mother’s parental rights.

Facts¹

The evidence most favorable to the termination order is that Mother had an on-again, off-again relationship with R.M. (“Father”) for approximately fourteen years, although they never married. Father is the biological father of K.M., K.M.M., K.J.M., R.V.M., and R.E.M. Father has had substance abuse problems throughout that time and has been in and out of jail or prison. Father’s problems while living with Mother and the

¹ Our review of this case was somewhat impeded by the numerous portions of the transcript marked “Indiscernible.”

children caused substantial trouble for the family. As of April 2006, they all lived in a one-bedroom apartment and lacked adequate food. The children also had persistent problems with head lice, which had caused them to miss over forty days of school. Mother and Father also sometimes watched pornography and/or had sex in front of the children.

Mother has another child, K.B., with a different father.² In December 2005, K.B. was placed in foster care following K.B.'s truancy problems. Mother often told K.B. to stay home from school so she could watch her younger half-siblings while Mother went to work. Mother's discipline of K.B. included slapping her in the face, hitting, and sitting on top of her.

As a condition of regaining custody of K.B., Mother was ordered not to allow Father back into the home. In February 2006, she also agreed to an informal adjustment with the Monroe County Department of Child Services ("DCS") to address K.M.'s own truancy problems. However, Mother did not cooperate with the services recommended to her. Additionally, on April 17, 2006, it was confirmed that Father had never moved out of the home. The next day, Mother was arrested because of this and spent ten days in jail.³

² K.B. turned eighteen before the termination of parental rights hearing.

³ Precisely how this led to Mother's jailing is not abundantly clear from the record. It appears, perhaps, that Mother was found in contempt of court for failing to abide by an order not to allow Father in the home.

After Mother's arrest, the children were left in Father's care. Within a few days, there was no food in the home, and the children were being unsupervised while Father and friends drank and used drugs, sometimes in front of the children. When Father failed to appear at a DCS conference on April 25, 2006, DCS employees went to speak to Mother in jail about the situation. Mother requested that the children, except for R.E.M., be sent to live with her sister. R.E.M. went to live with his paternal grandparents, although at some point he also went to live with Mother's sister. For the most part, the children have remained in that placement.

On May 3, 2006, the DCS filed a petition alleging that the children were children in need of services ("CHINS"). On September 11, 2006, Mother and Father admitted to a second amended CHINS petition. Mother's CHINS case plan required her to, among other things, maintain clean and suitable housing for six months, maintain employment or a valid source of income for six months, participate in and successfully complete individual and/or family counseling, participate in scheduled visitation, and follow any treatment recommendations.

In February and March 2007, Mother submitted to a psychological examination. The psychologist diagnosed her with "Personality Disorder NOS with dependent and anti-social features" Ex. F p. 6. The psychologist expressed concern that Mother "has had unhealthy dependent relationships on people who have abused her, and who are dependent on alcohol/drugs. This has continually placed her children in serious at-risk situations." Id. at 4. The psychologist also indicated that Mother had "disruption in all

spheres of functioning.” Tr. p. 38. She also believed Mother would require a treatment course of a minimum of two to five years, and her outlook for positive change would be at best “guarded” if she was “invested in treatment,” but that the prognosis would be “grim or poor” if she was not invested. Id. at 39.

Mother underwent counseling with Virshawn Champion, beginning in the spring of 2006. Mother’s attendance at the counseling initially was sporadic, although it later improved and she was regularly participating in therapy. Champion believed it was vital for Mother to separate herself from Father because that relationship was “very unhealthy” and similar to an “addiction.” Id. at 99. Although Mother would occasionally separate from Father, they regularly ended up back together. As of the time of the termination hearing in June 2008, Champion believed that although Mother had made some progress in therapy, it was not significant, and her prognosis for change continued to be poor. This was primarily because of her refusal to take personal responsibility for the problems in her life, rather than blaming them on other persons.

Regarding Mother’s visitation with her children, both the visitation supervisor and the court appointed special advocate (“CASA”) testified to the frequently chaotic nature of these visitations and Mother’s inability to adequately control or discipline them as needed. They also indicated having to intervene on a few occasions to prevent potential harm to the children, such as running into the street. By contrast, according to the CASA, outings with the children’s foster family were normal and the children were relatively well-behaved.

It appears to be undisputed that as of June 2008, Mother had been living in a suitable four-bedroom house, and had been working consistently, for nearly a year and a half. Also, according to Mother, she had finally broken up with Father in February 2008. That date coincides with the beginning of another period of incarceration for Father. Mother visited Father while he was in jail, and they also were seen in a car together after he had been released from jail. Mother claimed she only was giving Father a ride to his mother's house after a visitation session.

On December 7, 2007, the DCS filed a petition to terminate Mother and Father's parental rights. The trial court held a hearing on the petition on June 17, 2008. At the beginning of the hearing Father voluntarily terminated his parental rights, but Mother did not. At the hearing, the children's foster mother, i.e. Mother's sister, indicated her desire to adopt the children. On September 8, 2008, the trial court terminated Mother's parental rights. She now appeals.

Analysis

“When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility.” Bester v. Lake County Office of Family and Children, 839 N.E.2d 143, 147 (Ind. 2005). “We consider only the evidence and reasonable inferences that are most favorable to the judgment.” Id. Where, as here, a trial court enters findings and conclusions granting a petition to terminate parental rights, we apply a two-tiered standard of review. Id. First, we determine whether the evidence supports the findings. Id. Then we determine whether the findings support the judgment.

Id. We will set aside a judgment only when it is clearly erroneous. Id. A judgment is clearly erroneous when the findings do not support the trial court's conclusions or the conclusions do not support the judgment. Id.

A petition to terminate the parent-child relationship must allege:

(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 under IC 31-34-21-5.6 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) after July 1, 1999, 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).

The DCS had the burden of proving these allegations by clear and convincing evidence. See Bester, 839 N.E.2d at 148. Clear and convincing evidence need not show that the custody by the parent is wholly inadequate for the child's survival. Id. Instead, it is sufficient to show by clear and convincing evidence that the child's emotional and physical development would be threatened by the parent's custody. Id.

Courts must judge a parent's fitness to care for the children at the time of the termination hearing, taking into consideration evidence of changed conditions. In re R.H., 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). "A parent's habitual pattern of conduct must also be evaluated to determine the probability of future negative behavior." Id. at 149-50. Additionally, courts may consider the services offered to a parent as well as his or her response to those services. Id. at 150. When determining what is in the best interests of the children, the interests of the parents are subordinate to those of the child. Id. Parental rights will be terminated when it is no longer in the child's best interests to maintain the relationship. Id.

Mother contends she has done all she was required to do under her case plan to regain custody of her children, thus making termination of her parental rights improper. She directs us to evidence that as of the termination hearing, she had had good, stable employment and a large, four-bedroom house for approximately a year and a half. Although the trial court made no findings regarding Mother's housing and employment situation, we agree that the evidence on this point appears to be undisputed, and we

accept it as true. We do not believe, however, that this alone warrants reversal of the termination of Mother's parental rights.

In addition to finding suitable housing and employment, Mother was required not just to participate in counseling, but to successfully complete such counseling and follow any recommendations stemming from that treatment. Of utmost concern in this case to the psychologist who evaluated her and her counselor, Champion, was Mother's negative relationship with Father. That Mother's relationship with Father was extremely unhealthy, both for her and for the children, was made clear to Mother no later than the beginning of 2006, when she was ordered to have no contact with Father. However, she violated this order by permitting Father to return to the household, leading to Mother's arrest and the removal of the children from the household. Moreover, Mother continued her on-again, off-again relationship with Father until, at least, February 2008. Even then, Mother visited Father while he was incarcerated, and the two were observed together after he was released. Champion described Mother's relationship with Father as an "addiction." Tr. p. 99. Viewing Mother's habitual patterns of conduct, and in light of her fourteen-year relationship with Father that she had never been able to end in the past, despite repeated attempts to do so, the trial court's finding that "[t]here is no reason to believe that [Mother] and [Father] are not currently together" is not clearly erroneous, despite Mother's testimony to the contrary. App. p. 21.

This concern regarding Mother's inability to make a complete break from Father, which in and of itself would appear to make continuation of the parent-child relationship

a threat to the children, is echoed by the psychologist and Champion. Mother has a marked tendency towards harmful co-dependency relationships that it would take a significant period of counseling to overcome. However, after two years of counseling, Champion still viewed Mother's prognosis as poor and that her progress had not been significant. Champion referred to Mother's refusal to take personal responsibility for the difficulties she was having raising her children. That refusal was on display at the termination hearing, as Mother often blamed others, such as Father, other family members, and social service providers, for not providing assistance to her as the reason for her struggles to raise her children while they were in her custody. Participation in services is not necessarily enough to avoid a termination of parental rights, if there is legitimate doubt that a parent has adequately benefitted from those services.

In this regard, this case is unlike R.H., which Mother cites. There, we reversed a termination of parental rights where the father had fully complied with everything requested of him by the DCS. See R.H., 892 N.E.2d at 150. The father in R.H., however, did more than just participate in services; we also noted that "there were successful outcomes to those services" Id. Here, although Mother has managed to gain stable employment and a suitable residence, her two years in therapy have yet to yield significant change in her underlying issues and her future prognosis, i.e. the risk that she will relapse into old habits, remains poor. This means there is sufficient evidence to support the trial court's finding that there is a reasonable probability that the conditions resulting in the children's removal will not be remedied, or alternatively that

continuation of the parent-child relationship poses a threat to the children's well-being. The DCS only had to prove that there was a reasonable probability that Mother's behavior would not change; it did not have to rule out any possibility of change. See In re Kay. L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). The DCS met this burden.

Mother also contends that there is insufficient evidence that termination was in the children's best interests. Here, there was evidence that when the children were first removed from Mother's household and placed in foster care with her sister and sister's husband, they were "hard to deal with" and acted out, but they have changed for the better since then. Tr. p. 207. The CASA also observed the substantial difference in the children's behavior between when they were visiting with Mother and when they were in the care of the foster mother. The children appear to be bonded with their foster parents, who wish to adopt them. The CASA "wholeheartedly" agrees with the termination of Mother's parental rights and adoption by the foster parents. Id. at 193. All of this evidence supports the conclusion that termination is in the children's best interests.

This case was one in which the trial court likely could have properly decided that Mother was making such progress that a termination of parental rights would be premature. That is not what it decided. The trial court had an opportunity to view and evaluate the witnesses, including Mother, first-hand. Additionally, the CASA, who has spent hundreds of hours in this case with Mother and the children, believes that termination of Mother's parental rights is appropriate at this time. That is a

determination we will not lightly second-guess, having had no personal interaction with Mother or the children.

Conclusion

There is sufficient evidence to support the termination of Mother's parental rights.

We affirm.

Affirmed.

BAKER, C.J., and MAY, J., concur.