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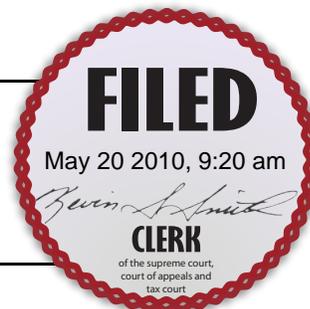
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**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP)
OF A.S.,)
)
H.S.,)
)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner.)

No. 32A05-0912-JV-682

APPEAL FROM THE HENDRICKS CIRCUIT COURT
The Honorable J.V. Boles, Judge
Cause No. 32C01-0812-JT-268

May 20, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

H.S. (“Mother”) appeals the trial court’s involuntary termination of her parental rights to her four-year-old son, A.S. She raises one issue for our review, which we restate as whether clear and convincing evidence supports the trial court’s findings that the reasons for A.S.’s continued placement outside the home are not likely to be remedied and termination of the parent-child relationship is in A.S.’s best interests. Concluding sufficient evidence exists to support the trial court’s order terminating Mother’s parental rights, we affirm.

Facts and Procedural History

A.S. was born on October 29, 2004, to Mother and J.S.¹ On July 26, 2007, Mother and the Hendricks County Office of Family and Children entered into a six-month program of informal adjustment with respect to A.S. In September of 2007, however, Mother was arrested for battery and the Indiana Department of Child Services, Hendricks County Office (“DCS”) filed a request for detention and for authorization to file a child in need of services (“CHINS”) petition, which was granted following an emergency hearing. A.S. was placed with a foster family at that time. At a hearing on October 23, 2007, Mother admitted A.S. was a CHINS and on November 15, 2007, entered into an agreed entry with DCS which, upon being signed by the trial court, served as the trial court’s finding that A.S. was a CHINS, as well as its dispositional decree and parental participation order. A.S. was to remain in foster care, and Mother was ordered to fully cooperate with DCS, maintain suitable

¹ J.S.’s parental rights were also terminated. He does not participate in this appeal, however, and we have therefore limited our recitation of the facts to those relevant to Mother’s conduct.

housing, secure and maintain a stable source of income, maintain routine contact with her family case manager, reimburse DCS for the expenses of placement, participate in home-based counseling, regularly exercise visitation, complete a drug and alcohol evaluation, and submit to random drug screens.

In February of 2008, Mother was charged with a drug offense in Marion County. In October of 2008, Mother was found in contempt in the CHINS case for failure to comply with terms of the agreed entry and was ordered to “strictly comply with all previous orders.” State’s Exhibit 4. Despite being told she needed to start drug and alcohol treatment as part of the CHINS case, Mother wanted to wait until she could get treatment through the Marion County Drug Treatment Court diversion program as part of her criminal case. On December 16, 2008, DCS filed a petition for involuntary termination of parental rights.

On January 26, 2009, Mother began intensive outpatient treatment through the drug court diversion program at The Salvation Army’s Harbor Light Center. The February and March reports from Harbor Light Center indicated Mother was attending group therapy sessions regularly and participating well. State’s Exhibits 9 and 10. The April and May reports, however, indicated she had started missing group sessions, “does not address issues normally,” State’s Exhibit 11, and had submitted a diluted urine sample. The June report shows Mother submitted three urine samples, two of which were positive for opiates and ethanol, that she was not attending group sessions adequately, had been incarcerated several times for violations of the drug court program, and “does not appear to be concerned about treatment or her case with DCS based on her actions.” State’s Exhibit 12. The July report

also indicates Mother was not attending group regularly and had been incarcerated on several occasions for drug court program violations. Mother moved back into transitional housing at Harbor Light Center on July 2, 2009, and was still living there at the time of the TPR hearing on August 27, 2009. The August report indicates Mother had two negative drug screens, attended five individual or group sessions, and “continues to address issues related to her addiction . . . [and] seems to be doing much better in dealing with her mental issues and the reason she used drugs to deal with life’s problems.” Respondent’s Exhibit 2. Also during August, however, Mother was incarcerated four nights for violations of the drug court program. In total, Mother has been sanctioned and incarcerated for drug court program violations eight times.

At the TPR hearing on August 27, 2009, Courtney Crowe, the family case manager, testified that Mother had maintained contact with her throughout the proceedings, and visited and called A.S. regularly. However, Mother had not maintained suitable housing or had a stable source of income since sometime in 2008, had not completed home-based counseling, and had only recently started drug and alcohol treatment through a program that would last at least six more months. Crowe testified that she did not believe the reasons for A.S.’s placement outside the home would be remedied anytime soon because Mother “has not been able to demonstrate since I’ve had her case that she can support her children financially or keep them in a home that’s free of alcohol and drug use.” Transcript at 55. Both Crowe and Suzanne Conger, A.S.’s guardian ad litem, testified that termination was in A.S.’s best interests. Conger’s report to the court prior to the hearing indicated that since the inception

of the CHINS case, “Mother continued to suffer relapses and made no progress.” Appellant’s Appendix at 70. Mother testified that she had applied for several jobs and hoped to hear about one as soon as the day of the hearing, that she knew Harbor Light Center was not appropriate for A.S. but she could live with her cousin after she finishes treatment, and that she calls A.S. almost every day and visits when she can arrange transportation. She also acknowledged that she has not fully complied with the requirements of the drug court program, that she has relapsed during treatment with her last drug or alcohol consumption being in May of 2009, and that she had not complied with home-based counseling or payment of costs as ordered by the court.

The trial court issued the following order, in pertinent part, terminating Mother’s parental rights to A.S.:

45. [Mother’s] past conduct, including conduct during the two years of involvement with DCS show there is a substantial probability of future neglect or deprivation. [Mother has] shown nothing to give this Court reason to believe that [she] will be able to remedy the reasons for continued placement outside the home.

* * *

55. In light of case law in this state and the facts of the hearing, the reasons for continued placement outside the home of the mother . . . are not likely to soon be remedied.

56. Furthermore, in light of [Mother’s] inability to do anything to have the child returned to [her] care, despite warnings from DCS and through contempt orders, termination of the parent-child relationship is in the best interests of the child.

Id. at 104-07. Mother now appeals.

Discussion and Decision

I. Standard of Review

We begin our review by acknowledging 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 the 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, 264 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences 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, cert. denied, 534 U.S. 1161 (2002).

Here, in terminating Mother's parental rights, the juvenile court entered specific findings of fact. 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 County 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.

“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. A juvenile court must subordinate the interests of the parent to those of the child, however, when evaluating the circumstances surrounding a termination. K.S., 750 N.E.2d at 837. In addition, although parental rights 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 836-37.

In order to terminate a parent-child relationship, the State is required to allege and prove by clear and convincing evidence that:

(A) . . .

(i) The child has been removed from the parent for at least six (6) months under a dispositional decree.

* * *

(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); see also Ind. Code § 31-37-14-2 (burden of proof).² Mother concedes the State proved A.S. had been removed for at least six months under a dispositional decree and that a satisfactory plan for A.S.’s care exists. She challenges the

² This is the text of the statute as it read in August 2009 when the termination hearing was held. The statute was amended effective March 12, 2010, but has not materially changed as it is relevant to this case.

sufficiency of the evidence supporting the juvenile court's findings as to whether the conditions will be remedied and whether termination is in A.S.'s best interests.

II. Remedy of Conditions

With respect to whether there is a reasonable probability the conditions resulting in A.S.'s removal or continued placement outside the family home will not be remedied, 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. However, 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 County Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. The juvenile court may also properly consider the services offered to the parent by the county department of child services, and the parent's response to those services, as evidence of whether conditions will be remedied. Id. Moreover, a county department of child services 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).

A.S. was removed from Mother's custody in September 2007. In the nearly two years following his removal, Mother did keep in contact with both her family case manager and

A.S., regularly calling and visiting him, even after she lost her car and DCS stopped providing transportation upon filing the TPR petition.³ The family case manager testified the interaction between Mother and A.S. is positive and Mother is trying to continue her relationship with her son. We also acknowledge Mother faced an obstacle to her personal development when she was raped in March 2008, which she testified drove her to alcohol. However, since A.S. was removed, Mother has lost her home and her job, so that at the time of the termination hearing, she was living in transitional housing and had no source of income. Although she testified she had a lead on a job, she did not yet have that job. She did not begin drug and alcohol treatment until after the TPR petition was filed, although she was ordered to complete a drug and alcohol evaluation as part of the agreed order in the CHINS case, and was told throughout the CHINS proceedings she needed to seek treatment. The program she is currently in is at least a year-long program, of which she had completed eight months at the time of the hearing and had approximately six more months remaining. During the eight months she has been participating in the program, any progress she has shown has been offset by relapses, as she has tested positive for drugs during her treatment and been incarcerated for failure to abide by drug court rules as recently as three weeks prior to the termination hearing. Not only does the evidence support the trial court's finding that the

³ In this respect, we agree with Mother that the evidence did not support the trial court's findings. See Brief of Appellant at 10-12. The trial court found that Mother did not maintain routine contact with her case manager and did not fully participate in visits with A.S. See Appellant's App. at 101-02. Although there was testimony that Mother had been out of touch with both her case manager and A.S. for approximately one month while a warrant for her was outstanding, the case manager testified Mother had been "very compliant" in maintaining contact, tr. at 47, and visitation had otherwise been "routine," id. at 52.

conditions precipitating A.S.'s removal would not be remedied, the conditions have in fact gotten worse since A.S.'s removal.

III. Best Interests of the Child

In determining what is in the best interests of the child, the trial court is required to look beyond the factors identified by DCS and look to the totality of the evidence. McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). Recommendations by a case manager and child advocate to terminate parental rights, coupled with evidence demonstrating that the conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in the child's best interests. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

Mother cites In re G.Y., 904 N.E.2d 1257 (Ind. 2009), in support of her position. In that case, the mother committed a crime before her child's birth for which she was arrested and sentenced to jail after his birth. There were no allegations that since the child's birth, the mother had engaged in any further criminal behavior or had been an unfit parent in any way. Upon her arrest, she tried but failed to arrange care for her child, and DCS took custody of him. Our supreme court held there was insufficient evidence that termination was in the child's best interests because there was no evidence the mother had a pattern of criminal activity likely to continue upon her release from prison, the mother had taken all the steps she could while incarcerated to better herself, including participating in educational program designed to provide permanency for the child upon her release, and had maintained a consistent, positive relationship with the child. Id. at 1262. In this case, we acknowledge

Mother has made efforts to maintain a relationship with A.S. throughout these proceedings. However, unlike the mother in G.Y., whose child was removed from her care for conduct occurring before his birth and who did everything possible to facilitate reunification upon her release from prison, Mother's conduct during A.S.'s life and since he was removed has not been nearly so cooperative and committed.

We also acknowledge Mother has faced personal difficulties during the pendency of this case which have not necessarily been of her own making. There was testimony that a home-based services worker inappropriately touched Mother during a visit⁴ in addition to the testimony that Mother was raped. If Mother had worked as diligently on her own issues as she did on maintaining contact with A.S., this might be a different case. However, Mother did not take advantage of the home-based counseling services intended to help her with budgeting and parenting skills, finding a place to live, and drug and alcohol treatment. She waited until after the TPR petition was filed to begin drug and alcohol treatment, and then only through a drug treatment program in connection with a criminal case, despite being told throughout this case that treatment was important in order for her to be reunited with A.S. She is only recently sober, and has a history of back-sliding. And she has no means of financially supporting A.S. or providing him with a suitable home. A.S. has been in licensed foster care for two years, and "has come to know his current foster parents as a mother and father figure" Tr. at 55. Given the totality of the evidence presented by DCS, including the testimony of both the case manager and guardian ad litem who have been involved in this

⁴ The case manager testified that she did not know about this incident personally, as it happened before she took over the case, but she was told the worker massaged or rubbed Mother's shoulders and made

case for nearly two years that termination is in A.S.'s best interests, the trial court's finding that termination is in A.S.'s best interests is not clearly erroneous.

Conclusion

Sufficient evidence supports the trial court's findings that the conditions resulting in A.S.'s removal will not be remedied and that termination of Mother's parental rights is in A.S.'s best interests. The judgment of the trial court is affirmed.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.

her uncomfortable. After this incident, DCS terminated its contract with this particular home-based agency.