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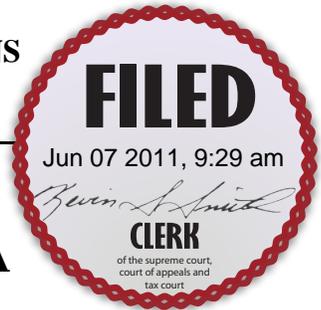
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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP)
OF:)
)
R.L. (Minor Child))
)
And)
)
C.L. (Mother))
)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
Appellee-Petitioner.)
)

No. 05A02-1012-JT-1411

APPEAL FROM THE BLACKFORD CIRCUIT COURT
The Honorable Dean A. Young, Judge
Cause No. 05C01-1006-JT-41

June 7, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDK, Judge

Case Summary

C.L. (“Mother”) appeals the involuntary termination of her parental rights to her child, R.L. Concluding that the Indiana Department of Child Services, local office in Blackford County (“BCDCS”), presented clear and convincing evidence to support the trial court’s judgment, we affirm.

Facts and Procedural History

Mother is the biological mother of R.L., born in January 2009. The facts most favorable to the trial court’s judgment reveal that R.L. was born prematurely and suffered from respiratory ailments. Consequently, he remained in the hospital for an extended period of time. On February 9, 2009, BCDCS took R.L. into emergency protective custody after receiving and substantiating a report that health care workers feared for the child’s safety and that Mother was unable to meet R.L.’s emotional and physical needs during the child’s stay at the hospital. The referral also alleged that Mother had “obvious mental health issues,” asked questions regarding “how long it takes to smother a baby,” commented about committing suicide, became very “agitated” when R.L. cried during diaper changing and feeding, and yelled at R.L. to stop crying while “sternly” shaking the child’s leg despite warnings from nursing staff that such acts could cause injury. Exhibits, Vol. I, State’s Ex. 1, p. 2. The referral also indicated Mother “used profane language on several occasions” and “totally disregarded nursing staff instructions,”

including proper bathing and feeding instructions. *Id.* BCDCS thereafter filed a petition alleging that R.L. was a child in need of services (“CHINS”).

Following a hearing in March 2009, the trial court adjudicated R.L. a CHINS. In June 2009, the trial court issued its dispositional order formally removing R.L. from Mother’s care and directing Mother to participate in and successfully complete a variety of services designed to improve her parenting skills and facilitate her reunification with R.L. Specifically, Mother was ordered to, among other things: (1) establish paternity of R.L.; (2) obtain and maintain stable housing and employment; (3) submit to a drug and alcohol assessment and follow all resulting recommendations; (4) complete parenting classes and home-based counseling services; and (5) attend regular supervised visits with R.L.

Mother’s participation in court-ordered reunification services was sporadic from the beginning of the CHINS case and was ultimately unsuccessful, due in large part to Mother’s ongoing criminal activities. After the court’s entry of its dispositional order, Mother was incarcerated five separate times as follows: (1) June 15 - August 25, 2009; (2) October 7, 2009 - May 27, 2010; (3) August 27 - October 12, 2010; (4) October 17, 2010; and (5) October 21 - November 30, 2010. During this time, Mother was temporarily released from incarceration in May 2010 and was involuntarily committed to Richmond State Hospital. Several months later, Mother was discharged from the hospital program and was immediately re-incarcerated in order to complete her previously-imposed sentence. Meanwhile, in June 2010, BCDCS filed a petition to involuntarily terminate Mother’s parental rights to R.L.

A hearing on the termination petition was held in December 2010. During the termination hearing, BCDCS presented significant evidence establishing that Mother remained incapable of providing R.L. with a safe and stable home environment. In addition to detailing Mother's extended periods of incarceration throughout the underlying CHINS and termination proceedings for various felony and misdemeanor charges, including Class D felony battery resulting in bodily injury, BCDCS also provided evidence of Mother's failure to successfully complete a majority of the trial court's dispositional goals. Licensed clinical social worker and outpatient therapist Lasonda Sylte described Mother's participation in individual therapy as "incomplete" and "unsuccessful." Tr. p. 34. Home-based case worker Emily Feltt informed the trial court that Mother had made "no progress" in this case and further reported that, on occasion, she had felt "personally threatened" by Mother's behaviors during supervised visits with R.L. *Id.* at 72.

In recommending termination of Mother's parental rights, BCDCS case manager Michelle Coons likewise confirmed Mother (1) had failed to complete essentially all of the trial court's dispositional goals, including parenting classes and home-based counseling; (2) exhibited "very erratic" behavior throughout the life of the case in that "one minute, [Mother] [was] a logical person willing to listen and to follow . . . directions or recommendations, and the next minute, [Mother was] an angry, screaming, out-of-control person"; and (3) continued to self-report to Coons that she remained unable "to maintain or control her temper or anger" notwithstanding her completion of the Richmond State Hospital program. *Id.* at 111. When asked whether she believed

continuation of the parent-child relationship posed a threat to R.L.'s well-being, Coons answered, "Yes, I do." *Id.* at 114.

At the conclusion of the termination hearing, the trial court took the matter under advisement. The following day, the trial court issued its judgment terminating Mother's parental rights to R.L. Mother now appeals.

Discussion and Decision

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 neither reweigh the evidence nor judge witness credibility. *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 most favorable to the judgment. *Id.* Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside a 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*.

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*. These parental interests, however, are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. *Id.* In addition, 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. *K.S.*, 750 N.E.2d at 836.

In Indiana, before an involuntary termination of parental rights may occur, the State is required to allege and prove, among other things:

- (B) that one (1) of the following is true:
 - (i) 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.
 - (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.
 - (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services

Ind. Code § 31-35-2-4(b)(2). “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) (quoting Ind. Code § 31-37-14-2). If the trial court finds 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 trial court’s findings as to subsection (b)(2)(B) of the termination statute cited above. *See* I.C. § 31-35-2-4.

We begin our review by observing that Indiana’s termination statute requires only one of the three prongs of subsection (b)(2)(B) to be established by clear and convincing evidence in order to properly terminate parental rights. In the present case, the trial court determined that BCDCS presented clear and convincing evidence establishing the first

two prongs. *See* I.C. § 31-35-2-4(b)(2)(B)(i) & (ii). Because the trial court emphasized the evidence supporting the latter prong in its termination order, and because we find it to be dispositive, we shall consider only whether BCDCS established, by clear and convincing evidence, that continuation of the parent-child relationship poses a threat to R.L.’s well-being.

A trial 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 trial 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*.

In the present case, we observe that Mother does not challenge any particular finding of the trial court as unsupported by the evidence. Rather, Mother complains that the trial court “ignored” the evidence she presented during the termination hearing that she had “participated in in-patient counseling and was successfully discharged from the treatment program at Richmond State Hospital.” Appellant’s Br. p. 14. Mother further cites to her own self-serving testimony and to that of her current live-in boyfriend to support her contention that she is now “capable of repairing her parenting skills and [of]

bonding with [R.L.].” *Id.* Mother therefore claims BCDCS “failed to sustain its burden as to [Indiana Code section 31-35-2-4(b)(2)(B)].” *Id.*

Where, as here, a party challenges “only the judgment as contrary to law and does not challenge the specific findings as unsupported by the evidence,” this Court “does not look to the evidence, but only to the findings to determine whether they support the judgment.” *Smith v. Miller Builders, Inc.*, 741 N.E.2d 731, 734 (Ind. Ct. App. 2000). In terminating Mother’s parental rights to R.L., the trial court made multiple, detailed findings¹ regarding Mother’s failure to “substantially comply with each of the [c]ourt-ordered Parental Participation requirements” as well as Mother’s failure to “take advantage of the many opportunities to bond with [R.L.] made available through [BCDCS] . . . [e]ven when she was not incarcerated or committed [in Richmond State Hospital].” Appellant’s App. Vol. II, p. 9, 11.

As for Mother’s significant history of criminal involvement, the trial court found that since the time of the dispositional order issued in the underlying CHINS case, Mother had been convicted of two felonies and spent a total of 394 days incarcerated during five separate periods of incarceration, the most recent of which ending only “the day before the final [termination] hearing.” *Id.* at 9. The trial court also noted that despite Mother’s involuntary commitment in Richmond State Hospital and her subsequent re-incarceration to finish her previously-imposed sentence, Mother was re-arrested just five days after her release in October 2010 for operating a vehicle without

¹ We pause to commend the trial court on the thoughtful and detailed findings and conclusions delineated in its December 2010 termination order, the provision of which greatly facilitated appellate review in this matter.

ever having received a license. Four days later, on October 21, 2010, Mother was again arrested on battery, disorderly conduct, and intimidation charges, all of which were pending at the time of the termination hearing. Finally, the court noted that Mother's history of criminal conduct, which began before her current involvement with BCDCS and "span[s] several years," includes fifteen misdemeanor and felony convictions in the State of Colorado as well as two "pending, active warrants for [Mother's] arrest" in that state. *Id.* at 10-11.

Regarding Mother's participation in court-ordered reunification services, the trial court specifically found Mother had been "hostile to home-based counseling workers, was removed from the Joyce House in Marion, Indiana, as a result of her volatile behavior, and apparently did not profit from the treatment she received from Richmond State Hospital, in light of her continuing criminal activity." *Id.* at 11. The trial court thereafter found as follows:

As a result of all the foregoing, continuation of the parent[-]child relationship poses a threat to the well[-]being of the child. [Mother] remains unemployed, and her continuing criminal conduct, and continual incarceration, would result in upheaval in [R.L.'s] life and could not help but adversely affect his physical and emotional development. [Mother] continues to exhibit volatile behavior in that she addresses any stress by yelling, profanity[,] and blaming others. This often occurred while [R.L.] was in [Mother's] presence, and even in her arms.

Id.

The specific findings set forth above clearly and convincingly support the trial court's determination that continuation of the parent-child relationship poses a threat to R.L.'s well-being. This finding, in turn, supports the trial court's ultimate decision to

terminate Mother's parental rights to R.L. Mother's arguments on appeal amount to an invitation to reweigh the evidence, which we may not do. *See D.D.*, 804 N.E.2d at 264.

We therefore find no error.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.