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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF:	)	
B.R.M. and S.R.M., Minor Children,	)	
and	)	
J.B., Mother,	)	
Appellant-Respondent,	)	
vs.	)	No. 28A01-1101-JT-18
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE GREENE CIRCUIT COURT
The Honorable Viola J. Taliaferro, Senior Judge
Cause Nos. 28C01-1009-JT-19 and 28C01-1009-JT-20

June 9, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

J.B. ("Mother") appeals the juvenile court's orders involuntarily terminating her parental rights to her daughters, B.R.M. and S.R.M. Mother contends that the termination orders are not supported by sufficient evidence. We affirm.

Facts and Procedural History

Mother gave birth to B.R.M. in July 2001 and to S.R.M. in August 2003.[1] The juvenile court's termination orders contain the following uncontested findings of fact:[2]

> 7. On November 14, 2009, [Department of Child Services ("DCS")] Family Case Manager ("FCM") Harris received an on-call page requesting her to contact Bloomfield Police Officer Jordan Hasler in regards to a possible drug bust at [Mother's] residence. After a second attempt, Officer Hasler was able to gain access to [Mother's] residence. [Both children were present in the home.] Officer Hasler found drugs and drug paraphernalia in [Mother's] bedroom, cabinet drawers in the bathroom, residue on the living room couch, smoking devices, papers, roaches, a straw with a … powdery substance and approximately 26 to 27 grams of marijuana. [Mother] was arrested and placed in jail. [The children] were removed from the residence on November 15, 2009 at 12:15 a.m.
>
> 8. [Petitions alleging that the children were Children in Need of Services were filed on November 17, 2009.]
>
> 9. The hearing on the petition[s] was held on January 12, 2010. The Court found that the allegations contained in the Petition[s] were true and that [the children] were [Children] in Need of Services as alleged in the petition[s] and as defined in IND. Code 31-34-1-1.
>
> 10. On March 11, 2010, the Court issued its Dispositional Order and ordered [Mother] to participate in the following services, and treatment plans until further review of the Court:

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[1] The parental rights of the children's fathers have been terminated.

[2] The orders are nearly identical, except as mentioned in footnote 3 below.

a. [Mother] will notify FCM of any changes in address, household, composition [sic], employment or telephone number within five (5) days of such change;

b. [Mother] will keep all appointments with any service provider, DCS, or [Court-Appointed Special Advocate ("CASA")] or good cause will be given to the service provider and the [FCM] for the missed appointment(s);

c. [Mother] will maintain suitable housing with adequate bedding, functional utilities, adequate supplies of food and food preparation facilities. [Mother] will keep the family residence in a manner that is structurally sound, sanitary, clean, free from clutter and safe for the child[ren];

d. [Mother] will secure and maintain a legal and stable source of income, which may include public assistance, adequate to support the entire household, including the child[ren];

e. [Mother] will assist in the formulation [of] and put in place a protection plan which protects the child[ren] from abuse or neglect from any person;

f. [Mother] will not use, consume, manufacture, trade, or sell any illegal controlled substances, and will only take prescription medications for which a valid and current prescription exists and then only in the doses and in the frequencies specified in the prescription. [Mother] will not permit the possession, use or consumption of any illegal controlled substances or alcohol in the home or in the presence of the child[ren];

g. [Mother] will ensure that [the children] will become engaged in a home-based counseling program referred by the [FCM]. All members of the family are to actively participate to the extent recommended by the provider and DCS. The family will demonstrate positive changes in their lives as a result of the counseling;

h. [Mother] will complete a substance abuse assessment and follow all treatment recommendations developed as a result of the substance abuse assessment;

i. [Mother] will complete GED classes once she has been released from jail;

j. [Mother] will complete [a] 12 Step NA program. She will complete as many steps as she can while incarcerated. Once released from jail, she will complete the remaining steps.

11. A permanency Hearing was held on June 14, 2010.… [Mother] failed to appear in person but did appear by attorney of record …. On June 21,

2010, the Court approved the Permanency Plan for reunification of the children with [Mother].

12. The Court also found on June 21, 2010 that [Mother] was participating in services but that she was not in compliance with the terms of the Dispositional Decree. [Mother] was currently starting to participate in the Intensive outpatient treatment for the third time. [Mother] was visiting with [the children] under the supervision of DCS, but she had missed some scheduled visits. She was also participating in parent-aid services and mental health counseling but had missed several scheduled sessions. DCS required that if [Mother] were living with someone, she could have supervised visitation with [the children] only if that person would agree to be fingerprinted. [Mother] was unable to have visitations with [the children] in her home because she had been living with a man for several months who refused to be fingerprinted.

13. A Petition for Parental Participation was filed on July 6, 2010 and approved and ordered by the Court on August 3, 2010. The Court found that [Mother] had … failed to submit to random drug screens as previously ordered. In April 2010 [Mother] missed calling in 11 times and as a result missed 6 scheduled drug screens. In May 2010 [Mother] missed calling in 14 times and as a result missed 9 scheduled drug screens. [Mother] failed to call in 12 times in June 2010 and consequently missed 5 scheduled drug screens.

14. FCM Rickelman requested and received medical records from Greene County General Hospital in regards to medical services provided to [Mother] on August 28, 2010. The records indicated that [Mother] fell two feet off a porch, became unconscious and was dropped off by unknown persons at the wrong residence. When she was discovered by the residents, she was unconscious and in a fetal position. [Mother] was still unresponsive when the ambulance arrived. [Mother] was taken to Greene County Hospital where she was revived. [Mother's] blood-alcohol content was .186%.

15. [Mother] was arrested on November 15, 2009 for possession of marijuana. She was found guilty and served 22 days in jail. A portion of the sentence was suspended and [Mother] was placed on probation. On September 7, 2010, [Mother] was arrested on a preliminary charge of operating a vehicle while intoxicated and leaving the scene of an accident. The arrest on September 7, 2010 was a violation of her probation. [Mother] is currently incarcerated in the Greene County Jail, and she is serving the suspended sentence that stemmed from the November 15, 2009 arrest. Her intended release date is January 11, 2011.

Appellant's App. at 48-50.

On September 16, 2010, DCS filed petitions for the involuntary termination of Mother's parental rights to B.R.M. and S.R.M. A final hearing was held on November 30 and December 1, 2010. The court took the matter under advisement and issued orders granting the petitions on December 17, 2010. In addition to the foregoing findings of fact, the orders contain the following findings and conclusions:

> 16. [The children deserve and need] permanence and stability. [The children need and deserve] an adult caregiver who can meet [their] emotional, mental and physical needs in a consistent manner. [The children deserve and need] to live with a caregiver who does not abuse alcohol or use illegal substances. [They deserve and need] to live in an environment that is safe, loving and nurturing.
>
> 17. [Mother] has not demonstrated that she can provide the stability that [the children need and deserve]. She has been offered but failed to complete the services that were identified by the Court as necessary for completion prior to reunification.
>
> 18. In 2004 [Mother] left [the children] in an automobile alone in Monroe County. The children were removed by the Monroe County [DCS] and placed in foster care. [Mother] completed services and she was reunited with the minor children within three months.
>
> 19. On September 6, 2008, [the children] were removed from [Mother] by the Greene County on DOC. [Mother] complied with the recommended services and was reunited with the children on December 19, 2008.
>
> 20. [The children were] placed in foster care when [they were] removed from [Mother] on November 15, 2009 [and were placed with their maternal grandmother on January 12, 2010. The grandmother indicated that she wanted to adopt the children[3]].… On November 11, 2010, [the

[3] With respect to B.R.M., the juvenile court found that she "was allegedly sexually molested by a cousin while in [the grandmother's] care. The status of that matter is unknown." Appellant's App. at 50. With respect to S.R.M., the court found that "[t]here is currently an investigation about possible sexual misconduct involving [S.R.M.] before she was removed from the care and custody of [Mother]." *Id*. at 44.

grandmother] telephoned DCS and indicated that she could no longer care for [the children]. On November 12, 2010, [the grandmother] drove [the children] to DCS and left [them] in care of the DCS. [The children are] currently in foster care placement with a couple in Muncie[,] Indiana. [The children have] made a satisfactory adjustment, and the foster parents are planning to adopt [them].

21. The continuation of the parent-child relationship is not in the best interests of [the children]. [Mother] has not demonstrated that she has the ability to provide a stable, safe and nurturing home for [the children].

22. There is a reasonable probability that the conditions which led to the removal of [the children] from Mother will not be remedied. Continuation of the parent-child relationship poses a threat to [the children's] well-being. [Mother] has ongoing problems with the criminal justice system; unwillingness to complete court-ordered services; and untreated illegal drug and alcohol usage which have not been adequately addressed by her during the course of the CHINS action and this proceeding.

23. The [CASA] believes that the parent-child relationship should be terminated and that adoption of [the children] is in [their] best interests.

CONCLUSIONS OF LAW

….

3. There is a reasonable probability that the conditions which led to the removal of [the children] from and continued placement outside the care and custody of [Mother] will not be remedied.

4. There is a reasonable probability that the continuation of the parent-child relationship between [the children] and [Mother] is in [the children's] best interests [sic[4]].

5. Termination of the parent-child relationship between [the children] and [Mother] is in [the children's] best interests.

[4] We presume that this is a scrivener's error and that the court intended to state that "there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the children." *See* Ind. Code § 31-35-2-4(b)(2)(B)(ii).

> 6. The plan of the Greene County [DCS] for the care and treatment of [the children] is adoption and that plan is acceptable and satisfactory.

Id. at 50-51. This appeal followed.

Discussion and Decision

This Court has stated that

> [t]he traditional right of a parent to establish a home and raise her child is protected by the Fourteenth Amendment of the United States Constitution. Parental rights may be terminated when a parent is unable or unwilling to meet her parental responsibilities. The purpose of terminating parental rights is not to punish a parent but to protect the child.

In re I.A., 903 N.E.2d 146, 152 (Ind. Ct. App. 2009) (citations omitted).

To involuntarily terminate a parent-child relationship, DCS must allege and prove

> (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.
> >
> > …
>
> (C) that termination is in the best interests of the child; and
>
> (D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2) (inapplicable provisions omitted).[5] DCS must prove these elements by clear and convincing evidence. Ind. Code § 31-37-14-2. "Clear and convincing

[5] Indiana Code Section 31-35-2-4 was amended effective March 12, 2010, six months before the termination petitions were filed in this case. In her brief, Mother quotes the superseded version of the statute.

evidence need not show that the custody by the parent is wholly inadequate for the child's survival. 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." *In re A.B.*, 924 N.E.2d 666, 670 (Ind. Ct. App. 2010) (citation omitted).

In reviewing termination proceedings on appeal, we will neither reweigh the evidence nor assess witness credibility. *In re S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We consider only the evidence that supports the juvenile court's decision and the reasonable inferences drawn therefrom. *Id*. Typically, where the juvenile court enters findings of fact and conclusions thereon, our standard of review is two-tiered: first, we determine whether the evidence supports the findings, and second, whether the findings support the conclusions. *Id*. In deference to the juvenile court's unique position to assess the evidence, we set aside its findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id*. "A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it." *Id*. A judgment is clearly erroneous only if the legal conclusions drawn by the juvenile court are not supported by its findings of fact or the conclusions do not support the judgment. *Id*.

Because Mother does not contest the accuracy of the juvenile court's findings, we need only determine whether the findings support the conclusions.[6] Mother challenges three of the juvenile court's conclusions, only two of which we must address: (1) that there is a

[6] Much of the argument section of Mother's brief is devoted to her assertions that she "attempted to address the specific problems DCS identified." Appellant's Br. at 11. These assertions are merely invitations to reweigh evidence and assess witness credibility, which we may not do.

reasonable probability that the conditions which led to the removal of the children from and continued placement outside the care and custody of Mother will not be remedied;[7] and (2) that the termination of Mother's parental rights is in the children's best interests.

Regarding Mother's first contention, we note that "it is not just the basis for the initial removal of the child that may be considered for purposes of determining whether a parent's rights should be terminated, but also those bases resulting in the continued placement outside of the home." *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*. When assessing a parent's fitness to care for children, the court should view the parent as of the time of the termination hearing and take into account any evidence of changed conditions. *In re B.D.J.*, 728 N.E.2d 195, 201 (Ind. Ct. App. 2000). The juvenile court can reasonably consider the services offered by DCS to the parent and the parent's response to those services. *Id*. The court must also "consider the parent's habitual patterns of conduct as a means of determining the probability of future detrimental behavior." *Id*. The court "need not wait until the child is irreversibly harmed so long as clear and convincing evidence exists that the shortfalls of the parent's ability are not likely to be remedied." *Id*.

Here, DCS removed the children from Mother's home – for the third time – in November 2009 because Mother was arrested for marijuana possession. Mother was

[7] Mother also contends that "DCS did not establish by clear and convincing evidence that continuation of the parent-child relationship poses a threat to [the children]." Appellant's Br. at 16. As Mother herself acknowledges, however, Indiana Code Section 31-35-2-4(b)(2)(B) "is written in the disjunctive, and the trial court need find only one of the … requirements of the subdivision [has] been satisfied when ordering the involuntary termination of parental rights." *Id*. (citing *In re L.S.*, 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), *trans. denied* (2000), *cert. denied* (2002)). Because we agree with the juvenile court's conclusion that the first requirement has been satisfied, we need not address the second.

convicted of this crime and served twenty-two days in jail. After she was released to probation, she failed to fully comply with the juvenile court's dispositional decree, including the requirement that she submit to random drug screens, and she was unable to have supervised visitation with the children in her home because she was living with a man who refused to be fingerprinted.[8] In August 2010, Mother was taken to the hospital while unconscious and extremely intoxicated. In September 2010, Mother was arrested for operating a vehicle while intoxicated and leaving the scene of an accident, which was a violation of her probation, and she was incarcerated at the time of the termination hearing.

Mother's only responses to this uncontested evidence of parental unfitness are that she "never had a positive [drug] screen for probation," that she "violated her probation for reasons other than use of marijuana," and that she "does not use marijuana anymore." Appellant's Br. at 16. Mother's argument disregards her multiple failures to submit to the drug screens ordered by the juvenile court and to comply with other court-ordered services.[9] It also disregards her failure to provide a safe and stable home for her children and to acknowledge and adequately address her problems with substance use and abuse, which led to the removal of her children, her hospitalization, and two incarcerations in less than one year. In sum, we cannot say that the juvenile court's conclusion on this point is clearly erroneous.

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[8] In fact, the record indicates that Mother lived with two men in succession who refused to be fingerprinted. Tr. at 127.

[9] Mother acknowledged that she was "taking drug screens when [she] wanted to not when [she was] requested to" and that she could not prove that she was not using drugs if she failed to follow the juvenile court's orders. Tr. at 250.

Regarding Mother's second contention, we note that a determination of the best interests of the children should be based on the totality of the evidence. *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. In making this determination, the juvenile court must subordinate the interests of the parent to those of the children. *Id*. "A parent's historical inability to provide a suitable environment along with the parent's current inability to do the same supports a finding that termination of parental rights is in the best interests of the children." *Lang v. Starke Cnty. Office of Family & Children*, 861 N.E.2d 366, 373 (Ind. Ct. App. 2007), *trans. denied*. "Additionally, a child's need for permanency is an important consideration in determining the best interests of a child, and the testimony of the service providers may support a finding that termination is in the child's best interests." *In re A.K.*, 924 N.E.2d 212, 224 (Ind. Ct. App. 2010), *trans. dismissed*.

In this case, the CASA opined that the termination of Mother's parental rights would be in the children's best interests. The juvenile court agreed, and its conclusion is supported by numerous uncontested findings of fact, including several regarding the children's need for permanency and stability and Mother's inability to fulfill those needs. Mother's extremely brief argument to the contrary is simply an invitation to reweigh evidence and assess witness credibility in her favor, which we may not do. Therefore, we affirm the juvenile court's termination orders.

Affirmed.

NAJAM, J., and ROBB, C.J., concur.