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IN THE
COURT OF APPEALS OF INDIANA

IN MATTER OF TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF A.C. ET AL, CHILDREN	)	
S.F., Mother, Appellants,	)	
vs.	)	No. 82A01-1010-JT-578
INDIANA DEPARTMENT OF CHILD SERVICES, Appellee.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Brett Niemeier, Judge
Cause Nos. 82D01-1003-JT-30, 82D01-1003-JT-32, 82D01-1003-JT-33 and 82D01-1003-JT-34

June 9, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

S.F. ("Mother") appeals the involuntary termination of her parental rights to her children, claiming there is insufficient evidence supporting the trial court's judgment. We affirm.

Facts and Procedural History

Mother is the biological mother of A.C., born in May 2003, A.P., born in November 2004, Ad.P., born in February 2007, and A.F., born in January 2009. In July 2009, the Vanderburgh County Office of the Indiana Department of Child Services ("VCDCS") filed petitions under separate cause numbers alleging that all four children had been taken into emergency protective custody and were children in need of services ("CHINS") due to the unsafe and "deplorable" unsanitary conditions of the family home.[1] Appellee's App. p. 168. The CHINS petitions and probable cause affidavits further detailed that, immediately prior to their removal, the children, ages six, four, two, and five months, had been discovered by law enforcement personnel alone and unsupervised in the family home, along with a large pit bull that was freely roaming about the apartment. The apartment was littered with animal feces, dirty clothes and dirty dishes. Standing water mixed with dirt covered the kitchen floor, and feces in the overflowing toilet had caused a leak into the apartment below.

[1] The children's alleged biological fathers did not participate in the underlying proceedings, and their parental rights to the children were involuntarily terminated by the trial court in its September 2010 judgment. The fathers do not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother's appeal.

As for the children, A.C. was suffering from a "serious lice infestation," and was observed to have bruises on her buttocks area which, according to A.C., was the result of a recent spanking administered by Mother. Id. at 172. Five-month-old A.F. appeared to be very hungry, her diaper was saturated with urine and feces, her legs were "red and raw" from where the diaper had rubbed her skin, and she had a knot on the back of her head where Mother had reportedly dropped her. Id. at 169. The remaining two children were likewise filthy and wearing urine-soaked clothing. All four children were adjudicated CHINS following a hearing the next day.

In August 2009, a dispositional hearing was held, after which the trial court issued an order formally removing the children from Mother's custody and making them wards of VCDCS. The dispositional order also directed Mother to successfully complete a variety of tasks and services designed to improve her parenting skills and facilitate her reunification with the children. Specifically, Mother was directed to, among other things: (1) obtain and maintain a stable source of income sufficient to meet the financial needs of her family; (2) obtain and maintain safe, clean, and appropriate housing for all household members; (3) submit to substance abuse and mental health evaluations; and (4) ensure that the children receive proper nutrition, hygiene, supervision, and care. Mother also signed a parent participation plan, which was adopted by the trial court, thereby agreeing to participate in and successfully complete parenting education classes, home-based counseling services, and regular, supervised visits with the children.

Despite Mother's initial participation in several of the court-ordered reunification services, including mental health and substance abuse evaluations, parenting classes, supervised visits with the children, and home-based counseling, Mother failed to internalize and/or consistently apply the parenting instruction she was receiving. As a result, Mother ultimately showed no overall improvement in her ability to parent the children.

In March 2010, VCDCS filed petitions seeking the involuntary termination of Mother's parental rights to all four children. A consolidated evidentiary hearing on the termination petitions commenced on June 29, 2010, and concluded on August 12, 2010. During the termination hearing, VCDCS presented evidence showing Mother's unresolved housing instability and parenting issues were unlikely to be remedied, thus preventing a safe reunification of the family. Thereafter, the trial court took the matter under advisement. On September 29, 2010, the trial court entered its judgment terminating Mother's parental rights to A.C., A.P., Ad.P., and A.F. Mother now appeals.

Discussion and Decision

We begin our review by acknowledging that 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 a 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, 265 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. Id.

Moreover, in deference to the trial 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.

Here, in terminating Mother's parental rights, the trial court entered specific factual findings and conclusions. When a trial court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. Bester v. Lake Cnty. 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 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, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. K.S., 750 N.E.2d at 837. Termination of a parent-child relationship is proper where a child's emotional and physical development is threatened. Id. 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. Id. at 836.

Before an involuntary termination of parental rights can occur in Indiana, the State is required to allege and prove, among other things, that 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," or that "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)(i) & (ii). The State's burden of proof for establishing these allegations in termination cases "is one of 'clear and convincing evidence.'" In re G.Y., 904 N.E.2d 1257, 1260-1261 (Ind. 2009) (quoting Ind. Code § 31-37-14-2). Moreover, if the court finds that 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, asserting that, "[a]t best," the evidence presented by VCDCS during the termination hearing merely shows that during the pendency of the CHINS action Mother did not meet VCDCS's "unreasonably high" expectations for "someone in [Mother's] circumstances." Appellant's Br. at 6. Mother further asserts that if what she accomplished during the CHINS proceedings was not sufficient to regain custody of her children, that the possibility of her regaining her children "at any time was, for all purposes, illusory."

Initially, we observe that to properly effectuate the termination of parental rights, the trial court need find only one of the three requirements of subsection (b)(2)(B) has been established by clear and convincing evidence. See I.C. § 31-35-2-4(b)(2)(B); See also L.S., 717 N.E.2d at 209. Because we find it to be dispositive under the facts of this case, we shall only discuss whether VCDCS established, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in the children's removal or continued placement outside of Mother's care will not be remedied. See I.C. § 31-35-2-4(b)(2)(B)(i).

When making such a determination, 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 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. The trial court may also consider any services offered to the parent by the local Indiana Department of Child Services office (here, VCDCS) and the parent's response to those services as evidence of whether conditions will be remedied. Id. Moreover, VCDCS 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).

Here, the trial court made multiple specific findings in its judgment regarding Mother's unresolved parenting issues. In so doing, the trial court painstakingly detailed the "unsafe" and "unsanitary" conditions of the family home at the time the children were removed, including the facts that the children were found "home alone without adult supervision" and "smelled of urine and were wearing clothes that appeared to be covered in urine." Appellant's Br. at 13.[2] The court further noted that the toilet "was overflowing with feces that had also begun to leak into the apartment below," dog feces were "found throughout the home," and that two of the children were observed to have injuries reportedly inflicted by Mother. Id. The court then specifically found that "[a]ll of these above facts should not be forgotten as [Mother] never showed her ability to remedy this lifestyle and habits." Id. at 14.

As for Mother's ability to properly supervise the children, the trial court found that Mother's behavior during supervised visits with the children "causes concern," as Mother failed to "provide consistent boundaries and discipline for the children," and her lack of "appropriate supervision" resulted in service providers observing the children "to be left in inappropriate and unsafe situations on multiple occasions." Id. at 15-16. The court also found that Mother "continues to refuse to acknowledge the needs of the children,"

[2] Mother placed a signed copy of the trial court's September 2009 order at the back of her Appellant's brief. However, she failed to include a copy in her Appendix. See Ind. Appellate R. 50(A)(2) (stating that the Appellant's Appendix shall contain a copy of the appealed order or judgment). We therefore cite to the Appellant's brief.

and cited to multiple examples of this behavior, including Mother's refusal to change A.F.'s diaper despite its "obvious" need to be changed, and "leaving feces on the child's back" on another occasion, as well as her failure to bring a diaper bag with appropriate supplies on yet another occasion, causing the outing with the children to have to end early. Id. at 16.

As for Mother's ability to maintain safe and stable housing, the trial court found that despite the provision of services, Mother had "lost her housing on several occasions during the pending CHINS matter," and that each of these times the children's belongings were also "lost." Id. at 15. In addition, the court noted there were periods of time during which Mother was "completely out of communications with [VCDCS]," that Mother continued to have problems with "clutter" and "bugs," and that Mother "never learned to live within her means." Id. at 15-16, 18. Finally, the trial court found that, as of the first day of the termination hearing, Mother "still did not have bedding and necessary provisions for her children," and by the second day of evidence in August 2010, Mother's housing remained "inappropriate" for the children and she was living with her boyfriend, whose name was on the lease but whose background check could not be completed by VCDCS due to "concern for the accuracy of his identifying information." Id. at 15.

The trial court also observed that Mother was convicted on four counts of criminal neglect as a result of the incident giving rise to VCDCS's involvement in the underlying CHINS proceedings, found to be in contempt of court after admitting non-compliance with her parent aide, repeatedly refused offers to make-up missed visits with the children,

and consistently "prioritize[d] herself and her interests above those of the children." Id. at 18. As a result, the trial court determined:

> The pattern of behavior observed throughout the pending CHINS matters indicates Mother is unlikely to remedy the reasons that the children have been placed out of her care. The court believes [Mother] thinks that as long as she works and loves her children, the children are being well cared for. She has no insight on what missing school, dysfunctional relationships, and instability does to children.

Id. at 18-19.

A thorough review of the record leaves us satisfied that clear and convincing evidence supports the trial court's findings, which in turn support the court's ultimate decision to terminate Mother's parental rights to all four children. At the time of the termination hearing, Mother's circumstances remained largely unchanged. Although Mother had obtained somewhat stable employment, Mother's ability to safely care for and supervise the children remained inadequate. In addition, Mother had failed to successfully complete and/or benefit from parenting classes and home-based counseling services, and testimony from various caseworkers and service providers makes clear that Mother remained incapable of providing the children with a safe and stable home environment.

During the termination hearing, VCDCS case managers Lindsey Grimes ("Grimes") and Ellen Moore ("Moore"), along with Ireland home-based service providers Paris Scott ("Scott") and Clay Rogers ("Rogers") all testified that Mother had made little or no progress in her overall ability to care for the children, and that Mother continued to

be unable to insure the safety of the children. When asked if she would feel safe, "as of today," to leave the children with Mother "without any form of supervision," Scott replied, "No," and further explained she remained concerned with Mother's ability to "keep an eye on all four of the kids" and to feed A.F. properly. Tr. p. 102. Rogers likewise voiced concerns about the "level of supervision" Mother provided during visits and confirmed that Mother remained unable "to maintain the cleanliness of the home on a long[-]term basis." Tr. pp. 157, 159.

When asked why she believed Mother was unlikely to remedy the reasons for the children's continued placement outside Mother's care, Grimes informed the trial court that despite numerous offered services, including parent aide services, increased visitation opportunities, and parenting classes, Mother was never able to consistently demonstrate the parenting skills she had been taught while visiting with the children, nor to "show that she was able to take care of [the children] appropriately[.]" Tr. p. 178.

Finally, Court Appointed Special Advocate Marilyn Ashley ("Ashley") recommended termination of Mother's parental rights to all four children, stating that Mother's participation in reunification services had been "a roller coaster ride" from the start, and that Mother was essentially at "the exact same place now that she was at the beginning" of the case. Tr. p. 205. Ashley further testified that Mother remained unable to provide the children with a "consistent and safe and stable home" and recommended against allowing Mother any more time to complete services stating, "[Mother is] inconsistent about following through. She's inconsistent about communication. She's

inconsistent with her personal life[,] [and her] personal life directly reflects [on] these children." Tr. pp. 213, 218.

As noted earlier, 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 the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. D.D., 804 N.E.2d at 266. Moreover, where a parent's "pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve." In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). After reviewing the record, we conclude that VCDCS presented clear and convincing evidence to support the trial court's findings and ultimate determination that there is a reasonable probability the conditions leading to the children's removal or continued placement outside of Mother's care will not be remedied. Mother's arguments on appeal amount to an invitation to reweigh the evidence, and this we may not do. D.D., 804 N.E.2d at 265.

This Court will reverse a termination of parental rights "only upon a showing of 'clear error'– that which leaves us with a definite and firm conviction that a mistake has been made." In re A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting Egly v. Blackford Cnty. Dep't of Public Welfare, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Affirmed.[3]

KIRSCH, J., and VAIDIK, J., concur.

[3] In her brief to this Court, Mother also makes the bald statement that termination of her parental rights is not in the children's best interests. Mother fails, however, to support her assertion with any cogent reasoning or citation to authority, as is required by our appellate rules. Mother has therefore waived appellate review of this issue. See Ind. Appellate Rule 46(A)(8)(a).