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IN THE
COURT OF APPEALS OF INDIANA

IN MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF C.D., Minor Child,	)	
Brezzy D., Mother, Appellant-Defendant,	)	
vs.	)	No. 68A01-0811-JV-531
RANDOLPH COUNTY DEPARTMENT OF CHILD SERVICES, Appellee-Plaintiff.	)	

APPEAL FROM THE RANDOLPH CIRCUIT COURT
The Honorable Jay L. Toney, Judge
Cause Nos. 68C01-0804-JT-51 and 68C01-0804-JT-52

June 10, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Brezzy D. ("Mother") appeals the involuntary termination of her parental rights to her children, K.R. and C.D., claiming there is insufficient evidence to support the trial court's judgment. Concluding that the trial court's judgment terminating Mother's parental rights is supported by clear and convincing evidence, we affirm.

Facts and Procedural History

Mother is the biological mother of K.R., born on January 19, 2004, and C.D., born on June 7, 2006.[1] The facts most favorable to the trial court's judgment reveal that in January 2007, Mother took then three-year-old K.R. to the police station because Mother's boyfriend, Jerome Willis, had struck K.R. in the face causing K.R.'s face to bruise. This incident occurred while Mother was at work and Willis was babysitting the children. At that time, Rhonda Moore, a case manager from the Randolph County Department of Child Services ("RCDCS"), spoke with Mother about the importance of keeping the children away from Willis. Mother informed Moore that she had decided to move to Angola, Indiana, to live with her own mother and that her truck was "packed and ready to go[.]" Appellant's App. p. 191.

Several days later, Moore received a telephone call from a relative who reported that Willis had physical custody of K.R. and would not return him to Mother. The relative also reported that Mother and the children were living with Willis somewhere in Winchester, Indiana. Several days after receiving this report, Moore received yet another

[1] The parental rights of Alvaro R., alleged biological father of K.R., and Jose D.D., alleged father of C.D., were involuntarily terminated by the trial court on October 22, 2008. Neither alleged father participates in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother's appeal.

report that Mother, who reportedly did not have a permanent residence and had been living with Willis at various friends' homes, had left the children with Kala Vick in Union City, Indiana. It was further reported that Mother had not contacted Vick for two days and that Mother's current whereabouts were unknown. During this same time period, Moore also discovered that Willis had been "beating up" on Mother. Id. at 182.

Due to these circumstances, on or about February 4, 2007, K.R. and C.D. were taken into protective custody by the RCDCS. On February 28, 2007, the RCDCS filed a petition alleging K.R. and C.D. were children in need of services ("CHINS"). During an initial hearing, Mother denied the allegations contained in the CHINS petition and a fact-finding hearing was set for April 25, 2007. On April 23, 2007, however, Mother filed a written stipulation admitting that the children were in need of services. The next day, the trial court issued separate orders under different cause numbers adjudicating both children CHINS.

A dispositional hearing was held on June 5, 2007, and the trial court issued its dispositional orders the following day. In its orders, the trial court formally removed the children from Mother's care and directed Mother to participate in a variety of services in order to achieve reunification with her children. Specifically, Mother was ordered, among other things, to (1) participate in counseling and mental health services through Darke County Recovery Services in Ohio, (2) complete home-based services with Youth Service Bureau ("Y.S.B."), and (3) participate in supervised visitation with the children. Additional goals later established for Mother by the RCDCS and service providers

included maintaining stable housing and employment, improving parenting skills, and learning to make better decisions, especially with regard to Mother's personal relationships and the children's safety.

Mother's participation in services was inconsistent throughout the duration of the underlying proceedings. Although Mother maintained employment and regularly participated in visitation with the children, even progressing to the point of unsupervised visits, Mother's repeated violations of the conditions of unsupervised visitation resulted in reversion back to supervised visits on three separate occasions. Mother was also unable to secure long-term housing, oftentimes moving in with different friends, relatives, and co-workers.

Mother's participation in individual counseling was also sporadic. Initially, Mother attended counseling sessions at Darke County Recovery Services. However, after approximately three or four sessions, Mother requested a new counselor and, in August 2007, was referred to Eldon Solomon at Winds of Change. During her first few counseling sessions with Solomon, Mother made good progress in identifying her dysfunctional behavior patterns. Mother was also open to exploring the reasons why she had made unwise decisions in the past, as well as how to make different decisions in the future in order to ensure the emotional and physical safety of both herself and her children. By October 2007, however, Mother's willingness to participate in counseling sessions had changed. According to Solomon, Mother was no longer "very engaged in treatment" and her "resistance to treatment and change became much more elevated." Id.

at 217. Mother also became much more manipulative of the community system, would blame others for her circumstances, and would not allow treatment to be refocused on her own behavior. By December 2007, Mother had ceased participating in individual counseling altogether.

Most importantly, Mother also continued to make destructive decisions regarding her personal relationships, which repeatedly placed both she and her children in physical and emotional danger. For example, Mother continued her relationship with Willis for approximately nine months following the removal of the children, even though Willis reportedly beat Mother on multiple occasions. Mother also visited Willis after he had been incarcerated for committing battery against her. In addition, shortly after Mother ended her relationship with Willis, Mother began a new relationship with a former boyfriend, Gilbert Jenks, even though Mother knew Jenks also had a history of domestic violence and mental health issues. Although Mother admitted to Solomon that she had previously ended her relationship with Jenks due to his violent behavior, she refused to acknowledge that Jenks posed a possible threat to her and the children's physical and emotional safety. Mother was still dating Jenks at the time of the termination hearing.

On April 22, 2008, the RCDCS filed petitions requesting the involuntary termination of Mother's parental rights to K.R. and C.D. A three-day fact-finding hearing on the termination petition commenced on July 15, continued on July 23, and was concluded on August 7, 2008. At the conclusion of the termination hearing, the trial court took the matter under advisement, and on October 22, 2008, the court issued its

judgments terminating Mother's parental rights to both K.R. and C.D. Mother now appeals.

Standard of Review

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). Thus, 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, 265 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. Id.

In the present case, the trial court's judgments terminating Mother's parental rights to the children contained specific findings and conclusions. Where a trial court enters specific findings of fact and conclusions thereon, this Court applies 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.

We will not set aside a trial court's judgment terminating parental rights unless it is clearly erroneous. Rowlett v. Vanderburgh County Office of Family & Children, 841 N.E.2d 615, 620 (Ind. Ct. App. 2006), trans. denied. A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment thereon. Bester, 839 N.E.2d at 147.

Discussion and Decision

At the outset, we acknowledge that the Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. Id. A parent's interest in the care, custody, and control of his or her children is arguably one of the oldest of our fundamental liberty interests. Id. However, these parental interests are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. Parental rights may therefore be terminated when the parents are unable or unwilling to meet their parental responsibilities. K.S., 750 N.E.2d at 836.

In order to terminate a parent-child relationship, the Department of Child Services is required to allege, among other things,[2] that:

> (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;

Ind. Code § 31-35-2-4(b)(2)(B) (1998 & Supp. 2007). The State must establish these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992); see also Ind. Code § 31-37-14-2 (2008).

[2] Additional conditions not at issue in this case are also required to be alleged and proved before an involuntary termination of parental rights may occur. See Ind. Code § 31-35-2-4(b)(2).

Mother asserts on appeal that the trial court's judgment is not supported by sufficient evidence. Specifically, Mother argues that the RCDCS failed to prove, by clear and convincing evidence, both of the conditions set forth in Indiana Code Section 31-35-2-4(b)(2)(B), namely, that there is a reasonable probability the conditions resulting in the children's removal will not be remedied and that continuation of the parent-child relationship poses a threat to the children's well-being.

We pause to point out that Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, a trial court need only find one of the two requirements of subsection (B) have been satisfied when ordering the involuntary termination of parental rights. See In re L.S., 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), trans. denied. Here, the trial court found that the RCDCS established both prongs of Indiana Code section 31-35-2-4(b)(2)(B) by clear and convincing evidence. We shall begin our review by first considering whether clear and convincing evidence supports the trial court's determination that continuation of the parent-child relationship poses a threat to the children's well-being.

The involuntary termination of parental rights is an extreme measure that terminates all rights of a parent to his or her child and is designed to be used only as a last result when all other reasonable efforts have failed. M.H.C. v. Hill, 750 N.E.2d 872, 875 (Ind. Ct. App. 2001). Nevertheless, a trial court need not wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. Castro v. State

Office of Family and Children, 842 N.E.2d 367, 372 (Ind. Ct. App. 2006). When the evidence shows that the emotional and physical development of a child in need of services is threatened, termination of the parent-child relationship is appropriate. Id.

In terminating Mothers parental rights to both K.R. and C.D., the trial court made the following, detailed findings and conclusions regarding the issue of whether continuation of the parent-child relationship poses a threat to the children's well-being:

> 8. While living in Union City, IN, Mother began a relationship with Jerome Willis, in which there was domestic abuse, i.e. suffocation and beatings, beginning approximately four (4) months into their relationship.
> 9. On a Sunday in February, 2007, Mother saw that [K.R.'s] face was black and blue.
> 10. Jerome Willis, boyfriend of Mother, had smacked [K.R.] and left the bruise on [K.R.'s] face.
> 11. Jerome Willis would hit Mother, also, including during the time Mother was on work release, during the CHINS case.
> 12. Mother experienced violence from Jerome Willis every day while she was on work release; however, Mother never pressed charges.
> 13. On September 6, 2007, while at Jerome Willis' brother's house, Mother experienced violence by Jerome Willis, and Mother pressed charges.
> 14. Mother states she tried to leave Jerome Willis "at least once a day[,]" but could not leave, as Jerome Willis would beat Mother.
> 15. Mother feared for her and her children's lives.
>
> * * *
>
> 19. Mother never tried to press charges for Jerome Willis'[] hitting [K.R.].
> 20. Mother did not sever her relationship with Jerome Willis until his incarceration, which was for battery and criminal confinement.
> 21. Mother continued to see Jerome Willis after he was in jail.
> 22. Mother went to jail to visit Jerome Willis five (5) days after signing the Safety Plan which included that Mother would not visit Jerome Willis.
> 23. Mother saw Jerome Willis on two (2) other occasions.
> 24. Mother ended her relationship with Jerome Willis approximately one (1) month after he was in jail.
>
> * * *

28. Moore was the Case Manager for [the children] and Mother from January to September, 2007, when Connie Siders took over as Case Manager.

* * *

32. Moore had concerns for [the children's] safety while in the home with Jerome Willis, due to his previous striking of [K.R.].

* * *

44. One of the reasons that Mother was referred to Darke County Recovery and to Winds of Change by the [RCDCS] was for Mother to learn about ways to get away from Jerome Willis and similar relationships.

* * *

64. Solomon's last session with Mother was on January 23, 2008, due to Mother not wanting to continue in therapy with him.

65. In counseling, Mother did not want to address issues that had affected Mother's behavior.

* * *

67. Mother resisted treatment significantly when Mother got unsupervised visits, becoming manipulative and blaming others.

* * *

69. Gilbert Jenks has the same pattern of behavior as Jerome Willis . . . .

* * *

78. Gilbert Jenks is Mother's new boyfriend.

79. Mother had previously left Gilbert Jenks due to Gilbert Jenks' violent behavior.

80. Solomon's concern for [the children] was that Mother had not changed [her] behavior, and that it did not appear her behavior would change in the future.

* * *

83. Knasinski was referred to work with Mother in March 2007, to address the issues of:

a. Reunification,
b. Increasing parenting skills,
c. Increasing decision-making skills, and
d. Finding permanent housing.

* * *

85. At some point, due to Mother's failure to make progress, Knasinski recommended that reunification not be the goal, but that the parties look at adoption.

* * *

95. Mother believes Gilbert Jenks has paranoid schizophrenia, suicidal tendencies, and has bi-polar disorder, yet has left [the children] with him on an unsupervised basis.
96. Mother told Knasinski that Gilbert Jenks would not sign releases for medical records, as he stated that if he did, it would hurt Mother's case.
97. Knasinski does have concerns about Gilbert Jenks from what she has read in the police reports regarding his suicidal tendencies, domestic violence issues, and that he has had several voluntary psychiatric placements.

* * *

101. Knasinski believes that Mother fights harder to keep Gilbert Jenks in her life than she does to regain custody of [the children].

* * *

120. Melanie Miller . . . was appointed as the volunteer for [the children] in the CHINS case in March, 2007.

* * *

124. Miller fears for [the children's] safety if [the children are] returned home.
125. Mother's choice of companions causes Miller to have concern for [the children's] safety.

* * *

127. Mother was very open-minded as to [her] ability to keep [the children], but Mother has shown an inability to change her lifestyle.

* * *

131. Connie Siders[,] . . . [f]amily [c]ase [m]anager for the [RCDCS], assumed responsibility for this case in September, 2007[.]

* * *

133. Siders has consistently recommended that [the children] be out of the home.

* * *

140. Siders still has concerns about [the children's] safety and Mother's unwillingness to make changes.

* * *

146. Gilbert Jenks advised Siders he had domestic violence in his past.

* * *

153. Gilbert Jenks has had two (2) separate [incidents] of domestic violence, one in 1998 in Howard County, IN, and one in Union City, Ohio.
154. Gilbert Jenkins frightened Siders at the Family Team Meeting in January.

* * *

> 159. There has been a decrease in services since February, 2008, and Mother is not attending counseling.
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> * * *
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> 212. Mother did nothing regarding counseling from January to July, 2008.
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> CONCLUSIONS
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> 2. Both by qualitative and quantitative measures, the RCDCS proved the conditions that resulted in removal of [the children], consisting of family violence, unstable boyfriend for Mother, and lack of a stable home environment, have not significantly changed or improved, and will not be remedied by Mother.
>
> 3. Both by qualitative and quantitative measures, the RCDCS proved the reasons for placement outside Mother's home, including Mother's failure to stay away from Jerome Willis, or others with violent tendencies, and failure to provide a stable home environment, have not significantly changed or improved.
>
> 4. Both by qualitative and quantitative measures, the RCDCS proved that the continuation of the parent-child relationship poses a threat to the well-being of the [children], specifically as to the [children's] physical health and emotional stability, and that this threat has not significantly changed or improved.
>
> * * *
>
> 6. The evidence is substantial that Mother knew the requirements of the case plan, did not disagree with the instructions and directions of the service providers and the Court, but that Mother has not taken steps to follow the terms and conditions of the case plan, and has not completed the terms and conditions ordered by the Court following [the] Dispositional Hearing.

Appellant's App. pp. 52-66.[3] Our review of the record reveals that there is abundant evidence supporting the trial court's findings, which in turn support the court's ultimate decision to terminate Mother's parental rights to K.R. and C.D.

[3] The trial court entered two judgments under separate cause numbers terminating Mother's parental rights to K.R. and C.D. Although there are some specific variations between the judgments, the language contained in the findings and conclusions cited to herein are substantially identical, apart from their enumeration. We therefore cite to only one judgment.

The children were initially removed from Mother's care for several reasons, including Mother's continuing relationship with Jerome Willis, who had physically abused both Mother and K.R., and her failure to provide a safe and stable home environment for the children. By the time of the termination hearing, these circumstances remained essentially unchanged. Although Mother was successful in securing stable employment and regularly participating in visitation with the children, her failure to improve her parenting and decision-making skills and to achieve a safe and stable home environment made continuation of Mother's parental relationship with K.R. and C.D. a threat to the children's well-being. Throughout the duration of the CHINS and termination cases, Mother has continuously engaged in a pattern of bad decision-making and conduct that has repeatedly subjected both she and the children to abusive relationships and an unstable home environment. At the time of the termination hearing, this pattern of behavior had not significantly improved. For example, Mother chose to continue her personal relationship with Willis for approximately nine months after the children's removal from her care, despite the facts Willis had physically struck three-year-old K.R. in the face and had repeatedly beat Mother prior to his incarceration for battery and confinement. As an additional example, within five days of signing a Safety Plan wherein Mother agreed to cease all communication with Willis, Mother visited Willis in jail.

Shortly after ending her relationship with Willis, Mother then became involved with former boyfriend Gilbert Jenks, who has a history of domestic violence as well as

various mental health issues. Despite Mother's admission to Solomon that she had previously ended her relationship with Jenks due to his abusive behaviors, Mother nevertheless repeatedly denied that Jenks posed any threat to the physical or emotional safety of the children. Mother was still dating Jenks at the time of the termination hearing.

Substantial testimony from Mother's case managers and service providers further supports the trial court's determination that continuation of the parent-child relationships poses a threat to the children's well-being. During the termination hearing, RCDCS case manager Moore enumerated several reasons why she was never able to recommend that the children be returned to Mother's care while she was assigned to Mother's case, including (1) Mothers ongoing housing instability, (2) Mother's relationship with Willis and the accompanying "domestic violence" going on in that relationship, and (3) the fact that she didn't feel Mother "fully understood . . . how her actions were going to affect the kids . . . ." Appellant's App. pp. 184, 195. Mother's current case manager, Connie Siders, also voiced concerns for the children's safety should they be returned to Mother's care. In so doing, Siders testified that although Mother had tried to make efforts to "correct those things that were easily correctible, such as . . . maintaining employment[,]" she went on to state that when it came to Mother's behavior and decision-making ability, Siders didn't feel that "there's been any change." Id. at 320.

Solomon's testimony echoed the testimony of Moore and Siders. During the termination hearing, Solomon informed the court that Mother had set two goals for

therapy, namely, to be able to identify why she gets involved in relationships, particularly with men, where she lets others "push her around" and how to be able to make better decisions in order to keep her children safe. Id. at 216. When questioned as to whether Mother had accomplished these treatment goals, Solomon replied, "No, [Mother] had not met those." Id. at 218. In addition, when asked whether he felt the children would be safe in Mother's home, Solomon answered, "My concern for the children's safety has always been in the context of [Mother] not changing her behavior. Uh, throughout the course of treatment, I never really [saw] consistent change[.]" Id. at 225. Solomon went on to testify that, by the end of Mother's participation in treatment in January 2008, he felt Mother was even "more set in not changing" her behavior than she was prior to treatment. Id. He further acknowledged that Mother had "regress[ed]" in her ability to recognize how her own choices were causing her problems and began insisting that it was "someone else's fault." Id. at 227-28.

Finally, April Knasinski, home-based service provider, and Bruce Miller, court-appointed special advocate ("CASA"), both recommended termination of Mother's parental rights to K.R. and C.D. In so doing, Knasinski informed the court that Mother "prioritized [her] boyfriend over the children[,]" that Mother's current boyfriend had an "explosive personality" and that Mother had made "no significant change" in any of the areas she had been working on with Mother. Id. at 260, 263. Similarly, Miller testified he believed the children were "not seeing enough consistency" from Mother and that he "fear[ed] for their safety." Id. at 300. Miller went on to say that he felt Mother's choice

of companions "do not give the children a full opportunity of being safe - safe at all times." Id. at 301. Miller also acknowledged that it was his belief Mother made conscious choices that did not put the children first.

A trial court must judge a parent's fitness to care for his or her children 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 children. D.D., 804 N.E.2d at 266. Where there are only temporary improvements and the 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). In the present case, the evidence shows that Mother has consistently engaged in a pattern of destructive decision-making and risky conduct which has clearly had a harmful effect on her children. Moreover, Mother's refusal to participate in court-ordered programs designed to improve her parenting and decision-making skills, coupled with her willingness to repeatedly place her own interests above those of her children, further supports the trial court's determination that continuation of the parent-child relationship poses a threat to the children's well-being. For all these reasons, we conclude that the trial court did not err when it found that continuation of the parent-child relationships between Mother and both K.R. and C.D poses a threat to the

children's well-being.[4] This determination, in turn, supports the trial court's ultimate decision to terminate Mother's parental rights to the children.

Conclusion

A thorough review of the record leaves us convinced that the trial court's judgment terminating Mother's parental rights to K.R. and C.D. is supported by clear and convincing evidence. When the evidence shows that a child's emotional and physical development is threatened, termination of the parent-child relationship is appropriate. Egly, 592 N.E.2d at 1234. Mother's continuing inability to provide K.R. and C.D. with a stable home environment, coupled with her refusal to fully participate in court-ordered services and to prioritize the children's need for physical and emotional safety over her own personal relationships, poses a threat to the children's physical safety and emotional well-being. Termination of Mother's parental rights is therefore appropriate. The trial court's judgment terminating Mother's parental rights to K.R. and C.D. is hereby affirmed.

Affirmed.

RILEY, J., and KIRSCH, J., concur.

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[4] Having determined that clear and convincing evidence supports the trial court's conclusion that continuation of the parent-child relationships between Mother and both children poses a threat to the children's well-being, we need not consider Father's various arguments relating to whether the RCDCS presented sufficient evidence to support the trial court's additional determination that there is a reasonable probability the conditions resulting in the children's removal from Mother's care will not be remedied. See L.S., 717 N.E.2d at 209 (stating Indiana Code Section 31-35-2-4(b)(2)(B) written in disjunctive).