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**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF THE TERMINATION)
OF PARENT-CHILD RELATIONSHIP OF)
Q.W. and F.W., Minor Children,)
And)
J.C., Mother,)
Appellants,)
)
vs.)
)
MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)
Appellee,)
And)
CHILD ADVOCATES, INC.,)
Co-Appellee-Guardian Ad Litem.)

No. 49A05-1010-JT-666

APPEAL FROM THE MARION SUPERIOR COURT JUVENILE DIVISION
The Honorable Gary Chavers, Judge Pro Tem
The Honorable Larry Bradley, Magistrate
Cause Nos. 49D09-1010-JT-3944 and 49D09-1010-JT-3945

June 28, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

J.C. (“Mother”) appeals the involuntary termination of her parental rights to her children, claiming there is insufficient evidence supporting the juvenile court’s judgment. We affirm.

Facts and Procedural History

Mother is the biological mother of Q.W., born in May 2001, and F.W., born in June 2005.¹ In July 2008, the local Marion County office of the Indiana Department of Child Services (“MCDCS”), received a referral from the children’s paternal grandmother that Father, whose whereabouts were unknown, had left the children in her care and she could no longer care for them. Mother’s whereabouts at the time were also unknown. The children were taken into custody and MCDCS filed a petition alleging Q.W. and F.W. were children in need of services (“CHINS”).

Mother and Father both failed to appear for the initial hearings on the CHINS petition, but Father later admitted to the allegations therein during a default hearing in October 2008. The children were thereafter adjudicated CHINS and made wards of MCDCS. Mother, who had an open warrant for her arrest in an unrelated criminal matter, continued to refuse to participate in any CHINS hearings until January 2009.

During a hearing in April 2009, Mother admitted to the allegation of the CHINS petition. By agreement of the parties, the juvenile court proceeded to disposition the same day and thereafter issued an order formally removing the children, who had been

¹ The parental rights of the children’s biological father, F.W.II., were also terminated by the juvenile court’s September 2010 judgment. Father, however, does not participate in this appeal. We therefore limit our recitation of the facts to those pertinent solely to Mother’s appeal.

placed in relative foster care, from Mother's custody. The court's dispositional order also incorporated a Participation Decree which directed Mother to successfully complete a variety of tasks and services designed to improve her ability to parent the children and to facilitate reunification. Specifically, the court's Participation Decree ordered Mother to, among other things: (1) secure and maintain a stable source of income adequate to support all household members; (2) obtain and maintain suitable and safe housing; and (3) successfully complete a home-based counseling program and follow all resulting recommendations of the home-based counselor.

Mother's participation in services was sporadic and ultimately unsuccessful. In May 2009, Mother obtained employment as a fast-food cashier, but was fired from this position after several months due to excessive late arrivals and/or no-shows on scheduled work days. Although Mother initially attended regular supervised visits with the children, she began missing visits as the case progressed and this caused the children to be upset and confused. Mother also became easily frustrated when the children misbehaved during visits and would yell at and threaten the children. In addition, Mother was unable to consistently incorporate the parenting techniques she had been taught, and she showed no significant overall improvement in her ability to provide the children with the structure and appropriate discipline they need due to their diagnosed behavioral disorders.² Due to the children's negative behaviors and increased aggressiveness

² Q.W. was diagnosed with Conduct Disorder and Attention Deficit Hyperactivity Disorder ("ADHD"). She also has a learning disability. F.W. was assessed for ADHD, and results are pending. In addition, both children had started to show signs of Oppositional Defiant Disorder and Conduct Disorder.

following visits with Mother, coupled with Mother's increasingly sporadic attendance at the visits, MCDCS eventually petitioned the juvenile court to suspend all visits in April 2010.

Mother's housing situation remained unstable throughout this time. Mother lived in four residences during the underlying CHINS case. She was also unable to achieve financial stability and continued to rely upon outside resources, such as the Dawn Project³ and relatives, in order to pay for her rent and utility bills.

In January 2010, MCDCS filed a petition seeking the involuntary termination of Mother's parental rights to Q.W and F.W. An evidentiary hearing on the termination petition was held in September 2010. During the termination hearing, MCDCS presented evidence showing Mother's ongoing housing and employment instability, coupled with her unresolved parenting issues, were unlikely to be remedied, thus preventing a safe reunification of the family. At the conclusion of the hearing, the juvenile court took the matter under advisement. On September 13, 2010, the court entered its judgment terminating Mother's parental rights to both children. Mother now appeals.

Discussion and Decision

We begin our review by acknowledging that this court has long had a 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

³ The Dawn Project is a local Marion County social services program created to help care for children who are involved in multiple systems and their families.

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 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.

Here, in terminating Mother's parental rights, the juvenile court entered specific factual findings and conclusions. 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 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 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. However, a juvenile 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, 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 juvenile court's findings as to subsection (b)(2)(B) of the termination statute cited above, stating the juvenile court failed to make "any specific findings pertaining to the statutory requirements," and instead "merely recited the evidence presented during the [termination] hearing." Appellant's Br. at 8. Mother also asserts that there was insufficient evidence to support the juvenile court's determination that the conditions leading to the children's removal would not be remedied because, at the time of the

termination hearing, Mother had obtained “sporadic” employment, secured a two-bedroom home, and was being “assisted with her financial needs by her mother and aunt.” Id. at 18. Mother therefore contends her “only problem was that she was poor.” Id. at 17.

We pause to observe that in order to properly effectuate the termination of parental rights, a juvenile court need find only one of the three requirements of subsection (b)(2)(B) has been established by clear and convincing evidence. See Ind. Code § 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 MCDCS 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 Ind. Code § 31-35-2-4(b)(2)(B)(i).

When making such a determination, 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. 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 juvenile court may also

consider any services offered to the parent by the local Indiana Department of Child Services office (here, MCDCS) and the parent's response to those services, as evidence of whether conditions will be remedied. Id. Moreover, MCDCS 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 juvenile court made multiple, detailed findings in its judgment regarding Mother's unresolved parenting issues. In so doing, the juvenile court noted Mother had a "history of unstable housing," which included living in four residences during the underlying CHINS case and continuously relying on outside resources such as "the Dawn Project and relatives to help her pay rent and utilities." Appellant's App. p. 16. The court further found Mother had a "history of not maintaining employment, either quitting or being fired after a few months," and pointed out Mother's only job during the CHINS case lasted "seven months or less," and that her current job was with a temporary agency, where the work was "very inconsistent, and the hours minimal." Id.

Although the juvenile court acknowledged Mother had completed the Common Sense Parenting curriculum, this was tempered by the court's additional findings Mother had "difficulty in applying [parenting] techniques, and would become upset when redirected or when parenting concerns were discussed with her." Id. The court also indicated that "areas of concern" observed by services providers included Mother "not following through with discipline, inappropriate discipline, not setting limits,

inconsistency, lack of patience, lack of insight, lack of judgment, and not being able to meet the children’s educational and special needs.” Id.

As for Mother’s participation in home-based counseling sessions and visits with the children, the juvenile court noted in its findings that Mother became “inconsistent in visiting the children as the CHINS case proceeded,” and that “[e]ven though services were intensive, lasting over one year and with up to three or four people in [Mother’s] home per week working on parenting, home[-]based services were closed out unsuccessfully” and Mother “never got to the point where she could visit the children unsupervised.” Id. Additional findings by the court point out that, at the time of the termination hearing, Mother was “not in a position to provide for the children’s physical needs,” and that she lacked the “skills and judgment to meet the children’s educational, emotional, and special needs.” Id. at 17.

As a result of these and other findings, the trial court determined that there is a reasonable probability the conditions that resulted in the children’s removal and continued placement outside the home will not be remedied by Mother as follows:

Home[-]based services were in place for over a year, including intensive wrap-around services. The result being that [Mother] failed to apply the skills needed to safely and appropriately parent, and failed to maintain adequate income to meet the children’s physical needs. When taking into consideration the duration and level of services, and [Mother’s] lack of insight, it is not reasonable to believe that additional time will remedy conditions.

Id. at 17-18. A thorough review of the record leaves us satisfied that the juvenile court’s findings set forth above do not constitute a mere verbatim recitation of witness testimony

as Mother suggests, but rather a thoughtful and detailed list of findings of primary fact, which are clearly and convincingly supported by the evidence presented during the termination hearing. Moreover, these findings support the juvenile court's ultimate decision to terminate Mother's parental rights to both children.

During the termination hearing, MCDCS case manager Shawn Houston, home-based service providers Stacy Kalima ("Kalima") and Marcia Mora ("Mora"), and psychologist Thordis Thordarottir ("Dr. Thordarottir") confirmed Mother had made little or no progress in her overall ability to parent the children and/or to provide them with a safe and stable home environment. Kalima informed the juvenile court that she had supervised visits between Mother and the children and provided Mother with case management services for over one year. Kalima further testified that she and Mother had set several initial treatment goals, including obtaining stable housing and employment and utilizing appropriate parenting and discipline techniques. When asked about Mother's overall progress in achieving these goals, Kalima explained that although Mother had completed the parenting class, she had "difficulty applying those things that we had talked about." Tr. p. 48. When asked to provide an example, Kalima recounted an incident during which F.W. was "running around" and "not listening" to Mother during a supervised visit, and instead of remaining calm and using one of the demonstrated parenting techniques, such as "time[-]out," Mother began yelling at F.W. and "raised her hand to hit him." *Id.* at 49. Kalima also testified Mother continued to struggle with putting the children's needs ahead of her own, refused to attend any of the

children's individualized educational plan meetings despite repeated requests to do so, and "just was never able to grasp what [the children] needed" on a consistent basis, as was made evident by the children's "lack of progress" while they were in Mother's care versus the "tremendous amount of progress, especially [with Q.W.], with her ADHD, once [the children] were in a different placement." Id. at 90.

Mora's testimony echoed that of Kalima. Mora acknowledged that Mother had made no overall progress in her ability to parent the children, and she confirmed that Mother had missed numerous scheduled visits throughout the CHINS case, thereby "upsetting" the children. Id. at 97. Mora also informed the juvenile court that Mother routinely disregarded Mora's parenting advice, stating she "didn't need [any home-based counselors] to tell her how to take care of her children." Id. at 103. In addition, Mora testified that when she asked Mother why she forced the children to sit and watch television rather than allow them to play with their toys during the three-hour home visits, Mother explained, "[T]hey don't clean up after their selves [sic]" and she had "a big enough mess to clean up." Id. at 102. Mora also observed Mother "threaten[]" to use a belt on [F.W.]" when she became frustrated with the child's behavior during a visit in December 2009, and tell Q.W., "Girl, I'm gonna [sic] slap your face," when Q.W. failed to understand the homework assignment Mother was trying to help Q.W. finish. Id. at 106-07. The children's behavioral therapist, Dr. Thordarottir, likewise confirmed that she had observed Mother "slap" F.W. for spilling his juice on her. Id. at 132. Dr. Thordarottir also testified that when she tried to discuss parenting issues with Mother,

such as appropriate and consistent discipline techniques, Mother would “get frustrated” and told Dr. Thordarottir that “nobody’s gonna [sic] tell [Mother] how to raise her kids.” Id. at 138.

As noted earlier, 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 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 MCDCS presented clear and convincing evidence to support the juvenile court’s findings set forth above, which in turn support its ultimate determination to terminate Mother’s parental rights to Q.W. and F.W. 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.

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