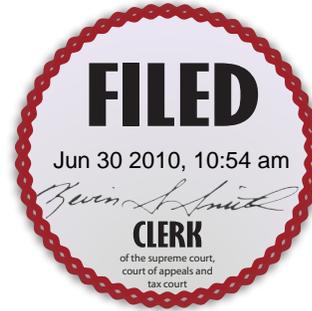


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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF:)
J.G. & J.R. (Minor Children),)

A.R. (Mother),)
Appellant-Respondent,)

vs.)

INDIANA DEPARTMENT OF CHILD)
SERVICES,)

Appellee-Petitioner.)

No. 20A05-1001-JT-21

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
The Honorable Deborah A. Domine, Magistrate
Cause No. 20C01-0907-JT-49
20C01-0907-JT-50

June 30, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BARNES, Judge

A.R. (“Mother”) appeals the termination of her parent-child relationship with J.G. and J.R. We affirm.

Issue

Mother raises one issue, which we restate as whether there is sufficient evidence to support the termination of her parental rights.

Facts

In April 2008, Mother was arrested.¹ At that time, Mother’s husband (“Stepfather”) had recently been hospitalized for psychiatric treatment, was adjusting to new medication, and was unable to the care for the children. Because no one was able to care for the children, Mother had not been treating her mental illness, and Mother had not been able to provide stable and suitable housing, the Department of Child Services (“DCS”) filed a petition alleging the children were children in need of services (“CHINS”), and the children were placed in foster care.

Although Mother was released from jail the same day, the children were determined to be CHINS and their placement in foster care continued. Mother and Stepfather were ordered to seek mental health treatment and counseling and to take their medications as prescribed. They were also ordered to complete parenting classes and to

¹ It is not clear why Mother was arrested or what, if anything, with which she was charged.

follow the recommendations of the Rapid Family Assessment, which included obtaining employment and housing.

Mother and Stepfather participated in visitation and counseling, which included parenting classes. Neither Mother nor Stepfather, however, obtained employment, and they had no income other than Stepfather's Social Security disability payments. On July 7, 2009, the DCS filed a petition to terminate Mother's parental rights.² In August or September, Mother and Stepfather obtained a one bedroom apartment.

On December 21, 2009, the trial court held a hearing on the termination petition. Following the hearing, the trial court issued an order terminating Mother's parental rights. The trial court issued findings and conclusions, which provide in part:

b. There is a reasonable probability that both the conditions that resulted in the removal of the children from their mother will not be remedied and that a continuation of the parent-child relationship poses a threat to the well being of the children.

* * * * *

ii. Kim Varga, MSW, completed a Rapid Family Assessment over three sessions in May and June of 2008. In the assessment, she notes that the presenting problem at the time the children were removed were [sic] that [Mother] and [Stepfather] were unable to care for her children because [Mother] was incarcerated, and [Stepfather] was receiving inpatient treatment for his own mental illness. In addition, the assessment documents that Mother and Stepfather were unable to maintain employment and housing and unable to manage their finances. In her testimony, Ms. Varga expressed concerns about the children's

² The children's father's parental rights were also terminated. He does not appeal.

untreated MRSA staff [sic] infection^[3] at the time of removal, inconsistency in parenting exhibited by the parents and step-father, exposure to violence in the parent's home,^[4] and abuse by an older sibling whom [Mother] lost custody of because of past abuse,^[5] but whom [sic] is at times in the family home. Ms. Varga recommended that before the children could safely be reunited with [Mother] and [Stepfather], that the mother and step-father needed, among other things, to secure employment, secure their own housing, and consistently take their prescribed medications. Above all she stressed that the family needs stability because the constant moving has and had a negative impact on the children.

iii. Sadly in the twenty months since the removal of the children from the home, little has changed. DCS case manager Tamela Boyer stated specifically that the conditions that resulted in the removal of the children have not been remedied.

iv. Marlene Villeco, is [Mother's] therapist. She testified that she has worked with [Mother] for over a year and in that time for every step [Mother] has made forward, she has made two steps backwards.

v. DCS case manager Tamela Boyer testified that [Mother] and her husband remain unemployed today, [Mother] still is not consistently taking her medication as prescribed and at one point flushed her prescribed medications down the toilet, and while [Mother] and her husband recently obtained housing, the home is a one bedroom apartment unit. Moreover, mother is still not providing for the children's educational needs; CASA, Kathy Stull, described that attempts were

³ Varga and another case manager testified that the children's former foster mother was concerned because they were "Mersa positive." Tr. p. 163. There is no medical evidence indicating that they were actually treated for MRSA.

⁴ The violence in the home seems to relate to the behavior of the children's older brother, A.R., who, among other things, played violent video games in front of the children.

⁵ There were no allegations that Mother or Stepfather abused A.R.

recently made to involve [Mother] in her children's updated I.E.P. and [Mother] got angry and simply walked out of the meeting rather than working to complete a plan.

vi. The CASA Kathy Stull explained that the children need stability, structure, involvement in community activities, and they need someone who will always be there for them. She opined based on her observations, and working as an advocate for [J.G.] and [J.R.], that the parents are unable to provide for those needs.

vii. The children's therapist, Jessica Kindig, testified that after twenty months out of the mother's home, the children continue to express fear of returning home. In a letter to DCS and admitted into evidence without objection (Exhibit 16) Kindig writes: ". . . . They both identify that they were not taken care of, were treated poorly (harsh discipline with objects, inappropriate language, and name calling, etc.), and that they were not cared about."

viii. Foster mother [B.C.] has been caring for [J.G.] and [J.R.] for a year and half. She too testified that both boys have repeatedly stated that they do not want to go home. She described that they are nervous before and after visits with their mother and step-father, they have described that they do not want to attend visits with their mother and step father, and [J.R.] has stated that he does not want to visit with his mother and step father because he does not "want to get hit." To thrive, she described that the boys need structure consistency, and guidance and a care giver who can get them to treatment. As for the last identified need, the mother described that she does not have a license or a car, and relies on others to help her get where she needs to go. The Court of Appeals has instructed that a trial court must evaluate a parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect. Mother's past and present both support a finding she will be

unable to meet her children's needs. This adds further support for the termination of mother's parental rights.

ix. There is no doubt, but that, [Mother] loves her children. During the testimony she admitted to mistakes and asked for another chance to have her children in her care. The CASA testified, however, that 9-year old [J.R.] told her that he wants to be safe and is certain that if he goes home he will just end up in another foster home. Mother's lack of progress in her own therapy and in changing the circumstances that brought the children into the system continue [sic] suggests that there is wisdom in the fears expressed by the child. More import mother's lack of progress supports the finding that a continuation of the parent child relationship poses a threat to the children.

x. DCS case manager Boyer described that to this day [Mother] cannot make a decision for herself. And Boyer expressed that [Mother] would, therefore, have a difficult time caring for and making parenting decisions for her children. The CASA Kathy Stull, made the same observation, but went a step further; she stated that [Mother] cannot care for herself, and could not care for her children.⁶ According to Stull a continuation of the parent child relationship would pose a threat to [J.G.] and [J.R.].

xi. The purpose of termination of parental rights is not to punish the parents, but to protect the child. Here, the evidence supports a finding that severing the relationship between [Mother] and her children is necessary for the children's protection.

⁶ Stull specifically testified:

I would be really concerned. I'd be concerned because [Mother] can't make decisions and I don't think that she can speak up for herself. [Stepfather] has a tendency to fly off the handle very quickly and so I would be concerned that [Mother] would be able to stand up against that with the children.

c. Termination of the Parent Child Relationship is in the best interest of [J.R.] and [J.G.].

i. The Case manager and the CASA both testified to this conclusion. More important, the case law is clear on this issue; “A parent’s historical inability to provide adequate housing, stability, and supervision, coupled with a current inability to provide the same will support a finding that termination of the parent-child relationship is in the child’s best interest.” The fact that mother has made little improvement in her circumstances since the removal of the child from the home support the conclusion expressed by the case manager and the CASA.

ii. The foster mother [B.C.] testified that when [J.R.] and [J.G.] moved into her home they did not know how to use silverware at the dinner table.^[7] She said that [J.R.] could not read or even snap his pants. They have learned all of these things since removal from their mother’s care.

iii. Equally important is the fact that the boys have expressed that they do not want to go back. They say that they are afraid to go back to mother’s home.

iv. [Mother] herself testified that the children need to be out of the system.^[8]

v. Because neither [Mother] or any other parent is ready to care for [J.R.] and [J.G.], the way out of the system is termination of parental rights. For that reasons [sic] as well the court must conclude that termination is in the best interest of the children.

⁷ This testimony specifically referred to J.R., not to both boys. J.R. was seven when he was removed from Mother’s care. It appears that J.R. has ongoing special educational needs.

⁸ Mother did testify that she agreed that the children need to get out of the system. See Tr. p. 401. It is clear, however, that Mother was not suggesting that she consented to the termination of her parental rights.

d. There is a satisfactory plan for the care and treatment of [J.R.] and [J.G.] should parental rights be terminated. The plan is for adoption.

App. pp. 12-16 (citations omitted). Mother now appeals.

Analysis

Mother argues there is insufficient evidence to support the termination of her parental rights. “When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility.” Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). “We consider only the evidence and reasonable inferences that are most favorable to the judgment.” Id. Where a trial court enters findings and conclusions granting a petition to terminate parental rights, we apply a two-tiered standard of review. Id. First, we determine whether the evidence supports the findings. Id. Then we determine whether the findings support the judgment. Id. We will set aside a judgment that is clearly erroneous. Id. A judgment is clearly erroneous when the findings do not support the trial court’s conclusions or the conclusions do not support the judgment. Id.

A petition to terminate the parent-child relationship must allege:

(A) that one (1) of the following is true:

(i) The child has been removed from the parent for at least six (6) months under a dispositional decree.

(ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made.

(iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(B) that one (1) of the following is true:

(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;

(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).

DCS has the burden of proving these allegations by clear and convincing evidence. See Bester, 839 N.E.2d at 148. Clear and convincing evidence need not show that the continued custody of the parent is wholly inadequate for the child's very survival. Id. Instead, it is sufficient to show by clear and convincing evidence that the child's emotional and physical development is threatened by the parent's custody. Id.

Mother concedes the children had been removed from her home for more than fifteen of the last twenty-two months. She argues, however, that the DCS did not present evidence to establish the other requirements of Indiana Code Section 31-35-2-4(b)(2).

In arguing that the DCS did not provide clear and convincing evidence of a reasonable probability that the conditions resulting in the children's removal from the

home would not be remedied, Mother points to her compliance with court orders, her request for additional services, which were not provided, and her continuous involvement in services. Indeed, Mother did regularly participate in counseling, which included parenting classes and anger management classes, and visitations with the children, and Mother sought the implementation of family therapy sessions. It is clear Mother was genuinely concerned about the children's well-being.

Nevertheless, various witnesses testified that at the time of the termination hearing, Mother still lacked the necessary parenting skills. Specifically, Mother's therapist testified that Mother still struggled with consistency and had difficulty making decisions. A case manager testified that Mother "needs to be able to make her own decisions and do what it [sic] best for her and the boys." Tr. p. 231.

There is also evidence that Mother did not take her medication for depression as prescribed. In November 2009, Mother flushed some of her medication down the toilet because she felt two pills a day was too much and one was not enough.

Further, although Mother acknowledged at the termination hearing that she would have to have a job if the children were returned to her custody, she admitted that during the time of DCS involvement she, for the most part, remained unemployed. Mother stated that she had applied for jobs "a few times." *Id.* at 264. She testified that the last time she had a job was "[q]uite a few months ago" when she worked at a motel for one day but could not make the bed the way they wanted her to. *Id.* at 277. Regarding Mother's ability to work, a case manager testified that he was concerned about Mother

finding a job “because of depression, because of stress – I think she struggles with working you know, with people.” Id. at 212.

Although Stepfather received disability payments, as late as July 2009, it was unclear whether Mother would continue her marriage to Stepfather and Mother began living with her mother. It was not until August or September 2009, after the DCS sought to terminate the parent-child relationship, that Mother and Stepfather obtained suitable housing together. Given the importance of stable housing in this particular case, the record demonstrates that Mother and Stepfather had maintained the apartment for a relatively short period of time.

This evidence is sufficient to establish that there was a reasonable probability that the conditions resulting in the children’s removal from Mother’s home would not be remedied. To conclude otherwise would require us to reweigh the evidence, which we cannot do.⁹

Mother’s argument that the termination of her parental rights was not in the children’s best interest is also unavailing. The children, who were nine and seven when the CHINS petition was filed, repeatedly stated they did not want to return home. The CASA testified that Mother has not benefited from the services she has been offered, and one of Mother’s counselors testified that Mother takes one step forward and two steps back. The CASA also testified that the children need structure and stability. She

⁹ We need not address the trial court’s conclusion that the continuation of the parent-child relationship poses a threat to the children’s well-being because the statute is written in the disjunctive. Thus, DCS was not required to prove both. See Bester, 839 N.E.2d at 148 n.5.

concluded that termination of the parent-child relationship was in the children's best interests. The DCS presented clear and convincing evidence of this factor.

Finally, Mother argues that adoption is not a satisfactory plan for the children because adoption is a "very slow" process. Appellant's Br. p. 38. Although there is no indication that the foster parents will adopt the children and adoption may be a slow process, adoption is generally considered to be a satisfactory plan under the termination of parental rights statute. See In re B.M., 913 N.E.2d 1283, 1287 (Ind. Ct. App. 2009). For a plan to be "satisfactory," it need not be detailed, so long as it offers a general sense of the direction in which the children will be going after the parent-child relationship is terminated. See Lang v. Starke County Office of Family and Children, 861 N.E.2d 366, 374 (Ind. Ct. App. 2007), trans. denied. The DCS's plan for adoption offered a general sense of the direction in which the children would be going upon the termination of Mother's parental rights. The plan for adoption was satisfactory.

Conclusion

The DCS provided clear and convincing evidence to support the termination of Mother's parent-child relationship with J.G. and J.R. We affirm.

Affirmed.

BAILEY, J., and MAY, J., concur.