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IN THE
COURT OF APPEALS OF INDIANA

IN MATTER OF TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF	)	
A.M.C., Minor Child, and A.C., Mother, Appellant,	)	
vs.	)	No. 28A01-1102-JT-81
INDIANA DEPARTMENT OF CHILD SERVICES, Appellee.	)	

APPEAL FROM THE GREENE CIRCUIT COURT
The Honorable Erik C. Allen, Judge
Cause No. 28C01-1007-JT-13

July 15, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

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

Facts and Procedural History

Mother is the biological mother of A.M.C., born in November 1999.[1] In September 2009, the local Greene County office of the Indiana Department of Child Services ("GCDCS"), received a report that both of A.M.C.'s parents had been arrested on multiple, felony drug-related charges. Specifically, as relates to the instant case, Mother had been arrested on four class A felony dealing methamphetamine charges and one class D felony maintaining a common nuisance charge. During its investigation of the matter, GCDCS learned A.M.C. was in the care of his father's former step-mother, "Tami." Tami informed GCDCS that she was not a blood relative to A.M.C. and could not continue to care for the child full-time. GCDCS thereafter contacted multiple family members, including both of A.M.C.'s paternal grandparents, paternal great-grandmother, maternal grandmother, and maternal cousin regarding placement, but none were able to

[1] The parental rights of A.M.C.'s biological father, M.C., were also terminated by the trial court's February 2011 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.

care for A.M.C. Consequently, A.M.C. was taken into custody and GCDCS thereafter filed a petition alleging A.M.C. was a child in need of services ("CHINS").

A.M.C. was adjudicated a CHINS in October 2009. Following a dispositional hearing in November 2009, the trial court issued an order formally removing A.M.C. from Mother's custody and making the child a ward of GCDCS. The trial court's dispositional order further directed Mother to participate in a variety of services designed to improve her parenting skills and facilitate reunification with A.M.C. Specifically, Mother was ordered to, among other things: (1) obtain a legal and stable source of income; (2) maintain safe and suitable housing; (3) complete a substance abuse assessment once released from incarceration or transferred to a less restrictive detention facility and follow any resulting treatment recommendations; (4) obtain her G.E.D.; (5) participate in individual and family counseling as needed; (6) refrain from the use, manufacture, trade or sale of any illegal substances, and only take prescribed medications as directed; (7) prohibit the possession, use, or possession of any illegal controlled substances or alcohol in the home or presence of the child; and (8) demonstrate the ability to appropriately parent and supervise A.M.C.

In March 2010, Mother pleaded guilty to Class B felony dealing in methamphetamine. She was sentenced to twelve years incarceration at the Indiana Department of Correction ("IDOC"), with five years suspended and credit for 175 actual days served as of the date of sentencing. In addition, Mother was authorized to complete the balance of her executed sentence in a work release program, provided she obtained

suitable employment within two weeks. Mother thereafter failed to obtain suitable employment and voluntarily returned to IDOC to serve the remaining portion of her sentence in the custody of IDOC approximately three days before the two-week deadline had elapsed.

In July 2010, GCDCS filed a petition seeking the involuntary termination of Mother's parental rights to A.M.C. An evidentiary hearing on the termination petition was held in January 2011. During the termination hearing, GCDCS presented evidence showing Mother's ongoing incarceration, coupled with her unresolved parenting and substance abuse issues, were unlikely to be remedied, thereby preventing a safe reunification with A.M.C. At the conclusion of the termination hearing, the trial court took the matter under advisement. On February 7, 2011, the court entered its judgment terminating Mother's parental rights to A.M.C. 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 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. 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:

> (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.
> >
> > (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services; [and]
>
> (C) that termination is in the best interests of the child . . . .

Ind. Code § 31-35-2-4(b)(2) (2008). 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 (2008). 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) (2008). Mother challenges the sufficiency of the evidence supporting the trial court's findings as to subsection (b)(2)(B) & (C) of the termination statute cited above.

I. Conditions Remedied/Threat to Well-being

At the outset, we note that in order to properly effectuate the termination of parental rights, a trial court need find only one of the three requirements of Indiana Code section 31-35-2-4(b)(2)(B) has been established by clear and convincing evidence. See

e.g., 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 GCDCS established, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in A.M.C.'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 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, GCDCS) and the parent's response to those services, as evidence of whether conditions will be remedied. Id. Moreover, GCDCS 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, detailed findings in its judgment regarding Mother's unresolved parenting issues. In so doing, the trial court noted Mother had been "continuously incarcerated since being arrested in mid-September 2009," and remained incarcerated at the time of the termination hearing on a Class B felony dealing in methamphetamine conviction. Appellant's App. p. 30. The court further noted that Mother had been authorized to complete her sentence on work release, but failed to obtain suitable employment and was therefore completing her time incarcerated at IDOC. The court also acknowledged Mother had prior criminal convictions for theft, conversion, and furnishing alcohol to a minor, finding that "[t]his history, along with the current dealing in methamphetamine conviction displays a consistent history of irresponsible and unstable conduct by [M]other." Id. Moreover, in finding Mother's earliest possible release date is not until March 16, 2013, the trial court acknowledged Mother was "hopeful to get a number of time cuts" in her sentence through participation in various programs while incarcerated, but further found that these "time cuts are speculative at this time as the programs have not all been completed, are not guaranteed for [M]other's acceptance, and will take a period of time to complete." Id.

As for Mother's unresolved substance abuse issues and future plans to care for A.M.C., the trial court found that during the time A.M.C. lived with Mother, he was "exposed to very adult issues such as drug use in the home and household finances." Id. at 31. The court further acknowledged Mother's testimony that she intended to move back to Greene County and live with a relative upon her release from incarceration, as

well as the testimony from A.M.C.'s therapist who informed the trial court that "the probability of [Mother] returning to her old habits related to illegal substances is greatly increased if she returns to the same community where she previously was involved with illegal drugs, which it is [M]other's plan to return to her old community (Greene County) when she is released." Id. Based on these and other findings, the trial court concluded as follows:

> There is a reasonable probability that: 1) the conditions that resulted in the child's removal or the reasons for placement outside of the parents' home will not be remedied . . . . Regarding [Mother], her consistent criminal history, current period of incarceration, and her plans upon release from incarceration, despite her completed programs while incarcerated, cause the Court to conclude that it is unlikely that she will be able to consistently provide a suitable, stable, and safe environment for [A.M.C.] in the future. . . . [T]he parent[s'] historical behavior causes the Court to conclude that neither parent is likely to be able to provide such consistency, stability and predictability that the child requires.

Id. at 32. A thorough review of the record leaves us satisfied that the trial court's findings and conclusions set forth above are clearly and convincingly supported by the evidence presented during the termination hearing.

Moreover, these findings support the trial court's ultimate decision to terminate Mother's parental rights to A.M.C. At the time of the termination hearing, Mother's ability to provide A.M.C. with a safe and stable home environment was unknown. Importantly, at the time of the termination hearing, Mother remained incarcerated with an earliest possible release date of March 2013. In addition, Mother had failed to successfully participate in and/or complete any of the trial court's dispositional orders,

and admitted she had never participated in, nor planned to participate in, a substance abuse treatment program.

During the termination hearing, GCDCS case manager Amanda Thatcher ("Thatcher") acknowledged that although Mother had participated in some self-improvement classes while incarcerated, these classes did not eliminate the need for Mother to complete GCDCS services. Thatcher further informed the trial court that Mother would ultimately "need to show that she [is] able to provide what [A.M.C.] needs," and that Thatcher had no way of predicting how long that would take. Tr. p. 219. When asked if there were "any guarantee" that Mother would follow through and be able to do all that was required of her for reunification purposes, Thatcher answered in the negative and later admitted that Mother was "[no] closer to reunification today" than she was in September 2009. Id. at 219, 222.

Patrick Linderman ("Linderman"), therapist with Ireland Home Based Services, also testified during the termination hearing. Linderman informed the trial court that A.M.C. had confided during therapy sessions that his family "moved frequently," "lived with other families," and that Mother would "usually go over to a friend's house" after work and was "barely" ever home prior to his removal from Mother's custody in September 2009. Id. at 109. Linderman further testified that A.M.C. had been exposed to "drug use" and "drinking" in the family home, stating then nine-year-old A.M.C. had been allowed to "take some sips or drinks of Mike's [H]ard [L]emonade" on occasion

and that A.M.C.'s parents would tell him to "go to the other room" so they could smoke marijuana on an "every other day" basis. Id. at 110.

When asked what Mother's recent success with sobriety while incarcerated "tells you" about Mother's ability to maintain sobriety "on the outside," Linderman explained that Mother's sobriety while incarcerated was not necessarily an accurate "measure" of how Mother will behave in "real life," because she is not being exposed to the same "triggers" and "stress," such as seeing old friends, finding a job, and maintaining a safe and suitable residence. Id. at 127-28. Linderman further testified that statistics indicate "people who abuse drugs go through more than one recidivist problem, they go through 2, 3, or 4," and relapse is even more likely if "you go back to where you lived because there are so many triggers in the same place you used to live." Id. at 127.

Finally, Mother's own testimony supports the trial court's findings and conclusions. Mother admitted she had used drugs since she was a teenager, that she had never sought treatment for her substance abuse problem, and that although she "tried many times to quit and knew that it wasn't right," she "just couldn't" do it. Id. at 262. Moreover, when asked whether she had a plan for caring for A.M.C. once she is released from incarceration, Mother indicated, among other things, that she "plan[ed] on coming right back here [to Greene County.]" Id. at 266.

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 GCDCS presented clear and convincing evidence to support the trial court's findings and conclusions previously discussed, which in turn support the court's ultimate determination to terminate Mother's parental rights to A.M.C. 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.

II. Best Interests

We next consider Mother's assertion that termination of the parent-child relationship is not in A.M.C.'s best interests. We are ever mindful that, when determining what is in a child's best interests, a trial court is required to look beyond the factors identified by the Indiana Department of Child Services and to look to the totality of the evidence. McBride v. Monroe Cnty. Office of Family & Children, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, however, the court must subordinate the interests of the parent to those of the child. Id. Moreover, we have previously explained that recommendations from the case manager and child advocate that parental rights should be terminated support a finding that termination is in the child's best interests. Id.

Here, in addition to the findings set forth previously, the trial court noted in its findings that, at the time of A.M.C.'s removal from the family home, A.M.C. appeared "'sad' and 'dirty,'" "displayed a number of behavioral issues," and his behavior

"significantly deteriorate[d] after visits with the parents." Appellant's App. p. 31. The court further acknowledged that A.M.C. "displayed substantial improvement in behavior and school performance" following his removal from the family home and placement in foster care, where he received "stability" and "predictability." Id. In addition, the court found that: (1) A.M.C. had "developed a strong bond with the foster parents and with the prospective adoptive parents;" (2) both the GCDCS case manager and CASA had recommended termination of Mother's parental rights; (3) the CASA had "expressed concerns with the length of incarceration for each parent and observed that [A.M.C.] has significantly improved his behavior since experiencing the stability of foster placement;" and (4) "[f]ailure to continue to provide a safe, stable and predictable home for A.M.C. will be detrimental to his emotional health." Id. at 32. Thereafter the trial court concluded as follows:

> c. Due to the child's diagnosis and history of behavior issues, the child desperately needs permanency, which will be significantly delayed if parental rights are not terminated.
>
> d. Termination is in the best interest[s] of the child. [A.M.C.] needs permanency now, in a stable and predictable home in order to maintain progress with his behavior and social issues while he is in his formative years. The child is doing very well in his current placement and his expected adoption will be within the same family unit. Even if [Mother] would get all of her possible time cuts, it would be nearly a year before the child could be reunified with her considering the time before she could possibly be released, and the time it would take for her to demonstrate an ability to maintain employment, obtain and maintain a residence, remain substance[-] free, and display the ability to consistently provide appropriate care and supervision for the child. The Court also concludes that the historical behavior of the parents results in a low probability that

> either would be suitable for the child's needs upon release from incarceration.

Id. at 32-33. These findings and conclusions are supported by the evidence.

Both case manager Thatcher and court-appointed special advocate ("CASA") Jim Tuggle ("Tuggle") recommended the termination of Mother's parental rights in A.M.C.'s best interests. In so doing, Thatcher testified A.M.C. "has been drug through foster care for 16 months" and "needs to be his own person now." Id. at 213. Thatcher further stated that she believed it was "not fair" to allow A.M.C. to continue to "linger on in the foster care system," and that A.M.C. needed "stability," "trust," and "permanency" "now." Id. at 213-14. Similarly, CASA Tuggle informed the court that A.M.C. had experienced "trauma after trauma" in his life and "can't handle any more of this up and down." Id. at 181-82. Thatcher went on to testify that A.M.C. "needs closure," "definite structure," and to "just get on with his life." Id. at 182, 184.

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. In re E.S., 762 N.E.2d 1287 (Ind. Ct. App. 2002). Here, Mother's on-going incarceration, long-term and untreated struggle with substance abuse, and A.M.C.'s immediate need for permanency and stability, coupled with the testimony from Thatcher and Tuggle recommending termination of the parent-child relationship, all lead us to the conclusion that the trial court's termination of Mother's parental rights is in A.M.C.'s best interests and is supported by the evidence.

See, e.g., In re A.I., 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding that testimony from child's court-appointed advocate and family case manager regarding child's need for permanency and recommendation to terminate parental rights, coupled with evidence that conditions causing removal will not be remedied, constitutes sufficient evidence to support termination of parental rights), trans. denied.

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.