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# IN THE
# COURT OF APPEALS OF INDIANA

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| IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF: B.M., A Minor Child, | ) | |
| and, | ) | |
| D.M., Mother, | ) | |
| Appellant-Respondent, | ) | |
| vs. | ) | No. 49A02-1012-JT-1424 |
| THE INDIANA DEPARTMENT OF CHILD SERVICES, | ) | |
| Appellee-Petitioner. | ) | |
| and, | ) | |
| CHILD ADVOCATES, INC., | ) | |
| Co-Appellee, Guardian as Litem. | ) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary Chavers, Judge Pro Tem
The Honorable Larry Bradley, Magistrate
Cause No. 49D09-1006-JT-24537

**July 19, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BARNES, Judge**

## Case Summary

D.M. ("Mother") appeals the termination of her parent-child relationship with her daughter, B.M. 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

B.M. was born on May 24, 2009. On June 1, 2009, the Department of Child Services ("DCS") filed a petition alleging B.M. was a child in need of services ("CHINS") because Mother and B.M.'s father, L.M., ("Father") were unable to provide her with a safe, stable, and appropriate living environment. The petition alleged that Mother lacked the cognitive ability to care for a newborn and that Father was incarcerated. At that time, B.M. was removed from Mother's home and placed in foster care.

On July 20, 2009, the trial court determined B.M. was a CHINS and, with a permanency plan of reunification, the trial court ordered Mother to, among other things,

obtain and maintain suitable housing, participate in and successfully complete home-based counseling, and complete all recommendations of a parenting assessment.

Mother has mild mental retardation and receives social security disability benefits for her impairment. Shortly after the CHINS petition was filed, Father was released from jail, and Mother and Father lived together. A clinical psychologist determined that Mother suffered from a depressive disorder, intermittent explosive disorder, cognitive disorder, and personality disorder with schizoid and obsessive compulsive features. At that time Mother was taking Ceroquil and Zoloft, and the clinical psychologist believed Mother should continue taking those medications and be periodically evaluated by the prescribing doctor. Mother participated in services offered by Medicaid and DCS.

Beginning in July 2009, Lonya Thompson, a licensed social worker, provided Mother with intensive home-based services between six to nine hours per week. Thompson focused on Mother's parenting skills, budgeting, and anger management. Mother did not fill her prescriptions regularly and became agitated, hostile, and aggressive when she was off her medication. Thompson used a step-by-step curriculum designed for individuals with disabilities in an effort to improve Mother's parenting skills. During the course of counseling, Thompson believed Mother made some improvements but that the improvements "vacillated" and that ongoing basic child safety issues persisted. Tr. p. 180. In March 2010, during a visitation with B.M., Mother became agitated and frustrated while putting a jacket on B.M. and accidently fractured B.M.'s arm. Mother continued having trouble following through with Thompson's safety

recommendations and, even after eleven months of counseling, Mother and Father had not made significant progress in creating a safe environment for B.M.

In June 2010, the permanency plan was changed from reunification to adoption, and DCS filed a petition to terminate the parent-child relationship. At the same time, Mother and Father were evicted from their apartment. Mother moved to Ohio to live with her sister and, at some point, she and Father began living above an ice cream business where Father was seasonally employed. Because of manner in which the business was secured, Mother and Father had a limited ability to leave the premises. In November 2010, Mother voluntarily signed out of similar services provided by Medicaid, which were not court ordered, so that she would appear more independent.

On December 15, 2010, a termination hearing was conducted. On December 20, 2010, the trial court issued its order terminating Mother's parental rights.[1] Based on Mother's request for findings and conclusions, the trial court's order provided in part:

> 18. There is a reasonable probability that the conditions that resulted in [B.M.'s] removal and continued placement outside the home will not be remedied. [Mother's] cognitive impairments have prevented her from being able to learn and consistently demonstrate the parenting skills needed to adequately and safely parent [B.M.]. She has received a year of intensive home based services without success. Given her lack of success, and lack of insight, there exists no reasonable expectation that [Mother] will overcome her limitations.

App. p. 11. Mother now appeals.

[1] Father's parental rights were also terminated; however, he is not a party to this appeal.

## Analysis

Mother contends 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." In re I.A., 934 N.E.2d 1127, 1132 (Ind. 2010). We consider only the evidence and reasonable inferences most favorable to the judgment. Id. "We must also give 'due regard' to the trial court's unique opportunity to judge the credibility of the witnesses." Id. (quoting Indiana Trial Rule 52(A)). Where a trial court enters findings of fact and conclusions thereon, as the trial court did here, we apply a two-tiered standard of review. Id. "First, we determine whether the evidence supports the findings, and second we determine whether the findings support the judgment." Id. We will set aside the trial court's judgment only if it is clearly erroneous, which occurs if the findings do not support the trial court's conclusions or the conclusions do not support the judgment.

A petition to terminate a 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) 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;
>
> (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. I.A., 934 N.E.2d at 1133.

Mother contends that the conditions that led to B.M.'s removal have been remedied and that she does not pose a threat to B.M.'s well-being. Referring to a prior version of Indiana Code Section 31-35-2-4(b)(2)(B), our supreme court observed that the statute was written in the disjunctive, requiring DCS to prove only one of the requirements of subsection (B). Id. Although the statute has been amended, it specifically requires allegations of only one of the three factors. See I.C. § 31-35-2-4(b)(2)(B)(i)-(iii). Thus, although Mother argues DCS failed to prove two of the factors, we only need to address whether DCS proved that the conditions resulting in B.M.'s

removal will not be remedied. See Bester v. Lake County Office of Family and Children, 839 N.E.2d 143, 148 n.5 (Ind. 2005) (observing that under the prior version of the statute DCS was required to prove either of the two factors, not both).

Mother argues that B.M. was removed because Mother was developmentally disabled and that "[m]ental retardation is not capable of being remedied and cannot be used as a basis for termination." Appellant's Br. p. 4. The petition specifically alleged, however, that B.M. was need of services because her parents:

> are unable to provide the child with a safe, stable, and appropriate living environment. [Mother] lacks the cognitive ability to care for a newborn and has been unable to demonstrate the ability to care for the infant despite having extensive parenting classes. In addition, immediate services are not available to assist [Mother] in appropriately caring for the child, and [Father] is incarcerated. Due to the foregoing reasons, the coercive intervention of the Court is necessary to ensure the child's safety and well being.

Ex. 1. Based on the CHINS petition, it is clear that B.M. was not removed from Mother's custody because Mother was cognitively impaired. Instead, B.M. was removed because Mother's cognitive impairment prevented her from adequately caring for B.M. Thus, the question is appropriately framed as whether there is a reasonable probability that the condition that led to B.M.'s removal, Mother's inability to adequately care for B.M., has been remedied.

Mother directs us to evidence that she was cooperative with caseworkers and motivated to complete services and that she could take better care of B.M. and cope with

her anger issues.[2] It is undisputed that Mother was very consistent with her participation in home-based services. Nevertheless, there is extensive evidence supporting the trial court's findings regarding Mother's inability to safely care for B.M. even after having received intensive home-based services for approximately one year. For example, the trial court found that, even with intensive services for over a year, Mother still needs prompts and redirection in her parenting skills, did not master coping skills, and injured B.M.'s arm in the spring of 2010. The trial court also found that both parents evidenced anger issues, with Mother's hostility and aggression worsening when she did not take her mental health medications. These findings support the trial court's conclusion that there is a reasonable probability that the conditions resulting in B.M.'s removal and continued placement outside the home will not be remedied. Because the evidence supports the findings and the findings support the conclusion, the trial court's judgment is not clearly erroneous.

## Conclusion

There is sufficient evidence to support the trial court's conclusion that the conditions resulting in B.M.'s removal would not be remedied. We affirm.

Affirmed.

RILEY, J., and DARDEN, J., concur.

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[2] Although the trial court made no specific findings about housing, Mother also contends that she had maintained a stable residence for a year. This evidence was disputed, and we will not reweigh the evidence.