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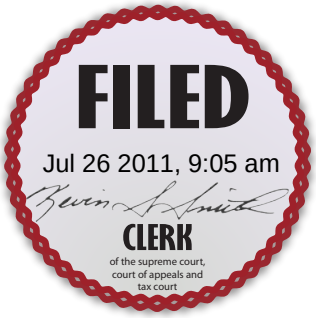

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF M.M., minor child, and M.G., the child's parent.	)	
M.G.,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A02-1012-JT-1420
MARION COUNTY OFFICE, INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary K. Chavers, Judge Pro Tempore
The Honorable Larry E. Bradley, Magistrate
Cause No. 49D09-1007-JT-30763

July 26, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

M.G. ("Mother") appeals an order terminating her parental rights to M.M., upon the petition of the Marion County Department of Child Services ("the DCS"). We affirm.

Issue

Mother presents a single, consolidated issue for appeal: Whether the DCS established, by clear and convincing evidence, the requisite statutory elements to support the termination of parental rights.

Facts and Procedural History

M.M. is Mother's youngest child, born November 8, 2000. On February 6, 2009, DCS filed a Children in Need of Services ("CHINS") petition regarding M.M. and an older sibling.[1] The petition alleged that Mother was homeless and had left the children in the care of another adult but had failed to return at the designated time. The DCS also alleged that Mother lacked sufficient finances to meet the children's basic needs.

Mother appeared at the initial hearing and requested counsel. However, she failed to appear at two subsequent pretrial conferences, reporting that she feared arrest on pending criminal charges. At the time of the May 13, 2009 fact-finding hearing, Mother was incarcerated in the Hendricks County Jail on a theft charge. Her counsel admitted that

[1] Her eldest child is not named in the instant petition for termination of parental rights.

Mother was incarcerated, lacked housing, and could not provide for the children. The children were found to be CHINS.

The juvenile court entered a dispositional order wherein Mother was ordered to comply with the terms of her criminal sentence, participate in home based services after release, complete a substance abuse assessment, exercise visitation, and obtain appropriate housing and income. M.M.'s father subsequently agreed to the termination of his parental rights.[2]

Mother was released from the Hendricks County Jail in late June of 2009. In August of that year, she was incarcerated for a probation violation. She was released the following month. In October of 2009, Mother returned to jail on a probation violation. She was released the following month. Mother was incarcerated from February 2010 to August 2010.[3]

A permanency hearing was conducted in January of 2010, prior to Mother's last incarceration. At that time, the DCS recommended that the plan for M.M. remain reunification with Mother. However, at the June 23, 2010 permanency hearing, conducted while Mother was incarcerated, the DCS recommended a change of plan. The juvenile court ordered placement of M.M. with her paternal grandparents and the DCS discontinued services for Mother.

On July 13, 2010, the DCS petitioned to terminate Mother's parental rights to M.M.

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[2] He is not an active party to this appeal.

[3] This may have been in relation to a theft charge. Mother had three theft charges dating back to 2008 and 2009.

The juvenile court conducted an evidentiary hearing on December 7, 2010. The parental relationship between Mother and M.M. was terminated on December 10, 2010. Mother now appeals.

Discussion and Decision

A. Standard of Review

Our standard of review is highly deferential in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). This Court will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, we neither reweigh the evidence nor judge the credibility of the witnesses. Id. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id.

B. Requirements for Involuntary Termination of Parental Rights

Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). The purpose of terminating parental rights is not to punish the parents, but to protect their children. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied.

Indiana Code Section 31-35-2-4(b)(2) sets out the elements that the DCS must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

(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 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.

If the court finds 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). 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 trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of

the child." Id. 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 County Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied.

C. Analysis

Mother does not challenge the juvenile court's determinations pursuant to Indiana Code Section 31-35-2-4(b)(2)(A) (removal from parent) or (D) (satisfactory plan). However, she challenges the determinations relating to Indiana Code Section 31-35-2-4(b)(2)(B) (conditions will not be remedied or relationship poses a threat to child's well-being) and (C) (best interests of the child).

Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, and therefore the trial court needed to find that only one of the three requirements of subsection (b)(2)(B) had been established by clear and convincing evidence. See L.S., 717 N.E.2d at 209. Because we find it to be dispositive under the facts of this case, we only consider whether the DCS established, by clear and convincing evidence, that there is a reasonable probability that the conditions resulting in M.M.'s removal will not be remedied. See Ind. Code § 31-35-2-4(b)(2)(B)(i).

Mother had been addicted to opiates for approximately six years. During the twenty-two month CHINS proceedings, Mother had been incarcerated on several occasions, arising from multiple theft charges and allegations of probation violations. Case Manager Floyde Carson testified that he had provided home-based services to Mother but her participation

was "sporadic." (Tr. 4.) She would miss two weeks and show up on a third week. Carson's services ended with Mother's incarceration and the referral was "closed as unsuccessful." (Tr. 6.) Family Case Manager Angela Lewis-Bettcher testified that, throughout the CHINS proceedings, Mother had been unable to obtain stable housing or an income. Mother had not completed the drug assessment and the provider referral had been "closed as unsuccessful" because Mother had failed to appear for appointments after notice. (Tr. 72.) Mother testified that she had missed appointments due to drugs and her environment.

As of the time of the termination hearing, Mother had been released on parole. She was living in a "recovery house" where participation in a twelve-step program was a condition of her residency. (Tr. 13.) She had satisfactorily completed a ninety-day agreement and contemplated continuing residency. However, children are not allowed in the residence. Mother had obtained employment of thirty-five hours per week at $7.25 per hour. While Mother's recent efforts are highly commendable, she has not completed the court-ordered services including a drug assessment nor has she obtained suitable housing for a child or income above her own subsistence level. The DCS presented clear and convincing evidence that there is a reasonable probability that the conditions leading to M.M.'s removal will not be remedied.

Mother also challenges the juvenile court's determination relating to the best interests of M.M. In determining what is in the best interests of the child, the juvenile court is required to look beyond the factors identified by the DCS and consider the totality of the evidence. In re A.B., 887 N.E.2d 158, 167 (Ind. Ct. App. 2008). Here, the evidence most

favorable to the judgment indicates that Mother has historically been unable to provide for M.M.'s physical and psychological needs. Lewis-Bettcher testified that M.M. had experienced ongoing distress over the uncertainty of her living arrangements, but was "thriving" in her current family placement. (Tr. 65.) The Guardian Ad Litem opined that it was in M.M.'s best interests to be with her grandparents permanently.

Mother does not dispute the evidence that she has had a long-standing drug problem and lacks the current ability to provide the necessities of life for her child. Rather, she argues that the juvenile court placed upon her the burden of proving her sobriety and failed to adequately consider her recent employment, drug treatment, and parenting classes. She directs us to the juvenile court's statement: "there was insufficient evidence to demonstrate that [Mother] can maintain sobriety on her own." (App. 11.)

To the extent that this language suggests that Mother bore a burden of proof in termination proceedings, it is erroneous. See Ind. Code § 31-35-2-8. Nonetheless, the superfluous language does not change our review of the sufficiency of the evidence. The juvenile court's factual findings that Mother had a six-year opiate addiction and had completed only two months of Narcotics Anonymous meetings have evidentiary support. Moreover, the record is replete with evidence that it is in M.M.'s best interests to have the parental relationship terminated so that she can be adopted by her grandparents.

In essence, it appears that Mother is asking that we reweigh the evidence and accord greater weight to her testimony of her recent efforts and future aspirations. We will not do so. See In re A.A.C., 682 N.E.2d at 544. The DCS presented clear and convincing evidence

from which the juvenile court could conclude that there is a reasonable probability that the conditions that led to M.M.'s removal from Mother's care will not be remedied and it is in M.M.'s best interests to have the parental relationship terminated.

Conclusion

The DCS established by clear and convincing evidence the requisite elements to support the termination of Mother's parental rights.

Affirmed.

FRIEDLANDER, J., and BROWN, J., concur.