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**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIPS OF R.P., minor child, and)
R.P., Mother, and M.P., Father.)

R.P., Mother, and M.P., Father,)
Appellants-Respondents,)

vs.)

THE INDIANA DEPARTMENT OF CHILD)
SERVICES,)
Appellee-Petitioner.)

No. 20A03-1101-JT-15

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
The Honorable Deborah A. Domine, Magistrate
Cause No. 20C01-1007-JT-42

July 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

R.P. (“Mother”) and M.P. (“Father”), (collectively, “the Parents”), appeal an order terminating their parental rights to R.P., upon the petition of the Elkhart County Department of Child Services (“DCS”). We affirm.

Issue

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

Facts and Procedural History

R.P. was born in 1997, the only child of the Parents’ fourteen-year marriage. The Parents separated when R.P. was seven and R.P. remained with Mother. DCS became involved with Mother in October of 2007 due to the unsanitary conditions of her residence. On March 4, 2009, R.P. was removed from Mother’s care when Elkhart police officers placed the child in protective custody.

On March 10, 2009, DCS filed a Children in Need of Services (“CHINS”) petition regarding R.P. The petition alleged that DCS had received a report stating that R.P. had been observed digging in dumpsters wearing clothing unsuitable for winter conditions. The petition further alleged that Mother’s residence had rotten food and trash strewn throughout

it, and that clothes were intertwined in the food, despite Father's report that he had, two months before, removed eighteen bags of trash from the apartment. The petition also alleged that there was "a prior substantiation of sexual abuse" against Father.¹ (App. 25.)

The Parents admitted the allegations of the petition and R.P. was found to be a CHINS. The juvenile court entered a dispositional order wherein the Parents were ordered to submit to parenting evaluations, cooperate with in-home case management, maintain a clean home environment and participate in home and family counseling, when deemed appropriate. The Parents regularly attended supervised visits with R.P., and they each participated with individual and family counseling. Mother also worked with in-home service providers whose goal was to help Mother maintain a clean home. However, caseworkers considered Mother's progress to be very minimal.

On July 14, 2010, DCS petitioned to terminate the Parents' parental rights to R.P. The juvenile court conducted an evidentiary hearing on December 17, 2010. At that time, Father was residing in a sleeping room and Mother was residing in a bedroom of a relative. R.P. was in a residential treatment facility. The parental relationships between Father, Mother, and R.P. were terminated on December 21, 2010. The Parents now appeal.

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

¹ R.P. was not the alleged victim.

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

The Parents do not challenge the juvenile court's determination pursuant to Indiana Code Section 31-35-2-4(b)(2)(A) (removal from parent). However, they challenge 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), (C) (best interests of the child), and (D) (satisfactory plan).

Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, and therefore the juvenile 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 DCS established, by clear and convincing evidence, that there is a reasonable probability that the conditions resulting in R.P.'s removal will not be remedied. See Ind. Code § 31-35-2-4(b)(2)(B)(i).

R.P. was removed from Mother's care due to the filthy conditions of Mother's apartment and Mother's neglect of R.P.'s physical needs.² For several years prior to R.P.'s removal, Mother had been the custodial parent of R.P. At the time of the termination hearing, Father was living in a sleeping room and was not seeking custody of R.P. Therefore, the conditions of Mother's home were the primary focus of reunification efforts.

During the CHINS proceedings, Mother was cooperative with in-home service providers. However, according to family case manager Stephanie Miller ("Miller"), Mother "wasn't able to keep that household up." (Tr. 144.) Her progress was considered "just minimal to no progress whatsoever." (Tr. 149.) On one home visit, Miller observed that

² When R.P. arrived at her foster home, she was smelly and lice-infested. Foster mother Sheila Norman testified that she "treated [R.P.] almost like an infant to address hygiene issues." (Tr. 132.) According to R.P.'s caseworker, R.P. had not been instructed on how to clean herself after using the restroom, nor had she received any information with regard to using menstrual products.

“[Mother] had gotten a small dog who was defecating and urinating all over the – the already trash strewn, clothing strewn, food strewn apartment.” (Tr. 151.) Moreover, there is ample evidence that Mother was unable to understand the trauma that R.P. had endured because of the squalid home conditions, R.P.’s lack of personal hygiene, and the consequent teasing and social ostracizing.

Finally, by the time of the termination hearing, Mother was no longer in an apartment but was renting a room from a relative who had three children of their own. It was unclear what space could be provided to R.P. should she be returned to Mother’s care. DCS presented clear and convincing evidence that there is a reasonable probability that the conditions leading to R.P.’s removal will not be remedied.

The Parents also challenge the juvenile court’s determination relating to the best interests of R.P. In determining what is in the best interests of the child, the juvenile court is required to look beyond the factors identified by 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 and Father have historically been unable to provide for R.P.’s physical and psychological needs.

Dr. Allen Wax evaluated R.P. and diagnosed her as suffering from both depression and anxiety. He found that R.P. had “suicidal ideations” and post-traumatic stress disorder. (Tr. 101). In Dr. Wax’s opinion, the post-traumatic stress disorder stemmed from multiple causes: the home conditions, domestic violence, prior molestation, and the teasing R.P. had endured. Dr. Wax explained that the history of trauma caused R.P. to react in anger to

seemingly minor situations. R.P.'s time in the therapeutic foster home was punctuated by her tantrums, throwing things, using racial slurs against her foster mother, and threatening suicide. R.P. was placed in a residential facility after she struck her foster mother in the jaw.

According to R.P.'s caseworker, R.P. has "a strong need for structure, consistency, [and] the need to feel safe." (Tr. 167.) R.P. requires daily medication, as well as frequent appointments with a psychiatrist. Mother seemed unable to appreciate R.P.'s mental health issues, joking with Miller that R.P. just "needs her ass beat." (Tr. 155.)

Dr. Wax and R.P.'s therapist, Melinda Runyon, each testified that R.P. did not wish to return to her parent's custody. Dr. Wax recommended against reunification. As to Father, the recommendation was based upon a lack of suitable housing. As to Mother, the recommendation was based upon her lack of completion of services and R.P.'s expressed wish not to return to Mother. R.P.'s court-appointed special advocate opined that, in light of R.P.'s special needs and the lack of parental progress, termination of parental rights was in R.P.'s best interests.

The Parents do not dispute the evidence that R.P. has special needs; nor do they deny that they have historically been unable to meet even her basic needs, including maintaining a clean and suitable home for R.P. Rather, they argue that the trial court unduly focused upon "the low-functioning ability of the mother" and the evidence of R.P.'s wishes, which the Parents claim to be conflicting. Appellant's Brief at 22. In essence, the Parents ask that we reweigh the evidence and accord greater weight to the evidence of Parent's willingness to comply with services and Mother's testimony that R.P. had expressed a wish to come back to

her. We will not do so. See In re A.A.C., 682 N.E.2d at 544.

Finally, the Parents contend that DCS lacks a suitable plan for R.P. They concede that the stated plan is for adoption, but point to evidence that R.P. has struggled in her current placement and “has a long way to go.” (Tr. 187.) The argument is unavailing. Although DCS is required to have a satisfactory plan for a child whose parental rights have been terminated, DCS need not establish that the fulfillment of the plan is imminent. See In re D.D., 804 N.E.2d 258, 268 (Ind. Ct. App. 2004) (observing that a plan need only “offer a general sense of the direction in which the child will be going after the parent-child relationship is terminated”), trans. denied.

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 R.P.’s removal from Parents’ care will not be remedied, that it is in R.P.’s best interests to have the parental relationship terminated, and that DCS has a suitable plan for R.P.

Conclusion

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

Affirmed.

MATHIAS, J., and CRONE, J., concur.