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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF H.W. and S.W.:	)	
A.W.	)	
Appellant-Respondent,	)	
vs.	)	No. 17A04-1102-JT-57
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE DEKALB CIRCUIT COURT
The Honorable Kirk D. Carpenter, Judge
Cause No. 17C01-1002-JT-008
Cause No. 17C01-1002-JT-009

July 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

A.W. (Mother) appeals the involuntary termination of her parental rights to her children, H.W. and S.W. In so doing, Mother challenges the sufficiency of the evidence supporting the trial court's termination order.

We affirm.

Mother is the biological mother of H.W., born in November 2006, and S.W., born in July 2003. The facts most favorable to the trial court's judgment reveal that in February 2009, the local DeKalb County office of the Indiana Department of Child Services (DCDCS) received a report that law enforcement personnel had conducted a raid at the home in which Mother, H.W., S.W., and the children's biological father, L.W., were living.[1] During the police raid at the family home, Mother admitted to hiding methamphetamine in a glass vile in her underwear and to having used methamphetamine earlier the same day while the children were present in the home. It was also determined during DCDCS's ensuing assessment that methamphetamine residue was present on the inside walls of the family home, indicating that methamphetamine had been smoked or manufactured in the house. In addition, DCDCS became concerned about reports of domestic violence in the home.

Mother was later arrested on D felony possession of methamphetamine and child neglect charges in March 2009. The children were taken into custody the same day.

[1] For clarification purposes we note that, at the time of the police raid, Mother and the children's biological father, L.W. (Father), were not married. The couple later married during the underlying proceedings and remained married at the time of the termination hearing. We further observe that although Father's parental rights were terminated by the trial court in its January 2011 judgment, he does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother's appeal.

Following a detention hearing, the children were made temporary wards of DCDCS and placed in licensed foster care. DCDCS thereafter filed a petition alleging H.W. and S.W. were children in need of services (CHINS) and the trial court directed DCDCS to provide provisional services to the family, including visitation with the children and a psychological evaluation for Mother.

In April 2009, Mother participated in a psychological evaluation performed by psychologist David Lombard. As part of his psychological evaluation, Dr. Lombard conducted a clinical interview and administered a series of tests to Mother, including the Minnesota Multiphasic Personality Inventory, the Personality Assessment Inventory, the Millon Clinical Multiaxial Inventory, the Child Abuse Potential Inventory, the Substance Abuse Subtle Screening Inventory, the Kaufman Brief Intelligence Test, the Wide Range Achievement Test, and the Parenting Awareness of Skills Survey. Based on Mother's test results, Dr. Lombard informed the trial court that it was his clinical opinion Mother was suffering from generalized anxiety disorder, poly-substance abuse, and antisocial personality disorder. Dr. Lombard's report further indicated Mother had described a history of engaging in volatile relationships and that psychological testing revealed Mother struggles with a paranoia, impulsivity, lack of healthy emotional attachment to others, anger management problems, drug abuse, poor decision-making, and an excessive focus on her own personal needs at the expense of the needs of her children and others in her life. Based on these and other findings, Dr. Lomdard made several treatment recommendations, including that Mother participate in parenting classes, individual counseling, substance abuse treatment, intensive cognitive behavioral therapy or dialectal behavior therapy (DBT), and relationship

counseling with Father prior to marriage.

A dispositional hearing was held in June 2009, after which the trial court issued an order formally removing H.W. and S.W. from Mother's care and custody. The trial court's dispositional order also directed Mother to successfully complete a variety of tasks and services designed to enhance her parenting skills and to facilitate reunification with her children. Specifically, Mother was ordered to, among other things: (1) obtain and maintain stable housing; (2) participate in and successfully complete parenting classes, an intensive out-patient substance abuse program, and home-based services; (3) attend regular supervised visits with the children; (4) participate in both individual counseling and relationship counseling with the children's father; (5) resolve all pending legal matters; (6) maintain regular contact with DCDCS; and (7) successfully complete a DBT program as recommended by Dr. Lombard.

Mother's participation in court-ordered reunification services was sporadic and ultimately unsuccessful. Although Mother regularly participated in supervised visits with the children, she was unable to incorporate the parenting techniques she had been taught during parenting classes when visiting with the children. Mother also continued to repeatedly test positive for illegal substances and/or refuse to submit to random drug screens throughout the case. In addition, Mother engaged in criminal activities that led to state welfare fraud and federal social security fraud charges being filed against her. Mother was also convicted on the methamphetamine charge that had given rise to the underlying CHINS case and was incarcerated for approximately forty-five days during May and June of 2010. Meanwhile, in February 2010, DCDCS filed a petition seeking the involuntary termination of Mother's

parental rights to both children.

A two-day evidentiary hearing on the termination petition was held in December 2010. During the termination hearing, DCDCS presented evidence showing Mother had refused to participate in and/or successfully complete a majority of the trial court's dispositional goals during the CHINS case and had failed to make any significant progress in her ability to properly care for and supervise the children, especially with regard to H.W., who suffers with cerebral palsy and thus has significant medical needs.

At the conclusion of the termination hearing, the trial court took the matter under advisement. In January 2011, the trial court entered its judgment terminating Mother's parental rights to H.W. and S.W. Mother now appeals.

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 (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 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id*. 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 (Ind. Ct. App. 1999), *trans. denied*. Thus, if the evidence and inferences support the trial court's decision, we must affirm. *Id.*

Here, the trial court made multiple detailed and specific findings in its order terminating Mother's parental rights. Where the court enters specific findings and

conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143 (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). A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment thereon. *Id.* We will reverse a judgment as clearly erroneous only if, after reviewing the record, we have a "firm conviction that a mistake has been made." *Lang v. Starke Cnty. Office of Family & Children*, 861 N.E.2d 366, 371 (Ind. Ct. App. 2007), *trans. denied*.

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*. Although parental rights are of a constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144 (Ind. Ct. App. 2008). In addition, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In re K.S.*, 750 N.E.2d 832.

To terminate a parent-child relationship in Indiana, the State is required to allege and prove, among other things:

(B) there is a reasonable probability that:

(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; [and]

(C) termination is in the best interests of the child[.]

Ind. Code Ann. § 31-35-2-4(b)(2)(B) & (C) (West, Westlaw through 2009 1st Special Sess.).[2] 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, 1260-61 (Ind. 2009) (quoting Ind. Code Ann. § 31-37-14-2 (West, Westlaw through 2010 2nd Regular Sess.)). 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. I.C. § 31-35-2-8 (West, Westlaw through 2011 Pub. Laws approved & effective through 6/28/2011). Mother challenges the sufficiency of the evidence supporting the trial court's findings as to subsections (b)(2)(B) and (C) of the termination statute cited above. *See* I.C. § 31-35-2-4(b)(2).

At the outset, we note that I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, DCDCS needed to establish only one of the requirements of subsection (b)(2)(B) by clear and convincing evidence before the trial court could terminate parental rights. *See In re L.V.N.*, 799 N.E.2d 63 (Ind. Ct. App. 2003). Here, the trial court found DCDCS presented sufficient evidence to satisfy both subsections of (b)(2)(B) of the termination statute. *See* I.C. § 31-35-2-4(b)(2)(B)(i) & (ii). Because we find it dispositive under the facts of this particular case, we shall consider only whether clear and convincing evidence supports the

trial court's findings regarding subsection (b)(2)(B)(i), namely, whether there is a reasonable probability the conditions resulting in the children's removal or continued placement outside the family home will not be remedied. *See* I.C. § 31-35-2-4(b)(2)(B)(i).

Mother does not challenge any of the trial court's specific findings as unsupported by the evidence. Rather, she claims she was "simply not [provided with] enough time" for a "realistic opportunity to complete her dialectical behavioral therapy and other requirements." *Appellant's Brief* at 8. Mother therefore contends the trial court's judgment terminating her parental rights was "premature." *Id.*

In determining whether there is a reasonable probability that the conditions leading to a child's removal from the family home will be remedied, 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 (Ind. Ct. App. 2001), *trans. denied*. The court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. *In re M.M.*, 733 N.E.2d 6 (Ind. Ct. App. 2000). Similarly, courts may consider 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 (Ind. Ct. App. 2002), *trans. denied*. The trial court may also consider the services offered to the parent by a county office of the Indiana Department of Child Services and the parent's response to those services, as

[2] Indiana Code section 31-35-2-4 was amended by Pub. L. No. 21-2010, § 8 (effective March 12, 2010). The changes to the statute became effective after the filing of the termination petition involved herein and are not

evidence of whether conditions will be remedied. *Id.* Finally, 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 are permanently impaired before terminating the parent-child relationship. *In re E.S.*, 762 N.E.2d 1287 (Ind. Ct. App. 2002).

Here, in finding there is a reasonable probability the conditions resulting in the children's removal and continued placement outside of Mother's care will not be remedied, the trial court made multiple, detailed findings regarding Mother's overall lack of progress in improving her ability to care for and successfully parent the children, despite having nearly two years to improve her situation and a wealth of services available to her. In so doing, the trial court noted Mother's failure to obtain stable employment and housing, ongoing illegal activities that resulted in pending state welfare fraud and federal social security fraud charges, unresolved substance abuse and mental health issues, and failure to successfully complete a majority of the trial court's dispositional goals. The trial court also specifically found Mother: (1) still "blames" DCDCS and Father for the children's initial removal from her care; (2) "did not follow through with taking psychiatric medication and only went to one (1) appointment with the psychiatrist" during which she was "under the influence of either illegal or prescription drugs to the point of being intoxicated;" (3) did not begin a DBT program "in earnest" until September 2010 which was sixteen (16) months after Dr. Lombard's recommendation to do so and eight (8) months after DCDCS had already filed its termination petition; (4) exhibited "inappropriate" behavior at visitations with the children

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applicable to this case.

"approximately fifty percent (50%) of the time" despite completing parenting classes; and (5) "failed to submit to court-ordered drug tests on numerous occasions" in addition to failing "twenty (20) drug screens with results positive for illegal drugs or prescription drugs for which she did not have a prescription at the time of the drug screen." *Appellant's Appendix* at 16, 19, 21, 23. The trial court thereafter found that "[a]lthough the parties have recently shown some effort toward completing some of the court[-]ordered requirements, this is a clear case of too little, too late." *Id.* at 25. Our review of the record convinces us that these findings are supported by abundant evidence.

During the termination hearing, DCDCS case manager Rebecca Honn informed the trial court that Mother remained unemployed throughout the underlying proceedings case, had failed to pay any rent during the four months leading up to the termination hearing, and had been recently served with an eviction notice. Honn also confirmed that Mother neglected to maintain consistent contact with DCDCS, "never" participated in couple's counseling with Father, failed to successfully complete home-based services, and refused to "work with the psychiatrist" and consistently take her "psychiatric medication." *Transcript* at 343. Case Facilitator Kelly Roe with the Northeastern Center confirmed that Mother was not currently seeing a psychiatrist from their facility or taking any prescribed psychiatric medications.

As for Mother's participation in a DBT program, Honn testified, and Mother confirmed, that she did not begin to participate in DBT classes until September 2010, more than one year following Dr. Lombard's recommendation to do so and eight months after DCDCS had filed its termination petition. Honn further testified that it would take Mother at least six to seven additional months to complete the DBT program and that Mother's original

explanation for not participating in the program sooner was that she "didn't see why it [DBT training] was necessary." *Transcript* at 344. Visitation supervisor Gretchen Duncan confirmed that she, too, had encouraged Mother to participate in DBT classes for more than one year and had informed Mother that she "needed to do these DBT classes in order to get the kids back," but that Mother stated she was not going to participate in the DBT classes because "she thought they were stupid." *Id.* at 238. Although Mother testified that she did not participate in DBT classes because she could not afford the cost of attending the DBT classes after losing her Medicaid in April 2010 due to the pending fraud charges, she later admitted on cross-examination that Medicaid would have paid for the classes prior to April 2010, that she had also been informed in July 2010 that a sliding fee scale made the DBT classes available to Mother for only $10.00 per week, an amount significantly less than the $42.00 she and Father spent each week on cigarettes.

Regarding Mother's participation in a court-ordered substance abuse program, Honn acknowledged Mother completed some substance abuse group classes in October 2009 offered through the Northeastern Center. Honn further indicated, however, that she did not believe Mother had benefitted from these classes in light of the facts Mother continued to test positive for drugs both during and after completion of the substance abuse classes and because Mother continued to refuse to submit to random drug screen requests as recently as October 2010. Similarly, when asked whether she believed Mother's participation in the substance abuse group classes at the Northeastern Center had been "successful," Roe answered, "No." *Id.* at 278.

Finally, when asked to describe Mother's overall participation in court-ordered

services, Honn testified Mother "blames everyone else" for the children's removal from her care, "didn't become cooperative until a month before trial," and has not "benefitted from the services that she has participated in." *Id.* at 348, 351-522, 355. Rick Harmon, Staff Therapist with Northeastern Center who provided individual therapy for Mother during the underlying CHINS case, likewise testified that he did not believe Mother "incorporated anything that she learned at the [individual therapy] sessions into her life." *Id.* at 156.

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). Moreover, we have previously explained that "the time for parents to rehabilitate themselves is during the CHINS process, prior to the filing of the termination petition." *Prince v. Dep't of Child Servs.*, 861 N.E.2d 1223, 1230 (Ind. Ct. App. 2007). Here, Mother has demonstrated a persistent unwillingness and/or inability to take the actions necessary to show she is capable of providing H.W. and S.W. with the safe and stable home environment they need. The trial court was responsible for judging Mother's credibility and for weighing her testimony of changed conditions against the abundant evidence of Mother's habitual and neglectful conduct in caring for the children. It is clear from the language of the judgment that the trial court gave more weight to evidence of the latter, rather than the former, which it was permitted to do. *See Bergman v. Knox Cnty. Office of Family & Children*, 750 N.E.2d 809 (Ind. Ct. App. 2001) (concluding trial court was permitted and in fact gave more weight to abundant evidence of mother's pattern of conduct in neglecting her children during several years prior to termination hearing than to mother's testimony she had changed her life to better accommodate children's needs).

Mother's arguments on appeal amount to an impermissible invitation to reweigh the evidence. *D.D.*, 804 N.E.2d at 265.

We next consider Mother's assertion that DCDCS failed to prove termination of her parental rights is in the children's best interests. In determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Indiana Department of Child Services and look to the totality of the evidence. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185 (Ind. Ct. App. 2003). In so doing, the trial court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* Moreover, we have previously held that the recommendations of the case manager and child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. *In re M.M.*, 733 N.E.2d 6.

In addition to the findings previously discussed, the trial court made several additional pertinent findings in determining that termination of Mother's parental rights is in the children's best interests. Specifically, the trial court acknowledged that H.W. is a "special needs child" who has been diagnosed with Cerebral Palsy and "needs excessive medical care, home care, physical therapy, occupational therapy, and speech therapy." *Appellant's Appendix* at 10, 13. The court also found that S.W. struggles with Reactive Attachment Disorder (RAD) "due to the volatile, unstable lifestyle she was raised in by [Mother]. . . ." *Id.* at 14. The court also noted that due to Mother's "failure to follow through with the court's

orders for treatment of her Antisocial Personality Disorder and Generalized Anxiety Disorder," and her "failure to take responsibility for her own part" in the children's removal, continuation of the parent-child relationship poses a "threat to the well-being" of the children. *Id.* at 24. These findings, too, are supported by the evidence.

During the termination hearing, the children's various therapists, doctors, case managers, and foster mother detailed H.W.'s special medical needs, including her weekly participation in physical, occupational, and speech therapy sessions, in addition to equine therapy and sign language classes. The children's foster mother confirmed that due to S.W.'s struggle with attention deficit hyperactivity disorder and RAD, she has "a lot of issues" and is oftentimes "very defiant," "destructive," and "angry." *Id.* at 308-9. In recommending termination of Mother's parental rights as in the children's best interests, case manager Honn confirmed that "both girls need extensive follow through and consistency" and that it was her opinion Mother was "not ready" to care for the children. *Id.* at 330-31. Honn further opined that Mother did not "put the children's needs first," and that she would be unable to "provide the special care, medical appointments[,] and therapy that [H.W.] needs." *Id.* at 331, 358.

Based on the totality of the evidence, including Mother's lack of stable housing and employment, unresolved struggle with substance abuse and mental health issues, admitted history of domestic violence with Father, and current inability to demonstrate she is capable of providing the children with a safe and stable home environment, coupled with the testimony from Honn recommending termination of the parent-child relationships, we conclude that clear and convincing evidence supports the trial court's determination that termination of Mother's parental rights is in H.W.'s and S.W.'s best interests.

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 Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Judgment affirmed.

BAILEY, J., and BROWN, J., concur.