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IN THE
COURT OF APPEALS OF INDIANA

IN MATTER OF TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF W.R. and S.I., Minor Children, and AUDRIA I., and IN MATTER OF TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF S.I., Minor Child, and JAMES I., Appellants-Respondents,	)	
vs.	)	No. 53A01-0901-JV-42
MONROE COUNTY DEPARTMENT OF CHILD SERVICES, Appellee-Petitioners.	)	

APPEAL FROM THE MONROE CIRCUIT COURT
The Honorable Stephen Galvin, Judge
Cause Nos. 53C07-0804-JT-412 and 53C07-0804-JT-413

August 5, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Audria I. ("Mother") appeals the involuntary termination of her parental rights to her children W.R. and S.I. claiming there is insufficient evidence to support the Monroe Circuit Court's judgment. James I. ("Father") also appeals the involuntary termination of his parental rights to S.I., raising the same issue of sufficiency. Concluding that the trial court's judgment terminating Mother's parental rights to W.R. and S.I. and terminating Father's parental rights to S.I. is supported by clear and convincing evidence, we affirm.

Facts and Procedural History

Mother has three children: C.R., W.R. and S.I. Father is C.R. and W.R.'s stepfather, and he is the biological father of S.I. On September 4, 2008, the Bartholomew Circuit Court terminated Mother's parental rights to C.R. During the CHINS and termination proceedings, the Bartholomew County Department of Child Services received multiple reports indicating that C.R. was being physically abused by both Mother and Father. See Appellee's App. pp. 4-13.

On March 19, 2007, eight-year-old W.R. and Father attended a wrestling match at Conseco Fieldhouse in Indianapolis. When they returned home, W.R. had multiple injuries to his face, eye, neck, and shoulder. W.R. and Father told Mother that W.R. had fallen down an escalator. The next day, school officials notified the Monroe County

Department of Child Services ("the DCS") about W.R.'s injuries. W.R. and Father continued to maintain that W.R. had received the injuries by falling down an escalator. The DCS told the parents to take W.R. to see a physician and they complied. The physician determined that the injuries were not consistent with a fall, but were most likely the result of physical abuse. In addition, the physician stated that the petichiae under W.R.'s right eye was likely caused by choking.

On May 17, 2007, the DCS filed a petition alleging that W.R. and two-month-old S.I. were children in need of services ("CHINS"). On the date the CHINS petition was filed, C.R. had already been removed from parents' home due to the Bartholomew County CHINS proceedings. At the Monroe County dispositional hearing, the trial court ordered Mother, Father, and W.R. to receive individual and family therapy, ordered Mother and Father to undergo psychological evaluations, and to comply with all case management services.

Mother and Father underwent the mental health evaluations with Dr. Susan Pauly in October and November of 2007. Dr. Pauly diagnosed both parents with multiple personality disorders and found that neither parent takes responsibility for their actions. As a result of the evaluation, Dr. Pauly recommended that Mother and Father undergo individual and family therapy, and specifically recommended that Father work on his anger issues.

On April 10, 2008, the DCS filed a petition to terminate Mother's parental rights to W.R. and S.I. and to terminate Father's parental rights to S.I. The termination hearing

was held on November 3, 2008. On January 5, 2009, the trial court issued the following pertinent findings of fact:

> 10. On May 17, 2007, [W.R. and S.I.] were removed from the care of [Mother and Father]. [The DCS] filed a petition alleging that the children were [CHINS]. Following a fact-finding hearing on July 16, 2007, the children were found to be [CHINS].
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> 11. On August 2, 2007 a review hearing was held in [C.R.]'s case. The Bartholomew County [DCS] requested permission to terminate [Mother's] parental rights. Immediately following the hearing, [Mother] called caseworker DeAnna Gamroth a bitch and attempted to push her down a flight of stairs. [Mother] was arrested for battery. [Mother] later told Dr. Susan Pauly that Ms. Gamroth had called her a [expletive deleted] in the courthouse, so she decided to punch her. She also stated that she had been incarcerated for welfare fraud after a CASA had made up a story about her.
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> 12. In their dealings with the Bartholomew County [DCS], [Mother and Father] attempted to intimidate caseworkers and service providers. They attempted to dictate what services they would receive. They failed to cooperate with services.
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> 14. Following his removal from his parents' home, [W.R.] reported that he was the victim of several batteries by [Father.] [Father] kicked him and held him under a water faucet. [W.R.] told the Court Appointed Special Advocate that [Father] beat him. [Father] swore him to secrecy. [Father] told him to "keep it a secret or I'll hurt you even worse." [W.R.] told his mother about this abuse, and asked that he not be left alone with [Father]. She took no action to protect him.
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> 15. Tom Trent, a clinical social worker . . ., became [W.R.'s] therapist in the spring of 2007. To facilitate reunification, Mr. Trent scheduled two sessions for [W.R.] and his mother to discuss the abuse. [W.R.] explained to his mother that [Father] had hurt him. [Mother] told [W.R.] that she did not believe him. [W.R.] became very upset, eventually cowering in a corner. He was sad and angry that his mother did not believe him.
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> 16. In October and November, 2007 [Mother] participated in a psychological evaluation conducted by Dr. Susan Pauly. Dr. Pauly found that [Mother's] primary diagnosis is Paranoid Personality Disorder. She also suffers from Borderline Personality Disorder and Anti-Social Personality Disorder. Dr. Pauly recommended that [Mother] engage in individual psychotherapy and participate in a structured anger management program. Dr. Pauly noted the following:

> She is suspicious of others' motives and blames others for her problems. She often does not follow through with things and has a history of becoming disenchanted with therapists and caseworkers and requesting transfer of services. She can be manipulative and con others to do what she wants. She is cynical and resists attempts of others to change her ways. She is not likely to invest herself in therapy, even when ordered to do so, and indeed, has expressed the desire to be left alone as therapy has not been helpful and only makes her more angry…
>
> She takes little or no responsibility for her own actions. The STAXI-2 shows, again, a high level of anger that will likely be expressed either physically or verbally towards others that can also be internalized for a time before exploding. The need for referral for counseling is great when responses like this are seen.

17. Terry Eads, a therapist employed by Family Solutions, began to offer therapy to [Mother] beginning in November, 2007. They met weekly for one hour in [Mother's] home. Ms. Eads attempted to address the issues raised in [Mother's] psychological evaluation, particularly her problems with anger control. Although [Mother] met with Ms. Eads on a regular basis for the next seven months, she consistently maintained that she had no problems that required therapeutic intervention. She was not willing to discuss her anger control problems because she felt that her anger was provoked by others. She stated that she would not be in therapy if it was not required by the case plan. She never became engaged in the therapeutic process. . . .

18. Nancy Hughes, a therapist at Family Solutions, met with [Mother] to arrange therapy on July 31, 2009. She has seen [Mother] three times. The sessions have not been productive. Until recently, [Mother] has consistently denied that [Father] did anything wrong. On October 10, 2008 [Mother] reported that [Father] had been physically abusive to her. She made this report after [Father] had evicted her from their home. One week before the hearing on termination of parental rights, she told [W.R.] that she believed that [Father] had abused him. She stated that if [Father] was abusive to her, maybe he had abused [W.R.]. However, [Mother] continues to maintain that she needs no assistance. She takes no responsibility for what happened to [W.R.]. She has not actively participated in therapy.

19. In October and November, 2007 [Father] participated in a psychological evaluation conducted by Dr. Pauly. Dr. Pauly found that [Father] suffers from Obsessive-Compulsive Personality Disorder, Narcissistic Personality Disorder, Antisocial Personality Disorder, and Paranoid Personality Disorder. Tests indicate that [Father] is impulsive,

angry, aggressive and has a low frustration tolerance. He is egocentric, immature and passive-dependent. His acting out and demanding behavior strains his marriage and relationships with others. He is likely to behave in a threatening and sociopathic manner. He is suspicious of others' motives and blames others for his life problems. He is cynical and resists attempts of others to change his ways. He is not likely to invest himself in therapy, even when ordered to do so. He takes no responsibility for his own actions, but becomes extremely angry when confronted. Dr. Pauly recommended that [Father] attend individual psychotherapy and participate in a structured anger management program.

20. Lee Schwieterman, a therapist with McConn Partnerships, attempted to offer home based therapy to [Father]. [Father] attended therapy sessions in his home for one hour each week. Although Father made some progress in dealing with his anger, he did not complete therapy. Mr. Schwieterman notes that [Father] gets depressed and angry. He is preoccupied with rules. He can be rigid and demanding. He lacks psychological sophistication. He does not understand why children lie or misbehave. He suffers from poor insight and poor self-esteem. Given these behavioral characteristics, he may react to the stress of parenting with anger. Mr. Schwieterman estimates that it would take [Father] two to three years to complete his therapy.

21. Until very recently, [Mother and Father] continued to deny that [Father] had battered [W.R.]. They presented a united front, insisting that everyone should leave their family alone. However, following a recent argument, each parent now claims that the other parent battered [W.R.]. Father recently stated that he saw mother hit [W.R.] in the face on the night [W.R.] was injured. He states that he [has] seen Mother strike [W.R.] in the back of the head, pull [C.R.'s] hair, and push [C.R.] into a wall. At no time did he report these alleged batteries to the police or the [DCS]. He states that [S.I.] would not be safe with [Mother]. He believes that [Mother] would harm [S.I.] to get back at him.

22. [Mother] testified that she had seen [Father] engage in violent behavior, including whipping [W.R.] and "putting his own head through a wall." [Mother] testified that [Father] told her that, if his parental rights are terminated, he would shoot the foster parents and set their home on fire. She did not report [Father's] violent behavior and statements to the police or DCS.

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25. [Mother] has refused to cooperate with the Court Appointed Special Advocate. She has threatened to call the police if the CASA came to her home.

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> 27. [CASA] George Malachinski believes that termination of the parent-child relationship is in the children's best interests. He notes that [S.I.] has spent his entire life in foster care. Although the children are developing in a "remarkable fashion" in their foster placement, there is a threat that [W.R.] will regress. At this time [W.R.] is happy. He has often stated that he wants to live with the foster parents forever. There is a strong bond between the children and their foster parents. The children are doing exceptionally well in their placement. The children need permanency.

Appellant's App. pp. 29-32.

In concluding that clear and convincing evidence supported the termination of Mother's and Father's parental rights, the trial court concluded:

> [Mother's] children have been removed from her care by the state of Florida, Bartholomew County Circuit Court, and the Monroe County Circuit Court. Extensive services have been offered to her. She has shown little inclination to avail herself of these services. She repeatedly states that she does not need therapy. She has assaulted and attempted to intimidate individuals who were attempting to offer her services. She either lied about injuries inflicted on [W.R.] by [Father], or refused to believe her son in the face of overwhelming evidence. The parent-child relationship between [Mother] and her daughter, [C.R.], has been terminated due to her failure to adequately parent and protect the child.
>
> [Mother] has engaged in a habitual pattern of conduct that poses a direct and immediate threat to the health and safety of her children. There is no reasonable probability that she will discontinue this pattern of conduct.
>
> [Father] has battered [W.R.]. He has terrorized and threatened the child. He has battered [C.R.]. He takes no responsibility for his actions. He has failed to complete treatment. There is no reasonable probability that he will comply with the court's orders designed to reunify his family.
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> [Mother and Father] both suffer from mental disorders that pose a threat to the health and safety of their children. Neither is willing to actively participate in treatment. Both have lied about batteries they have committed on [C.R. and W.R.]. Based on their history of harming the children, it is clear that they pose a threat to the well-being of the children.

Appellant's App. pp. 32-33. The trial court also concluded that termination of Mother's and Father's parental rights was in the children's best interests and that the DCS has a

satisfactory plan for the children's care and treatment. Mother and Father now appeal the trial court's judgment terminating Mother's parental rights to W.R. and S.I. and terminating Father's parental rights to S.I.

Discussion and Decision

In reviewing Mother's and Father's challenge to the sufficiency of the evidence supporting the trial court's decision, we note that we have 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 trial court's order terminating a parent-child relationship, we will not set it aside unless it is clearly erroneous. Castro v. State Office of Family & Children, 842 N.E.2d 367, 372 (Ind. Ct. App. 2006), trans. denied. We will neither reweigh the evidence nor 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 therefrom that are most favorable to the judgment. Id.

"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. Moreover, because termination severs all rights of a parent to his or her child, the involuntary termination of parental rights is arguably one of the most extreme sanctions a court can impose. In re T.F., 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), trans. denied. Thus, such a sanction is intended as a last resort, available only when all other reasonable efforts have failed. Id. Nevertheless, parental rights are not absolute and must be subordinated to the child's

interests in determining the proper disposition of a petition to terminate a parent-child relationship. Id. Because the purpose of terminating parental rights is to protect the child, not to punish the parent, parental rights may be properly terminated when a parent is unable or unwilling to meet his or her parental responsibilities. K.S., 750 N.E.2d at 836.

In order to terminate a parent-child relationship, the DCS is required to allege and prove that:

> (A) one (1) of the following exists:
> (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; or
> (iii) after July 1, 1999, 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;
> (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;
> (C) termination is in the best interests of the child; and
> (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2); see also Ind. Code § 31-35-2-8. The DCS must establish each of these allegations by clear and convincing evidence. Ind. Code § 31-37-14-2; Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

We have previously recognized that a trial court should examine not only the parent's fitness at the time of the termination hearing, but also consider the parent's

habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003) (citing In re D.G., 702 N.E.2d 777, 779 (Ind. Ct. App. 1998)). A court may properly 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. Id. Moreover, a trial court can reasonably consider the services offered to the parent and the parent's response to those services. Id. (citing In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997)). In determining what is in the best interests of the children, the court is required to look beyond the factors identified by the office of family and children, and look to the totality of the evidence. McBride, 798 N.E.2d at 203.

Both Mother and Father argue that the evidence is insufficient to establish that there is a reasonable probability that "the conditions that resulted in the child[ren's] removal or the reasons for placement outside the home of the parents will not be remedied" and that "the continuation of the parent-child relationship poses a threat to the well-being of the child[ren]." I.C. § 31-35-2-4(b)(2)(B). However, section 31-35-2-4(b)(2)(B) is written in the disjunctive, and the trial court need only find by clear and convincing evidence that one of the two requirements of subsection (B) have been met in order to terminate a parent-child relationship. R.W. v. Marion County Dep't of Child Servs., 892 N.E.2d 239, 245 (Ind. Ct. App. 2008).

In this case, the trial court found that both requirements of subsection (B) were met. Consequently, we will first consider whether clear and convincing evidence

supports the trial court's determination that a reasonable probability exists that the conditions resulting in the children's removal or continued placement outside the family home will not be remedied.

Mother argues that the evidence was insufficient because W.R. was removed due to Father's actions, she complied with court-ordered therapy, and she now believes W.R.'s claims of abuse. Mother also notes that dissolution proceedings were pending at the time of the termination hearing. Both Mother and Father argue that the evidence is insufficient with regard to S.I. because there was no evidence to establish that S.I. was neglected or endangered by either parent's actions.

W.R. and S.I. were removed from Mother's and Father's home because W.R. had multiple injuries to his face, neck, and shoulder that the examining physician believed were consistent with abuse and possibly choking. When W.R. revealed that Father beat him, causing his injuries, Mother refused to believe W.R.[1] Prior to W.R. and S.I.'s removal, the DCS also learned from the Bartholomew County DCS, that C.R., who was a CHINS, was in the parents' home and Mother shoved C.R. into a wall. C.R. hit the wall hard enough to make a hole in the wall. Ex. Vol., Ex. 3. Evidence presented at the termination hearing established that Mother battered C.R., and Father battered both W.R. and C.R. Because neither parent would take responsibility for W.R.'s injuries, they were unable to participate in family therapy. Moreover, both Mother and Father testified that the other parent engaged in violent behavior.

[1] Finally, a few weeks before the final termination hearing, Mother stated that she believed W.R.'s statement that Father battered him.

Although Mother did participate in court-ordered therapy, she refused "to accept any personal responsibility for the issues that have brought her family to the attention of DCS or the legal system. She emphatically expressed her lack of investment in further counseling services." Ex. Vol., Ex. 5, p.13. Mother continually expressed her belief to her therapists that she had done nothing wrong. Tr. p. 90. In addition, Mother has anger control issues that she is not willing to address. Tr. p. 104. Family case manager Dawn Freeman testified that Mother's parental rights should be terminated because Mother has been ordered to participate in treatment services since 2003 (dating back to C.R.'s CHINS adjudication), and Mother has been unable to learn how to safely parent her children. Tr. p. 191.

Father's therapist testified that Father's "lack of psychological sophistication carries over into his understanding of children." Tr. p. 115. The therapist also stated, "I don't feel he always understands why children do certain things, such as lie or misbehave or other things. . . . [H]e struggles to understand . . . how to handle that kind of situation[.]" Id. The therapist testified that Father likely would not have trouble with a baby, but that he

> would be very concerned about the future because, if [Father] does not work through his issues, . . . when [the baby] becomes two or three . . ., I think [Father] might, at times, be inappropriate in working with his own son.

Tr. pp. 124-25.

Psychologist Dr. Susan Pauly concluded that Father is egocentric, immature and passive-dependent.

> His acting out and demanding behavior strains his marriage and relationships with others. He is likely to behave in a threatening and sociopathic manner. He is suspicious of others' motives and blames others for his life problems. He is cynical and resists attempts of others to change his ways. He is not likely to invest himself in therapy, even when ordered to do so. He takes no responsibility for his own actions, but becomes extremely angry when confronted.

Appellant's App. p. 31.

The CASA testified that "the business of the physical safety of the children has not been resolved to [his] satisfaction." Tr. p. 200. Moreover, neither Mother nor Father has demonstrated any ability to provide a stable home environment. Father still denies responsibility for W.R.'s injuries, and Mother only accepted responsibility for W.R.'s injuries a few weeks before the termination hearing. The CASA also stated that the children are "developing in a most remarkable fashion in this stable foster environment" and that if a permanent plan is not established there is a danger that W.R. will regress. Tr. p. 201.

With regard to S.I., we agree with Mother's and Father's assertion that there was no evidence that would establish that either parent neglected S.I. for the short period of time S.I. was in their care. S.I. was removed from the parents' home when he was two months old and he remained in foster care throughout these proceedings. However, the evidence admitted at the termination hearing reasonably leads to the conclusion that S.I. would be physically harmed if S.I. were placed in Mother's or Father's care. Mother and Father have not demonstrated any ability to parent their children without subjecting them to physical abuse.

As we have often noted, "[a] parent's habitual pattern of conduct must also be evaluated to determine the probability of future negative behavior. The trial court need not wait until a child is irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship." In re M.S., 898 N.E.2d 307, 311 (Ind. Ct. App. 2008) (citing In re D.J., 755 N.E.2d 679, 684 (Ind. Ct. App. 2001), trans. denied). See also Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied ("A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change."); In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005) (stating that where there are only temporary improvements, and the pattern of conduct shows no overall progress, the court might reasonably infer that under the circumstances, the problematic situation will not improve.).

For all of these reasons, we conclude that clear and convincing evidence supports the trial court's finding that there is a reasonable probability that the conditions which resulted in the children's removal, or the reasons for placement outside the Mother's or Father's home, will not be remedied.[2]

Affirmed.

RILEY, J., and KIRSCH, J., concur.

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[2] Having concluded that this finding is supported by clear and convincing evidence, we need not consider whether the DCS proved by clear and convincing evidence that continuation of the parent-child relationship poses a threat to the children's well being. In re L.S., 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), trans. denied.