

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

DANIEL B. SCHUETZ
Franklin, Indiana

ATTORNEYS FOR APPELLEE:

ROBERT J. HENKE
DCS Central Administration
Indianapolis, Indiana

DOUGLAS J. PURDY
DCS, Bartholomew County Office
Columbus, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF TERMINATION OF)
PARENT-CHILD RELATIONSHIP OF)
X.D. AND T.D., Minor Children,)
And)
J.D., Mother,)
Appellant,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
Appellee.)

No. 03A01-1102-JT-46

APPEAL FROM THE BARTHOLOMEW JUVENILE AND CIRCUIT COURT
The Honorable Stephen R. Heimann, Judge
The Honorable Heather M. Mollo, Magistrate
Cause Nos. 03C01-1007-JT-1564 and 0301-1007-JT-1565

August 9, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

J.D. (“Mother”) appeals the involuntary termination of her parental rights to her child, T.D., claiming there is insufficient evidence supporting the trial court’s judgment. We affirm.

Facts and Procedural History

Mother is the biological mother of T.D., born in August 1997. In early March 2009, the Bartholomew County Office of the Indiana Department of Child Services (“BCDCS”) initiated an investigation concerning a report that Mother was abusing drugs and had recently lost her housing. BCDCS thereafter attempted to enter into an Informal Adjustment¹ (“I.A.”) with Mother. Although Mother verbally consented to the terms of the I.A., she failed to sign a written agreement before BCDCS lost contact with her. In late April 2009, BCDCS learned Mother, T.D., and a younger sibling² were living with an aunt. A BCDCS case manager promptly visited the aunt’s home and observed that

¹ A Program of Informal Adjustment is a negotiated agreement between a family and the Indiana Department of Child Services whereby the family agrees to participate in various services in an effort to prevent the child/children from being formally deemed children in need of services (“CHINS”). See Ind. Code 31-34-8 et. seq.

² For clarification purposes we note that Mother is also the biological parent of several additional children, including T.D.’s younger sibling, X.D., who was in Mother’s care at the time of the referral to BCDCS. Both T.D. and X.D. were removed from Mother’s care in April 2009. X.D., however, was not subject to the trial court’s January 2011 termination order at issue in this case. In addition, although T.D.’s biological father’s, K.W.’s, parental rights were terminated by order of the trial court in February 2011, K.W. does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother’s appeal of the termination of her parental rights to T.D.

Mother appeared to be under the influence of drugs or alcohol, as her words were slurred and she could not walk steadily. While talking with Mother, the BCDCS case manager discovered that the aunt's home did not have any running water, dirty dishes were piling up in the kitchen, Mother and the children had been sleeping on couches because of insufficient bedding in the home, and the aunt was having serious health and financial difficulties that prevented her from being able to offer Mother sustained help. The case manager also observed that although Mother's prescription medication had been filled just two days earlier for sixty tablets, there were only thirteen pills remaining in the package even though the correct dosage was only one to two tablets per day. Finally, when asked about the children, Mother indicated she was uncertain of the children's whereabouts. After approximately one hour of searching throughout the neighborhood by car, the BCDCS case manager found T.D. and her younger sibling playing in a vacant field between two trailer parks approximately one mile from the aunt's home.

As a result of BCDCS's investigation of the matter, T.D. was taken into protective custody, and BCDCS subsequently filed a petition alleging T.D. was a child in need of services ("CHINS"). The CHINS petition was granted in December 2009. Following a dispositional hearing in February 2010, the trial court issued an order formally removing T.D. from Mother's care and adjudicating the child a ward of the State. The trial court's dispositional order also directed Mother to participate in and successfully complete a variety of services designed to help Mother improve her parenting abilities and to facilitate reunification of the family. Specifically, Mother was directed to, among other

things: (1) establish suitable housing and a stable source of income sufficient to support all members of the household; (2) complete a drug and alcohol assessment through Centerstone Indiana and follow all treatment recommendations; (3) submit to random drug screens; (4) undergo a medical evaluation by a medical doctor; (4) participate in grief counseling to address unresolved feelings concerning her parents' deaths; (5) maintain consistent contact with HCDCS; (6) exercise regular visitation with the children; and (6) participate in home-based counseling services through Homebuilders.

Mother's participation in court-ordered reunification services was inconsistent from the beginning of the CHINS case and ultimately unsuccessful. From August 2009 through December 2009, Mother met with home-based service providers from Homebuilders on a sporadic basis, and was eventually discharged from the program as unsuccessful in February 2010 due to her noncompliance. Although Mother obtained employment in October 2009, by December of the same year, she had lost her job. In addition, Mother tested positive for methadone in October 2009 and for hydrocodone in December 2009. Mother thereafter failed to participate in any additional random drug screens, due in large part to her refusal to maintain contact with BCDCS for months at a time. Mother also neglected to obtain a medical evaluation, failed to obtain stable housing and employment, and discontinued her participation in grief counseling after only two sessions.

As for Mother's visitation with T.D., although Mother initially attended weekly scheduled visits, her participation soon began to wane. Following a scheduled visit with

T.D. on November 16, 2009, Mother failed to show for two subsequently scheduled visits in December 2009 and thereafter ceased all communication with BCDCS and service providers between January and July 2010. At some point during this same time period, Mother was arrested and incarcerated on a probation violation for an unrelated criminal matter.³

Following a status hearing in July 2010, the trial court granted BCDCS's request to suspend all reunification services for Mother, including her visitation privileges which had remained open despite Mother's complete lack of contact with BCDCS. The same month, BCDCS also filed a petition seeking the involuntary termination of Mother's parental rights to T.D. An evidentiary hearing on the termination petition was later held in December 2010.

During the termination hearing, BCDCS presented evidence showing that despite a wealth of services available to Mother for approximately one-and-one-half years, Mother had failed to complete a majority of the trial court's dispositional goals, and her ability to care for T.D. had not improved. Moreover, the evidence showed Mother's continued struggle with housing instability, unemployment, substance abuse, and other parenting issues prevented a safe reunification of the family and further supported a finding that it is unlikely Mother will remedy the conditions resulting in T.D.'s removal in the future.

³ The Record on appeal does not disclose the nature of the underlying charges related to Mother's probation. Testimony during the termination hearing suggests, however, that Mother's violation of probation was related to her drug use, and that she remained incarcerated for several months before being released on house arrest.

At the conclusion of the termination hearing, the trial court took the matter under advisement. On January 1, 2010, the court entered its judgment terminating Mother's parental rights to T.D. Mother now appeals.

Discussion and Decision

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, 836 (Ind. Ct. App. 2001). When reviewing a 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, 265 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. Id. Moreover, 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, 208 (Ind. Ct. App. 1999), trans. denied.

Here, in terminating Mother's parental rights, the trial court entered specific factual findings and conclusions. When a trial court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. Bester v. Lake Cnty. Office of Family & Children, 839 N.E.2d 143, 147 (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). If the evidence and inferences support the trial court’s decision, we must affirm. L.S., 717 N.E.2d at 208.

“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. However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. K.S., 750 N.E.2d at 837. Termination of a parent-child relationship is proper where a child’s emotional and physical development is threatened. Id. Although the right to raise one’s own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. Id. at 836.

Before an involuntary termination of parental rights can occur in Indiana, the State is required to allege and prove, among other things, that one of the following is true: (1) there is a reasonable probability the conditions resulting in the child’s removal or the reasons for placement outside the home of the parents will not be remedied; (2) continuation of the parent-child relationship poses a threat to the well-being of the child; or (3) the child has, on at least two separate occasions, been adjudicated a CHINS. See Ind. Code § 31-35-2-4(b)(2)(B); see also L.S., 717 N.E.2d at 209. 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, 1260-1261 (Ind. 2009) (quoting

Ind. Code § 31-37-14-2). Moreover, 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. Ind. Code § 31-35-2-8(a).

Mother's sole allegation on appeal can be fairly stated as a challenge to the trial court's determination that there is a reasonable probability the conditions resulting in T.D.'s removal from Mother's care will not be remedied. We observe, however, that Mother fails to support her argument with any cogent reasoning or citation to authority, statutes, and/or parts of the record that support this contention, as is required by our appellate rules. See Ind. Appellate Rule 46(A)(8)(a). Rather, Mother baldly asserts that the commencement of the underlying termination case was "too harsh a penalty" under the circumstances, and further argues because she had made "substantial improvement" by the time of the termination hearing she "should have been allowed to continue in her efforts to regain custody of her children." Appellant's Br. at 3-4.

We further observe that Mother fails to challenge the trial court's findings as to subsection (b)(2)(B)(ii) of the termination statute, namely, that continuation of the parent-child relationship poses a threat to T.D.'s well-being. In failing to do so, as well as failing to support her argument as to subsection (b)(2)(B)(i) with cogent reasoning and citation to authority, Mother has waived review of this issue. See Ind. Code § 31-35-2-4(b)(2)(B); see also Davis v. State, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005) (concluding that failure to present a cogent argument or citation to authority constitutes waiver of issue for appellate review), trans. denied. Nevertheless, given our preference

for resolving a case on its merits, we will review the sufficiency of the evidence supporting the trial court's judgment with regard to subsection (b)(2)(B)(i) of the termination statute. See Ind. Code § 31-35-2-4(b)(2)(B)(i).

When making a determination as to whether there is a reasonable probability that the conditions resulting in a child's removal or continued placement outside of a parent's care will not 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, 512 (Ind. Ct. App. 2001), trans. denied. The court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." Id. Pursuant to this rule, 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 Cnty. Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. The trial court may also consider any services offered to the parent by the local Indiana Department of Child Services office (here, BCDCS) and the parent's response to those services, as evidence of whether conditions will be remedied. Id. Moreover, BCDCS is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

Here, the trial court made detailed findings in its judgment regarding Mother's unresolved parenting and substance abuse issues. In so doing, the trial court found there were "several risk factors at the time [T.D.] was removed," including Mother's housing instability, "substance abuse" issues, and "untreated grief" issues associated with the loss of her parents that "impacted her own well-being and that of her children." Appellant's Br. at 6.⁴ The court thereafter found that at the time of the termination hearing, the "risk factors that initially led to [BCDCS's] involvement still existed," noting Mother "did not have housing," "did not have a job or the ability to financially support the children," had "not completed drug and alcohol treatment," and remained on house arrest. *Id.* at 8. The court also made multiple, detailed findings about Mother's refusal to participate in and/or successfully complete essentially all of the trial court's dispositional goals throughout the entirety of the CHINS case and a majority of the termination case, finding Mother had: (1) failed to comply with Homebuilders, having only "occasionally" met with home-based counselors and eventually was discharged from the program due to her "non[-]compliance; (2) completed a drug and alcohol assessment but never attended the recommended Individual Outpatient Program ("IOP") despite the fact she "self-admitted to being addicted to prescription medications;" (3) tested positive for methadone and hydrocodone in October 2009 and December 2009 respectively; (4) never submitted to a medical evaluation; (5) attended only two grief counseling sessions; (6) stopped visiting

⁴ Mother placed a signed copy of the trial court's judgment at the back of her Appellant's Brief. However, she failed to include a copy in her Appendix. *See* Ind. Appellate R. 50(A)(2) (stating that the Appellant's Appendix shall contain a copy of the appealed order or judgment). We therefore are constrained to cite to the Appellant's Brief when referring to judgment.

with T.D. by December 2009 even though her ability to do so remained open until July 2010; and (7) never maintained weekly contact with BCDCS. Id. at 6-7.

Although the trial court did acknowledge that by the time of the termination hearing Mother was “having some measure of success,” because she was attending GED classes twice a week, had passed four drug screens, was signed up for housing assistance, and had submitted some applications for work, the trial court nevertheless found:

Mother did not timely avail herself of services or timely make progress toward reunification with her children. It was not until her arrest and placement on house arrest that she demonstrated any compliance with court orders. The motive for [M]other’s compliance at this stage is questionable as being for her own benefit to avoid further incarceration than being for the sake of her children. It is equally unknown whether [M]other can sustain the progress that she has only just begun. In the meantime, at least nineteen months have passed with uncertainty for the child. The child needs permanency now[,] and [M]other is not [in] a position to provide it.

Id. at 8. A thorough review of the record leaves us satisfied that clear and convincing evidence supports the trial court’s findings, which in turn support the court’s ultimate decision to terminate Mother’s parental rights to T.D.

During the termination hearing, BCDCS case managers Lynette May, Rachel Flohr, and Ella Bishop all confirmed that Mother had made little or no progress in her overall ability to care for T.D. In so doing, the case managers confirmed that, at the time of the termination hearing, Mother was unemployed, had failed to complete a substance abuse program, did not have independent housing, and remained on house arrest while living with a family friend. When asked if she believed that there was a reasonable probability the conditions resulting in T.D.’s removal from Mother’s care would be

remedied, case manager Bishop answered in the negative and further explained that she based her opinion on Mother's "lack of visitation with the children" throughout the CHINS case, the amount of time that had already been "allotted for this case" and Mother's failure to use the time to "rectify the reasons for removal," and the fact Mother "still has not been [to] any drug or alcohol classes." Tr. pp. 47-48.

Mother's own testimony lends further support to the trial court's findings. Mother admitted during the termination hearing that she continues to suffer from depression which she attributes, at least in part, to her unresolved grief issues related to the death of her parents in 2008. Mother also confirmed her lengthy history of housing instability, addiction to prescription drugs, and lack of participation in the IOP program referred by BCDCS during the CHINS case. In addition, Mother admitted that she was unemployed, could not currently provide housing for T.D., and remained on house arrest.

As noted earlier, 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 the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. D.D., 804 N.E.2d at 266. Moreover, 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). After reviewing the record, we conclude that BCDCS presented clear and convincing evidence to support the trial court's findings and ultimate determination that there is a reasonable probability the conditions leading to T.D.'s removal or continued

placement outside of Mother's care will not be remedied. 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 Public Welfare, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Affirmed.

BAILEY, J., and CRONE, J., concur.