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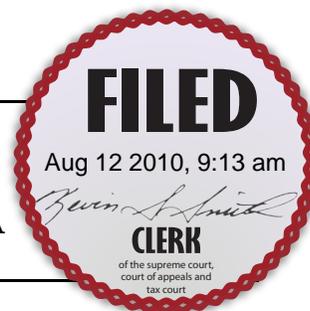
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**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF L.P., MINOR CHILD, AND)
HIS MOTHER, H.P., AND HIS FATHER, D.P.)

H.P. (Mother),)

Appellant-Respondent,)

vs.)

TIPPECANOE COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner.)

No. 79A02-0912-JV-1215

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta H. Rush, Judge
Cause No. 79D03-0907-JT-84

August 12, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Respondent H.P. (“Mother”) appeals the involuntary termination of her parental rights to her child, L.P. On appeal, Mother claims there is insufficient evidence supporting the trial court’s judgment. We affirm.

FACTS AND PROCEDURAL HISTORY

Mother is the biological mother of L.P., born on July 17, 2007. The facts most favorable to the trial court’s judgment reveal that local police received a domestic disturbance report involving Mother and L.P.’s father, D.P. (“Father”) in February 2008.¹ Upon arriving at the family home, police officers observed the house to be filthy and in disarray. There were open containers of alcohol, medication, choking hazards, rotten food, and other debris scattered about the home. In addition, piles of miscellaneous items throughout the house were blocking pathways and doorways. Police also observed marijuana and paraphernalia in the home, and both parents tested positive for Tetrahydrocannabinol (“THC”), the main psychoactive substance found in marijuana, on instant drug screens. Mother and Father were thereafter arrested on multiple charges, including neglect of a dependent, possession of marijuana, possession of paraphernalia, and maintaining a common nuisance. The same day, the Tippecanoe County Department of Child Services (“TCDCS”) took L.P. into emergency protective custody and filed a petition with the trial court alleging L.P. was a child in need of services. L.P. was later placed with his paternal grandmother (“Grandmother”).

In March 2008, L.P. was adjudicated a CHINS. The trial court thereafter

¹ Father, whose parental rights were also terminated by the trial court in its November 2009 termination order, does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother’s appeal.

proceeded to disposition, and on March 26, 2006, entered an order formally removing L.P. from Mother's care. The dispositional order also incorporated a Parental Participation Plan which directed Mother to successfully complete a variety of services in order to achieve reunification with L.P. Specifically, Mother was ordered to, among other things: (1) obtain and maintain stable employment and suitable housing; (2) participate in counseling, parenting classes, and home-based services through the Babies Can't Wait program; (3) successfully complete a drug and alcohol rehabilitation program and follow all resulting recommendations; (4) remain drug-free and submit to random drug screens; (5) complete a psychological exam and follow all resulting recommendations; (6) pay child support to Grandmother for L.P.'s care; (7) exercise regular supervised visitation with L.P.; and (8) not allow any persons not first approved of by TCDCS to live in the family home or visit with L.P.

For the first couple of months, Mother was reluctant to participate in any court-ordered drug treatment services. She eventually started working with service providers, however, and accomplished several court-ordered dispositional goals including a substance abuse rehabilitation program, a psychological evaluation, regular visitation with L.P., and individual and marital counseling. Due to Mother's cooperation with service providers, clean drug screens, and successful completion of multiple services, the trial court approved trial in-home visitation in September 2008.

Despite Mother's many successes, Mother also experienced several setbacks. Mother's volatile on-again/off-again relationship with Father continued to be a problem, and the couple separated in October or November 2008. Mother and L.P. moved in with

Grandmother and the trial in-home visitation continued. Mother and Father reunited in December 2008 or January 2009 and seemed to be working out their problems. However, in March 2009, Father assaulted Mother in L.P.'s presence, and the trial court ordered that the trial in-home visitation be suspended. L.P. was placed with Grandmother, and Mother also began living with Grandmother. By April 2009, however, Mother moved out of Grandmother's home to live with a new boyfriend who had felony convictions. The trial in-home visitation was thereafter terminated, and L.P. was formally placed with Grandmother. Shortly thereafter, Mother moved back in to her marital apartment with Father.

In July 2009, TCDCS filed a petition seeking the involuntary termination of Mother's parental rights. A hearing on the termination petition was held on October 4, 2009. On November 5, 2009, the trial court terminated Mother's parental rights to L.P. This appeal ensued.

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 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, 264 (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 findings of fact. 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 County 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.

"The State's burden of proof in termination of parental rights cases is one of 'clear

and convincing evidence.” *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (citing Ind. Code § 31-37-14-2). In addition, before an involuntary termination of parental rights can occur, the State is required to allege and prove, among other things, that:

- (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 § 31-35-2-4(b)(2)(B) & (C) (2009).² The State’s burden of proof for establishing these allegations in termination cases “is one of ‘clear and convincing evidence.’” *G.Y.*, 904 N.E.2d at 1260-1261 (quoting Ind. Code § 31-37-14-2). 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(b).

Mother challenges the sufficiency of the evidence supporting the trial court’s findings as to subsections 2(B) and (C) of the termination statute cited above.

Initially, we observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. It therefore requires the trial court to find that only one of the two requirements of subsection 2(B) has been established by clear and convincing evidence. *See L.S.*, 717 N.E.2d at 209. Although the trial court found both prongs of subsection 2(B) had been satisfied under the facts of this case, because we find it determinative, we need only consider whether clear and convincing evidence supports the trial court’s

² Indiana Code section 31-35-2-4 was amended by Pub. L. No. 21-2010, § 8 (eff. March 12, 2010). Because the changes to the statute became effective in March 2010 following the filing of the termination petition herein, they are not applicable to this case.

finding that there is a reasonable probability the conditions resulting in L.P.'s removal or continued placement outside the family home will not be remedied. *See* Ind. Code § 31-35-2-4(b)(2)(B)(i).

Conditions Resulting in Removal Will Not be Remedied

In determining whether there is a reasonable probability the conditions resulting in a child's removal or continued placement outside the family home 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*. However, 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 County 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 county department of child services, and the parent's response to those services, as evidence of whether conditions will be remedied. *Id.* Moreover, a county department of child services (here, the TCDCS) 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, in making such a determination as to L.P, the trial court specifically found

that Mother had a “history of criminal, instability, and substance abuse issues.” Appellant’s App. p. 11. The court also found that there had been “incidents of domestic violence and repeated separations” between Mother and Father, and that while still married Mother had “developed a relationship with another man who also had a criminal history.” *Id.*

With regard to Mother’s history of substance abuse, the trial court noted that Mother “began drinking alcohol at age thirteen and began smoking marijuana at age fifteen,” and that Mother admitted that her “entire social life revolves around substance abuse.” *Id.* The trial court also observed that Mother had tested positive for marijuana, benzodiazepines, and opiates on several occasions at the beginning of the CHINS case in February, March, and April 2008, and again tested positive for Marijuana on two occasions in June 2009. Mother also refused to submit to a drug screen in September 2009.

The court’s findings further indicated that Mother had been offered an “exhaustive” set of services designed to address her parenting difficulties, and that various evaluations revealed there were “no barriers to [Mother’s] ability to participate in services and achieve reunification.” *Id.* at 12. Although the trial court acknowledged in its findings that prior to March 2009, the parents were “maintaining the residence at a minimum standard” and “reporting improvement in their communication and relationship,” the court also pointed out that on March 1, 2009, the police were called to the home of the parents for another domestic dispute. *Id.* at 13. The court thereafter indicated that as of June 2009, “neither parent had yet shown a real investment in

reunification,” and that consequently the parents were “in no better position to care for [L.P.]” *Id.* Based on the foregoing, the trial court concluded as follows:

There is a reasonable probability that the conditions that resulted in the removal of [L.P.] from the parents’ care or the reasons for placement outside the home will not be remedied. Neither parent has yet to demonstrate the ability or willingness to make lasting changes from past behaviors. There is no reasonable probability that either parent will be able to maintain stability and remain substance free in order to care and provide adequately for this child.

Id. at 14. A thorough review of the record leaves us convinced that clear and convincing evidence supports the trial court’s findings set forth above, which in turn support the court’s ultimate decision to terminate Mother’s parental rights to L.P.

Testimony from various caseworkers and service providers makes clear that despite a wealth of services available to her, by the time of the termination hearing in 2009, Mother remained incapable of providing L.P. with a safe and stable home environment, free from substance abuse and domestic violence.

During the termination hearing, TCDCS intake officer and family case manager Jennifer Mugg acknowledged that for a “period of time” Mother had made “some real progress” in addressing her substance abuse issues and the cleanliness of the home. Transcript at 36. Mugg also testified Mother’s was capable of keeping the home up to reasonable standards if she chose to “invest the energy to get it done,” but that there were also times when service providers observed “choking hazards” in the home. *Id.* at 37-38. When asked whether she felt there were any additional services that could have been offered to help the family achieve reunification, Mugg answered, “No, Babies Can’t Wait was very intensive.” *Id.* at 44.

Similarly, in recommending termination of Mother's parental rights, TCDCS family case manager Jennifer Walters testified she did not believe that the conditions which resulted in L.P.'s removal from the family home would ever be remedied. When asked to explain why this was her opinion in light of the fact that both TCDCS and the court-appointed special advocate ("CASA") had recommended dismissing the CHINS case approximately ten months earlier, Walters replied:

[T]he parents . . . they have a cyclical relationship; it goes through good times and goes through bad times and I think at the end of the case...where Babies Can't Wait was involved that was a big fear, that the parents were not able to really break any...cycles of substance abuse or of domestic violence...or their domestic problems[,] even the home condition started to deteriorate[.] [S]o I think it went well for a while . . . I think that just the time that the case was open presented an opportunity for us to see the pattern continue.

Id. at pp. 114-15.

Mother's own testimony also supports the trial court's findings. During the termination hearing, Mother admitted that she was initially "pretty resistant" to the idea of participating in substance-abuse treatment and had several "dirty" screens, but then later was "clear" for approximately thirteen months. *Id.* at 49. Mother also admitted, however, that the most recent screen in June 2009 was "dirty" and that she had refused to submit to a request for a drug screen in September. *Id.* at 50. This latter testimony was substantiated by visitation supervisor Jennifer Wilkerson, who likewise reported that Mother had refused to submit to two recent drug screens requests on September 23 and 24, 2009. *Id.* at 23.

Regarding Mother's more recent participation in court-ordered reunification services, Mother acknowledged during the termination hearing that, other than

participating in visitation with L.P., she had not participated in any services or done “anything really targeted toward getting [L.P.] back in [her] care.” *Id.* at 51. Mother also informed the court that she was currently pregnant, unemployed, married to and still living with Father, whom she depended upon to meet her basic daily needs. When asked whether it would be fair to say that throughout the entire case she had been “back and forth” between deciding whether to solve her marital problems or to end the marriage, Mother answered, “Yes.” *Id.* at 64. Mother also admitted that she is “not really independent.” *Id.* at 81.

Based on the foregoing, we conclude that the TCDCS presented clear and convincing evidence to support the trial court’s findings and ultimate conclusion that there is a reasonable probability the conditions leading to L.P.’s removal or continued placement outside of Mother’s care will not be remedied. As previously stated, 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. Here, the trial court had the responsibility of judging Mother’s credibility and of weighing her testimony of improved conditions against the abundant evidence demonstrating Mother’s past and current inability to provide L.P. with a consistently safe and stable home environment. 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 County Office of Family & Children*, 750 N.E.2d 809, 812 (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 her children's needs). Mother's arguments on appeal emphasizing her period of success in maintaining sobriety and complying with court orders in the past, rather than the conditions as they existed at the time of the termination hearing, amount to an impermissible invitation to reweigh the evidence. *D.D.*, 804 N.E.2d at 264; *see also In re L.V.N.*, 799 N.E.2d 63, 68-71 (Ind. Ct. App. 2003) (concluding that mother's argument that conditions had changed and she was now drug-free constituted impermissible invitation to reweigh evidence).

Best Interests

Next, we turn to Mother's assertion that TCDCS failed to prove that termination of her parental rights is in L.P.'s best interests. We are ever mindful that, when determining what is in a child's best interests, a trial court is required to look beyond the factors identified by the Indiana Department of Child Services and to look to the totality of the evidence. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, however, the court must subordinate the interests of the parent to those of the child. *Id.* Moreover, we have previously explained that recommendations from the case manager and child advocate that parental rights should be terminated support a finding that termination is in the child's best interests. *Id.*

Here, in addition to the specific findings previously discussed, the trial court found as follows:

11. CASA Rheeta Booth supports termination of parental rights in the best interests of the child. CASA noted that neither parent had

“exhibited traits of being dependable parents.” Neither parent has remained drug[-]free or shown they are capable of supporting themselves[,] let alone a child. . . . [L.P.] is an adoptable child. CASA believes [L.P.] should be adopted by his paternal grandmother with whom he has resided most of his life.

12. Although the parents love this child, neither has the current ability to meet the child’s needs. It is not safe for [L.P.] to be in the care of Mother or Father at this time. Mother’s history of instability and substance abuse continues All imaginable services have been offered and nothing is singularly different in today’s circumstances since the time of removal. To continue the parent-child relationships would be detrimental to the child. The child needs permanency now.

Appellant’s App. p. 14. The trial court thereafter concluded that it was in L.P.’s best interests to terminate Mother’s parental rights and that “[f]urther efforts to reunify would have continued negative effects on the child.” *Id.* These findings and conclusions are likewise supported by the evidence.

Case manager Walters testified that she believed termination of parental rights was in L.P.’s “best interest[s].” Transcript at 134. Walters also testified that Grandmother takes “excellent care” of L.P. and is “very committed” to L.P. *Id.* When asked if there were any additional services that could have benefitted this family, Walters answered that she believed there was nothing else TCDCS could have done to help reunite the family because the “whole set of services” offered to the family was “targeted to give the parents a reasonable chance at success.” *Id.* at 134.

Similarly, in her report to the trial court recommending termination of Mother’s parental rights, CASA Rheeta Booth stated that “[n]either [Mother] nor [Father] ha[d] exhibited traits of being dependable parents,” that they did “not remain drug[-]free,” and that they had not shown that they are “capable of living and supporting themselves[,]

which is (sic) a necessity for them to take on the responsibility of a child.” Exhibits p. 415. In addition, Grandmother informed the trial court that L.P. was doing “very well” in her home. *Id.* at 106. Grandmother also testified that L.P. was “very loving and affectionate,” had a lot of extended family that lived nearby, and that she was willing and able to adopt L.P. *Id.* at 107.

A court need not wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. *In re E.S.*, 762 N.E.2d 1287 (Ind. Ct. App. 2002). Based on the totality of the evidence, including Mother’s failure to successfully complete and benefit from a majority of the trial court’s dispositional goals, inability to refrain from the use of alcohol and illegal substances and current inability to demonstrate an ability to provide L.P. with a safe and stable home environment, coupled with Walter’s testimony recommending against reunification, we conclude that the trial court’s findings and conclusion that termination is in L.P.’s best interests is supported by the evidence.

We 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.”” *Matter of A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (*quoting Egly*, 592 N.E.2d at 1235). We find no such error here.

The judgment of the trial court is affirmed.

RILEY, J., and MATHIAS, J., concur.