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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF:	)	
N.D. (Child) and,	)	
H.D. (Mother) and D.D. (Father),	)	
Appellants-Respondents,	)	
vs.	)	No. 40A05-1101-JT-17
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE JENNINGS CIRCUIT COURT
The Honorable Jon W. Webster, Judge
Cause No. 40C01-0904-JT-136

August 16, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellants-respondents H.D. (Mother) and D.D. (Father) (collectively "Parents") appeal the juvenile court's order terminating their parental rights with regard to their minor child, N.D. Specifically, the Parents argue that the Indiana Department of Child Services (DCS) failed to establish the elements of Indiana Code section 31-35-2-4(b)(2) by clear and convincing evidence as required to terminate their parental rights. Concluding that DCS met its burden, we affirm the judgment of the juvenile court.

FACTS

Mother and Father are the parents of N.D. Prior to N.D.'s birth, Mother was taken to the King's Daughters' Hospital in Madison on January 17, 2008, to seek medical treatment. Dr. Roney, the treating physician, noted in his report that Mother is a class F diabetic and appears developmentally disabled. Appellee's Ex. 1. Additionally Dr. Roney determined that Mother was a ". . . noncompliant pre-gestational diabetic with limited prenatal care . . ." and had a "very poor understanding of long term risks." Id.

Mother refused any medical treatment and signed the medical release form[1] acknowledging the serious medical risks posed by her decision.[2]

N.D. was born prematurely at the University of Louisville Hospital, on January 23, 2008. Weighing just three pounds, N.D. required a ventilation system, had jaundice, and was fed through a feeding tube. N.D. remained at the hospital until he was released on February 20, 2008.

On January 25, 2008, DCS received a report concerning the health and safety of N.D. and the Parents' ability to care for their newborn child. In response to that report, on February 4, 2008, Stacey Ruddick, who had been assigned as the initial assessment family case manager, made contact with Mother at her home. Ruddick explained to Mother the report that DCS had received. Ruddick observed Mother's behavior as defensive over Father and the condition of the home. Ruddick also noted that N.D.'s room did not have a light and had no evidence of a new child except for a car seat and some clothes. Id. The room lacked the necessities required for appropriate child care. Tr. p. 121.

A subsequent meeting between Parents and Ruddick occurred on February 6, 2008, where the Parents' pastor, Pastor Willis, joined the Parents in their meeting with

[1] The release form states: "I, [Mother], understand that the OB Doctors feel I am a high risk pregnancy. By not following their advice, I understand I could develop kidney failure, my baby could have long-term problems, or my baby could die. I accept these risks as explained by [the doctor]. . . I refuse." Appellee's Ex. 18.

[2] Father was not willing to sign the release form.

Ruddick at the DCS office. During the course of the meeting, Mother admitted that she refused to take insulin offered to her by the hospital because it made her so violent that she has tried to kill Father with a butcher knife on two separate occasions. Id. at 124. Father did not dispute Mother's admission and agreed that Mother exhibits violent behavior. Additionally, Father was not willing to seek medical advice because of the problems it has caused and his belief that doctors are ignorant as to the Parents' methods of homeopathic treatments and the use of herbs. Other individuals closely associated with Mother and Father were contacted by Ruddick. They too shared concerns over N.D.'s well-being and Parents' ability to care for N.D.

Ruddick completed her assessment and found that the report was substantiated. Subsequently, a CHINS petition was filed on February 20, 2008. N.D. was placed in licensed foster care upon his release from the hospital. A detention hearing was held and on March 10, 2008, the juvenile court approved the removal and placement of N.D. with foster care, and the Parents were appointed counsel.

The fact-finding and dispositional hearing were held in conjunction on May 22, 2008, whereat Parents entered an admission that N.D. was a CHINS, but otherwise denied the allegations of the petition. Appellee's Ex. 5. N.D. was adjudicated accordingly and on July 8, 2008 the juvenile court entered its dispositional decree ordering continued out-of-home placement for N.D. The order further required Parents to participate in parental services including: psychological assessments and treatment, individual and family mental health counseling from an approved mental health facility,

in-home services provided by Fountain Consulting Services and First Steps, DCS case management supervision and services, and to follow all recommendations by these service providers until completion. Id. at 7, 8.

On July 16, 2008, Parents completed the psychological evaluation, which determined Father's IQ to be 85 and Mother's IQ to be 65. While Father's IQ is in the low-average range, Mother's IQ is in the extremely low range. Additionally, Mother met the criteria for Mild Mental Retardation and an Adjustment Disorder with Depression and Anxious Mood. Appellant's App. p. 16.

A CHINS progress report was submitted to the juvenile court on September 29, 2008, by DCS and the family case manager, covering a time period of May 22, 2008, to October 1, 2008. Appellee's Ex. 8. The report indicated that the Parents did not participate in mental health counseling, and despite being referred to Centerstone for individual and family counseling on June 11, 2008, they have not participated in that service either. Id. The report also indicated that the Parents had supervised visits with N.D. three-to-four times a week for about four to six hours each visit. Id. However, Parents were often argumentative when receiving direction from the service providers. Moreover, Fountain's "Monthly Homebased Service Reports," repeatedly indicate Mother's poor communication skills, moodiness, anger, and increasing hostility towards Fountain service providers. Fountain eventually needed to have two staff members present during home-visits due to Mother's threats and hostility.

A case-review hearing was held on December 5, 2008. The juvenile court determined that "while progress has been made; the parents have not been able to demonstrate sufficient parenting skills to safely parent the child on their own." Id. at 9.

A permanency hearing was held on February 13, 2009. Reports demonstrated that Mother still had significant difficulty handling N.D. and did so roughly. Mother was also continually scolding N.D. and believed N.D.'s actions were deliberate. Additionally, Mother and Father still had not sought individual or family counseling and, instead, chose to attend a program geared towards addiction offered by their church called Celebrate Recovery.[3] Concerns over Mother and Father's ability to safely parent and provide for N.D. continued. No Fountain service provider would recommend any parental visitation at less than full-supervision with two providers present. Eventually, home-based visitation was moved to the DCS offices on account of Mother's repeated threats to Fountain staff.

DCS filed its petition for involuntary termination of the parent-child relationship on April 9, 2009. Appellant's App. p. 8. Following the petition, the juvenile court appointed Linda Ellerbrook as special advocate. Services continued for Parents up until June 5, 2009, but were suspended because of the pending termination case. Visits resumed in April 2010, under the supervision of Dr. Robert Dailey, a psychologist who had been counseling Mother and Father since June of 2009.

[3] There were no allegations made that either Mother or Father suffered from any known substance addictions.

A two-day fact-finding and termination hearing was held on July 26, 2010, and November 22, 2010. It was shown that since N.D.'s removal in February 2008 through the hearing on November 22, 2010, N.D. has never resided with Mother and Father. Danelle Knoeff, Fountain's home-based care provider and program director, summarized her concerns stating, "Well, there were some safety concerns for N.D., just with Mother being alone with him in general." Tr. p. 5. She also stated her other concern ". . . was for our own safety. We had been threatened . . . that [Fountain providers] would be hurt, physical violence . . . if they were in the home. So we felt it necessary to provide two providers in with the visit." Id. at 5-6.

With regards to Mother and Father's parenting abilities, Knoef testified that ". . . it was almost like a re-learning process every time we came in. And they struggled; they struggled with a lot of things." Id. at 7. Moreover, Knoef recounted specific instances where Mother was very abrupt and rough with N.D. citing, "One specific instance where [N.D.] got really loud and [Mother] covered his mouth and his face with her hand and she did it not once but twice before I could ever get off the couch and when I said something to her, she got very angry with me and told me that I better not even speak a word or else she didn't know what was going to happen at that point." Id. at 14.

Lisa Hearne, the First Steps service provider, testified that she had ". . . great concerns about [Mother's] lack of understanding about how to properly hold, care for, just the general overall well-being of taking care of an infant. I had great concerns about their problem solving skills." Id. at 44. Jana Harrison, the DCS home-based counselor,

added that "Mother really didn't understand the stages of development." Id. at 110. Other witnesses testified that Mother failed to grasp even the basic concepts of diaper changing and feeding N.D.

Kathy Cain, the DCS on-going family case manager, expressed her concerns that Mother and Father were non-compliant with the recommended services, and only ". . . started complying with services, meaning with counseling . . . after [DCS] filed the [termination of parent-child relationship]." Id. at 142.

Finally, Linda Ellerbrook submitted a report to the juvenile court recounting the history of this case and listing her observations, wherein she concluded that based off of her observations, ". . . it is in the best interest of N.D. that Termination of Parental Rights be granted." Appellant's App. p. 19. She reiterated her recommendation at the hearing. Tr. p. 208.

On December 29, 2010, the juvenile court issued findings of fact and conclusions of law terminating the parent-child relationship. The juvenile court stated in part:

> 1. It is established by clear and convincing evidence that the allegations of the Petition are true in that there is a reasonable probability that the conditions that resulted in the child's removal and the reasons for the placement outside the parents' home will not be remedied, and / or that the continuation of the parent-child relationship poses a threat to the well-being of the child.
> 2. Termination of parental rights is in the best interest of the child, [N.D.], in that the parents have shown over the course of the related CHINS cause that they continue to be unable to provide safety, nurturing and permanence for their child despite their cooperation with intensive home-based services emphasizing parenting skills and child-development education.

> 3. Any nominal and / or short term progress after almost three (3) years under the jurisdiction of this [juvenile court] in the CHINS matter is not sufficient to foreclose the involuntary termination of parental rights.
>
> ***
>
> 7. The DCS has a satisfactory plan for the care and treatment of the child, which is adoption.

Appellant's App. p. 29. Mother and Father now appeal.

DISCUSSION AND DECISION

The Parents challenge the sufficiency of the evidence supporting the termination of the parent-child relationship. More particularly, the Parents contend that DCS did not prove the required statutory elements for termination of parental rights by clear and convincing evidence in that: (1) the termination of parental rights was in the best interests of the child; (2) that the continuation of the parent-child relationship posed a threat to the child; or (3) that the conditions that resulted in the child's removal from the home had not been remedied.

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to raise their children. Troxel v. Granville, 530 U.S. 57, 65 (2000); Bester v. Lake Cnty Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). But parental rights are not absolute and must be subordinated to the child's interest in determining the proper disposition of a petition to terminate parental rights. In re D.D., 804 N.E.2d 258, 264-65 (Ind. Ct. App. 2004). Thus, "parental rights may be

terminated when the parents are unable or unwilling to meet their parental responsibilities." Id. at 265.

When reviewing the termination of parental rights, we will neither reweigh the evidence, nor judge the credibility of the witnesses. In re G.Y., 904 N.E.2d 1257, 1260 (Ind. 2009). Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment below. Id. Here, the juvenile court made specific findings and conclusions thereon in its order terminating Mother and Father's parental rights. Where the juvenile court enters specific findings and conclusions thereon, we apply a two-tiered standard of review. Bester, 839 N.E.2d at 147. We first determine whether the evidence supports the findings, and then whether the findings support the judgment. Id. We will not set aside the juvenile court's judgment unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). A judgment is clearly erroneous when the evidence does not support the findings or the findings do not support the result. In re S.F., 883 N.E.2d 830, 834 (Ind. Ct. App. 2008).

The elements that DCS must allege and prove by clear and convincing evidence in order to effect the termination of parental rights is controlled by Indiana Code section 31-35-2-4(b)(2), wherein it states:

> (A) that one (1) of the following is true:
>
> > (i) The child has been removed from the parent for at least six (6) months under a dispositional decree.
> >
> > (ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not

> required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made.
>
> (iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;
>
> (B) that one (1) of the following is true:
>
> (i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.
>
> (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.
>
> (C) that termination is in the best interests of the child; and
>
> (D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2).[4]

The Parents argue that the juvenile court erred when it determined, "It is established by clear and convincing evidence that the allegations of the Petition are true in that there is a reasonable probability that the conditions that resulted in the child's removal and the reasons for the placement outside the parents' home will not be remedied, and / or that the continuation of the parent-child relationship poses a threat to the well-being of the child." Appellant's App. p. 29.

[4] Parents concede I.C. 31-35-2-4(b)(2)(A),(D).

We note that Ind. Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, which requires that only one of the two sub-elements under section (B) be proven true by clear and convincing evidence. In re L.S., 717, N.E.2d 204, 209 (Ind. Ct. App. 1999). When determining whether the conditions that led to a child's removal will not be remedied, the juvenile court must judge a parent's fitness to care for his child at the time of the termination hearing. In re A.B., 924 N.E.2d 666, 670 (Ind. Ct. App. 2010). However, the juvenile court's inquiry must also evaluate parents' habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. Id.

Here, N.D. was removed from the custody of Mother and Father because of their inability to properly care for the child, as well as their refusal to seek appropriate medical treatment. The evidence and testimony at the two-day termination hearing made clear that Parents demonstrated an inability to learn and/or retain the most basic of parenting skills. Moreover, Mother's continual misreading of N.D.'s behaviors as malicious and willful has led to various instances of rough and abrupt conduct by Mother that have in-turn raised significant concerns for many of the service providers. Intensive home-based services were provided to Mother and Father for more than seventeen months and at no point did any service provider ever recommend anything less than full-supervision on parental visits.

Mother and Father also contend that there was insufficient evidence to show that continuation of the parent-child relationship posed a threat to the well-being of N.D. As discussed above, Ind. Code § 31-35-2-4(b)(2)(B) is written in the disjunctive. Because

there was sufficient evidence for the juvenile court to conclude that there was a reasonable probability that conditions would not be remedied, the DCS is not required to prove that the continuation of the parent-child relationship posed a threat to N.D.'s well-being.

Nevertheless, "[w]hen the evidence shows that the emotional and physical development of a child in need of services is threatened, termination of the parent-child relationship is appropriate." In re E.S., 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002). Unfortunately, Mother's previous refusals to seek proper medical care and gross acceptance of medical risk during her pregnancy with N.D. have already impacted his emotional and physical development. N.D. was born premature, weighing only three pounds. He spent the first month of his life in a hospital, relying on a breathing apparatus and a feeding tube. Hearne testified that N.D. suffers from "Global Delays" over each of the categories tested, those categories being, ". . . gross motor development, fine motor development, speech development, cognitive skills, and self-help skills." Tr. p. 39.

Moreover, evidence of Mother's temper, coupled with the various service providers' observations, including Knoeff's that Mother perceived N.D. as "doing things because he was mean or he was doing things to be rude or . . . he was being defiant. . . . So it was . . . her ultimate goal . . . to punish him in some way shape or form." id. at 10-11, posed a tangible threat to N.D.'s well-being. Thus, there was sufficient evidence for the juvenile court to determine that continuation of the parent-child relationship posed a

threat to N.D.'s well-being. Therefore, we cannot say that this determination was clearly erroneous.

Finally, the Parents' argue that the DCS failed to prove that termination of parental rights was in the best interests of N.D. In determining the best interests of the child, the juvenile court is required to look beyond the factors identified by the DCS and consider the totality of the evidence. In re J.S., 906 N.E.2d 226, 236 (Ind. Ct. App. 2009). The juvenile court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development are permanently impaired before terminating the parent-child relationship. In re A.A.C., 682 N.E.2d at 545.

When all the evidence and testimony is compiled and viewed in totality, which includes: recommendations to terminate the parent-child relationship coming from all Fountain service providers, the court appointed special advocate, the DCS case manager and home based care providers; Mother's mental health issues; the fact that N.D. has never resided with the Parents; that N.D. has flourished in foster care; and that the Parents have demonstrated an inability to adequately provide for the safety and well-being of N.D., we cannot say that the juvenile court's determination that it was in N.D.'s best interest that the parent-child relationship be terminated was clearly erroneous. Accordingly we affirm the decision of the juvenile court.

The judgment of the juvenile court is affirmed.

KIRSCH, J., and BROWN, J., concur.