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# IN THE
# COURT OF APPEALS OF INDIANA

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| IN RE: THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF L.M. (Child), B.M. (Mother), J.D. (Biological Father), and S.W. (Putative Father): | ) | |
| B.M. (Mother), | ) | |
| Appellant-Respondent, | ) | |
| vs. | ) | No. 03A05-0906-JV-322 |
| INDIANA DEPARTMENT OF CHILD SERVICES, BARTHOLOMEW COUNTY OFFICE, | ) | |
| Appellee-Petitioner. | ) | |

APPEAL FROM THE BARTHOLOMEW CIRCUIT COURT
The Honorable Stephen R. Heimann, Judge
The Honorable Heather M. Mollo, Magistrate
Cause No. 03C01-0801-JT-39

**August 31, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

## CASE SUMMARY

Appellant-Respondent B.M. ("Mother") appeals the involuntary termination of her parental rights to her daughter, L.M. We affirm.

## FACTS AND PROCEDURAL HISTORY

Mother is the biological mother of L.M., born on May 11, 2005.[1] The record reveals that on the morning of February 3, 2007, Mother walked with L.M. in freezing temperatures[2] for approximately ten miles to meet a friend at the friend's place of employment in Edinburgh. Mother then waited for the friend in the friend's car until approximately 4:40 p.m., despite the bitter cold weather and no heat in the car. When Mother's friend finished her shift, she began driving Mother and L.M. north on Interstate 65 toward Indianapolis. However, during the trip, Mother began arguing with her friend and decided to exit the vehicle with L.M. Mother proceeded to walk with L.M., who did not have gloves, a blanket, or any head covering, along Interstate 65 for approximately twenty to thirty minutes before being picked up by Edinburgh police. After questioning Mother, the police arrested her for child endangerment and contacted the Indiana Department of Child Services, Bartholomew County ("BCDCS"). L.M. was subsequently taken into emergency protective custody by the BCDCS.

On March 30, 2007, the BCDCS filed a petition alleging L.M was a child in need of services ("CHINS"). Mother admitted to the allegations in the CHINS petition during

[1] As of the time of the termination hearing, paternity of L.M. had not been established. The paternal rights of L.M.'s putative father, S.W., were also terminated by the juvenile court in its January 20, 2009, termination order. L.M.'s putative father does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother's appeal.

[2] The record indicates that the air temperature that day was in the single digits.

an initial hearing held in April 2007, and the juvenile court found L.M. to be a CHINS. The juvenile court proceeded to disposition and entered an order for Mother to participate in a variety of services in order to achieve reunification with L.M. Specifically, Mother was ordered to, inter alia: (1) cooperate with the BCDCS and actively participate in the development of her case plan; (2) maintain contact with the BCDCS case manager and report any household changes; (3) participate in and adhere to the visitation plan arranged by the BCDCS and demonstrate appropriate parenting skills during visits with L.M.; (4) obtain and maintain clean, safe, and stable housing and employment; (5) submit to a psychological evaluation and parenting assessment and follow all resulting recommendations; and (6) participate in random drug screens as requested by the BCDCS.

Mother's participation in services was inconsistent throughout the duration of the underlying proceedings. For example, she persisted in living a transient lifestyle, constantly moving between family and friends' homes in various cities including Indianapolis, Hope, and Franklin. Mother completed a psychological evaluation and parenting assessment, but failed to successfully complete the resulting recommendations for services and treatment including individual therapy, couples' counseling, anger management classes, and a substance abuse assessment. Mother also failed to obtain a valid driver's license despite repeated requests to do so by BCDCS case workers.

Although Mother did submit to five random drug screens, she tested positive for marijuana on March 9, 2007, January 18, 2008, and February 14, 2008. Mother also repeatedly engaged in other unlawful conduct throughout the duration of the underlying

proceedings. For example, Mother was arrested for driving while intoxicated in July 2007. She was also found guilty of disorderly conduct and served thirty days in jail in February and March of 2008. Mother also received four infractions between the months of July and November 2007, including driving while suspended.

Mother's participation in supervised visits with L.M. was also sporadic. Mother repeatedly failed to attend scheduled visits with L.M., and when she did attend visits, she would often arrive late or leave early. As a result, visitation supervisors reported that they had "very little opportunity to assess how well [Mother was] really doing at learning parenting [skills]" and internalizing the "modeling" behavior demonstrated by service providers or "whether she could ever engage in a more meaningful interaction with [L.M.] because of the limited amount of time [Mother] was participating in the visits." Tr. pp. 27-28. In January 2008, Mother's visitation privileges were reduced to one visit per month due to her failure to maintain a consistent visitation schedule. Despite this reduction in privileges, Mother continued to refuse to contact service providers at The Villages of Indiana ("the Villages") to make arrangements for supervised visits with L.M from January through May of 2008. When Mother finally contacted the Villages in May 2008, she scheduled a birthday visit with L.M. but failed to show.

Meanwhile, in January 2008, the BCDCS petitioned the juvenile court to change the permanency plan from reunification to termination of parental rights. In support of its request, BCDCS case manager Brian Gooding informed the court that Mother had made no progress with the case plan. Gooding further indicated Mother was no longer attending counseling, continued to live in various places and to drive without a license,

had no proof of income, and had missed several visits with L.M. The juvenile court subsequently approved BCDCS's request and entered an order for the permanency plan to be changed from reunification to termination and adoption.

A fact-finding hearing on the BCDCS's petition requesting the involuntary termination of Mother's parental rights was held on December 2, 2008. Mother did not appear at the hearing but was represented by counsel. Mother had also not visited with L.M. since December 2007. At the conclusion of the hearing, the juvenile court took the matter under advisement. On January 20, 2009, the juvenile court issued an order terminating Mother's parental rights to L.M. This appeal ensued.

**Discussion and Decision**

Initially, we acknowledge 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 juvenile court's judgment, 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 therefrom that are most favorable to the judgment. *Id.*

Here, the juvenile court made specific findings in ordering the termination of Mother's parental rights. Where the juvenile court enters specific findings of fact, we apply a two-tiered standard of review. First, we must determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind.

2005). In deference to the juvenile 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; see also Bester*, 839 N.E.2d at 147. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. *D.D.*, 804 N.E.2d at 264. A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment thereon. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

"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, the juvenile court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding an involuntary termination of the parent-child relationship. *K.S.*, 750 N.E.2d at 837. Parental rights may therefore be terminated when parents are unable or unwilling to meet their parental responsibilities. *Id.* at 836.

Before a juvenile court may terminate a parent-child relationship, the Indiana Department of Child Services is required to allege, 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;
> (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)(B) thru (D) (2007). Each of these allegations must be established by clear and convincing evidence. *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992); *see also* Ind. Code § 31-37-14-2.

In the present case, Mother does not challenge the sufficiency of the evidence supporting the juvenile court's findings. Mother also does not contend that the juvenile court's findings do not support its termination order. Rather, Mother makes the general assertion that the evidence presented by the BCDCS to support its petition for involuntary termination is "insufficient" because "[al]hough there is testimony regarding the establishment of a case plan, . . . it is unclear whether the case plan was established pursuant to Indiana Code § 31-34-15-1[3] as [Mother] is unable to identify any such case plan in the trial exhibits." Appellant's Amended Br. p. 2.

This Court has previously explained that two important purposes of a case plan are (1) to notify parents of conduct that could lead to termination of their parental rights and (2) to inform parents of the steps they need to take in order to facilitate reunification with their child. *Castro v. State Office of Family & Children*, 842 N.E.2d 367, 376 (Ind. Ct. App. 2006), *trans. denied*. We find it significant that Mother's argument stops short of explicitly alleging that there was never a valid case plan filed in the underlying proceedings or that she was unaware of the steps she needed to take in order to achieve reunification with L.M. Also significant, the evidence presented during the termination hearing indicates not only that there was in fact a case plan established for L.M., but that

[3] Indiana Code Section 31-34-15-1 provides that "a case plan is required for each child in need of services who is under the supervision of the county as a result of [an] . . . out-of-home placement . . . or . . . issuance of a dispositional decree . . . ."

Mother met with BCDCS case managers on multiple occasions to discuss it. For example, when asked during the termination hearing whether Mother had participated in the development of a case plan, BCDCS case manager and supervisor Heather Angebrandt replied, "[Mother] did participate in a case plan conference, actually, a few of those. However, she did not follow through with what was set up in those case plan conferences." Tr. p. 17. Similarly, when asked whether Mother had followed through with any of the referrals for services made between February and October 2008, current BCDCS case manager Elizabeth Schertzer answered, "No. [Mother] had not followed through with any of my referrals and showed no real interest in being active in the case plan . . . ." *Id.* at 40. In addition, in its termination order, the juvenile court specifically found that "[Mother] did participate in case planning[.] [BCDCS], CASA and Villages spent significant time explaining to [Mother] what she would need to do for reunification. [BCDCS] did offer child and family team meetings[,] but [Mother] declined." Appellant's App. p. 5 (Finding No. 13).

Mother does not assert, nor do we find in the record, any evidence that Mother ever objected to the BCDCS's case plan for L.M., or alleged lack thereof, at any time during the CHINS proceedings. Nor did Mother raise this issue during the termination hearing. Consequently, we conclude that to the extent Mother now suggests she is entitled to reversal because the BCDCS did not provide a case plan for L.M. pursuant to Indiana Code Section 31-34-15-1 during the underlying CHINS case, Mother has waived appellate review of such an argument. *See McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 198 (Ind. Ct. App. 2003) (concluding that mother waived

due process challenge to adequacy of CHINS proceeding because she did not object during that proceeding or raise constitutional claim at termination hearing); *see also Castro,* 842 N.E.2d at 376 (concluding that Department of Child Services' failure to follow certain statutory procedures relating to case plans did not deprive Father of due process and thus reversal was not warranted). In addition, we also reject Mother's argument to the extent that she claims she is entitled to reversal simply because the BCDCS did not introduce its CHINS case plan for L.M. into evidence during the termination hearing.

We first observe that Mother does not support her argument with cogent reasoning or citation to authority, as is required by our appellate rules. *See* Ind. Appellate Rule 46(A)(8). Rather, Mother acknowledges that the entry of a case plan "may not be a strict requirement for a termination hearing," but nevertheless insists that, given the fact that an involuntary termination of parental rights is a remedy of "last resort," such a decision "should be supported by some modicum of objectivity –such as the required inclusion of a case plan– in the termination hearing." Appellant's Amended Br. p. 2-3.

As stated previously, Indiana Code Section 31-35-2-4(b)(2) sets forth the statutory elements which must be established, by clear and convincing evidence, before an involuntary termination of parental rights may occur in Indiana, and those requirements are exclusive. *See A.P. v. Porter County office of Family & Children*, 734 N.E.2d 1107, 1118 (Ind. Ct. App. 2000), *trans. denied*. Thus, although it may be helpful for appellate review, or even a customary practice to do so, Indiana Code Section 31-35-2-4(b)(2) does not require the BCDCS to introduce a CHINS case plan into evidence during a

subsequent termination hearing.

Our review of the record reveals that, in terminating Mother's parental rights to L.M., the juvenile court entered a five-page order containing, thirty-four specific, thoughtful, and detailed findings describing, among other things, the reasons for L.M.'s initial removal from Mother's care, the services the BCDCS offered to Mother to facilitate her reunification with L.M., Mother's persistent refusal to participate in and successfully complete court-ordered services, and Mother's current inability to provide L.M. with a safe and stable home environment. These findings were supported by uncontroverted evidence and testimony from various service providers and BCDCS caseworkers concerning Mother's use of marijuana, lack of stable housing and employment, recurrent unlawful conduct, and refusal to consistently visit with L.M. Based on the foregoing, we cannot conclude, as Mother would have us do, that insufficient evidence supports the juvenile court's termination order simply because the BCDCS did not introduce the CHINS case plan into evidence during the termination hearing. *See A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002) (stating that courts have properly considered evidence of parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, lack of adequate housing and employment, and parents' response to services offered by county Department of Child Services as evidence of whether conditions will be remedied), *trans. denied*; *see also In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001) (explaining that juvenile court must judge a parent's fitness to care for his or her child at time of termination hearing and must evaluate parent's habitual patterns of conduct to

determine probability of future neglect or deprivation of child), *trans. denied.*

The judgment of the juvenile court is hereby affirmed.

BAILEY, J., and VAIDIK, J., concur.