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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF B.B. and A.P.	)	
	)	
M.B.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 20A03-0902-JV-54
	)	
ELKHART COUNTY OFFICE, INDIANA DEPARTMENT OF CHILD SERVICES,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
The Honorable Deborah A. Domine, Magistrate
Cause No. 20C01-0804-JT-65; Cause No. 20C01-0804-JT-66

September 3, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

M.B. appeals the trial court's termination of her parental rights to B.B. and A.P. We affirm.

Issue

Did the Elkhart County Department of Child Services ("DCS") establish by clear and convincing evidence that it was in B.B.'s and A.P.'s best interest for M.B.'s parental rights to be terminated.

Facts and Procedural History

M.B. is the biological mother of B.B., age five, and A.P., age three. In November 2006, the children began residing with a relative in Elkhart, Indiana because M.B. was incarcerated. In February 2007, after having the children more than two months, the relative contacted DCS and advised that he was no longer capable of caring for them. As a result, the children were placed in foster care; they were still in foster care in Elkhart at the time the appealed order was issued.

M.B. was released from incarceration in April 2007. M.B.'s case manager, Lisa Morris-Carr ("Morris-Carr"), testified at the termination hearing that M.B. told her the following regarding the incarceration:

> [T]he main reason she – she stayed so long is because she would not give them evidence against A.P.'s father . . . . Because I believe that's who they really wanted to file the charges against, but she would not tell on him so she [was] in jail a whole year, or just about a year.

Transcript at 80. After M.B.'s release, the children remained in foster care because M.B. moved in with her parents, even though her father had been convicted of child molesting.

M.B. became pregnant that summer by a short-term acquaintance.

In September 2007, M.B. informed Morris-Carr that M.B. was moving to Florida two days later. M.B. resided in Florida for five months. While there, she visited the children once. At the termination hearing, Morris-Carr testified that, after that visit:

> B.B.'s behavior completely deteriorated. During the visit, [M.B.] told the kids that she had housing for them in Florida and that they would be moving there soon with her and that they had rooms, umm, there in Florida. So, after she left, and then she didn't see the kids anymore, B.B. would get angry at foster mom and say that we were keeping him away from his mom, and it wasn't that we were keeping her away, it was that she was unavailable to see him at that point.

Id. at 71-72. M.B. did not pay support for the children, despite being ordered to pay $25 per week. Nor did she complete an addiction assessment, as ordered. In February 2008, she moved from Florida to Kokomo, Indiana.

In April 2008, DCS petitioned to terminate involuntarily the parental rights of M.B. to B.B. and A.P. After a two-day evidentiary hearing, the trial court terminated M.B.'s parental rights to B.B. and A.P.[1] M.B. now appeals.

Discussion and Decision

M.B. argues that there was not sufficient evidence to support the trial court's findings that continuation of the parent-child relationships posed a threat to the well-being of the children and that termination of the parent-child relationships was in the children's best interest.

[1] The trial court also terminated the parental rights of B.B. and A.P.'s biological fathers.

I. Standard of Review

We will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, this Court neither reweighs the evidence nor judges the credibility of the witnesses. Id. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id.

II. Requirements for Involuntary Termination of Parental Rights

Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. Id. The purpose of terminating parental rights is not to punish the parents, but to protect the children. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

Indiana Code Section 31-35-2-4(b)(2) establishes the elements that must be alleged and proved, by clear and convincing evidence, in order to terminate a parent-child relationship:

> (A) one (1) of the following exists:
> (i) the child has been removed from the parent for a 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) 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.

"[P]arental interests are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights." Bester, 839 N.E.2d at 147. Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. Id. at 148. The trial court need not wait to terminate the parent-child relationship until the child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired. In re Danforth, 542 N.E.2d 1330, 1331 (Ind. 1989).

III. Analysis

The trial court "place[d] considerable weight" upon a series of M.B.'s decisions. Appendix at 24, 30. First, she allowed herself to be incarcerated and therefore unavailable to the children, in an effort to protect a boyfriend. Dr. Anthony Berardi ("Dr. Berardi"), a clinical psychologist, testified: "[t]hat was the most egregious example, I guess, of negligence on her part and poor judgment." Tr. at 135. Second, upon her release, M.B. moved in with her father, who had been convicted of child molesting – thus preventing the

children from living with her. Third, she moved to Florida for five months. Fourth, while in Florida, she visited the children only once. Fifth, the one time she did visit, according to Morris-Carr, M.B. "told the kids that she had housing for them in Florida and that they would be moving there soon . . . ." Id. at 72. But M.B. lacked the capacity to fulfill that promise.

M.B. failed to pay any support, despite being ordered to do so, failed to complete an addiction assessment, failed to attend a number of her scheduled appointments for purposes of her psychological parenting examination, failed to secure stable employment, and was living with a friend in Kokomo. At the time of the termination hearing, M.B. did not have a valid driver's license.

Morris-Carr testified,

> [I]t's not in the kids' best interest to keep moving to see if [M.B.] can keep it together and stay and get – get her needs met by . . . doing her therapy and working with her therapist. To be able to take care of them now that they do have all of these other needs.

Id. at 81. Morris-Carr stated that M.B., "thinks that as soon as they come home, they'll be okay, and I don't believe that to be the case." Id. at 82. In referring to the children's needs, Morris-Carr was referring to B.B.'s anger and A.P.'s need of occupational and physical therapy.

> [B.B.] refers now to his other mommy as being his mommy, mommy [M.B.] as being dead, because [M.B.], like she abandoned him. Umm, when she did what she did, moved away and then she came for the one visit and then didn't show up any more.

Id. at 81-82.

Dr. Berardi performed a psychological parenting examination of M.B. He concluded

that M.B.:

> had very poor choices in relationships with men, men who have been – been abusive, been into drugs and criminal behavior, and so I was concerned about her perpetuating that problem and getting involved in another relationship so very quickly. She became involved [and pregnant] in living with this individual after a very short period of time after knowing him.

Id. at 124-25. Dr. Berardi also concluded that M.B. needed to address the following issues to be an effective parent:

> Abandonment, intense anger, problems with anti-social attitudes, disregard for rules, regulations, self-centeredness, excessive need for male attention and approval, and over-reliance and dependence on men throughout her life, self-sufficiency, standing on her own two feet, and becoming confident that she can handle life on her own and doesn't need a man in order to support her.

Id. at 127. Moreover, according to Cathy Heign, the children's court-appointed special advocate, each boy has anger and trust issues.

M.B.'s appeal amounts to a request that we reweigh the evidence, which we cannot do. See Bester, 839 N.E.2d at 147. While the trial court found that M.B. loved B.B. and A.P., it also found that her decision-making would continue to pose threats for their well-being and that termination of her parental rights was in their best interest. The record supporting the trial court's involuntary termination of M.B.'s parental rights to B.B. and A.P. was established by clear and convincing evidence.

Affirmed.

VAIDIK, J., and BRADFORD, J., concur.