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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF J.E.:	)	
C.E.,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A04-1101-JT-20
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner,	)	
and	)	
CHILD ADVOCATES, INC.,	)	
Co-Appellee (Guardian Ad Litum).	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn Moores, Judge
The Honorable Larry Bradley, Magistrate

September 21, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

C.E. (Mother) appeals the involuntary termination of her parental rights to her child, J.E. In so doing, Mother challenges the sufficiency of the evidence supporting the trial court's termination order.

We affirm.

Mother is the biological mother of J.E., born in December 2007. The facts most favorable to the juvenile court's judgment reveal that the local Marion County office of the Indiana Department of Child Services (MCDCS) filed a petition alleging J.E. was a child in need of services (CHINS) in May 2009 after receiving and substantiating a report that J.E. had sustained burns on both his right and left cheek, neck, shoulder and middle and lower part of his back. Although Mother initially denied knowing how J.E. had received the burn marks, she later admitted to law enforcement detectives investigating the matter that she had caused the burns by touching J.E. with a cigarette lighter. J.E. was taken into protective custody and medical treatment was sought for his injuries.

Mother admitted to the allegations of the CHINS petition, and, following a dispositional hearing in July 2009, the juvenile court issued an order formally removing J.E. from Mother's care and custody. The court's dispositional order also directed Mother to

participate in and successfully complete a variety of tasks and services designed to help improve her parenting abilities and facilitate reunification with J.E. Specifically, Mother was ordered to, among other things: (1) secure and maintain a stable source of income, including public assistance, sufficient to support all household members including J.E.; (2) obtain suitable housing; (3) successfully complete home-based counseling; (4) formulate and put in place a protection plan designed to protect J.E. from any future physical and/or sexual abuse; (5) complete a psychological evaluation; (6) establish paternity of J.E.; (6) follow all recommendations of assessments and/or providers; and (7) participate in regular supervised visits with J.E.

In August 2009, Mother participated in a psychological evaluation performed by psychologist Roger Perry through Transitional Assistance Services. Dr. Perry diagnosed Mother, who was eighteen years old at the time of the evaluation, as having adjustment disorder with anxiety and depressed mood, a second-grade reading ability, and a full scale I.Q. of 58, which placed Mother in the mild mental retardation category. Based upon his clinical interview and standardized testing of Mother, Dr. Perry concluded that Mother is "beset by numerous developmental, intellectual[,] and abuse/neglect problems," is "dull intellectually," and is "not likely" to increase substantively in her "ability to succeed academically or intellectually." *Exhibits* at 3. Dr. Perry further surmised that Mother "will not be able to be responsible for herself either physically or financially," will "likely need a guardian of her person and finances," and "will not be able to care for her child independently without long[-]term supervision from a responsible adult." *Id*. at 3-4. For approximately eighteen months, Mother participated in intensive, weekly, home-based

counseling services with goals of improving her parenting skills, finding stable employment, and obtaining independent housing apart from her own mother. Mother also completed anger-management classes and participated in supervised visits with J.E. Notwithstanding her participation in these court-ordered reunification services, Mother continued to struggle with depression, repeatedly exhibited combativeness and anger control issues, and remained unable to demonstrate she could safely parent J.E. and/or meet J.E.'s emotional and developmental needs.

In June 2010, MCDCS filed a petition seeking the involuntary termination of Mother's parental rights to J.E. Shortly thereafter, in August 2010, Mother's visitation privileges were suspended due to J.E.'s increased agitation and aggressive behaviors following visits with Mother. An evidentiary hearing on the termination petition was later held in December 2010.

During the termination hearing, MCDCS presented evidence showing Mother had failed to successfully complete and/or benefit from a majority of the juvenile court's dispositional orders. Specifically, the evidence showed Mother remained unemployed, had failed to obtain her G.E.D., refused to acknowledge J.E.'s special physical and emotional needs, and continued to exhibit anger-control issues both during visits with J.E. and when interacting with caseworkers and service providers. In addition, the evidence showed Mother's housing situation remained unstable throughout the CHINS and termination proceedings as she bounced between living with her mother and aunt as well as switched apartments with her mother on more than one occasion, including just two weeks before the termination hearing when she moved into her mother's old apartment and her mother moved to another apartment just upstairs. As for J.E., MCDCS presented evidence establishing the

child was happy, thriving, and bonded to his pre-adoptive foster parents. At the conclusion of the termination hearing, the juvenile court took the matter under advisement. Later the same month, the court entered its judgment terminating Mother's parental rights to J.E. Mother now appeals.

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 (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 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id*. 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 (Ind. Ct. App. 1999), *trans. denied*. Thus, if the evidence and inferences support the juvenile court's decision, we must affirm. *Id.*

Here, the juvenile court made detailed findings and conclusions in its order terminating Mother's parental rights. Where the court enters specific findings and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143 (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). 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. *Id*. We will reverse a judgment as clearly erroneous only if, after reviewing the record, we have a "firm conviction that a mistake has been made." *Lang v. Starke Cnty. Office of Family & Children*, 861 N.E.2d 366, 371 (Ind. Ct. App. 2007), *trans. denied*.

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*. Although parental rights are of a constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144 (Ind. Ct. App. 2008). In addition, a juvenile court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In re K.S.*, 750 N.E.2d 832.

Before an involuntary termination of parental rights may occur in Indiana, the State is required to allege and prove, among other things:

> (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.
> >
> > (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services; [and]
>
> (C) that termination is in the best interests of the child . . . .

Ind. Code Ann. § 31-35-2-4(b)(2) (West, Westlaw through end of 2011 1st Regular Sess.). 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, 1260-61 (Ind. 2009) (quoting Ind. Code Ann. § 31-37-14-2 (West, Westlaw through end of 2011 1st Regular Sess.). If the juvenile 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. I.C. § 31-35-2-8 (West, Westlaw through end of 2011 1st Regular Sess.). Mother challenges the sufficiency of the evidence supporting the juvenile court's findings as to subsections (b)(2)(B) and (C) of the termination statute cited above. *See* I.C. § 31-35-2-4(b)(2).

At the outset, we note that I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, MCDCS needed to establish only one of the three requirements of subsection (b)(2)(B) by clear and convincing evidence before the juvenile court could terminate parental rights. *See In re L.V.N.*, 799 N.E.2d 63 (Ind. Ct. App. 2003). Here, the court found MCDCS presented sufficient evidence to satisfy the first two subsections of (b)(2)(B) of the termination statute. *See* I.C. § 31-35-2-4(b)(2)(B)(i) & (ii). Because we find it dispositive under the facts of this particular case, however, we shall consider only whether clear and convincing evidence supports the juvenile court's findings regarding subsection (b)(2)(B)(i), namely, whether there is a reasonable probability the conditions resulting in J.E.'s removal or continued placement outside Mother's care will not be remedied. *See* I.C. § 31-35-2-4(b)(2)(B)(i).

In determining whether there is a reasonable probability that the conditions leading to a child's removal from the family home will be remedied, a juvenile 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 (Ind. Ct. App. 2001), *trans. denied*. The court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. *In re M.M.*, 733 N.E.2d 6 (Ind. Ct. App. 2000). Similarly, courts may consider 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 (Ind. Ct. App. 2002), *trans. denied*. The juvenile court may also consider the services offered to the parent by a county office of the Indiana Department of Child Services and the parent's response to those services, as evidence of whether conditions will be remedied. *Id.*

Here, in finding there is a reasonable probability the conditions resulting in J.E.'s removal and continued placement outside of Mother's care will not be remedied, the juvenile court found that although Mother "consistently met with her referred home[-]based case manager and therapist," for over one and one-half years, she made "[m]inimal consistent progress," and "had trouble applying learned skills." *Appellant's Appendix* at 10. The court also found that notwithstanding Mother's completion of anger management classes, she "continued to demonstrate angry outbursts" and "exhibited anger during visitations which resulted in [J.E.] mimicking her behavior." *Id.*

As for employment, the juvenile court found Mother's attempts to obtain employment to be "unsuccessful," noting that Mother had "interviewed once and failed to follow through

with getting a required state identification card." *Id.* The court also found Mother "failed to participate in recommended Goodwill and Job Corps programs." *Id.* In addition, the court noted Mother has a "limited support group," "appears to rely on her mother who has a substantiated [MCDCS] history," and only "recently obtained a two[-]bedroom apartment below her mother's apartment." *Id*. The court thereafter determined:

> 19. There is a reasonable probability that the conditions that resulted in [J.E.'s] removal and continued placement outside the home will not be remedied by [Mother]. Services have been in place for approximately one and one[-]half years[,] but [Mother] has not made progress in obtaining employment or the parenting skills needed to safely parent [J.E.] and provide for his needs[] physically, educationally[,] and emotionally. When taking into consideration [Mother's] refusal to believe she needs services, there is little probability that she will be successful in remedying conditions.

Id. at 10. Our review of the record convinces us that these findings are supported by abundant evidence.

It was the general consensus of MCDCS case manager Virginia Garner and home-based service counselors Jessica Montgomery and Robin Malone that despite a wealth of services offered to Mother, including intensive, weekly, home-based counseling services, anger-management classes, individual therapy, and other services designed to assist Mother in overcoming her anger and depression issues and to improve her parenting skills, Mother was never able to make any significant progress in learning, retaining, and incorporating these new skills into her daily life. During the termination hearing, Garner testified that during several Child and Family team meetings, Mother "blew up during the meetings" and "walk[ed] out crying and yelling in the halls." *Transcript* at 264. Gardner also testified that

Mother had informed Garner she "didn't need no (sic) therapy" and "didn't need no (sic) anger management." *Id.* at 253. When asked why she recommended termination of Mother's parental rights, Gardner stated that the "case had been open . . . over a year and a half" and also that Mother "hadn't improved on her parenting skills . . . ." *Id.* at 266.

Similarly, home-based counselor Jessica Montgomery described Mother's angry outburst during visits with J.E. as "alarming," and recounted one particular incident during which Mother "started screaming," "threw the food that she had in her hand" against the wall, and "kicked in the door" causing the door to need repair work. *Transcript* at 59. Montgomery also confirmed that although Mother showed some improvement in her parenting skills at various times throughout the CHINS case, Montgomery was never able to recommend increased parenting time due to Mother's unresolved "anger issues," stating, "I didn't feel like [J.E.] would be safe[,] so I didn't see a reason to increase the visits if there [were] already things that weren't being addressed." *Id.* at 65. In addition, Montgomery reported that Mother had refused her offers of help in finding housing, obtaining a state identification card, and participating in job training opportunities through community programs such as Job Corps and Goodwill Industries.

Home-based counselor Malone testified regarding Mother's ongoing struggle with depression, stating Mother presented as depressed throughout the entirety of the case, but that the "severity" and "intensity" of Mother's depression would "go up and down," depending "on the situation she was in." *Id.* at 115. Although Malone acknowledged Mother's regular participation in home-based counseling, he further testified that Mother's level of "cooperation" during sessions varied, as sometimes Mother would listen, and other times she

would appear "distant" and "distracted" and he would be forced to simply review the information he had previously presented during the entire counseling session. *Id.* at 118. As for Mother's participation in anger management classes, Malone stated Mother's attendance "was not good" and that she had reported to him "on many occasions that she wasn't leaning anything during the class." *Id.*

As previously explained, a juvenile court must judge a parent's fitness to care for his or her children 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 children. *D.D.*, 804 N.E.2d 258 (Ind. Ct. App. 2004), *trans. denied*. Moreover, where there are only temporary improvements and the parent's pattern of conduct shows no overall progress, the court might reasonably infer that, under the circumstances, the problematic situation will not improve. *In re A.H.*, 832 N.E.2d 563 (Ind. Ct. App. 2005). Such is the case here. Since the time of J.E.'s removal, Mother has demonstrated a persistent unwillingness and/or inability to take the actions necessary to show she is capable of providing J.E. with a safe and stable home environment. We therefore conclude that clear and convincing evidence supports the trial court's determination that there is a reasonable probability the conditions leading to J.E.'s removal and/or continued placement outside Mother's care will not be remedied. Mother's arguments to the contrary, including her insistence that she "did everything asked of her" amount to an impermissible invitation to reweigh the evidence. *Appellant's Brief* at 8; *see also D.D.*, 804 N.E.2d at 265.

Mother's additional assertion that MCDCS should have provided different services to Mother in light of her mild mental retardation diagnosis is likewise unavailing. We have

previously explained that "the provision of services is *not* a requisite element of our parental rights termination statute, and thus even a complete failure to provide services would not serve to negate a necessary element of the termination statute and require reversal." *In re E.E.*, 736 N.E.2d 791, 796 (Ind. Ct. App. 2000) (emphasis supplied).

We next consider Mother's assertion that MCDCS failed to prove termination of her parental rights is in J.E.'s best interests. In determining what is in the best interests of a child, the juvenile court is required to look beyond the factors identified by the Indiana Department of Child Services and look to the totality of the evidence. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185 (Ind. Ct. App. 2003). In so doing, the court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* Moreover, we have previously held that the recommendations of the case manager and child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. *In re M.M.*, 733 N.E.2d 6.

In addition to the findings previously discussed, the juvenile court made several additional pertinent findings in determining that termination of Mother's parental rights is in J.E.'s best interests. Specifically, the court noted that J.E. "has special needs which include seizures, behavioral outbursts with aggression, ear infections, and being developmentally delay." *Appellant's Appendix* at 11. The court further found, however, that Mother "did not understand that [J.E.] was developmentally delayed, and did not believe he needed a therapist or first steps." *Id.* at 10-11. In addition, the court found J.E. is "in need of a parent that is

knowledgeable with his conditions and needs" and who can be "an involved advocate," but that Mother "does not appear to be up to this task." *Id.* at 11. The court also determined that if J.E. were returned to Mother "at this time, [J.E.] would not progress," would "be in harm of not having his physical, emotional, and special needs met," and that continuation of the parent-child relationship would "only pose a barrier to obtaining permanency for [J.E.]" *Id.*

As for J.E.'s relationship with his current pre-adoptive foster parents, the juvenile court found J.E. had been in his current placement since September 2009, that his foster parents have "engaged" with J.E. and his treatment "to the point that he has made significant strides in all areas," and that J.E. will "continue to need medical care for his seizures and ears, help in educational settings, and continued pediatric counseling." *Id.* The court thereafter found as follows:

> 23. Until visitation was suspended, [J.E.'s] behavior was much more pronounced after visiting with his mother.
>
> 24. [J.E.'s] current caregivers strongly wish to adopt him . . . . [J.E.] has been observed as doing very well, and as having a bond and attachment with the caregivers.
>
> 25. Termination of the parent-child relationship is on the best interests of [J.E.]. Termination, providing the opportunity for adoption by the current caregivers, would provide [J.E.] with a permanent home where he can continue to progress, and thrive in a safe, stable and loving environment where his needs will be met.
>
> * * *
>
> 27. Guardian ad Litem Lindsay Hakes agrees with the plan of adoption as being in [J.E.'s] long[-]term best interests, given [Mother's] lack of engagement or progress, the length of the case, and [J.E.'s] current placement.

Id. These findings, too, are supported by the evidence.

During the termination hearing, therapist Emily Dozier testified that at the beginning of the case, J.E. had trouble controlling his emotions, was unable to communicate his wants and needs to his caretakers, and was significantly developmentally delayed. Although Dozier reported that J.E. had "drastically improved" since his removal from Mother's care, she indicated that he was still developmentally delayed and that it would be "very important" for any future caretaker to have "an understanding of child development and where [J.E.'s] delays lie," "a lot of patience," an ability to "follow through," and a stable home environment. *Transcript* at 175.

In recommending termination of Mother's parental rights, case manager Garner testified that J.E. is "happy" in his current pre-adoptive placement and that the foster parents "really love that little boy" and "make sure" that all his needs are being met. *Id.* at 270. When asked why it was important that the court "make a decision and find permanency for [J.E.] at this time," Garner answered, "Because he need[s] to remain in stable housing again. He need[s] a structured home. He need[s] love[,] and he need[s] . . . to be away from neglect and abuse, and he's in a safe place." *Id.* at 270-71. Guardian ad Litem Lindsay Hakes testified that she had not observed a lot of "mutual affection" between Mother and J.E. and further stated that although she believes Mother loves J.E., "there wasn't a strong bond" between them. *Id.* at 211. When asked about J.E.'s interactions with his current foster parents, Hakes reported that J.E. is "doing quite well in his current placement." *Id.* at 212. Hakes further testified that she observed "a significant bond" and "attachment" between J.E. and his foster parents, that J.E. was "very affectionate" with his foster mother, and that J.E. looked to his foster mother "for affirmation" and "to be comforted." *Id.* at 212-13. Finally,

Hakes informed the court that she believed removing J.E. from his foster parents would "have a negative impact on him." *Id.* at 213.

Based on the totality of the evidence, including Mother's unresolved struggle with depression and anger management and current inability to demonstrate she is capable of providing J.E. with a safe and stable home environment, coupled with the testimony from Garner and Hakes recommending termination of the parent-child relationship, we conclude that clear and convincing evidence supports the juvenile court's determination that termination of Mother's parental rights to J.E. is in the child's best interests. 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 Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Judgment affirmed.

DARDEN, J., and VAIDIK, J., concur.