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# IN THE
# COURT OF APPEALS OF INDIANA

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| IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF H.G., Minor Child | ) | |
| M.G. and D.G., | ) | |
| Appellants-Respondents, | ) | |
| vs. | ) | No. 82A04-1011-JT-730 |
| INDIANA DEPARTMENT OF CHILD SERVICES, | ) | |
| Appellee-Petitioner. | ) | |

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
JUVENILE DIVISION
The Honorable Brett Niemeier, Judge
Cause No. 82D01-1002-JT-13

**October 14, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellants-Respondents, M.G. (Mother) and D.G. (Father) (collectively, Parents), appeal the trial court's Order terminating their parental rights to their minor child, H.G.

We affirm.

## ISSUE

Parents raise one issue for our review, which we restate as follows: Whether the evidence was sufficient to support the termination of Mother and Father's parental rights.

## FACTS AND PROCEDURAL HISTORY

Mother and Father are the biological parents of H.G., who was born on April 3, 2009. At the time of H.G.'s birth, the State had filed petitions to terminate Mother and Father's parental rights to their six other minor children.[1] Shortly after Mother took H.G. home from the hospital, Family Case Managers (FCM) Matt Murphy (Murphy) and Robb Haywood (Haywood) visited Parents' home to check on H.G. based on Mother and Father's prior history with the Department of Child Services (DCS). Murphy and Haywood found the living conditions to be less than sufficient for an infant. For example, "there were somewhere between six to eight pit bulls in the home. There was dangerous wiring in the home where extension cords were held together with saran wrap. The condition of the home were (sic) greatly concerning with dangerous items, unclean, molded food, within reach of

[1] Mother and Father's parental rights were terminated on November 10, 2009. Mother and Father appealed, arguing that their mental health concerns had not been adequately addressed. We upheld the trial court's decision to terminate parental rights, holding, among other things, that the trial court's finding that Mother and Father had the opportunity to address their mental health conditions, but chose not to, was supported with sufficient evidence. *In re B.G.*, 930 N.E.2d 84, 2010 WL 2784049 (Ind. Ct. App. July 15, 2010).

the children." (Transcript pp. 106-7). Not only were the living conditions unsafe and unsanitary, Mother and Father had not secured any of the necessary items that an infant would require other than those provided by the hospital. As a result, H.G. was removed from the home on April 6, 2009, and placed into foster care. On April 15, 2009, H.G. was found to be a CHINS.

On May 12, 2009, a dispositional hearing was held. At the hearing, the DCS recommended services to Mother and Father, such as parent aide services, parent classes, supervised visitations, and family counseling. Parents signed petitions agreeing to participate in the services provided and make efforts toward reunification with H.G. A month after the dispositional hearing, Mother and Father expressed the belief that their mental health needs had not previously been adequately addressed, and advised that they would seek treatment for these conditions on their own. They believed that the lack of mental health treatment was the cause for their inability to be reunified with H.G. and their other six children. After this request, their mental health progress was monitored by the DCS.

While the Parents made some efforts towards reunification by attending parenting classes, they did not fully comply with services ordered by the trial court. For example, they were ordered to participate in supervised visitation services with H.G. so that their bond with her could be maintained. However, each parent missed a significant amount of visitation. Mother missed nearly a month of visitation after an initial tuberculosis test indicated a possible positive result. Due to the risk of spreading disease to H.G., Mother's visitation was suspended until confirmatory testing was completed. Despite being asked by the FCM to get

the confirmatory testing done as quickly as possible, Mother took almost a month to seek treatment. Additionally, Father was working out of town and missed several visitation sessions as a result. At one point, the missed visitation sessions coincided so that neither parent visited H.G. for approximately a month.

With respect to their mental health needs, while Father failed to seek any mental health therapy, medication, or treatment of any kind for his Post Traumatic Stress Disorder (PTSD) and other diagnoses, Mother began to seek mental health treatment in the summer of 2009. Throughout her treatment, though, her attendance was inconsistent. By the end of January 2010, she had accrued so many absences that she received notification stating that if she continued to miss her therapy sessions, her case would be closed.

Based on the Parents' failure to comply with court-ordered services, the DCS filed a petition to terminate the parental rights of both Mother and Father on February 3, 2010. The trial court conducted a fact-finding hearing on the petition on July 29-30, 2010. On September 27, 2010, the trial court made findings of fact and conclusions of law, which include the following:

> 14. The parents have been offered the opportunity to complete services both individually and as a couple. The nature of the parents' relationship has changed frequently since the Department's initial interaction with the family in 2003, with the parents often alternating between being separated or together, even after their marriage. This pattern of behavior is an additional indicator of the instability that exists in the family's home environment. Furthermore, the changing relationship has allowed the court to see that in addition to being unable to parent as a couple, neither parent has shown the capability to fully provide for the child as an individual.
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> ***

16. Based on the history of neglect, the neglect occurring at the time of [H.G.'s] birth, and the parents' lack of progress during the pending CHINS matter, it is unlikely that the parents will remedy the reasons for [H.G.'s] removal and her continued placement out of their care. The parents have placed multiple children, including [H.G.], in unsafe and unsanitary conditions which have not only endangered them but caused them physical and developmental delay. Continuation of the parent-child relationship poses a threat to [H.G.'s] welfare and development.

17. Termination of parental rights is in the best interest of the child. The child has been living with her siblings since her birth. This is almost for a year and a half. Clearly it is not only best for her to be with her siblings, but also best for them to be raised with her. While the mother may have briefly showed signs of becoming a responsible parent, there are still too many issues that this court cannot take a chance on simply because the mother has made positive strides in handling one of her personal issues. The parent's relationship, making good choices, finances, and long term mental health problems all indicate that this child will be better long term [by] being adopted with her siblings.

18. The Department's plan of care for [H.G.] is adoption. [H.G.] is thriving in her current placement, where she is placed in the same home with her six older siblings. [H.G.] is very bonded to her older siblings. The plan of care for [H.G.] is to be adopted by the same family as her siblings. CASA is in support of adoption as the goal of [H.G.]….

CONCLUSIONS OF LAW

6. The [c]ourt now finds by clear and convincing evidence that the allegations of the petition to terminate parental rights are true in that:

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> b. There is a reasonable probability that the conditions that resulted in [H.G.'s] removal from, and continued placement outside the care and custody of the parents will not be remedied. As the court stated above the father has mental health issues which severely affect his ability to parent. The father still lives with the mother and the mother has only recently shown improvement with her own mental health issues.

(Appellants' Br. pp. 11-14). Relying on these findings and conclusions, the trial court terminated Mother and Father's parental rights.

Parents now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

### I. *Standard of Review*

In reviewing termination proceedings on appeal, this court will not reweigh the evidence nor assess the credibility of the witnesses. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We consider only the evidence that supports the trial court's decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the trial court enters findings of fact and conclusions of law in its termination of parental rights, our standard of review is two-tiered. *Id.* First, we determine whether the evidence supports the findings, and second, whether the findings support the conclusions of law. *Id.*

In deference to the trial court's unique position to assess the evidence, we set aside the trial court's findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id.* A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it. *Id.* A judgment is clearly erroneous only if the conclusions of law drawn by the trial court are not supported by its findings of fact or the conclusions of law do not support the judgment. *Id.* We review conclusions of law *de novo*. *Bowyer v. Ind. Dep't of Natural Res*., 882 N.E.2d 745, 761 (Ind. Ct. App. 2008).

## II. *Termination*

The Fourteenth Amendment of the United States Constitution protects the traditional right of parents to establish a home and raise their children. *Bester v. Lake Cnty. Office of Family and Children*, 839 N.E.2d 143, 147 (Ind. 2005). Our supreme court has acknowledged that the parent-child relationship is "one of the most valued relationships in our culture." *Id*. (quoting *Neal v. DeKalb County Div. of Family and Children*, 796 N.E.2d 280, 285 (Ind. 2003)). That being said, parental interests are not absolute and must be subordinated to the child's interest in determining the proper disposition of a petition to terminate parental rights. *Id*.

To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing that:

> (A) one (1) of the following exists:
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> > (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 I.C. § 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 had been under the supervision of a county officer of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
>
> (B) there is reasonable probability that:
>
> > (i) the condition 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.

I.C. § 31-35-2-4(b)(2).[2]

The Parents argue that DCS failed to prove I.C. § 31-35-2-4(b)(2)(B)(i) and (ii). We begin our review by observing that I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, a trial court need only find that one of the two requirements of subsection (b)(2)(B) has been established by clear and convincing evidence to properly terminate parental rights. *See In re L.S.*, 717 N.E.2d 204, 209 (Ind. Ct. App. 1999). Because we find it to be dispositive under the facts of this case, we only consider whether DCS established, by clear and convincing evidence, that there was a reasonable probability the conditions resulting in H.G.'s removal or continued placement outside of the Parents' care would not be remedied.

A. *Remedy of Conditions*

Mother and Father argue that DCS failed to prove by clear and convincing evidence that the conditions that resulted in H.G.'s removal or the reasons for placement outside the home will not be remedied. In determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the trial court must judge the parent's fitness to care for the children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re D.J.*, 755 N.E.2d 679, 684 (Ind. Ct. App. 2001). A parent's habitual patterns of conduct must also

[2] Indiana Code section 31-35-2-4 was amended effective March 12, 2010, by Pub.L. No. 21-2010, § 8. However, the amendment is not applicable here.

be evaluated to determine the probability of future negative behavior. *Id.* The trial court may properly consider the services offered by DCS, and the parent's response to those services, as evidence of whether the conditions that resulted in the child's removal from the home will or will not be remedied. *R.W., Sr. v. Marion Cnty. Dep't of Child Serv.*, 892 N.E.2d 239, 248 (Ind. Ct. App. 2008). The DCS need not rule out all possibilities of change; rather, it must establish that there is a reasonable possibility that the parent's behavior will not change. *In re B.J.*, 879 N.E.2d 7, 18-9 (Ind. Ct. App. 2008), *trans. denied*.

Parents direct our attention to the following findings of fact, and argue that these findings do not support the conclusion of law that the reasons for H.G.'s removal will not be remedied:

> 10. The parents had identified mental health treatment as a service which they needed in order to parent their children, and which they had not been given the ability to comply with during the CHINS matters of their oldest six children. However, by January of 2010 it was apparent that neither parent was taking steps to pursue treatment in a timely or consistent manner….
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> 12. To the [m]other's credit she did begin attending treatment at [Southwestern Behavioral Healthcare] after the filing of the termination petition. Furthermore, [m]other appears to come a long way with her mental health issues. She no longer appears depressed and understands her personal issues which caused her children to be removed from her in the past. Unfortunately, the mother doesn't appear to understand the significance of the father's problems and why the father's issues should be considered with her ability to parent. While the mother appears to have resolved a majority of her issues, this has been for a very limited time. The mother on her own can't raise the child due to financial issues and her extremely unstable relationship with the father will never be resolved unless the father is willing to seek mental health treatment.

(Appellants' Br. p. 11). Specifically, they argue that these findings demonstrate that "DCS is attempting to terminate parental rights before giving the parents a reasonable opportunity to treat the medical condition whose symptoms played a role in the parents' inability to care for [H.G.]." (Appellants' Br. p. 5).

Mother and Father rely on *In re D.Q.*, 745 N.E.2d 904, 907 (Ind. Ct. App. 2001), where we considered an appeal of the trial court's denial of a petition to involuntarily terminate the parental rights of the mother. In that case, after the mother's six children were found to be CHINS, she actively engaged in services provided by the State. *Id*. She successfully completed the parenting assessment, parenting classes, and the drug and alcohol assessment. *Id*. She was engaged in individual counseling and regularly visited the children over the course of the case. *Id*. Despite all these efforts, she was unable to maintain a job and find adequate housing. *Id*. As a result, the Office of Family and Children (OFC) filed a petition to terminate her parental rights. *Id*. While the petition was pending, but before any hearing, the mother was diagnosed with a hyperthyroid condition and placed on medication. *Id*.

Thereafter, the mother was able to maintain consistent employment. *Id*. However, at the time the trial court held a hearing on the termination petition, the mother had not yet obtained suitable housing for her children. *Id*. at 908. As such, the mother moved to stay the proceedings and presented evidence that she had signed a lease since the hearing, which the trial court granted and conducted a hearing on the housing issue. *Id*. The trial court denied the OFC's petition and on appeal, we affirmed the judgment of the trial court. *Id*. at 911.

Likening themselves to *D.Q.*, Mother and Father now argue that they were never given the chance to receive help and improve after evidence of their mental health issues surfaced. We disagree and find *D.Q*. to be readily distinguishable. In *D.Q.*, mother had successfully completed the services imposed by DCS and, after her medical diagnosis and appropriate medication was in place, mother made "significant improvements" and "a genuine effort to be reunited with her children." *Id*. at 911. To the contrary, in the instant case, the record is replete with evidence of unsuccessful attempts by the DCS to address the mental health issues exhibited by each parent from even before the birth of H.G. and evidence that the Parents themselves failed to address their mental health problems when provided with services. Specifically, the Parents have known about their mental health issues and have demonstrated a pattern of non-compliance with mental health treatment dating back from termination proceedings with H.G.'s six siblings. In the summer of 2007, a psychological evaluation was performed on both Parents and it was revealed that Mother is bi-polar and Father suffers from major depressive disorder, generalized anxiety disorder, possible attention deficit/hyperactive disorder and post traumatic stress disorder. Their mental health concerns were clearly an issue, as the trial court found that "[t]he parents' psychological symptoms associated with the diagnosis are [the] likely cause [] the parents' inability to properly maintain a safe home, adequate food, and proper supervision of the children." *In re B.G.*, 930 N.E.2d 84, 2010 WL 2784049 *2 (Ind. Ct. App. 2010). However, despite all of this and unlike *D.Q.*, both Parents failed to attend therapy and receive the proper treatment needed.

Around the time Parents were going through termination proceedings for their six children and CHINS for H.G., they again expressed the belief that they needed mental health treatment. While Mother had started attending treatment for her mental health issues after the filing of the petition to terminate paternal rights in H.G.'s case, she had missed so many therapy sessions that she was notified her case would be closed. Furthermore, even though Mother has started taking medication for her bi-polar disorder, H.G.'s Court Appointed Special Advocate (CASA) testified that she was concerned that because Mother has had problems in the past with forgetting to take her medication, there is a reasonable probability that Mother may not continue to be successful with her medical treatment.

With respect to Father, during the termination hearing he testified that he believed he has had post traumatic stress disorder his entire life, and that it affects his ability to function on a daily basis. He further testified that his condition limits his ability to multi-task, which he believed was a necessary skill for a parent. Despite all of this, Father appears to be completely uninterested in treating his mental health issues, as he has failed to seek any therapy because it would require him to "sit and talk to somebody and [he] just get[s] too anxious and get too nervous to talk to anybody." (Tr. p. 45).

Based on all the evidence presented, it is clear that while Mother and Father were well aware of their mental health issues, they had not taken measureable steps to improve their mental health, which was a factor in the removal of H.G. and her six siblings. As such, we find that the DCS has demonstrated by clear and convincing evidence that the conditions that resulted in H.G.'s removal would not be remedied.

### B. *Threat to Well-being*

Mother argues the trial court erred when it found there was a reasonable probability that continuation of the parent-child relationship poses a threat to the well-being of H.G. However, we need not address this issue in light of our dispositive conclusion above that the evidence supports the trial court's determination that there is a reasonable probability that the conditions resulting in H.G.'s removal and continued placement outside Parents' care will not be remedied. This determination, in conjunction with the trial court's other findings not challenged by Parents, including that termination is in H.G.'s best interest, supports its judgment terminating the parent-child relationship.

## CONCLUSION

Based on the foregoing, we conclude that the evidence was sufficient to support the termination of Mother and Father's parental rights.

Affirmed.

DARDEN, J. and BARNES, J. concur