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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Involuntary Termination of the Parent-Child Relationship of Z.Z.N., Minor Child, and L.O.O., Biological Mother,	)	
L.O.O.,	)	
Appellant-Respondent,	)	
vs.	)	No. 02A04-1101-JT-33
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Charles F. Pratt, Judge
Cause No. 02D08-0911-JT-475

October 27, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

L.O.O. ("Mother") appeals the involuntary termination of her parental rights to her biological child, Z.Z.N. In so doing, Mother challenges the sufficiency of the evidence supporting the trial court's judgment.

We affirm.

FACTS AND PROCEDURAL HISTORY

Mother is the biological mother of Z.Z.N. who was born on September 17, 2008. The facts most favorable to the trial court's judgment reveal that, at the time of Z.Z.N.'s birth, Mother, herself, had already been adjudicated to be a child in need of services ("CHINS") and placed in foster care. After Z.Z.N.'s birth, the Indiana Department of Child Services ("DCS") filed a verified petition alleging that Z.Z.N. was a CHINS. The preliminary inquiry hearing was held on October 1, 2008. After the dispositional hearing was held on November 3, 2008, the trial court adjudicated Z.Z.N. a CHINS and ordered that Z.Z.N. be placed in the same foster home in which Mother was placed. Also included in the dispositional order was a parent participation plan for Mother.[1]

[1] The parental rights of Z.Z.N.'s biological father, R.J.M.N. ("Father"), were also terminated by the trial court in its January 14, 2011 judgment. Father, however, does not participate in this appeal. We therefore limit our recitation of the facts to those pertinent solely to Mother's appeal.

The trial court's dispositional order directed Mother to participate in and successfully complete a variety of tasks and services designed to address Mother's parenting issues. More specifically, Mother was ordered to: (1) refrain from criminal activity; (2) maintain clean, safe, and appropriate housing; (3) notify the DCS within forty-eight hours of all changes in household composition, housing, and employment; (4) cooperate with all caseworkers and the Guardian ad Litem ("GAL") by attending all case conferences, maintaining contact, and by accepting announced and unannounced visits; (5) enroll in anger management classes at Park Center by December 3, 2008, and successfully complete the program; (6) obey all appropriate rules of Mother's home/placement; (7) enroll in a General Education Diploma ("GED") program by December 3, 2008, and successfully complete the program; (8) provide Z.Z.N. with clean, appropriate clothing at all times; (9) obtain suitable employment by December 3, 2008, and maintain that employment; (10) enroll in parenting classes, attend all sessions and successfully complete the program; (11) obtain both a psychiatric and psychological evaluation by December 30, 2008, and follow all recommendations; (12) immediately provide caseworkers with accurate information regarding paternity, finances, insurance, and family history; (13) immediately provide caseworkers with signed and current consents of release and exchange of information; (14) enroll in individual counseling, attend all sessions, and successfully complete the counseling program; (15) commence proceedings to establish a support order by meeting with the IV-D prosecutor by December 1, 2008; and (16) cooperate with The Villages for transition services and follow all recommendations. *Appellant's App*. at 45-48.

On November 28, 2008, Mother, with Z.Z.N., left their foster care placement with Z.Z.N. without permission. Law enforcement officers found Mother and Z.Z.N. at a hotel in February 2009. On February 10, 2009, the trial court held a detention hearing in the underlying CHINS case, found that Mother was not demonstrating an ability to benefit from services, ordered continued placement of Z.Z.N. in licensed foster care, and ordered supervised visitation between Mother and Z.Z.N. Later, during a review hearing, the trial court found that Mother was not in compliance with the parent participation plan, was not demonstrating an ability to benefit from services, and ordered the continued placement of Z.Z.N. in licensed foster care.

On August 25, 2009, the trial court ordered a permanency plan of termination of parental rights, with a concurrent plan of reunification with Mother with respect to Z.Z.N. The trial court also ordered the continued placement of Z.Z.N. in licensed foster care. Mother was not complying with the parental participation plan and was not demonstrating an ability to benefit from services.

At a review hearing held on November 17, 2009, Mother had not completed parenting classes or individual counseling and had failed to attend a medication review as requested by her therapist. The trial court placed Mother's visitations with Z.Z.N. on hold as Mother had failed to appear at a scheduled family team meeting to review reinstatement of her visitation with Z.Z.N. The trial court continued Z.Z.N.'s placement in licensed foster care.

On November 23, 2009, the DCS filed its petition for the involuntary termination of Mother's parental rights. The trial court held a fact-finding hearing on DCS's petition on

May 5, 2010, which continued on May 19, 2010 and October 21, 2010. Mother was present at the hearings and was represented by counsel. Z.Z.N. remained in licensed foster care and was never returned to Mother's care.

Danielle Wardell ("Dr. Wardell"), a licensed clinical psychologist, provided expert testimony about Mother's serious behavioral problems. In particular, Dr. Wardell testified that Mother tends to be impulsive, argumentative, and self-centered, with little remorse for inappropriate behaviors. Dr. Wardell stated that Mother "engages in sensation seeking activities" and "had difficulty with poor judgment." *Tr.* at 23. Dr. Wardell further testified that Mother is manipulative, often "putting her best foot forward," but did not make a "true commitment to change." *Id*. at 28. The psychologist concluded that Mother was in need of extensive treatment to effect change and that a minimum of three additional months of observation would be needed to insure that Mother was committed to such change in the event that reunification with the child should occur. Mother's self-centeredness, sensation seeking, and poor judgment impaired Mother's ability to parent. Dr. Wardell identified several issues Mother needed to address including anger management, problem solving skills, and parenting. In her opinion, Mother would prioritize her own interests and desires above what was best for Z.Z.N.

Mother had received services to address her anger management, poor judgment, problem solving, and child development. Lisa Jones ("Jones"), the caseworker assigned to Mother's case at the Park Center, testified that she provided home-based services to Mother from August 17, 2009 until November 13, 2009. Jones testified that she requested that future

sessions with Mother take place at the Park Center office after Mother had an angry outburst during a home-based session. Mother never attended a session at the Park Center office. Mother's services were transferred, at her request, to the Park Center's office in Bluffton, Indiana; however, Mother never attended sessions there. Jones testified that Mother was in need of additional services to address issues related to anger management, child development, and medication management.

The DCS presented evidence at the hearings that Mother had failed to complete a majority of the dispositional goals ordered by the trial court. Mother admitted that she had failed to complete a GED program, had failed to complete an anger management program, had failed to participate in individual counseling, and had failed to obtain employment, although she had received social security disability benefits for two months. Karen Jackson ("Jackson"), the DCS case manager, testified at the hearings about Mother's non-compliance with the trial court's dispositional order and addressed Mother's non-compliance with anger-management counseling, individual counseling, education, and employment.

At the time of the hearings, Mother's visitation with Z.Z.N. remained supervised. Tracey Schultz ("Schultz"), a Family Restoration Worker with Stop Child Abuse and Neglect ("SCAN"), testified that, initially Mother's visitation went very well, but that in July 2009, Mother's behavior during visitation created safety concerns. In particular, Mother used her phone to send text messages during visitation, used foul language toward Z.Z.N. and, on one occasion, struck Z.Z.N. in the back of the head. On another occasion, when Z.Z.N. was in the bathroom with Mother, he hit his head on the sink. Schultz attempted to redirect

Mother's actions during visitations; however, Mother persisted in feeding Z.Z.N. solid food even though he had no teeth and would choke. During the underlying CHINS action, Mother had no contact with Z.Z.N. for a period of two months.

Mother was unemployed and had failed to obtain independent housing by the time of the termination hearings. Mother testified that she was capable of maintaining full-time employment, but chose not to work as that would jeopardize her income of $674.00 per month from social security disability benefits. Mother moved out of the apartment provided to her through independent living transitional services and requested a suspension of those services. She had been receiving assistance with payment of a security deposit, rent, household goods, and furniture. Mother left to return to her own biological mother's residence, an arrangement Mother described as unstable.

The GAL and the DCS case manager recommended the termination of Mother's parental rights. The DCS case manager testified that Mother's failure to complete and benefit from services, unstable housing and employment, failure to comply with the recommendations of her psychological evaluation, and Z.Z.N.'s own need for permanency supported her recommendation. The GAL testified that Mother was emotionally disturbed and not an appropriate caretaker for Z.Z.N.

The trial court took the matter under advisement at the conclusion of the hearings and subsequently entered an order containing thirty-one findings of fact in support of terminating Mother's parent-child relationship with Z.Z.N. Mother now appeals.

DISCUSSION AND DECISION

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, 836 (Ind. Ct. App. 2001). When reviewing a 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, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* Moreover, in deference to the trial 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*.

Here, in terminating Mother's parental rights, the trial court entered specific findings and conclusions. When a trial court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (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). If the evidence and inferences support the trial court's decision, we must affirm. *L.S.*, 717 N.E.2d at 208.

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*. These parental interests, however, are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. *Id.* In addition, although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *K.S.*, 750 N.E.2d at 836.

Before an involuntary termination of parental rights may occur, 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 § 31-35-2-4(b)(2). 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 § 31-37-14-2). Moreover, if the 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. Ind. Code § 31-35-2-8(a). Mother challenges the sufficiency of the evidence supporting the trial court's findings as to subsection (b)(2)(B) and

(C) of the termination statute cited above.

At the outset, we observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, to properly effectuate the termination of parental rights, the trial court need only find that one of the three requirements of subsection (b)(2)(B) has been established by clear and convincing evidence. *See e.g. L.S.*, 717 N.E.2d at 209. Here, the trial court determined that the first two elements of subsection (b)(2)(B) had been established. Because we find it to be dispositive under the facts of this case, however, we shall only discuss whether the DCS established by clear and convincing evidence that there is a reasonable probability the conditions resulting in Z.Z.N.'s removal or continued placement outside of Mother's care will not be remedied. *See* Ind. Code § 31-35-2-4(b)(2)(B)(i).

When making such a determination, a trial 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, 512 (Ind. Ct. App. 2001), *trans. denied*. The court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.* Pursuant to this rule, courts have properly considered 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, 1251 (Ind. Ct. App. 2002), *trans. denied*. The trial court may also consider any services offered to the parent by the county department of child services (here, DCS) and the parent's response to those services, as evidence of whether conditions will be remedied. *Id.* Moreover, the

DCS is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. *See In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

Here, the trial court's order contains numerous findings that indicate Mother's unwillingness to change her behavior in order to be reunified with Z.Z.N. Mother had been adjudicated a CHINS at the time of Z.Z.N.'s birth and had been removed from her own mother's care and placed in licensed foster care. Z.Z.N. was adjudicated a CHINS and was placed in the same licensed foster care with Mother. Prior to Christmas in 2008, Mother left her foster home with Z.Z.N. without permission and did not notify her foster parent or DCS of her whereabouts. Prior to being found in February 2009, Mother had stayed at a friend's home for a few days and then alternated between staying at her own mother's home or a hotel.

Mother admittedly had not completed the requirements for a GED, had not always maintained contact with DCS, had not attended all case conferences, and had not completed anger management and counseling services. At the time of the termination hearings, Mother was living with her biological mother, from whose care she had been removed as a juvenile and had not been restored. Mother's visitation with Z.Z.N. had been put on hold because the quality of Mother's supervised visits with Z.Z.N. had deteriorated to the point where Mother was using foul language toward Z.Z.N., who at the time was about one year old, tried to feed him solid food even though he had no teeth and would choke, hit him on the back of the head for crying while he was getting his face washed, and Z.Z.N. hit his head on the sink when in

the bathroom with Mother. Mother refused to follow the directions of those who were supervising the visits in their attempts to redirect her behavior to more appropriately parent Z.Z.N.

Mother, who was receiving social security disability benefits due to her mental health issues, did not seek employment because she did not wish to jeopardize the receipt of those benefits, totaling $674.00 per month. Dr. Wardell testified that, unless Mother received proper treatment, a child under two years of age would be at risk in Mother's care. Mother vacated the apartment secured for her through transitional living services and requested a suspension of those services.

As noted above, a trial court must judge a parent's fitness to care for his or her child 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 child. *D.D.*, 804 N.E.2d at 266. Moreover, where a parent's "pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve." *In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). Mother does not challenge any of the findings in particular, but instead argues that the evidence supports her position that she had complied to the best of her ability with the parent participation plan and was complying with the plan at the time of the termination hearings. Based on the foregoing, we find Mother's assertions on appeal amount to an impermissible invitation to reweigh the evidence. *D.D.*, 804 N.E.2d at 265. We find that there is ample evidence to support the trial court's findings, which in turn support the trial court's conclusion that termination of the

parent-child relationship was proper on this ground.

Mother also advances the argument that the there is insufficient evidence to support the trial court's conclusion that termination of the parent-child relationship is in Z.Z.N.'s best interests. In determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the DCS and look to the totality of the evidence. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the trial 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 both the case manager and the 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, 13 (Ind. Ct. App. 2000).

Here, the trial court cited to the testimony of the DCS case manager and the GAL. The GAL and the DCS case manager recommended the termination of Mother's parental rights. The DCS case manager testified that Mother's failure to complete and benefit from services, unstable housing and employment, failure to comply with the recommendations of her psychological evaluation, and Z.Z.N.'s own need for permanency supported her recommendation. The GAL testified that Mother was emotionally disturbed and not an appropriate caretaker for Z.Z.N.

Based on the totality of the evidence, including Mother's current inability to provide

Z.Z.N. with a safe and stable home environment, and the testimony of the DCS case manager and GAL recommending termination of Mother's parental rights, we conclude that there is sufficient evidence to support the trial court's determination that termination of Mother's parental rights is in Z.Z.N.'s best interests. *See, e.g.*, *In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding that testimony of court-appointed advocate and family case manager, coupled with evidence that conditions resulting in continued placement outside home will not be remedied, is sufficient to prove by clear and convincing evidence termination is in child's best interests), *trans. denied*.

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."' *Matter of 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.

Affirmed.

BAKER, J., and BROWN, J., concur.