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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 Bn.Z. and Ba.Z., Minor Children, and B.Z., Father, and V.C., Mother, | ) | |
| B.Z. and V.C., | ) | |
| Appellants-Respondents, | ) | |
| vs. | ) | No. 20A03-1102-JT-93 |
| INDIANA DEPARTMENT OF CHILD SERVICES, | ) | |
| Appellee-Petitioner. | ) | |

APPEAL FROM THE ELKHART SUPERIOR COURT, JUVENILE DIVISION
The Honorable Deborah A. Domine, Magistrate
The Honorable Terry C. Shewmaker, Judge
Cause Nos. 20C01-1007-JT-46 and -47

**October 27, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

B.Z. ("Father") and V.C. ("Mother") appeal the involuntary termination of their parental rights to their children, Bn.Z. and Ba.Z. In so doing, the parents challenge the sufficiency of the evidence supporting the trial court's judgment.

We affirm.

## FACTS AND PROCEDURAL HISTORY

Father and Mother are the biological parents of Bn.Z., born in December 2006, and Ba.Z., born in September 2008. The facts most favorable to the trial court's judgment reveal that, in May 2009, the children were removed from the family home after the local Elkhart County office of the Indiana Department of Child Services ("ECDCS") substantiated various abuse and neglect allegations involving Mother, including a report that Mother force-fed then eight-month-old Ba.Z. a bottle causing the baby's gums to bleed, would blow marijuana smoke in the baby's face and watch her "eyes roll back in her head," and, following a night of binge drinking, held a pillow over Ba.Z.'s face to stop the baby from crying. *Appellant's App.* at 27. In addition, Mother refused to cooperate with ECDCS during its assessment of the abuse and neglect allegations, refused to participate in requested drug screens and financial disclosure requests, and was evicted from her home. During its assessment, ECDCS also discovered that Mother had an open child protective services case involving an older son who had been residing in California with that child's father and that Ba.Z. tested positive for cocaine at birth. In addition, Mother was on probation as a result of prior, unrelated disorderly conduct and battery convictions. As for Father, he was being held at the Elkhart County Jail on several pending felony charges, including possession of cocaine,

dealing in cocaine, and possession of an unlicensed firearm by a serious violent felon, at the time of the children's removal. Father was therefore unavailable to care for the children.

Upon the children's removal from Mother's care, Bn.Z. and Ba.Z. both tested positive for cocaine. ECDCS thereafter filed petitions under separate cause numbers alleging Bn.Z. and Ba.Z. were children in need of services ("CHINS"). Father admitted to the allegations of the CHINS petitions during a hearing on the matter, and both children were so adjudicated. Following a hearing in June 2009, the trial court entered dispositional orders formally removing the children from Father's and Mother's care and custody. The court's dispositional orders also directed Mother to successfully complete a variety of tasks and services designed to enhance her parenting abilities and to facilitate her reunification with the children. Specifically, Mother was ordered to, among other things: (1) submit to random drug screens and, should any test be positive, participate in a substance abuse assessment; (2) complete a psychological parenting assessment and follow all resulting recommendations; (3) participate in parenting education classes; (4) exercise regular supervised visitation with the children; and (5) obtain stable and appropriate means of financial support and housing. Father was ordered to contact ECDCS immediately upon his release from incarceration to begin supervised visits with the children and to undergo assessment for any needed services.

Mother's participation in court-ordered services was inconsistent from the beginning of the CHINS case and ultimately unsuccessful. She frequently missed scheduled visits with the children, and when she did attend, Mother would oftentimes

bring unapproved visitors and/or spend a large majority of the visit talking on her cell phone. Mother also did not obtain stable housing or employment and initially refused to participate in the recommended psychological parenting assessment. When Mother eventually completed the psychological parenting assessment in October 2009, the diagnostic impression was that Mother was suffering from cannabis abuse, major depression, anxiety disorder NOS, and a possible personality disorder. Mother also exhibited antisocial personality traits. It was therefore recommended that Mother participate in a psychiatric consultation and individual psychotherapy to assist in stabilizing and alleviating Mother's multiple and chronic problems, including her anger and impulse control, mood instability, and antisocial attitudes and traits. Mother refused, however, to participate in the recommended psychiatric evaluation. In addition, Mother continued to struggle with substance abuse issues throughout the majority of the CHINS case despite her eventual completion of an intensive out-patient drug rehabilitation program ("IOP"), and she tested positive for illegal substances eleven times. Mother also refused repeated requests for hair follicle drug screens and never completed the recommended IOP aftercare classes.

In July 2010, ECDCS filed petitions seeking the involuntary termination of Father's and Mother's parental rights to both children after initial plans to establish a relative guardianship fell through. A consolidated evidentiary hearing on the termination petitions was held in January 2011. During the termination hearing, ECDCS presented evidence showing that Mother had failed to successfully complete and/or benefit from the court-ordered reunification services. Mother also continued to test positive for illegal

substances, including a positive screen for cocaine in August 2010 despite being pregnant at the time the screen was administered, and she refused to participate in all subsequent drug screen requests. In addition, Mother had recently been arrested for violating the terms of her probation and had two pending charges in Elkhart County for criminal mischief and failure to appear.

As for Father, ECDCS introduced evidence establishing that he had a significant criminal and substance abuse history. Moreover, Father remained incarcerated, having been convicted on the pending felony charges and receiving a twenty-year sentence. At the time of the termination hearing, Father's earliest possible release date was not until March 2018.

At the conclusion of the termination hearing, the trial court took the matter under advisement. On January 11, 2011, the court entered its judgment terminating both Father's and Mother's parental rights to Bn.Z. and Ba.Z. This appeal ensued.[1]

## 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 case, 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

[1] For clarification purposes we note that rather than file a separate Appellant's brief in this consolidated appeal, Mother filed a motion for joinder pursuant to Indiana Appellate Rule 46(G), which provides that more than one party may join in a single brief. This Court granted Mother's motion for joinder on July 8, 2011. We therefore cite solely to Father's brief and appendix throughout this opinion.

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 Father's and 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;
>
> (C) that termination is in the best interests of the child; and
>
> (D) that there is a satisfactory plan for the care and treatment 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 (2008)). Moreover, if the court finds that the allegations in a petition described in Indiana Code section 31-35-2-4 are true, the court *shall* terminate the parent-child relationship. Ind. Code § 31-35-2-8(a). Father and Mother challenge the sufficiency of the evidence supporting the trial court's findings as to subsection (b)(2)(B) thru (D) of the termination statute cited above.

## I. Conditions Remedied/Threat to Well-Being

To properly effectuate the termination of parental rights under Indiana Code section 31-35-2-4(b)(2)(B), 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 id.* 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 ECDCS established, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in the children's removal or continued placement outside of each parent's care will not be remedied.

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 and the parent's response to those services, as evidence of whether conditions will be remedied. *Id.* Moreover, ECDCS 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. *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

On appeal, Father and Mother assert that "[M]other's changes in lifestyle make it appropriate for her to be reunified with the children," claiming, among other things, that Mother had obtained stable housing and employment and participated in all requested services. *Appellant's Br.* at 6. Father further asserts, without citation to authority, that because Father was incarcerated at the time of the children's removal, whether or not conditions that caused the children's removal from his care had been remedied "depended primarily upon the evidence presented about [Mother]." *Id.* at 15. Father therefore contends that because Mother "was living a stable life" at the time of the termination hearing, ECDCS failed to meet its evidentiary burden of establishing that "the conditions resulting in the children's removal had not been remedied" as to both parents. *Id.*

In terminating Father's and Mother's parental rights, the trial court made extensive findings regarding Mother's mental health issues, parenting deficiencies, and ongoing criminal activities. Specifically, the court acknowledged the results of an assessment conducted in May 2010 and admitted into evidence by Mother, which indicates Mother: (1) attempted suicide two times in the past, "but is not acutely suicidal currently"; (2) exhibited "possible symptoms of paranoia and auditory hallucinations from the voice of her deceased child[[2]]"; (3) grew up in a "chronically neglectful home environment"; (4) has "marginal" coping skills, and her "insight and motivation for treatment appears to be poor." *Appellant's App.* at 18. Although the court found Mother "completed some services," it nevertheless noted in its findings the testimony of ECDCS case manager

[2] The record indicates that while the family was living in the state of California, Mother's older daughter drowned while being cared for by the maternal grandmother, who also suffers with substance abuse issues.

Angela Welles ("Welles"), describing Mother's overall cooperation as "minimal" and thereafter found Mother's "failure to cooperate" to be a "factor considered" by the court. *Id.* at 23. The court's findings also acknowledged testimony from case workers that Mother refused to comply with visitation guidelines during scheduled visits with the children by bringing "unauthorized relatives to visits," making "phone calls" and "texting" during visits rather than "focusing attention on her young children" such that it "consumed as much as 90% of the visits," and failing to address "safety and supervision concerns" thereby preventing case workers from ever recommending unsupervised visits. *Id.* at 19.

As for Mother's struggle with substance abuse, the court observed that Mother presented a certificate of completion for an IOP during the termination hearing and had produced nineteen negative drug screens during the underlying proceedings. The court further found, however, that Mother had also produced "eleven positive drug screens," during the case, tested positive for cocaine in August 2010 despite being pregnant, and thereafter refused all subsequent drug screen requests. In addition, the court's findings acknowledge Welles' testimony that "there is no evidence that [Mother] has changed her criminal behaviors," as well as Probation Officer Anthony Weaver's testimony that Mother has "two cases pending in [Elkhart] City Court which could result in more than a year of incarceration," and Mother's own testimony that she is "currently on probation after having admitted to striking a Planned Parenthood receptionist, and having struck the sister for whom she currently provides care." *Id.* at 23. Based on these and other findings, the court determined that the evidence suggests Mother has "not changed and

that her history of drug use, criminal behaviors, and volatility poses a threat to the well-being of her children." *Id.* at 24.

Regarding Father, the trial court specifically found Father had "acknowledged his present incarceration" and the fact that his "earliest release date is currently March of 2018." *Id.* The court also found that, notwithstanding Father's attestations that he wants to be involved in the children's lives, his incarceration "precludes" him from doing so both "today" and "for years to come." *Id.* Thus, the trial court determined that the "conditions that prevented placement with [Father] at the time of [the children's] removal [from Mother], his incarceration, have not been remedied." *Id.* Our review of the record leaves us convinced that ample evidence supports the trial court's findings cited above.

At the time of the termination hearing, both parents' circumstances remained largely unchanged. Father, who remained incarcerated with an earliest possible release date not until 2018, continued to be unable to care for the children. Moreover, Father's significant history of criminal activity and unresolved substance abuse issues made it impossible for the trial court to determine if and when Father would ever be able to regain custody of the children following his release from incarceration. Although Mother eventually completed several of the court-ordered reunification services, including an IOP and parenting classes, it was the general consensus among case workers and service providers that she failed to benefit from these services. Moreover, testimony presented during the termination hearing makes clear that Mother remained incapable of providing the children with a safe and stable home environment.

In recommending termination of both Father's and Mother's parental rights to the children, ECDCS case manager Nicole Bartlette ("Bartlette") confirmed that Mother had been inconsistent in visiting with the children, tested positive for marijuana and cocaine throughout the underlying proceedings, never obtained stable employment or housing, and initially refused to participate in the recommended psychological parenting assessment. Similarly, Welles testified that Mother's participation in services had been either "non-compliant" or "very, very minimally compliant." *Tr.* at 220. Welles further explained that Mother ceased participating in individual therapy altogether after only a few weeks because she "became angry" when her counselor reported that Mother had made threats of inflicting future harm during counseling sessions. *Id.* at 221. Also significant, during the CHINS case Mother informed Welles that she had "no problem[s] with substance abuse and moods," she was "not going to change," and she had "smoked marijuana for a long period of time and [she's] not going to stop." *Id.* at 221-22.

Regarding visitation with the children, Welles informed the trial court that although Mother was offered increased visitation hours on multiple occasions, Mother "never took that opportunity." *Id*. at 209. Welles also confirmed Mother's visitation privileges had been suspended on two separate occasions, the first suspension was for approximately one month at Mother's request, and the second suspension was from October 2010 to December 2010 at the court's direction because of Mother's threats to harm herself and her unborn child. Mother thereafter missed her last scheduled visit with the children on December 30, 2010, because she had been arrested. Welles later testified that based on Father's and Mother's "habitual pattern[s] of behavior" involving law

enforcement and substance abuse, Father's incarceration, and both parents' "lack of progress," the "probability of things changing and the children not being exposed further to illegal substances is very, very slim." *Id.* at 229.

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). Here, in addition to Father being unavailable to care for the children until at least the year 2018 due to his incarceration, Mother has demonstrated a persistent unwillingness and/or inability to take the actions necessary to show she is capable of overcoming her addiction to marijuana and cocaine, successfully treating her mental health issues, and refraining from criminal activity in order to provide the children with the safe, stable, and drug-free home environment that they need. This court has repeatedly recognized that "[i]ndividuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children." *Castro v. State Office of Family & Children*, 842 N.E.2d 367, 375 (Ind. Ct. App. 2006), *trans. denied*. Based on the foregoing, we conclude that the trial court's determination that there is a reasonable probability the conditions resulting in the children's removal from Father's and Mother's care will not be remedied is supported by

clear and convincing evidence. Father's and Mother's assertions to the contrary amount to an impermissible invitation to reweigh the evidence. *D.D.*, 804 N.E.2d at 265.

## II. Best Interests

We next consider Father's and Mother's assertion that ECDCS failed to prove termination of their respective parental rights is in the children'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 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, 203 (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 case manager's and child advocate's recommendations 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).

In addition to the findings previously cited, the trial court made several additional pertinent findings relating to the best interests of the children. Although the court acknowledged that Father and Mother "love the children," the court further noted Welles' testimony concerning Mother's "history and habitual pattern of drug use and poor judgment," "involvement with law enforcement," "welfare fraud," and inability to "keep herself and her unborn child safe from cocaine" all of which Welles felt demonstrated

that Mother cannot keep the children safe. *Appellant's App*. at 25. In addition, the court specifically found that the children are now "happy and developmentally on track," that the court-appointed special advocate ("CASA"), Regina Hauptli ("Hauptli") testified that Bn.Z. and Ba.Z. "need stability and a home free from drugs and criminal behavior," and that the parents' behaviors, "including Father's current incarceration[,] supports the conclusion that the parents cannot provide for the children's needs." *Id.* at 25. In addition, the trial court found:

> viii. A two and a four[-]year[-]old child need a parent[] who is present, who can tuck them into bed tonight, not tuck them in at some unknown date in the future. Neither parent is able to meet that need[.] [F]ather cannot meet the children's needs because of his incarceration and [M]other because of her lack of progress in rectifying the problems that brought the children into the system.
>
> ix. The case manager and CASA both opined that termination is in the children's best interest[s]. Finding the evidence supports that conclusion, the Court agrees.

*Id.* at 25-26. These findings, too, are supported by the evidence.

In recommending termination of Father's and Mother's parental rights, Welles informed the trial court that the children were now "doing great" in foster care. *Tr*. at 223. When questioned why she believed termination of parental rights was in the children's best interests, Welles explained:

> Past behaviors are the best predictor of future behavior. The progress hasn't been made. [Mother] cannot keep herself safe from being exposed to cocaine . . . . [Father's] in jail until March 2018 for drug[-]related offenses. He's not shown that he [can] provide a drug[-]free environment for these children outside of a correctional institution. . . . [Mother's] still in trouble with the law and unable to follow rules. It sets up the children for an unstable life and endangers [sic] them of further exposure to drugs.

*Id.* at 236. Similarly, CASA Hauptli testified that the children need "a safe, stable, healthy environment . . . free of the drugs, [and] free of the criminal activity." *Id.* at 276. The CASA further explained that the children "need a good home to grow and thrive." *Id.*

Based on the totality of the evidence, including both parents' significant histories of substance abuse and criminal activities, Father's ongoing incarceration, and Mother's current inability to provide the children with a safe and stable home environment, coupled with the testimony from Welles and Hauptli recommending termination of the parent-child relationships, we conclude that there is sufficient evidence to support the trial court's determination that termination of Father's and Mother's respective parental rights to Bn.Z. and Ba.Z. is in the children'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*.

**III. Satisfactory Plan**

Finally, we consider whether sufficient evidence supports the trial court's determination that ECDCS has a satisfactory plan for the future care and treatment of Bn.Z. and Ba.Z. Indiana Code section 31-35-2-4(b)(2)(D) provides that before a trial court may terminate a parent-child relationship, it must find there is a satisfactory plan for the future care and treatment of the child. *Id.*; *see also D.D.*, 804 N.E.2d at 268. It is well-established, however, that this plan need not be detailed, so long as it offers a

general sense of the direction in which the child will be going after the parent-child relationship is terminated. *Id.* ECDCS's plan is for Bn.Z. and Ba.Z. to be adopted. This plan provides the trial court with a general sense of the direction of the children's future care and treatment. ECDCS's plan is therefore satisfactory.

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.