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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF A.S.	)	
L.P.,	)	
Appellant-Respondent,	)	
vs.	)	No. 79A02-0908-JV-712
TIPPECANOE COUNTY DEPARTMENT OF CHILD SERVICES	)	
Appellee-Petitioner.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta H. Rush, Judge
Cause No. 79D03-0812-JT-143

November 2, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

L.P. (Mother) appeals the termination of her parental rights with respect to her child, A.S. Mother presents the following restated issue for review: Did the Department of Child Services (DCS) prove by clear and convincing evidence that termination of Mother's parental rights was in A.S.'s best interests?

We affirm.

The facts are that A.S. was born on August 3, 2008 to Mother and Adam S. (Father). Mother and Father had two other children before A.S. At the time Mother became pregnant with A.S., she and Father were involved in a CHINS and termination of parental rights proceeding involving those other two children. A.S. was removed from Mother on September 17, 2008 because of allegations of medical neglect. The court determined that A.S. was a CHINS on September 19, 2008. On October 6, 2008, Mother's and Father's parental rights with respect to the other two children were terminated. On November 25, 2008, the court issued an order under Ind. Code Ann. § 31-34-21-5.6 (West, PREMISE through 2009 Public Laws approved and effective through 4/20/2009) that the DCS was no longer required to make reasonable efforts to reunite Mother and A.S. The DCS later filed a petition to terminate Mother's parental rights. On March 11, 2009, following a hearing, the court terminated Mother's parental rights.[1]

In the order terminating Mother's parental rights, the court issued findings of fact and conclusions of law. Mother does not challenge the validity of the findings of fact. Rather,

[1] Father's parental rights were also terminated, but he does not appeal that determination.

her challenge on appeal is that those findings do not support the conclusion that termination of her parental rights is in A.S.'s best interests. Therefore, we reproduce the relevant findings in setting forth the underlying conditions that led to the filing of the CHINS petition and, ultimately, termination.

> 2. Tippecanoe County Child Protective Services ("CPS") received a report on September 12, 2008 alleging concerns regarding inappropriate supervision and medical neglect. Specifically, the complaint alleged that Mother failed to obtain a prescribed apnea monitor for the child. The child was subsequently admitted to the hospital for overnight observation and thereafter released with a small supply of new formula and prescribed medication. Mother failed to attend a follow-up medical appointment. Mother was located at a friend's house at which time the child appeared to be unfed and very hungry. Mother still had the formula provided by the hospital which was not a supply sufficient to last the five (5) days that had elapsed. Father could not be located. [A.S.] was taken into protective custody on September 17, 2008. Medical Neglect was substantiated against Mother.
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> 3. Mother and Father were involved in a prior CHINS proceeding regarding older siblings, [M.D.P.] (DOB 06/14/2006) and [A.T.S.] (DOB 08/03/2007) under Cause Nos. 79D03-0709-JC-190/191. These CHINS proceedings resulted in termination of their parental rights to [M.D.P.] and [A.T.S.] on October 6, 2008 (Cause Nos. 79D03-0807-JT-83/84/85/86). For ease of reading, these prior CHINS proceedings will hereinafter be referred to as the "first CHINS case". For further ease of reading, the underlying CHINS proceeding (Cause No. 79D03-0809-JC-263) regarding [A.S.] that resulted in this termination hearing will hereinafter be referred to as the "second CHINS case". It should also be noted that Mother also has one (1) additional child, [M.J.B.]. [M.J.B.] was initially involved in the first CHINS case (Cause No. 79D03-0709-JC-189). [M.J.B.] was eventually placed in the home of his Father and that CHINS cause was dismissed. Mother's parental rights to [M.J.B.] have not been terminated, however, she is not authorized to exercise parenting time. …
>
> 4. The reasons for the first CHINS case involved allegations regarding lack of supervision and medial neglect. In the first CHINS case, Mother repeatedly and knowingly left her children in the care of a parent whose own children were in foster care as a result of a pending CHINS proceeding. Mother had also left a child in the care of neighbor [sic] without knowing the

neighbor's last name, address, or phone number. Mother failed to obtain medication or attend follow-up medical appointments for [M.D.P.] who subsequently required a chest tube in addition to other treatment for dehydration and a lung infection remaining hospitalized for approximately two (2) weeks. None of the children had received regular medical care or immunizations. Neglect was substantiated against Mother and Father (environment life/ health endangerment and medical neglect). [A.S.] was born during the first CHINS case. The reasons for the second CHINS case included the same medical neglect issues.

5. Mother has a long-standing history of delinquency, criminal, and instability issues. Mother herself was a victim of substantiated Child Molest in April 1999. In May 2000, Mother was adjudicated delinquent for truancy and multiple runaways. Mother was placed outside the home in residential care and foster care. Mother continued to runaway [sic], violate probation, and subsequently escaped from electronic monitoring. Mother was eventually committed to the Department of Correction in July 2000 and again in December 2001. Extensive services were offered to Mother including diagnostic evaluations, employment assistance, educational services, counseling, and case management. Mother was released from the Department of Correction on April 4, 2002. In May 2003, Mother was arrested for Minor Consumption. As an adult, Mother was convicted of Criminal Conversion in September 2003.

During the first CHINS case, Mother's housing and employment instability remained with her residing at various times with Father, relatives, friends, and government subsidized or transitional housing programs. Mother failed to utilize vocational rehabilitation services and failed to maintain any employment working a total of only twenty (20) days. Mother failed to comply with IMPACT requirements to maintain food stamps. Mother failed to attend individual counseling. Mother denied another pregnancy several times and failed to seek prenatal care until ordered to do so. During the second CHINS case, Mother demonstrated no improvement in her stability. Mother continued to display a lack of motivation and failed to comply with services with the exception of sporadic attendance at supervised visitations.

* * *

7. The child has remained in protective custody pursuant to a CHINS Detention Hearing Order issued on September 19, 2008. The child was initially placed and remains in a concurrent foster home with her older siblings. A CASA was appointed to represent the best interests of the child. The child was found to be a Child in Need of Services ("CHINS") as to the parents after evidentiary hearing by order issued on October 29, 2008.

Dispositional orders were issued on November 24, 2008 and December 4, 2008. The child has remained out of the parents' care continuously since that date.

8. Case conferences or family team meetings were held periodically. The Tippecanoe County Department of Child Services ("DCS") and CASA prepared separate written reports and recommendations prior to each hearing.

9. Pursuant to the dispositional order and parental participation decree issued in the second CHINS case on or about November 24, 2008, Mother was offered the following services: supervised visitation, random drug screens, home based services for reunification, parenting classes, support groups, medication assistance programs, and vocational rehabilitation. Mother was referred to individual counseling at her own expense. Father was offered the same services. During the course of the first CHINS case, extensive assistance was provided to Mother and Father including court hearings, case conferences or family team meetings, individual counseling, visitation, home based services for reunification, random drug screens, parenting classes, psychological evaluation, CARE Group to be informed of the CHINS process, anger management classes, prenatal care, Healthy Families, Vocational Rehabilitation, and Dad's Make a Difference Program. These services were exhaustive and were designed to address the parents' difficulties. Mother's psychological evaluation revealed Borderline Mental Retardation, Learning Disorder (NOS), Generalized Anxiety Disorder, and Depressive Disorder. Services were provided to Mother in the first CHINS case through one intensive home-based hands-on service agency to accommodate Mother's cognitive functioning, social anxiety, limited coping skills, and lack of motivation. The same agency provided visitation services for Mother in the second CHINS case.

10. The Court issued an order on December 4, 2008 finding that no reasonable efforts towards reunification or preservation were required.

11. A permanency hearing was held on December 19, 2008. By that time, the child continued to do well in foster care with her older siblings and remained on medication for acid reflux. The parents continued to be in no better position to care for the child. Mother had yet to contact service providers to initiate most services and failed to attend a scheduled appointment with Vocational Rehabilitation. Mother had failed to maintain contact with DCS with the exception of requesting bus passes and attending most supervised visitation. Father remained absent.

12. The Court ordered a permanency plan of initiation of proceedings for termination of parental rights as to Mother and Father and placement of the child for adoption. The DCS filed its petitions in the above-referenced Cause

> No. on December 19, 2008. The evidentiary hearing on the Verified Petitions to Terminate Parental Rights was held on February 26, 2009. At the time of the termination hearing, Mother's circumstances have not improved and Father remained absent.
>
> 13. Although Mother loves this child, she does not have the current ability to meet the child's needs. It is not safe for [A.S.] to be in the care of Mother and Father at this time. Mother's long-standing history of instability continues today. Father's whereabouts remain unknown and he has effectively abandoned this child entirely. All imaginable services have been offered and nothing is singularly different in today's circumstances since the time of removal. To continue the parent-child relationships would be detrimental to the child. The child needs permanency now.

Appellant's Appendix at 104-07.

We have long applied a "highly deferential" standard of review in cases involving the termination of parental rights. *In re L.B.*, 889 N.E.2d 326, 336 (Ind. Ct. App. 2008). In conducting such a review, we will not reweigh evidence or re-assess the credibility of the witnesses. *In re L.B.*, 889 N.E.2d 326. Rather, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id*. "Moreover, 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." *Id*. at 336. We will affirm if the evidence and inferences support the juvenile court's decision. *In re L.B.*, 889 N.E.2d 326.

The juvenile court here entered specific findings and conclusions in terminating Mother's parental rights. We apply a two-tiered standard of review where the court does so. *In re L.B.*, 889 N.E.2d 326. We first determine whether the evidence supports the findings, and second 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).

In order to terminate a parent-child relationship, the State is required under Ind. Code Ann. § 31-35-2-4(b)(2) (West, PREMISE through 2009 Public Laws approved and effective through 4/20/2009) to prove that several conditions are present, only one of which is challenged in this appeal, i.e., that "termination is in the best interests of the child[.]" I.C. § 31-35-2-4(b)(2)(C). As with the other elements, the State must establish this allegation by clear and convincing evidence. *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232 (Ind. 1992). In a termination proceeding, the juvenile court is required to look to the totality of the evidence in determining what is in a child's best interests. *In re L.B.*, 889 N.E.2d 326. Terminating parental rights is not done in order to punish the parent, but rather to protect the child or children involved. *Id*. Thus, the juvenile court must focus its attention on the interests of the children and not the parents. In so doing, it need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id*.

In determining that the termination of Mother's parental rights is in A.S.'s best interests, the juvenile court found that Mother has a long-standing history of delinquency and criminal behavior, as well emotional instability. She has failed as an adult to maintain stable housing, moving instead from one place to another. During that time, she has been employed for only a handful of days, despite having received employment assistance and vocational and educational services. Notwithstanding her involvement in an earlier CHINS proceeding

with respect to older children, Mother repeated the same problematic parenting behavior with A.S., characterized by a lack of supervision and medical neglect. After A.S. was declared a CHINS, Mother was offered a comprehensive array of services designed to address her difficulties, including supervised visitation, random drug screens, home-based reunification services, parenting classes, support groups, medication assistance programs, and vocational rehabilitation. Mother's psychological evaluation revealed borderline mental retardation, a learning disorder, generalized anxiety disorder, and depressive disorder. As a result, services were offered to accommodate Mother's cognitive functioning, social anxiety, limited coping skills, and lack of motivation. These services were also offered in conjunction with the first CHINS case. Yet, the court noted, it was all to no avail. Mother failed to contact most service providers to initiate services and failed to attend a scheduled appointment with a vocational rehabilitation service. The court noted that "[a]ll imaginable services" were offered to Mother, but no improvements were made from the time A.S. was removed from Mother's care. *Appellant's Appendix* at 107. The court concluded that Mother "has yet to demonstrate the ability or willingness to make lasting changes from past behaviors" and that there is no reasonable probability that Mother will be able to maintain stability to care and adequately provide for A.S.'s needs. *Id.*

The foregoing findings are supported by the testimony of Christy Huck, the Family Case Manager on A.S.'s case, and Leta Kelly, A.S.'s CASA. Huck testified that termination was in A.S.'s best interests because Mother "has no motivation, she has no follow-through …

[and] is not demonstrating that she is willing or able to take care of … [A.S.'s] basic needs[.]" *Transcript* at 21. Kelly was asked the same question and agreed with Huck's recommendation. Huck testified that A.S. was then staying with a foster family and that the permanency plan for the children included termination of Mother's and Father's parental rights and adoption by A.S.'s foster parents.[2]

Our review of the record convinces us that, as the juvenile court observed, "although Mother loves this child, she does not have the current ability to meet the child's needs." *Appellant's Appendix* at 107. The evidence recited above is sufficient to support the juvenile court's determination that termination of Mother's parental rights is in A.S.'s best interests. *See In re A.I.*, 825 N.E.2d 798 (Ind. Ct. App. 2005) (concluding that testimony of the court-appointed special advocate and family case manager, coupled with evidence that the conditions resulting in placement outside the home will not be remedied, was sufficient to prove by clear and convincing evidence that termination was in child's best interest), *trans. denied*.

Judgment affirmed.

BAKER, C.J., and RILEY, J., concur.

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[2] We note Mother's challenge to termination on grounds involving the suitability of these particular foster parents as adoptive parents. The suitability of these or any other individuals as adoptive parents for A.S. was not a decision this juvenile court was required, or even authorized, to make. Rather, the juvenile court in the instant case was required to decide whether termination of Mother's parental rights was in A.S.'s best interests, among other things. The decision whether A.S.'s foster parents are suitable adoptive parents is a different decision for a different court to make in a separate proceeding. *See In re Infant Girl W.*, 845 N.E.2d 229 (Ind. Ct. App. 2006) (setting out the roles of juvenile and probate courts in TPR and adoption actions, respectively).

It was enough for purposes of terminating Mother's parental rights that the DCS had presented an acceptable permanency plan.