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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF G.B. and J.N. (minor children) and E.B. (mother) and A.N.(father),	)	
Appellants,	)	
vs.	)	No. 79A02-1104-JT-315
THE INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta H. Rush, Judge
The Honorable Faith A. Graham, Magistrate
Cause Nos. 79D03-1012-JT-170, 171, 172, and 173

November 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

E.B. ("Mother") appeals the involuntary termination of her parental rights to G.J.B. and J.L.N. (collectively, "the children"). A.N. ("Father") appeals the involuntary termination of his parental rights to J.L.N.

We affirm.

ISSUES

1. Whether there is clear and convincing evidence to support the termination of Mother's parental rights to G.J.B. and J.L.N.

2. Whether there is clear and convincing evidence to support the termination of Father's parental rights to J.L.N.

FACTS

G.J.B. was born to Mother and K.H.[1] on October 13, 2007, and J.L.N. was born to Mother and Father on December 29, 2008. Mother and Father lived together either as roommates or as lovers after J.L.N.'s birth, and they were cohabiting as if a married couple at the time of the termination hearing.

[1] K.H.'s parental rights were also terminated; however, he is not a party to this appeal.

In February 2010, the Tippecanoe County Department of Child Services ("DCS") received a report that Mother was abusing prescription drugs. Following an assessment, DCS determined that Mother and Father were living with Mother's boyfriend, G.B., and another person. DCS further determined that Mother was abusing the Xanax and Lortab prescribed to her and that she was using Darvocet prescribed to G.B. In March 2010, DCS filed petitions alleging that G.J.B. and J.L.N. were children in need of services ("CHINS"). The petitions alleged that the parents neglected to supply the children with necessaries and supervision.

On March 31, 2010, the juvenile court conducted an initial hearing at which DCS entered an intake officer's report stating that Mother "has had [an] extensive history with [DCS]. She has participated in two separate CHINS cases[,] one in which her rights were terminated." (Father's App. 137). The juvenile court appointed a court appointed special advocate ("CASA") to protect the best interests of the children and ordered both Mother and Father to participate in various programs pending a fact finding hearing. The court also ordered Mother not to allow G.B. to live with the children because of his extensive criminal history.

In April 2010, the juvenile court held a detention hearing. The court found that Mother was still living with G.B. and that she had tested positive for use of the Darvocet prescribed to G.B. The court ordered that the children be removed from the home and be placed in DCS's custody. The children were subsequently placed in the custody of the children's maternal grandmother.

On April 22, 2010, the juvenile court conducted a fact finding hearing, and determined that the children were CHINS. The court ordered that Mother and Father continue to participate in various programs pending a dispositional hearing. On May 17, 2010, the juvenile court entered "Dispositional and Parental Participation Decrees" requiring Mother to (1) participate in a substance abuse evaluation and individual counseling and follow all recommendations; (2) attend supervised visitation at a level approved by the treatment team; (3) submit to random drug screens; (4) participate in home-based services and follow all recommendations; and (5) submit to medication management. (DCS Ex. 2). Father was ordered to (1) participate in a substance evaluation and follow all recommendations; (2) attend visitation at a level approved by the treatment team; (3) submit to random drug screens; (4) receive parenting education and follow all recommendations; and (5) participate in a parenting assessment to determine service needs. *Id*. The juvenile court later modified the decree to require Father to participate in individual counseling services.

In late May 2010, Mother's substance abuse assessor recommended that Mother participate in an inpatient substance abuse program after Mother tested positive for oxycodone and methamphetamines. In July 2010, the juvenile court found Mother in contempt for (1) failure to attend ordered programs; (2) testing positive for various substances in excess of the prescribed doses; (3) testing positive for illegal substances; and (4) allowing G.B. to reside in her home. (Father's App. 12). The juvenile court ordered Mother to be incarcerated; however, the court allowed her to purge herself of contempt by entering an inpatient substance abuse program. *Id.*

After completing an inpatient substance abuse program at Harbor Lights, Mother went to Turning Point Counseling for outpatient treatment. After her return from Harbor Lights, Mother was drug free for a time, but she gradually began to backslide and did not complete her outpatient treatment at Turning Point. In September 2010, Mother twice tested positive for methadone, a substance for which she did not have a prescription. Mother ceased seeing her substance abuse counselor in December 2010. Mother did, at her own expense, participate in some relapse prevention programs, but DCS was unable to speak with her counselor because she refused to sign a release. In January 2011, shortly after the filing of the December 2010 termination petitions, Mother again tested positive for a drug for which she did not have a prescription.

In August 2010, shortly after leaving Harbor Lights, Mother, who was intoxicated, hit Father with a hammer. Because Father decided to press charges when she struck him, Mother falsely accused Father of raping her.

During the bulk of the CHINS proceeding, Mother's visits with the children were chaotic. Mother's visit facilitator observed that Mother "had difficulty keeping the kids together, keeping herself together." (Tr. 100). On several occasions, the visit facilitator believed that Mother was under the influence of a controlled substance, noting that Mother struggled to stay awake and became belligerent with the staff, Father, and the children." (Tr. 101-02). The staff saw her "drooling on herself and falling asleep." (Tr. 107). The CASA observed multiple visits in which it was "very obvious" that Mother was intoxicated to the extent that she was falling over while sitting. (Tr. 143). During one visit, Mother went out to get air, collapsed, and had to be taken to the hospital. On

multiple occasions, she cursed at staff in front of the children. Police were called to Mother's visits on two occasions. On January 25, 2011, a visit was terminated early because Mother was apparently under the influence of a controlled substance and could not keep her eyes open or remain alert.

After the February 2011 termination hearing, the juvenile court concluded that Mother's parental rights should be terminated because there was no reasonable possibility that the reasons for continued placement outside the home would be remedied and because the continuation of the parent-child relationship posed a threat to G.J.B.'s and J.L.N.'s well being. The juvenile court also concluded that termination was in the children's best interests.

In support of its conclusions, the juvenile court found that Mother was involved in two prior CHINS proceedings that were primarily necessitated by Mother's substance abuse. In the first proceeding, Mother's parental rights to her son were involuntarily terminated. The juvenile court also found that the instant CHINS case "include[s] the same substance abuse, instability, and relationship issues." (Father's App. 21). The court made a lengthy finding outlining Mother's "significant substance abuse," including abuse of drugs and alcohol. (Father's App. 23). The juvenile court further found that "[o]ver the course of three CHINS proceedings, Mother has displayed a distinct pattern of short-term progress followed by repeated periods of drug use and instability . . . Multiple attempts at substance abuse treatment, both inpatient and outpatient, have been unsuccessful." (Father's App. 23).

Various members of the treatment team described Father in positive terms. They noted that he obtained stable housing and employment, was loving and affectionate with J.L.N., had a strong bond with J.L.N., and appropriately interacted with both children during visitations. All members agreed, however, that Father's plan to work 60-70 hours per week while leaving J.L.N. in Mother's care was untenable because it placed J.L.N. in danger.

Very early in the CHINS case, members of the treatment team, including the home-based case manager and the CASA, began to express to Father that maintaining a relationship with Mother would be detrimental to J.L.N.'s safety. As early as July 2010, Father was advised to separate from Mother, and he was warned that he would be unlikely to achieve reunification if they remained a couple. The DCS family case manager succinctly identified the Parent's respective problems as Mother's dependency on controlled or illegal substances and Father's dependency on Mother.

As Mother's positive screens increased and her reactions to services became more negative, the treatment team pressed Father to obtain independent housing. The DCS family case manager had multiple conversations with Father, explaining that a choice to remain with Mother was very likely a choice not to regain custody of J.L.N. Various team members encouraged Father to reach out to relatives for support, housing, financial assistance, and if necessary, help with J.L.N.'s care.

Shortly following the hammer incident, Father did leave Mother for approximately three weeks. However, he then returned to live with Mother and lied to the treatment team about his involvement with her.

Before the February 18, 2011 termination hearing, Sharon Cornell, the CASA, specifically told Father that she would have to recommend termination if Father would not separate from Mother. She told him that "if she was not successful then he would not be successful, because if the two of them were together they were going to be looked at as one entity." (Tr. 155). Shortly thereafter, Father rented an apartment with Mother and told the treatment team that he had made his decision. Jenny Cahoon, a member of the treatment team, testified that Father was told that "he was picking his relationship with [Mother] over his own son" and that Father acknowledged "that was the path that he was choosing." (Tr. 133). At the termination hearing, Ambyr Wade, the family case manager, was asked, "We hear nothing but great things about [Father's] visits, he's employed, he's got a house, he's got no history, he's not violent, he's a nice guy, everyone likes him, [then] why are we wanting to terminate [his] rights?" Wade responded, "He's addicted to [Mother]." (Tr. 177).

With regard to Father, the juvenile court concluded that there was a reasonable probability that the reasons for the continued placement outside the home would not be remedied and that continuation of the parent-child relationship posed a threat to the well being of J.L.N. The juvenile court also concluded that termination was in J.L.N.'s best interest.

In support of its conclusions about termination of Father's parental rights, the juvenile court, in pertinent part, found:

> At one point, [Father] appeared to recognize the seriousness of Mother's parenting difficulties. However, attempts to disassociate himself from Mother were short-lived. [Father] was dishonest about ongoing contact

> with Mother and almost immediately returned to residing with her. [Father] intends to continue his relationship with Mother despite her extensive history with child protective services as a result of ongoing substance abuse. [Father] even returned to the relationship with Mother after she accused him of rape and battered him with a hammer. [Father] continued to remain in the relationship after Mother relapsed on methadone in January despite facing termination of his parental rights. [Father's] current plan is to continue working sixty to seventy hours per week while Mother provides care for the children.

(Father's App. 24).

Additional facts are discussed below.

DECISION

The traditional right of parents to establish a home and raise their child is protected by the Fourteenth Amendment to the United States Constitution. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). Parental rights may be terminated when parents are unable or unwilling to meet their parental responsibilities. *Id.* The purpose of terminating parental rights is not to punish a parent but to protect the child. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*, *cert. denied*, 534 U.S. 1161(2002).

When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *Bester*, 839 N.E.2d at 147. We will only consider the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.* When reviewing findings of fact and conclusions thereon entered in a case involving a termination of parental rights, we apply a two-tiered standard of review. *Id.* First, we determine whether the evidence supports the findings. *Id.* Then, we determine

whether the findings support the judgment. *Id.* The trial court's judgment will be set aside only if it is clearly erroneous. *Id.* "A judgment is clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment." *Id*. (quoting *In re R.J.*, 829 N.E.2d 1032, 1034 (Ind. Ct. App. 2005)).

When DCS seeks to terminate parental rights, it must plead and prove in relevant part:

> (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. [2]

Ind. Code § 31-35-2-4(b)(2). These allegations must be established by clear and convincing evidence. *In re I.A.*, 934 N.E.2d 1127, 1133 (Ind. 2010).

Because subsection (b)(2)(B) is written in the disjunctive, DCS need prove only one of the elements by clear and convincing evidence. *See I.A.*, 934 N.E.2d at 1133. Thus, if we hold that the evidence sufficiently shows that there is reasonable probability that the conditions resulting in removal or the reasons for placement outside the home of the parents will not be remedied, we need not address whether the continuation of the

[2] Neither Mother nor Father contends that DCS presented insufficient evidence that there is a satisfactory plan for care and treatment of G.J.B. and J.L.N.

parent-child relationship poses a threat to the well-being of the child. *See* I.C. § 31-35-2-4(b)(2)(B); *In re A.N.J.*, 690 N.E.2d 716, 721 n.2. (Ind. Ct. App. 1997).

With regard to the "best interests of the child" statutory element, the trial court is required to consider the totality of the evidence and determine whether the custody by the parent is wholly inadequate for the child's future physical, mental, and social growth. *In re A.K.*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010), *trans. dismissed*. In making this determination, the trial court must subordinate the interest of the parent to that of the child involved. *Id.* The recommendations of the CASA and child's caseworker that parental rights be terminated support a finding that termination is in the child's best interests. *See A.J. v. Marion County Office of Family and Children*, 881 N.E.2d 706, 718 (Ind. Ct. App. 2008), *trans. denied*.

1. Termination of Mother's Rights

a. Conditions Remedied

Mother contends that the juvenile court erred in concluding that the conditions that resulted in the children's removal and continued placement outside Mother's home would not be remedied. For the most part, Mother cites her own testimony from the termination hearing in support of her contention, while occasionally citing testimony by others that is taken out of context or that is qualified by other testimony. In essence, Mother is asking us to reweigh the evidence, which we will not do.

The trial court should 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 M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*.

"However, a parent's habitual patterns of conduct must also be considered to determine whether there is a substantial probability of future neglect or deprivation." *Id.* "[A] trial court does not need to wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship." *Castro v. Ind. Office of Family & Children*, 842 N.E.2d 367, 372 (Ind. Ct. App. 2006), *trans. denied*. When the evidence shows that the emotional and physical development of a child is threatened, termination of parental rights is appropriate. *Id.*

Mother argues that her abuse of controlled substances improved after her attendance at Harbor Lights' inpatient program and that she may not have relapsed if DCS would have continued to pay for services after completion of the Harbor Lights program.[3] The record shows that after the completion of the Harbor Lights program, Mother showed great improvement. However, Mother began to gradually backslide and failed to complete follow-up treatment at Turning Point. In September 2010, Mother tested positive on two occasions for abuse of methadone, and in January 2011, a little over a month before the termination hearing, she again tested positive for methadone. The record shows that over the course of approximately ten years of the three CHINS proceedings involving Mother, DCS provided numerous services to help her overcome her abuse of controlled substances. The trial court did not err in determining that attempts at substance abuse treatment, both inpatient and outpatient, have been unsuccessful.

[3] An order of "Reasonable Efforts Not Required" was issued on September 8, 2010. (Father's App. 6).

Mother also argues that DCS did not establish that she missed a significant number of required supervised visitations. The issue is not the number of visitations attended but what happened during those visitations. Mother consistently attended visitations while under the influence of various mind-altering substances, and the result was inappropriate parenting, inattentiveness, and visitations that had to be terminated early because Mother either acted inappropriately or did not remain alert.

In short, the juvenile court did not err in concluding that there was a reasonable probability that Mother's continued abuse of controlled substances, with its attendant instability, would not be remedied.

b. Best Interests

Mother contends that DCS failed to establish that termination of the relationship with Mother was in the children's best interests. Mother notes that she loves the children and wants to provide a loving environment for them. Mother argues that ending a loving relationship between her and the children would not be in their best interests.

Sharon Cornell, the CASA representative for both children, testified that termination was in the best interests of the children because Mother made no lasting progress during the proceedings. Cornell further testified that Mother was afforded all possible assistance but could not abate her addiction problem, a problem that would probably never be remedied and that would lead to continued instability for the children.

Ambyr Wade, the DCS family case manager, testified that Mother was provided substantially the same services (substance abuse treatment, individual counseling, home-based case management services, and visitation) that she had been provided in the two

previous CHINS proceedings. Wade also testified that even after the provision of these continued services, Mother was unable to end her reliance on controlled substances and to prevent the attendant de-stabilizing consequences.

Cornell's and Wade's termination recommendations, coupled with evidence that the conditions that occasioned the removal and continued placement of the children outside the home, are sufficient to support the juvenile court's conclusion that termination is in the best interests of the children.

2. Termination of Father's Rights

a. Well Being of J.L.N.

Father contends that the juvenile court erred in terminating his parental rights to J.L.N. He cites the testimony of DCS representatives and the CASA that he is a loving father who is, on his own, no threat to J.L.N. He also cites testimony that he achieved the two important goals of acquiring stable housing and a stable job. Citing *Bester* and *In re R.H.*, 892 N.E.2d 144 (Ind. Ct. App. 2008), Father argues that while his continued cohabitation with Mother was relevant to a custody and/or guardianship determination, it was insufficient to support termination of his parental rights.

In *Bester*, the father had an extensive criminal history and could not obtain approval from his state of residence to allow the child to be placed with him. The trial court terminated the father's parental rights. On appeal, our supreme court concluded that the criminal convictions occurred when the father was a gang member and that there was no evidence to establish that the father posed a threat to the child at the time of the termination hearing. *Id*. at 152. The court also concluded that that "placement' in the

state of the father's residence "says nothing one way or the other about whether [the father's] parental rights should be terminated." *Id*. at 153.

In *R.H.*, the father was living with the mother and the infant child in Indiana before he moved to Alaska to find work and be close to his father and stepmother. The mother and the child moved to Alaska and lived with the father for eight months before moving back to Indiana. Shortly thereafter, the child was determined to be a CHINS because of Mother's drug problems. The child was placed with the Father's mother and stepfather in Indiana. The father, who was estranged from his mother and stepfather, participated in required services in Alaska and attended Indiana hearings either in person or by telephone during the CHINS and termination proceedings. The trial court concluded that the father's parental rights should be terminated because the father had had limited contacts with the child and was unwilling to move to Indiana to "reintroduce [R.H.] into his life." *Id.* at 146. The trial court found that R.H. "is bonded with Grandmother and her husband, and is not bonded with Father." *Id*. at 147. The trial court terminated the father's parental rights on the basis that "[t]he son's need for permanency clearly outweighs [the father's] parental rights[,]" as "it would be disastrous to the child's emotional and mental well being to be separated from the only parents he has known, paternal Grandmother and Step-Grandfather." *Id*. On appeal, we noted that the father "did everything asked of him" by DCS. *Id*. at 150. We further held that the evidence would "certainly be relevant to a custody and/or guardianship determination, but we simply cannot conclude that a parent's mere refusal to uproot himself from his

home, his life, his family, and his job and move across country supports the drastic, permanent, and extreme sanction of forever severing the parental relationship." *Id*.

Unlike in *Bester*, where the father had changed his lifestyle before the termination hearing, Father in this case was still insisting at the termination hearing, against all evidence, that Mother's drug use presented no danger to J.L.N. Unlike in *R.H.*, where the father had done everything required of him, Father in this case failed to meet the all-important requirement of terminating his relationship with Mother and ensuring that Mother was not J.L.N.'s caretaker for the sixty to seventy hours that Father spent at his jobs each week. Furthermore, Father intentionally failed, after counseling and many warnings from case managers and the CASA, to attain this important requirement. When it came time to make the hard choice, Father chose his relationship with Mother over J.L.N.'s safety. Under these circumstances, the juvenile court did not err in determining that there is a reasonable probability that the continuation of the parent-child relationship posed a threat to J.L.N.'s well-being.

b. Best Interests

Father does not explicitly address the issue of J.L.N.'s best interests. However, he raises two issues that bear on the issue. First, Father insists that DCS should have pursued temporary placement of J.L.N. with Father's parents in Puerto Rico. Father does not explain how temporary placement of J.L.N. in Puerto Rico, if obtainable, would be in J.L.N.'s best interests. J.L.N. is not in need of temporary placement; he is need of a permanent, stable environment. Second, Father insists that the juvenile court should have given weight to his declarations that he intended to leave Mother if her behavior did not

change. Father has made this claim before, and he has never acted on his promise to leave the relationship. Indeed, when Mother used illegal substances in the month before the termination hearing, Father, who previously had insisted that he was going to leave for J.L.N.'s sake, stayed in the relationship. There is no reasonable probability that Father will leave Mother and give J.L.N. the stable home that he needs.

CONCLUSION

We conclude there was clear and convincing evidence to support the juvenile court's decision to terminate Mother's parental rights to G.J.B. and J.L.N. We also conclude that there was clear and convincing evidence to support the juvenile court's decision to terminate Father's parental rights to J.L.N. We 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." *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992). We find no such error here and, therefore, affirm the juvenile court.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.