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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF:	)	
A.B. (Minor child),	)	
and	)	
K.S. (Mother)	)	
Appellant-Respondent,	)	
vs.	)	No. 49A04-1105-JT-255
THE INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner,	)	
CHILD ADVOCATES, INC.,	)	
Co-Appellee (Guardian Ad Litem)	)	

APPEAL FROM THE MARION SUPERIOR COURT, JUVENILE DIVISION
The Honorable Gary Chavers, Judge Pro Tempore
The Honorable Larry Bradley, Magistrate
Cause No. 49D09-1003-JT-9687

December 12, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-respondent K.S. (Mother) appeals the juvenile court's termination of the parent-child relationship with her son, A.B., upon the petition of the Marion County Department of Child Services (DCS). Specifically, Mother argues that the termination order must be set aside because the juvenile court erred in determining that there is a reasonable probability that the conditions which led to A.B.'s removal would not be remedied or that the continuation of the parent-child relationship poses a threat to A.B.'s well-being. Mother also contends that the DCS failed to establish that the termination of Mother's parental rights was in A.B.'s best interests. Concluding that the juvenile court did not err in terminating Mother's parental rights as to A.B., we affirm.

FACTS

A.B. was born on May 16, 1998, to Mother and Father. Father is not a party to this appeal. On October 1, 2008, DCS filed a Child In Need of Services (CHINS) petition regarding A.B. and his sister because of episodes involving domestic violence.

Mother also had untreated mental health issues and was living in an unstable environment. Both children were placed in therapeutic foster care.

On February 2, 2010, the permanency plan for A.B. was changed from reunification to adoption because of Mother's unstable living conditions, her refusal to address her untreated mental health issues, and her failure to engage in parenting services and cooperate with service providers. It was also alleged that A.B.'s education, developmental, and social skills were delayed because of Mother's mental health issues. DCS. Ex. 1.

Approximately one month later, the DCS filed a petition for involuntary termination of the parent-child relationship. Evidentiary hearings were conducted on February, March, and April, 2011. At the hearings, Lynn Highley, a clinical worker who had been working with Mother, testified that she had diagnosed Mother with a "major depressive disorder with moderate severity with melancholic features," and an "Axis II schizotypal personality disorder." Tr. p. 13. Highley found that Mother acted inappropriately toward the service providers and was territorial and paranoid on occasion. Mother refused to allow service providers into her home, and six weeks prior to the first day of the termination hearing, Mother was living in her van with no income and was acting in an unstable manner.

On the second day of the termination hearing, Mother participated by telephone because she was incarcerated in a Peoria County, Illinois jail. Mother had been in jail since March 4, 2011, and indicated that she did not know why she had been arrested.

Mother also testified that the residence she rented had been "foreclosed on." Tr. p. 51, 53, 55, 201. Mother testified that she had no residence and indicated that she would never return to Indiana. During the pendency of the CHINS proceedings, Mother resided either with friends, in her van, in abandoned homes, or hotels.

David James, the clinical director for The Villages, served as a supervisor for therapeutic foster home case managers at "The Villages" facility. James periodically supervised Mother's visits with A.B. and met with her individually at home-based appointments. James observed that Mother was inattentive, withdrawn, and did not interact much with A.B. James also found Mother uncooperative with staff members and she yelled at them. In fact, three different home-based counselors were unsuccessful in providing therapy to Mother.

Shalundra Barnett, the DCS case manager for Mother from July 2010 throughout the termination proceedings, told Mother that she was to participate in various court-ordered services. Mother failed to do so, and when the termination hearing commenced, she did not have stable housing. Barnett expressed concerns about Mother's violent relationships, inadequate income, and mental health issues. However, Barnett also testified that A.B. was doing well in his foster care placement. A.B.'s special needs were being met, and Barnett testified that it was in A.B.'s best interests for Mother's parental rights to be terminated and for A.B. to be adopted.

Nancy Englert was A.B.'s child advocate volunteer from July 2009 throughout the termination proceedings. She visited A.B. at his various placements eighteen times

between August 2009 and March 2011. Englert testified as to A.B.'s special needs in light of his attention deficit hyperactivity disorder. Englert also testified that A.B. has an Individualized Education Plan (IEP) and was doing well in school. Englert had talked with Mother several times, and concluded that there was general difficulty in having any kind of meaningful conversation with her. Tr. p. 153. Englert recommended a plan of adoption for A.B. based on the foster care placement for two and one-half years, the need for permanency, and the fact that his needs were now being met.

On the third day of the termination hearing, Mother was still incarcerated and informed the juvenile court that she did not want to participate in the proceedings that day. Her counsel called various visitation supervisors to verify the visitation logs that were presented as evidence. At the conclusion of the hearing, the juvenile court took the matter under advisement.

On April 11, 2011, the juvenile court entered findings of fact and conclusions of law terminating the parent-child relationship between Mother and A.B. Mother now appeals.

DISCUSSION AND DECISION

I. Standard of Review

When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, we neither reweigh the evidence nor judge the credibility of the witnesses. In re R.S., 774 N.E.2d 927, 930 (Ind. Ct. App. 2002). We consider only the evidence that supports the judgment and the reasonable

inferences to be drawn therefrom. Id. at 929-30. This court will not set aside the trial court's judgment terminating a parent-child relationship unless the judgment is clearly erroneous. Id.

The purpose of terminating parental rights is not to punish parents but to protect their children. In re Termination of the Parent-Child Relationship of D.D., 804 N.E.2d 258, 264 (Ind. Ct. App. 2004). Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parties are unable or unwilling to meet their responsibility as parents. Id. The trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. In re R.S., 774 N.E.2d at 930. Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. Id. The trial court need not wait until the child is irreversibly harmed before terminating the parent-child relationship. Id.

Indiana Code section 31-35-2-4(b)(2) sets out the following relevant elements that DCS must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

> (B)there is a reasonable probability that:
>
> (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
>
> (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

As set forth above, subsection (B) is written in the disjunctive, requiring that the DCS prove one of the three conditions by clear and convincing evidence. In re L.S., 717 N.E.2d 204, 209 (Ind. Ct. App. 1999). Therefore, standing alone, a finding that a reasonable probability existed that the conditions resulting in the removal of the child were unlikely to be remedied by the parent, can satisfy the requirement listed in subsection (B).

II. Conditions Remedied

With regard to Mother's claims that the DCS failed to show that the conditions that resulted in A.B.'s removal would not be remedied, we note that, to determine whether this allegation has been proven, the trial court must judge a parent's fitness to care for the child at the time of the termination hearing and take into consideration any evidence of changed conditions. In re D.D., 804 N.E.2d at 266. A parent's habitual patterns of conduct must also be evaluated to determine the probability of future neglect or deprivation of the child. Id. The trial court can properly consider the services that the State offered to the parent and the parent's response to those services. In re M.W., 943 N.E.2d 848, 854 (Ind. Ct. App. 2011), trans. denied.

As discussed above, the DCS became involved with Mother because of concerns about domestic violence, refusal to cooperate with law enforcement, unstable housing, and untreated mental health issues. DCS. Ex. 1. And nearly two years later, at the time

of the termination hearing, the evidence established that the circumstances had further deteriorated. When the termination hearing commenced, Mother was incarcerated, unemployed, and homeless. She had no intention of returning to Indiana and had not sought treatment for any of her mental health issues. In fact, she denied having any problems. Mother also failed to complete any of the services that were offered and provided to her to reunify her with A.B.

Throughout the underlying CHINS proceedings, which were initiated approximately two years prior to the termination hearing, Mother lacked stable housing and was unemployed. In short, she was not able to provide housing, income, and did not demonstrate an ability or willingness to parent A.B. Although the DCS offered many services to mother, she refused to participate in them. Although Mother's home-based therapist recommended that she see a psychiatrist, she refused to do so. Tr. p. 13, 25. Mother's behavior with the home-based therapist and other providers was volatile, and the therapist discharged Mother as unsuccessful from that service. Id. at 11-12, 18, 22, 39. Mother was also inattentive and withdrawn during parenting time sessions with A.B.

In short, the circumstances here, including Mother's failure to participate in a meaningful way in any of the court-ordered services, supports the juvenile court's conclusion that there is a reasonable probability that the Mother would not remedy the conditions that resulted in A.B.'s removal.[1]

[1] Mother also argues that the DCS failed to prove the continuation of the parent-child relationship poses a threat to A.B.'s well-being. However, as we have noted above, the statute is written in the disjunctive and

III. A.B.'s Best Interests

Next, we address the issue of whether termination of Mother's parental rights was in A.B.'s best interests. In determining what is in a child's best interests, the juvenile court is required to look beyond the factors identified by DCS to the totality of the evidence. In re T.F., 743 N.E.2d 766, 776 (Ind. Ct. App. 2001). In doing so, the juvenile court must subordinate the interests of the parent to those of the child involved. Id. In analyzing a child's best interests, we recognize that permanency is a central consideration. The trial court need not wait until a child is irreversibly influenced such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. Id.

A child's need for stability and permanency is paramount. McBride v. Monroe Cnty. OFC, 798 N.E.2d 185, 192-93 (Ind. Ct. App. 2003). The testimony of a child's caseworker and advocate regarding the child's need for permanency supports a finding that termination is in the child's best interest. In re T.F., 743 N.E.2d at 776.

In this case, both A.B.'s Guardian ad litem (GAL) and caseworker supported the termination of Mother's parental rights and the plan of adoption for A.B. Tr. p. 101-02, 161. And based on their respective knowledge of this case, the GAL and caseworker

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requires the juvenile court to find only one of requirements of subsection (B) under Indiana Code section 31-35-2-4 by clear and convincing evidence. In re L.S., 717 N.E.2d at 209. Standing alone, the finding that there is a reasonable probability that the conditions that resulted in A.B.'s removal will not be remedied satisfies the requirement of subsection (B). We therefore need not address Mother's argument that DCS failed to prove the continuation of the parent-child relationship poses a threat to A.B.'s the well-being.

Barnett made separate determinations that it was in the best interest of A.B. to terminate Mother's parental rights and pursue a plan of adoption.

This case had been open for over two years at the time of the final termination hearing, with Mother making little or no progress in court-ordered services. She failed to find adequate housing or employment, and was incarcerated in Illinois. In addition to the evidence discussed above, the home-based therapist testified that Mother's untreated mental health issues affected "every aspect of her life." Tr. p. 14. Mother has "several anger and impulse control issues," and acted inappropriately "towards all the team members and was paranoid." Id. at 10-12. Mother was unhelpful, uncooperative and was irate towards the service providers. Id. at 72-73. Finally, the evidence established that A.B. was adjusted and happy in foster care placement and his needs were being met.

In sum, the evidence established that Mother was afforded an extensive period of time in which to provide a safe, stable, and nurturing environment for A.B. by making positive changes. However, she failed to do so. As a result, we conclude that the juvenile court did not err in finding that termination of mother's parental rights was in A.B.'s best interests.

The judgment of the juvenile court is affirmed.

DARDEN, J., and BAILEY, J., concur.