Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

MICHAEL B. TROEMEL
Lafayette, Indiana

ATTORNEYS FOR APPELLEE:

CRAIG JONES
DCS, Tippecanoe County Office
Lafayette, Indiana

ROBERT J. HENKE
DCS Central Administration
Indianapolis, Indiana

FILED
Dec 19 2011, 9:46 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF J.B., D.G., and C.W. (MINOR CHILDREN) and	)	
D.G. (MOTHER),	)	
Appellant-Respondent,	)	
vs.	)	No. 79A04-1105-JT-347
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta H. Rush, Judge
The Honorable Faith A. Graham, Magistrate
Cause Nos. 79D03-1012-JT-183, 79D03-1012-JT-185, 79D03-1012-JT-187

December 19, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

D.G. ("Mother") appeals the trial court's order involuntarily terminating her parental rights to her children, J.B., D.G. and C.W. Mother contends that the trial court erred in determining that there is a reasonable probability that the conditions that resulted in the children's removal will not be remedied and that termination is in the best interests of the children. Finding no error, we affirm.

Facts and Procedural History

The trial court's termination order reads in pertinent part as follows:[1]

FINDINGS OF FACT

1. Mother (DOB 11/05/1988) is the Mother of J.B. (DOB 11/14/2006), D.G. (DOB 03/04/2008), and C.W. (DOB 06/23/2009). Mr. B. is the Father of J.B. Mr. A. is the Father of D.G. Mr. W. is the Father of C.W.

2. Tippecanoe County Child Protective Services ("CPS") received a report on August 24, 2009 alleging that Mother was hospitalized and unable to supervise the children. It was additionally reported that Mother often leaves the children with other people, the children were filthy, D.G. had a mark near her eye and a runny nose, and D.G. was hungry. Investigation revealed that Mother was admitted to the hospital for a kidney problem. Mother arrived at the hospital without the children. The children were later dropped off at the hospital. Mother was barely coherent. Mother was unable to provide the names of anyone who could supervise the children. After being informed the children would be taken into protective custody, Mother provided the names of three (3) persons who were determined to be inappropriate caregivers due to past history. Mother's blood sample tested positive for marijuana. Mr. W. was incarcerated at the time. No information was available regarding the whereabouts of Mr. B. or Mr. A.

3. The children were placed in protective custody pursuant to a CHINS Detention Hearing Order issued on or about August 27, 2009. The children

[1] Throughout this opinion, we have replaced names with initials when quoting from the record to protect the parties' anonymity.

were initially placed in foster care where the children remain. A CASA was appointed to represent the best interests of the children. The children were found to be Children in Need of Services ("CHINS") and a dispositional order was issued on or about October 20, 2009. The children have remained out of the parents' care continuously since that date with the exception of a short trial home visit with Mother.

4. Pursuant to the dispositional orders, Mother was offered the following services: intensive home-based family preservation and case management services, parenting assessment and classes, substance abuse treatment, GED classes, individual counseling, couples counseling, and random drug screens. Mr. B. and Mr. A. were ordered to contact DCS to establish paternity, services, and visitation. Mr. W. was offered the following services: home-based case management services, parenting assessment and classes, substance abuse assessment and treatment, couples counseling, GED classes, and random drug screens. These services were exhaustive and designed to address the parents' difficulties. Evaluations revealed no barriers to the parents' ability to participate in services and achieve reunification.

5. Case conferences or family team meetings and review hearings were held periodically. The Tippecanoe County Department of Child Services ("DCS") and CASA [court-appointed special advocate] prepared separate written reports and recommendations prior to each hearing. A permanency hearing was held on July 27, 2010 at which time the permanent plan was determined to be reunification with Mother. A second permanency hearing was held on November 20, 2010 at which time the permanent plan was determined to be initiation of proceedings for termination of parental rights and adoption. The DCS filed its petitions … on January 10, 2011. The evidentiary hearing on the Verified Petitions to Terminate Parental Rights was held on March 18, 2011. At the time of the termination hearing, the circumstances of the parents had not substantially improved.

[The next four findings relate to the children's fathers, all of whom were found to have a history of instability and criminal behavior, and two of whom were also found to have a history of substance abuse. None of the fathers have appealed the termination of their parental rights.]

10. Mother has a long-term history of instability. During the CHINS proceeding, Mother was employed at Chances Are bar as a dancer. Although it was not an ideal position, Mother was making money to save in preparation for the children's return. Mother was also employed at Teleservices on the night shift for a short time only. Mother is currently unemployed. Mother

resides in low income housing and only pays rent when employed. Although Mother has maintained such housing in Lafayette, she spends a great deal of time in Chicago. Mother was provided an open opportunity to produce a plan for relocation to Illinois and the Court authorized Mother to travel to Chicago to establish a plan. Mother has not produced a viable plan for relocation.

11. Mother has a history of substance abuse and criminal behavior. During the CHINS proceeding, Mother tested positive for drugs or alcohol on August 26, 2009 (ecstasy/cocaine), September 18, 2009 (marijuana), January 29, 2010 (marijuana), March 4, 2010 (alcohol), and March 22, 2010 (marijuana/alcohol). When Mother relapsed during substance abuse treatment, her substance abuse therapist recommended more intensive inpatient or residential substance abuse treatment. However, Mother did not follow that recommendation and instead attempted outpatient treatment again. Mother was found in contempt on April 13, 2010 for failing to remain drug and alcohol free. Mother was ordered to purge contempt by attending inpatient substance abuse treatment but failed to do so. Mother eventually made progress with substance abuse counseling and, at this point, it appears Mother is presently remaining drug free. During the CHINS proceeding, Mother was convicted of Failure to Stop after Accident (C Misdemeanor) on August 24, 2010 and is currently facing a Petition to Revoke Probation. Mother is also currently facing charges of Operating a Vehicle While Never Receiving a License filed in December 2010.

12. Mother has historically struggled with relationships including with the fathers of her children. Mother's individual counseling addressed relationship issues, especially separation from Mr. W. Before commencing a relationship with Mr. W., Mother was aware that he had been in prison for four (4) years. There is a history of domestic violence between Mother and Mr. W. both before and during the CHINS proceeding. The first incident of domestic violence involving police contact was approximately two (2) months after the relationship began. Law enforcement was contacted multiple times for domestic violence incidents. During the CHINS proceeding, an incident occurred at a local bar again resulting in law enforcement contact. Mr. W. was arrested for another incident during the CHINS proceeding when he kicked in Mother's door after having already been warned for trespassing. The last incident occurred when Mr. W. threw a shoe box with shoes at Mother in the presence of a service provider. A protective order was issued during the CHINS proceeding. Mother continued to have contact with another inappropriate male during the CHINS proceeding and until he left the area approximately two (2) months ago. Mother reports she is not currently involved in a relationship and is not currently pregnant.

13. Mother was initially reluctant to participate in services. However, when Mother separated from Mr. W., her participation improved. Mother was regularly attending services and remaining drug free. Mother made sufficient progress in case management and parenting for visitations to increase. Mother's visits progressed from supervised to semi-supervised to unsupervised to overnights. Eventually, a trial home visit commenced on September 11, 2010. At the time the trial home visit commenced, J.B. was in therapy and Mother was still participating in case management and finishing substance abuse treatment.

14. After the trial home visit commenced, Mother stopped ensuring that J.B. attend therapy. Thereafter, service providers began reporting that Mother seemed reluctant to allow home visits or to participate in case management. During one home visit, it was discovered that an unapproved male was hiding upstairs in Mother's bedroom. The male was subsequently identified as L.H. who has a history with child protective services. Mr. H. confirmed involvement in a CHINS case regarding a broken bone of an infant or young child. Shortly after this incident, Mother contacted DCS on November 19, 2010 reporting that she was overwhelmed with the children's behaviors. Mother was also struggling financially. Mother blamed DCS rules for background checks for hampering her ability to seek support from friends and family who historically "took the children off [her] hands for a few days" when she needed time to herself. More intensive services were offered to Mother to preserve the trial home visit. However, Mother refused to take advantage of the resources provided or otherwise available. Mother reported it was better for the children not to be with her and expressed a plan to join the military. The children were eventually removed from Mother's care for the second time on November 24, 2010 when Mother contacted DCS stating she felt that she could possibly harm the children.

15. Since the trial home visit ceased, Mother declined offers for additional case management and has not re-initiated services for therapy. An order was entered in January 2010 [sic] to cease visitation. Until then, efforts to schedule visits between the children and Mother were made but Mother declined. Mother stated she did not want visits because, at that point, Mother did not want the children returned to her care. Mother stated she wanted the children to have a better life and it would be too hard for her to see the children. Mother wanted the children to be adopted by an aunt in Florida but Mother declined to attend a family team meeting. Mother changed her mind about reunification at the initial hearing on the petition to terminate parental rights. Because Mother had declined visitation before, a single therapeutic visit was

scheduled at the end of January 2011 to obtain a recommendation from the children's therapist regarding further visits. Attempts to locate Mother with the therapist's recommendation were unsuccessful when Mother's phone numbers were disconnected. Mother did not contact DCS again until March 3, 2011. Mother is not currently participating in any services and reports she is spending a lot of time with family in Chicago and attending church.

16. The previously appointed CASA was not present at the termination proceeding. J.B. and D.G. have attended play therapy. The children's therapist noted that J.B. had difficulty adjusting to the foster home and displayed destructive behaviors and aggressiveness toward her sisters. D.G. was more compliant in the foster home but appeared to attach to people very quickly struggling with separation anxiety. The children have no special needs otherwise. The children have a close attachment to Mother. After cessation of the trial home visit, J.B. again did not adjust well to foster care. The impact on the children when the trial home visit ceased was traumatic, especially for J.B. If Mother had maintained regular contact with the children after the trial home visit ceased, the impact on the children might have been lessened. If Mother again vanishes from the children's lives, it will be extremely difficult on the children. The current plan for the children is adoption.

17. Although the parents love the children, none have the current ability to meet the children's needs. It is not safe for the children to be in the care of Mother or Fathers at this time. Mother's history of instability continues. The Fathers' histories of instability continue[] as well. 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 children. Mother made progress in her life so long as the children were not in her care. Once the children were returned to her care, Mother was unable to sustain progress in order to provide a safe and stable environment for the children.

CONCLUSIONS OF LAW

1. There is a reasonable probability that the conditions that resulted in the removal of the children from the parents' care or the reasons for the continued placement outside the home will not be remedied. No parent has yet to demonstrate the ability or willingness to make lasting changes from past behaviors. There is no reasonable probability that the parents will be able to maintain stability in order to care and provide adequately for the children.

> 2. Continuation of the parent-child relationships poses a threat to the well-being of the children. The children need permanency and stability in their lives now. The children need parents with whom they can form a permanent and lasting bond to provide for their emotional and psychological as well as [] physical well-being. The children's well-being would be threatened by keeping them in parent-child relationships with parents whose own choices and actions have made them unable to meet the needs of the children.
>
> 3. DCS has a satisfactory plan of adoption for the care and treatment of the children following termination of parental rights. The children can be adopted and there is reason to believe an appropriate permanent home has [been] or can be found for the children as a sibling group.
>
> 4. For the foregoing reasons, it is in the best interests of J.B., D.G., and C.W. that the parental rights of Mother and Mr. B., Mr. A., and Mr. W., Fathers, be terminated. Further efforts to reunify would have continued negative effects on the children.

Appellant's App. at 32-37. Mother now appeals.

Discussion and Decision

"The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children." *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). A parent's interest in the care, custody, and control of her children is perhaps the oldest fundamental liberty interest. *Id*. "Indeed, the parent-child relationship is one of the most valued relationships in our culture." *Id*. (citation and quotation marks omitted). Parental interests are not absolute, however, and must be subordinated to the children's interests when determining the proper disposition of a petition to terminate parental rights. *Id*. Therefore, parental rights may be terminated when the parent is unable or unwilling to meet her parental responsibilities. *Id*.

To involuntarily terminate a parent-child relationship, DCS must allege and prove

(A) that one (1) of the following is true:

> (i) The child has been removed from the parent for at least six (6) months under a dispositional decree.
>
> …

(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.
>
> …

(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) (inapplicable provisions omitted). DCS must prove these elements by clear and convincing evidence. Ind. Code § 31-37-14-2. "Clear and convincing evidence need not show that the custody by the parent is wholly inadequate for the child's survival. Instead, it is sufficient to show by clear and convincing evidence that the child's emotional and physical development would be threatened by the parent's custody." *In re A.B.*, 924 N.E.2d 666, 670 (Ind. Ct. App. 2010) (citation omitted).

In reviewing termination proceedings, we neither reweigh evidence nor assess witness credibility. *In re J.H.*, 911 N.E.2d 69, 73 (Ind. Ct. App. 2009), *trans. denied*. We consider only the evidence that supports the trial court's decision and the reasonable inferences drawn therefrom. *Id*. Typically, where the trial court enters findings of fact and conclusions

thereon, our standard of review is two-tiered: we first determine whether the evidence supports the findings and then determine whether the findings support the conclusions. *Id*. In deference to the trial court's unique position to assess the evidence, we set aside its findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id*. "A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it." *Id*. A judgment is clearly erroneous only if the legal conclusions drawn by the trial court are not supported by its findings of fact or the conclusions do not support the judgment. *Id*.

Mother does not contest the accuracy of the trial court's factual findings. Therefore, we need only determine whether the findings support the conclusions. Mother challenges only two conclusions, the first of which is that there is a reasonable probability that the conditions that resulted in the children's removal will not be remedied, as per Indiana Code Section 31-35-2-4(b)(2)(B)(i). We point out, as we have numerous times in the past, that Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, and thus DCS was required to establish only one of the requirements of subparagraph (B). *See, e.g.*, *In re I.A.*, 903 N.E.2d 146, 153 (Ind. Ct. App. 2009). Because Mother does not challenge the trial court's conclusion that continuation of the parent-child relationships poses a threat to the well-being of the children, as per Indiana Code Section 31-35-2-4(b)(2)(B)(ii), we need not consider this argument further.

Mother also challenges the trial court's conclusion that termination of her parental rights is in the best interests of the children. "A determination of the best interests of the

children should not be based merely on the factors identified by the DCS, but instead should be based on the totality of the circumstances." *Lang v. Starke Cnty. Office of Family & Children*, 861 N.E.2d 366, 373 (Ind. Ct. App. 2007), *trans. denied*. In making this determination, the trial court must subordinate the interests of the parent to those of the children involved. *In re A.K.*, 924 N.E.2d 212, 224 (Ind. Ct. App. 2010), *trans. dismissed*. "A parent's historical inability to provide a suitable environment along with the parent's current inability to do the same supports a finding that termination of parental rights is in the best interests of the children." *Lang*, 861 N.E.2d at 373. "Additionally, a child's need for permanency is an important consideration in determining the best interests of a child, and the testimony of the service providers may support a finding that termination is in the child's best interests." *A.K.*, 924 N.E.2d at 224.

Here, DCS case manager Tracy Williams opined that it was not in the children's best interests to "continue efforts at reunification" with Mother. Tr. at 160-61. Mother has a history of substance abuse, criminal activity, financial and occupational instability, and destructive relationships with men. Mother was initially reluctant to participate in services and gradually achieved a limited measure of success, but ultimately she was unable to cope with the stresses of raising three young children despite the intensive involvement of DCS. Based on the totality of the circumstances, as documented by the trial court's extensive and undisputed factual findings, and based on the children's need for permanency, we cannot conclude that the trial court's determination regarding the children's best interests is clearly erroneous. Therefore, we affirm.

Affirmed.

MAY, J., and BROWN, J., concur.