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ATTORNEY FOR APPELLANT:

WILLIAM BYER, JR.
Byer & Byer
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

ASHLEY HOPPER
Indiana Department of Child Services
Madison County Local Office
Anderson, Indiana

ROBERT J. HENKE
DCS Central Administration
Indianapolis, Indiana

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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF MINOR CHILDREN, H.W. AND H.S., AND THEIR MOTHER, T.S.	)	
T.S.	)	
Appellant-Respondent,	)	
vs.	)	No. 48A02-1105-JT-470
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable G. George Pancol, Judge
The Honorable Jack L. Brinkman, Juvenile Referee
Cause Nos. 48D02-1010-JT-387, 48D02-1010-JT-388

December 20, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Following judgment by the juvenile court terminating the parental rights of Appellant-Respondent T.S. ("Mother") to her minor children H.W. and H.S., Mother appeals, claiming there is insufficient evidence to support the judgment. We affirm.

FACTS AND PROCEDURAL HISTORY

Mother is the biological mother of H.W., born September 30, 1994; and H.S., born May 3, 2005.[1] At the time of the termination proceedings leading to this appeal, H.W. was sixteen years old and had a child of her own, and H.S. was five.

On approximately August 26, 2008, Mother was arrested for driving while intoxicated. H.S., who was in Mother's vehicle at the time, was removed from her care. That day, authorities filed a petition alleging H.S. to be a child in need of services, which Mother admitted. In a September 25, 2008 dispositional order, the juvenile court made H.S. a ward of the Department of Child Services ("DCS"), continued her placement in foster care, and ordered Mother to comply with various services, including mental health and substance abuse evaluation and treatment, unsupervised visitation with H.S., and drug screens. Mother was also required to pay child support, which she did not pay. Mother ultimately was convicted of two driving offenses arising out of the August 2008 incident, including operating a vehicle as a habitual traffic offender, as well as neglect of a dependent.

On February 24, 2009, DCS alleged H.W., who had been in Mother's friend's care, to

[1] The children's fathers' parental rights are not at issue in this appeal.

be a CHINS, which Mother admitted. At that point Mother was incarcerated, and her friend could no longer care for H.W. H.W. was pregnant at the time. In a March 26, 2009 dispositional order, the juvenile court awarded wardship of H.W. to DCS, continued H.W.'s placement in foster care, and ordered Mother to comply with services, including mental health and substance abuse evaluation and treatment, supervised visitation with H.W., and drug screens.

Mother participated in services until November 2009, when H.S. and H.W. were returned home for a trial home visit. During the trial home visit, Mother participated in home-based services as well as substance abuse evaluation and treatment and mental health services. Mother's participation in some of those services, including the substance abuse services recommended by Crestview, was sporadic, and she did not participate in the Crestview services at all in February 2010. Mother's participation in family counseling and H.S.'s therapy sessions was similarly sporadic, and while Mother complied with mental health services by submitting to a mental health evaluation, she refused to take recommended psychotropic medications.

On March 2, 2010, Mother was arrested and incarcerated again on numerous charges, including operating a vehicle as a habitual traffic violator, at which point H.S. and H.W. were returned to foster care. Crestview discharged Mother due to her incarceration, and on October 6, 2010, DCS filed petitions to terminate her parental rights to H.S. and H.W.

As of the March 29, 2011 termination hearing, Mother had been incarcerated three times since August of 2008. She was incarcerated at the time of the hearing, and her release

date was undetermined. Mother had not visited H.S. and H.W. since her latest incarceration.

H.W. and H.S.'s foster parents, who have cared for them both since March 2, 2010, plan to adopt them. H.W. and H.S. are bonded to their foster parents. According to therapist and former case manager Rebecca Reed, H.W., who was diagnosed in 2009 with adjustment disorder and depression, has shown considerable progress in her communication and coping skills. H.W. testified at the hearing that she did not wish to return to Mother's care or to expose her own child to Mother's unhealthy home environment of "screaming, yelling, throwing things, [and] drugs[.]" Tr. p. 53. H.W. maintained, however, that she would welcome visits with Mother upon Mother's release from incarceration and hoped she and Mother would continue to have a relationship, so long as it was on her own terms.

H.S. has also made considerable progress since she left Mother's care. According to therapist Melissa Boyd-Woodard, H.S., who was diagnosed in June 2010 with posttraumatic stress disorder, has had many fewer nightmares and decreased anxiety upon leaving Mother's care. The anxiety H.S. does exhibit is often associated with a wish for permanency and the prospect of returning to Mother's care. According to H.S.'s kindergarten teacher Rebecca Foley, H.S. shows a greatly improved aptitude for the alphabet and other kindergarten-level skills, which she acquired after leaving Mother's care. Apparently, when H.S. had enrolled in kindergarten approximately five months after leaving Mother's care, she qualified as having some of the lowest test scores in the school district. As of March 2011, H.S. was on track to meet her educational benchmarks.

All experts, including H.W.'s therapist, H.S.'s therapist, the family case manager, and

the court-appointed special advocate ("CASA") recommended termination of Mother's parental rights to H.W. and H.S. Following the termination hearing, on April 7, 2011, the juvenile court ordered that Mother's parental rights be terminated. Mother subsequently filed a motion to correct errors on the grounds that she was no longer incarcerated, which the trial court denied. This appeal follows.

DISCUSSION AND DECISION

I. Standard of Review and Applicable Law

Mother challenges the sufficiency of the evidence to support termination of her parental rights to H.W. and H.S. 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 County Office of Family and 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 of the fundamental liberty interests.'" *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). Indeed the parent-child relationship is "one of the most valued relationships in our culture." *Id.* (quoting *Neal v. DeKalb County Div. of Family & Children*, 796 N.E.2d 280, 285 (Ind. 2003) (internal quotation omitted)). Of course, parental interests are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. *Id.* Thus, "'[p]arental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities.'" *Id.* (quoting *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004)).

When reviewing the termination of parental rights, we do not reweigh the evidence or

judge witness credibility. *Id.* We consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* Here, the trial court entered findings of fact and conclusions thereon in granting DCS's petitions. When reviewing findings of fact and conclusions of law entered in a case involving termination of parental rights, we apply a two-tiered standard of review. *Id.* First we determine whether the evidence supports the findings, and second we determine whether the findings support the judgment. *Id*. We will set aside the juvenile court's judgment only if it is clearly erroneous. *Id.* A judgment is clearly erroneous "'if the findings do not support the [juvenile] court's conclusions or the conclusions do not support the judgment.'" *Id.* (quoting *In re R.J.*, 829 N.E.2d 1032, 1035 (Ind. Ct. App. 2005)).

Indiana Code section 31-35-2-4(b)(2) (2010) requires that a petition to terminate a parent-child relationship involving a child in need of services must allege as follows:

> (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.
>
> (ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made.
>
> (iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;
>
> (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.

DCS bears the burden of proving these allegations by clear and convincing evidence. *Bester*, 839 N.E.2d at 148. Significantly, clear and convincing evidence need not reveal that "'the continued custody of the parents is wholly inadequate for the child's very survival.'" *Id.* (quoting *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1233 (Ind. 1992). Rather, it is sufficient to show by clear and convincing evidence that "'the child's emotional and physical development are threatened'" by the respondent parent's custody. *Id.* (quoting *Egly*, 592 N.E.2d at 1234).

II. Analysis

Upon terminating Mother's parental rights, the juvenile court found that, given her incarceration and lack of demonstrated success with services, there was a reasonable probability that the conditions resulting in the children's removal would not be remedied. *See* Ind. Code § 31-35-2-4(b)(2)(B)(i). The juvenile court further found that, given the children's therapists' recommendations for termination, together with the children's own wishes, continuation of Mother's relationship with the children posed a threat to their well-being. *See* Ind. Code § 31-35-2-4(b)(2)(B)(ii). In challenging the sufficiency of the evidence to support the termination of her parental rights, Mother argues that she participated in services and that the record fails to establish "total neglect or unwillingness to participate in those services at some level." Appellant's Br. p. 18. Mother also argues that her sporadic

attendance was attributable to the fact that she was caring for her grandson and that her current incarceration occurred because she had to drive her vehicle to obtain medication for H.W.

Contrary to Mother's suggestion, DCS is not required to show a parent's utter disregard for services to prove that termination is warranted. A juvenile court must "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied.* 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 are relevant to this determination. *A.F. v. Marion County Office of Family and Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied.* Significantly, DCS is not required to provide evidence ruling out all possibilities of change; instead, it must only establish a reasonable probability that change would not occur. *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). "[I]t is not just the basis for the initial removal of the child that may be considered for purposes of determining whether a parent's rights should be terminated, but also those bases resulting in the continued placement outside of the home." *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*. Where there are only temporary improvements and the 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).

While Mother did participate in services and was successful at certain points, her efforts did not make her a law-abiding citizen, keep her out of incarceration, or show she had made long-term gains. The record reflects that Mother was incarcerated three times since August of 2008 and that she complied with services either sporadically or, ultimately with respect to Crestview, not at all. Mother failed to take recommended medications to assist her with her mental health difficulties, and she showed half-hearted interest in family counseling and H.S.'s therapy. This is so even after H.W. and H.S. were returned to her home, when compliance with services would have been particularly necessary and their usefulness of obvious importance. The juvenile court was entitled to conclude from these patterns of behavior that Mother had an overall disregard for her parental responsibilities which, in all probability, (1) would not change and (2) threatened her children's well-being.[2]

The fact that Mother was freed from jail shortly after the termination proceedings does not change this analysis. Indeed, even when H.W. and H.S. were placed back into her care Mother once again became noncompliant and ended up in jail. To the extent Mother claims that her noncompliance was due to efforts to care for her grandson or to secure medication for H.W., the juvenile court was within its fact-finding discretion to disbelieve her. At the very least, the court was not required to endorse these fact-specific excuses as broad justification for a multi-year pattern of nonparticipation. Mother's challenge based upon her

[2] Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, so termination is permissible on three separate grounds. DCS argues that Mother's challenge is only to subsection 31-35-2-4(b)(2)(B)(i), so her termination challenge is waived because the trial court found section 31-35-2-4(b)(2)(B)(ii) was also satisfied. *See In re L.V.N.*, 799 N.E.2d 63, 69 (Ind. Ct. App. 2003) (requiring juvenile court to satisfy only one of the requirements of subparagraph (B) to substantiate termination). While Mother's argument is largely focused on the contents of subsection 31-35-2-4(b)(2)(B)(i), we will address her sufficiency challenge on its merits.

claimed compliance with services is therefore unavailing. Having rejected Mother's arguments, we similarly reject their ability to undermine the juvenile court's conclusions that termination is in the best interests of the children and that the current pre-adoptive foster care placement is a satisfactory care and treatment plan.[3] *See* Ind. Code §§ 31-35-2-4(b)(2)(C) and (D).

The judgment of the juvenile court is affirmed.

KIRSCH, J., and BARNES, J., concur.

[3] In her Appellant's brief, Mother makes no mention of the children's best interests or the adequacy of their care and treatment plan. *See* Ind. Code §§ 31-35-2-4(b)(2)(C) and (D) (2010). DCS claims that these arguments are therefore waived, which Mother disputes in her reply brief. To the extent these arguments are not waived, we have rejected their premise, namely that Mother has somehow demonstrated an ability to adequately care for her children. Any additional challenge based on this faulty premise is therefore unavailing.