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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF PARENT-CHILD RELATIONSHIP OF M.A. (Minor Child),	)	
C.B. (Mother),	)	
Appellant-Respondent,	)	
vs.	)	No. 20A05-0905-JV-247
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
The Honorable Deborah A. Domine, Juvenile Magistrate
Cause No. 20C01-0811-JT-114

December 21, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Crystal B. ("Mother") appeals the involuntary termination of her parental rights to her son, M.A., claiming the Indiana Department of Child Services, Elkhart County ("ECDCS"), failed to establish that M.A. had been removed from her care pursuant to a dispositional decree for at least six months prior to the filing of the involuntary termination petition, as is required by Indiana Code section 31-35-2-4(b)(2)(A). We affirm.

Facts and Procedural History

Mother is the natural mother of M.A., born on March 18, 2008.[1] The facts most favorable to the trial court's judgment reveal that on March 20, 2008, the ECDCS filed an emergency petition for protective custody of M.A. after discovering M.A. had been "born with a positive urine screen for cocaine." Tr. p. 65. The trial court granted the ECDCS's request for immediate protective custody of M.A. and upon his release from the hospital, M.A. was placed in licensed foster care.[2]

Several days later, the ECDCS filed a petition alleging M.A. was a child in need of services ("CHINS"). An initial hearing on the CHINS petition was held on March 31, 2008. Mother, who was represented by counsel, had notice of the hearing but failed to

[1] The parental rights of M.A.'s biological father, Rodney A. ("Father"), were terminated on December 18, 2008. Father does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother's appeal.

[2] This was not Mother's first encounter with the ECDCS. M.A. has an older half-sibling who was removed from Mother's care several years earlier due to Mother's use of cocaine. Mother's parental rights to M.A.'s sibling were involuntarily terminated in May 2004.

appear. At the conclusion of the evidentiary hearing, the trial court adjudicated M.A. a CHINS and set the matter for disposition.

On April 24, 2008, a dispositional hearing was held, and the trial court issued its dispositional order the same day. The trial court's dispositional order provided as follows: "Wardship and Case Manager Supervision is assigned to the [ECDCS]." Appellant's App. p. 44. The trial court's dispositional order further specified, "[T]he [ECDCS] is granted continued responsibility for the placement and care of [M.A]. [M.A.] shall remain placed in foster care, with a move to less restrictive placement at the discretion of the [ECDCS] case manager and CASA." *Id.* In addition, the trial court ordered Mother to participate in and successfully complete a variety of services, including drug therapy, random drug screening, and supervised visitation with M.A., in order to achieve reunification with her son. Mother was also ordered to pay child support for M.A.

On November 7, 2008, the ECDCS filed a petition requesting the involuntary termination of Mother's parental rights. Following an evidentiary hearing on December 18, 2008, the trial court entered a default judgment terminating Mother's parental rights to M.A. On December 30, 2008, Mother, by counsel, requested that the trial court's default judgment be set aside and that a new evidentiary hearing be scheduled. The trial court granted Mother's motion to set aside on January 5, 2009.

A new evidentiary hearing on the termination petition was eventually held on April 3, 2009. During this hearing, the ECDCS presented evidence that Mother's participation in services throughout the CHINS proceedings had been sporadic at best and

was ultimately unsuccessful in achieving the court's dispositional goals. Although Mother had initially participated in visitation with M.A. and had acted appropriately during these visits, she often arrived late, cancelled appointments, and at one point in time refused to visit with M.A. for approximately two months. Mother's compliance with bi-weekly drug screens was described as "[v]ery intermittent" as she oftentimes refused to participate in the requested drug screens, including a request made during the week immediately preceding the termination hearing. *Id.* at 80. Mother also tested positive for cocaine on multiple occasions. In addition, at the time of the second termination hearing, Mother was unemployed, had failed to successfully complete the recommended drug therapy program, and had paid little or no child support for M.A. throughout the duration of the underlying proceedings.

Following the second termination hearing, the trial court issued a new judgment terminating Mother's parental rights to M.A. Mother now appeals.

Discussion and Decision

This court has long had a highly deferential standard of review in cases concerning the termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id*. Moreover, in deference to the trial 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. *In re L.S.*, 717 N.E.2d 204, 208

(Ind. Ct. App. 1999), *trans. denied*. Thus, if the evidence and inferences support the trial court's decision, we must affirm. *Id*.

In the present case, the trial court's judgment contained specific findings of primary facts and conclusions thereon. When a trial court's judgment contains specific findings and conclusions, we apply a two-tiered standard of review. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine 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).

"The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. A trial court must subordinate the interests of the parents to those of the child, however, when evaluating the circumstances surrounding a termination. *K.S.*, 750 N.E.2d at 837. Thus, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

In order to terminate a parent-child relationship, the State is required to allege, among other things, that:

> (A) one (1) of the following exists:
> (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 . . . .; or
(iii) the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(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.

Ind. Code § 31-35-2-4(b)(2). The State's burden of proof for establishing each of these allegations in termination of parental rights cases "is one of 'clear and convincing evidence.'" *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code § 31-37-14-2 (2008)). If the court finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship. Ind. Code § 31-35-2-8 (2008).

Here, Mother does not challenge the sufficiency of the evidence supporting the trial court's findings and conclusions pertaining to the statutory prerequisites found in subsections 2(B), (C), and (D) of Indiana's termination statute cited above. *See* Ind. Code § 31-35-2-4(b)(2)(B)-(D). Rather, Mother claims the ECDCS failed to satisfy the procedural prerequisites found at Indiana Code section 31-35-2-4(b)(2)(A). We pause to observe that subsection 2(A) is written in the disjunctive. The trial court was therefore only required to find that one of the three requirements of subsection 2(A) was met

before issuing an order to terminate Mother's parental rights. *See, e.g.*, *In re L.V.N.*, 799 N.E.2d 63, 69 (Ind. Ct. App. 2003) (explaining that statute written in disjunctive requires court to find only one of enumerated requirements has been satisfied). We also acknowledge that there is no finding by the trial court that reasonable efforts for family preservation or reunification were not required pursuant to Indiana Code section 31-34-21-5.6, and the ECDCS concedes M.A. had not been removed from Mother's care for at least fifteen of the most recent twenty-two months at the time of the filing of the termination petition. Thus, we must determine whether the evidence supports the trial court's determination that M.A. had been removed from Mother's care "under a dispositional decree for just over eleven (11) months." Appellant's App. p. 11.

Mother asserts there is no evidence that M.A. was removed from her care pursuant to a dispositional order. Specifically, Mother points out that M.A. was removed from her care "pursuant to an *emergency custody order* approximately [one] month before the [trial] court entered its dispositional orders." Appellant's Br. p. 12 (emphasis added). Mother therefore contends that the procedural prerequisite requiring the removal of a child for at least six months pursuant to a *dispositional decree* before the filing of an involuntary termination petition was never satisfied, and thus the trial court committed reversible error in terminating her parental rights to M.A.

This Court has previously stated that "[a]lthough the legislature has not expressly provided a definition of the term 'removed,' the terms of 'removed' and 'removal' are used repeatedly throughout [Article 35] in conjunction with the notions of 'detention,' . . . and the child being 'taken into custody' to protect the child and ensure his safety."

Tipton v. Marion County Dep't of Pub. Welfare, 629 N.E.2d 1262, 1265 (Ind. Ct. App. 1994). We have also explained that "[f]or purposes of the element of the involuntary termination statute requiring a child to have been 'removed from the parent for at least six months under a dispositional decree' before termination may occur, [*see*] I.C. § 31-35-2-4(b)(2)(A)(1), such a dispositional decree is one that authorizes an out-of-home placement." *A.P. v. Porter County Office of Family & Children*, 734 N.E.2d 1107, 1116 (Ind. Ct. App. 2000) (quoting *Tipton*, 629 N.E.2d at 1265-66), *trans. denied*.

The record discloses that within two days of his birth, M.A. was ordered removed from Mother's care and taken into protective custody by the ECDCS. Upon his medical release from the hospital, M.A. was placed in licensed foster care and has never been returned to Mother's custody. On April 24, 2008, the trial court held a dispositional hearing and thereafter issued an order specifically granting "Wardship and Case Manager Supervision" to the ECDCS. Appellant's App. p. 44. The trial court's dispositional order further granted the ECDCS "continued responsibility for the placement and care of [M.A.]" and directed that M.A. "shall remain in foster care" until the ECDCS determined that a less restrictive placement was appropriate. *Id.* Thus, the trial court's dispositional order clearly authorized an out-of-home placement for M.A. The ECDCS thereafter filed its petition requesting the involuntary termination of Mother's parental rights to M.A. on November 7, 2008, approximately six months and ten days following the April 2008 dispositional order. By the time of the second termination hearing, M.A. had been removed from Mother's care and residing in licensed foster care, pursuant to the trial court's April 2008 dispositional order, for approximately eleven consecutive months.

Based on the foregoing, we conclude that the procedural prerequisite set forth in Indiana Code section 31-34-2-4(b)(2)(A) was satisfied. M.A. was formally removed from Mother's care pursuant to the April 2008 dispositional order and thus had been removed from Mother's care for at least six months at the time the ECDCS filed its involuntary termination petition in November 2008. The trial court's determination that M.A. had been removed under a dispositional decree for approximately eleven months at the time of the second termination hearing is therefore supported by clear and convincing evidence. To hold otherwise and conclude that M.A. was not removed from Mother's care by a dispositional decree merely because the trial court did not expressly state it was "removing" M.A. from Mother's custody in its dispositional order would be illogical and unrealistic under these circumstances.

The language contained in the trial court's dispositional order, including the provisions granting the ECDCS wardship of M.A. and detailing requisite services for Mother designed to help her overcome her addiction to cocaine and improve her ability to parent M.A., makes clear its purpose was to ensure M.A. remained removed from Mother's care until such time as Mother could demonstrate she was willing and able to provide a safe and stable home environment for M.A. *See Robinson v. Madison County Dep't of Pub. Welfare*, 538 N.E.2d 1385, 1387 (Ind. 1989) (stating that to find children were not removed from father's care by a dispositional decree merely because trial court failed to expressly say so in its order was unrealistic where children were already physically removed from father's custody and nature of dispositional hearing and order indicated children were to remain outside father's care). This court will 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." *In re A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Affirmed.[3]

RILEY, J., and CRONE, J., concur.

[3] In light of our determination that clear and convincing evidence supports the trial court's determination that M.A. had been removed from Mother's care under a dispositional decree for at least six months when the ECDCS filed its termination petition, Mother's additional assertion that she received ineffective assistance of trial counsel because her attorney conceded this point at the conclusion of the termination hearing is unavailing. The statutory timeframe set forth in Indiana Code section 31-35-2-4(b)(2)(A)(i) was adequately met under the particular facts of this case. We do not agree with Mother that her counsel's recognition of this fact at the conclusion of the termination hearing caused Mother to receive a fundamentally unfair trial. *See, e.g., In re A.P.*, 882 N.E.2d 799, 806 (Ind. Ct. App. 2008) (explaining that to prevail on ineffective assistance of counsel claim in termination of parental rights proceeding parent must show he or she did not receive a fundamentally fair trial).