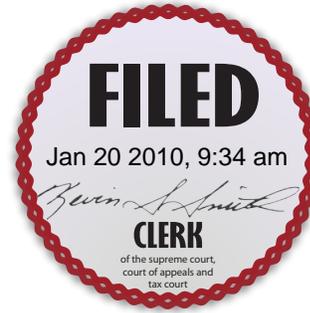


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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP OF:)
T.J., D.K., J.J., and L.J., AND THEIR MOTHER,)
T.J.,)
T.J.,)
Appellant-Respondent,)
vs.)
INDIANA DEPARTMENT OF CHILD)
SERVICES and LAKE COUNTY COURT)
APPOINTED SPECIAL ADVOCATE,)
Appellees-Petitioners.)

No. 45A03-0907-JV-333

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Judge
Katherine J. Garza, Referee
Cause Nos. 45D06-0809-JT-423
45D06-0809-JT-420
45D06-0809-JT-421
45D06-0809-JT-422

January 20, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Respondent Toya J. (“Mother”) appeals the involuntary termination of her parental rights to her children T.J., D.K., J.J., and L.J. On appeal, Mother claims there is insufficient evidence supporting the juvenile court’s judgment. We affirm.

FACTS AND PROCEDURAL HISTORY

Mother is the biological mother of T.J., born on July 1, 1998, D.K., born on January 30, 2003, J.J., born on July 29, 2004, and L.J., born on January 20, 2006.¹ On December 1, 2005, the Lake County office of the Indiana Department of Child Services (“LCDCS”) became involved with Mother after receiving a referral that Mother was frequenting the local hospital emergency room to obtain non-emergency medical services for her children for such things as headaches, colds, and minor falls. LCDCS caseworker Veronica Martinez initiated an investigation by visiting the family home and sending letters, but she was unsuccessful in reaching Mother. During the course of her investigation, however, Martinez was able to speak with then seven-year-old T.J. T.J. informed Martinez that her mother “cries a lot” and “locks herself in the bathroom.” Tr. p. 27.

On December 12, 2005, Martinez received a call from personnel at St. Catherine’s Hospital informing her that then two-year-old D.K. had been hospitalized for a broken tibia and that the hospital staff had some concerns regarding Mother’s mental health.

¹ The parental rights of D.K.’s biological father, Dwayne K., and the remaining children’s alleged biological father, Larry R., were involuntarily terminated by the juvenile court in its June 2009 termination order. Neither father participates in this appeal.

Martinez located Mother at the hospital and learned that Mother had waited six days before seeking medical treatment for D.K. following his injury. Mother, who has a history of mental illness dating back to her childhood and receives Social Security benefits, informed Martinez that she relied on her brother for help obtaining “the things that she needs.” *Id.* at 30. Mother also indicated that there had been some domestic violence in the past with one of the children’s fathers, and that the father continued to visit the family home on occasion. *Id.*

Based on this investigation and her overall impression that Mother was “overwhelmed” with caring for the children, Martinez offered Mother voluntary home-based services through Higher Dimensions. *Id.* These services were to include parenting classes, a mental health evaluation, and counseling. Mother agreed to participate in these services.

In early April 2006, Martinez was contacted by the Gary Police Department and informed that officers had been called to Mother’s home approximately two weeks earlier because the children had been left alone while Mother went across the street to make a phone call. Martinez also received a telephone call from Higher Dimensions caseworker Glendora Hawkins. Hawkins informed Martinez that Mother’s live-in boyfriend was interfering with her therapy services. Martinez thereafter contacted Mother by visiting the family home. While there, Mother told Martinez that she was afraid of her boyfriend and felt he was “controlling her.” *Id.* at 34. Mother also stated that she had repeatedly asked her boyfriend to move out, but that he had refused to leave.

Based on these incidents and Mother's failure to benefit from home-based services, the children were removed from Mother's custody on April 12, 2006, and placed at the Carmelite Home. The juvenile court issued a detention order the following day authorizing the children's removal as necessary to protect their physical or mental condition, which the court found to be "seriously impaired or endangered" due to Mother's "mental disability," inability to "properly care for her children without supervision," failure to benefit from home-based services since December 2005, "poor decisions" relating to finances and choice of friends, and lack of support from the children's biological fathers. Ex. Vol. 1, Pet. Ex. 4.

The LCDCS thereafter filed separate petitions under separate cause numbers alleging each child was a child in need of services ("CHINS"). An initial hearing on all four CHINS petitions was held on May 26, 2006. During the hearing, Mother admitted to the allegations of the petitions, and the juvenile court adjudicated T.J., D.K., J.J., and L.J. CHINS. The court proceeded to disposition the same day, formally removed all four children from Mother's care, and directed Mother to fully participate in the services set forth in the parent participation plan in order to achieve reunification with the children.

Initially, Mother cooperated with service providers by participating in visits with the children and participating in a psychological evaluation. Mother's compliance, however, soon began to wane. Mother began missing and/or rescheduling parenting classes and visits with the children. She also was unable to benefit from homemaker services and failed to incorporate the parenting techniques taught to her when interacting

with her children during visits. In addition, Mother refused to consistently take her depression medication, Paxil, as prescribed by her general practitioner.

In April 2007, Mother was referred to Human Beginnings, Inc., for mental health diagnostic and evaluation services. Mother completed the initial intake assessment on May 18, 2007, with therapist Cassandra Owens. As a result of this assessment, including Mother's self-reported history of suicidal ideation, psychiatric treatment, and in-patient hospitalizations, Owens recommended that Mother participate in individual and family counseling to assist her with reunification issues. Owens also recommended that Mother undergo a follow-up psychiatric evaluation.

Mother underwent a psychiatric evaluation on May 24, 2007, with Dr. Margules. Based on this evaluation and Mother's initial assessment, Dr. Margules diagnosed Mother with Schizophrenia, undifferentiated type, and recommended additional psychiatric testing in order to further diagnose Mother and determine any appropriate medications. Mother failed to participate in the recommended follow-up psychiatric testing, and by June 2007 she was no longer meeting with any therapists or doctors from Human Beginnings, Inc.

On February 29, 2008, the juvenile court adopted a new permanency plan of termination of parental rights and adoption by the children's maternal uncle ("Uncle"). Uncle had participated in services such as family counseling and visitation throughout the CHINS proceedings and was willing to adopt the children. The LCDCS continued to offer Mother services, but Mother persisted in being generally non-compliant with participating in services and taking her medication as prescribed, notwithstanding a brief

period of cooperation during which time Mother took her medication and resided with Uncle. In June 2008, the juvenile court ordered that the children be transitioned into Uncle's care and custody. The children have remained in Uncle's care and custody ever since that time.

A consolidated evidentiary hearing on the LCDCS's involuntary termination petitions was held on May 21, 2009.² Following the hearing, the juvenile court took the matters under advisement. On June 11, 2009, the court issued its judgment terminating Mother's parental rights to T.J., D.K., J.J., and L.J. This appeal ensued.

DISCUSSION AND DECISION

We begin our review by acknowledging that 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 juvenile 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*.

² Unfortunately, the LCDCS's involuntary termination petitions and other important documents such as the Chronological Case Summary, CHINS petitions, and Parent Participation Plan were not included in the record on appeal.

Here, in terminating Mother’s parental rights, the juvenile court entered specific findings of fact. When a juvenile court’s judgment contains specific findings of fact and conclusions thereon, 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). If the evidence and inferences support the juvenile court’s decision, we must affirm. *L.S.*, 717 N.E.2d at 208.

“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*. However, a juvenile court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *K.S.*, 750 N.E.2d at 837. Termination of a parent-child relationship is proper where a child’s emotional and physical development is threatened. *Id.* Although the right to raise one’s own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

“The State’s burden of proof 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) (citing

Ind. Code § 31-37-14-2). In addition, before an involuntary termination of parental rights can occur, the State is required to allege and prove, among other things, that:

- (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

Ind. Code § 31-35-2-4(b)(2)(B) (2007). Mother challenges the sufficiency of the evidence supporting the juvenile court’s findings as to subsection 2(B) of the termination statute cited above.

Initially, we observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. It therefore requires the juvenile court to find only one of the two requirements of subsection 2(B) have been established by clear and convincing evidence. *See L.S.*, 717 N.E.2d at 209. Although the trial court found both prongs of subsection 2(B) had been satisfied under the facts of this case, we need only consider whether clear and convincing evidence supports the juvenile court’s finding that there is a reasonable probability the conditions resulting in the children’s removal or continued placement outside the family home will not be remedied. *See* Ind. Code § 31-35-2-4(b)(2)(B)(i).

In making such a determination, a juvenile court must 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 J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. However, the court must also “evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child.” *Id.*

Pursuant to this rule, courts have properly considered 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. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. The juvenile court may also consider any services offered to the parent by the county department of child services, and the parent's response to those services, as evidence of whether conditions will be remedied. *Id.* Moreover, a county department of child services (here, the LCDCS) is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In determining there is a reasonable probability the conditions resulting in the children's removal and continued placement outside of Mother's care will not be remedied, the juvenile court specifically found that Mother has a learning disability and a "long history of mental illness" that includes hospitalization for psychiatric services and residential treatment. Appellant's App. p. ii. The court also found that, as recently as February 2008, Mother had failed to follow through with mental health treatment and was not taking her medication as prescribed. With regard to visitation, the juvenile court found Mother had failed to progress in her visitation with the children during the CHINS case and was no longer visiting with them "on any consistent basis." *Id.* Finally, the juvenile court acknowledged that Mother's caseworkers and therapists did not believe Mother could adequately care for the children on her own as of the time of the termination hearing and specifically found as follows:

All of the services offered and attempted have proved to be ineffective due to Mother's condition and circumstances. Reunification services were attempted for several years to no avail. Mother is incapable of providing proper supervision to parent her children. Mother is incapable of making appropriate decisions regarding her children. Mother is incapable of providing a stable, safe, structured, healthy home environment for her children. Mother has suffered from psychosis, schizophrenia, depression, and audio and visual hallucinations. Mother has not always been medication compliant which causes her to be depressed and unmotivated. After approximately three years of services, Mother is still unable to parent her children.

* * *

The children were removed in April of 2006 and have not been returned to parental care. The parents are not providing any emotional or financial support for the children. It is unlikely that [M]other will ever be in a position to properly care for her children. The children are placed with . . . the uncle and are bonded, stable, and happy.

Id. at iii. The juvenile court then granted the LCDCS's petition for involuntary termination of Mother's parental rights to all four children. A thorough review of the record leaves us convinced that clear and convincing evidence supports the juvenile court's findings set forth above, which in turn support the court's ultimate decision to terminate Mother's parental rights to T.J., D.K., J.J., and L.J.

The children were initially removed from Mother's care in 2006 due to her inability to properly care for and supervise the children without the assistance of others. This was due, in part, to Mother's untreated depression and other mental health issues. Testimony from various caseworkers and service providers makes clear that despite several years and a wealth of services available to her, by the time of the termination hearing in 2009, Mother remained incapable of caring for the children and of providing them with a safe and stable home environment without the help of others.

During the termination hearings, therapist Owens testified that Mother's psychiatric disorder could become "very severe" if left untreated, resulting in "impaired judgment." Tr. p. 52. Owens went on to explain that untreated Schizophrenia can cause a parent to having difficulty in making appropriate parenting decisions and creates "issues in terms of monitoring and supervision." *Id.* When asked if there would be "safety concerns for young children . . . in an environment where the parent is suffering from untreated schizophrenia," Owens replied, "Yes, because of the presence of hallucinations, visual and/or auditory and sometimes there could be a preoccupation with those hallucinations." *Id.* at 52-53.

LCDCS caseworkers Kimberly Wells, Illiana Iglesias, and Ebony Lee all testified during the termination hearing regarding Mother's failure to consistently cooperate with service providers or benefit from services throughout the duration of the underlying proceedings. When asked whether Mother was cooperative with services during the time Wells was assigned to Mother's case, Wells answered:

[Mother] was somewhat cooperative with the service[s], she was not really responsive to the homemaking services . . . so that's why it resulted in the [children's] removal because her home did not come up to the standards they needed to be. She . . . also missed several appointments for her . . . psychiatric [evaluation] with Edgewater. And with visitation, she . . . didn't appear to connect with her children. . . . [S]he would just sit and observe them. And when Carmelite would give her techniques on how to interact with her children, [Mother] would be non-responsive to that.

Id. at 58. Similarly, when asked whether Mother had made "adequate progress" with services during the time she worked on the case, Iglesias stated that Mother's progression with regard to visitation was "very slow" because after the first months, Mother "hit a

plateau where she was just comfortable with the services that she was receiving and she wasn't progressing." *Id.* at 68.

Iglesias also testified that Mother did not retain "any of the information given to her" during individual and family counseling sessions because Mother would cancel her appointments and then "forget the progress that she had made" in the previous class. *Id.* at 69. Thus, Iglesias explained, Mother's therapists would "have to go back and reiterate what they were working on" before. *Id.* Finally, Iglesias informed the court that Mother had told her she was not consistently taking her prescribed medication, Paxil, because Mother felt the medication "made her too emotional" and that "she didn't need it." *Id.* at 70.

Mother's current caseworker, Lee, testified that although Mother initially appeared very cooperative and motivated, Mother soon began to be non-compliant, her motivation declined, and she started missing scheduled visits with the children. Lee further explained that Mother's decline began to occur when Mother stopped taking her medications as prescribed. In recommending termination of Mother's parental rights, Lee confirmed that Mother was no longer receiving any visitation, therapy, or counseling services.

Home-based counselor Sherese Johnson confirmed Mother had a "long, ongoing problem" with taking her medication as prescribed. Johnson further indicated that when not on her medication, Mother appeared "odd" and "zombie like," was "really not attentive to the children," and said and did "inappropriate things." *Id.* at 96. When asked if, based on her experience with the case, she felt Mother could "adequately care for her

children without any help or intervention of others,” Johnson answered, “No, not on her own.” *Id.* at 98. Mother likewise admitted during the termination hearing that she could not take care of the children without “the right accurate guidance.” *Id.* at 116.

Based on the foregoing, we conclude that the LCDCS presented clear and convincing evidence to support the juvenile court’s finding that there is a reasonable probability the conditions leading to the children’s removal or continued placement outside Mother’s care will not be remedied. As previously stated, a juvenile court must judge a parent’s fitness to care for his or her child at the time of the termination hearing, taking into consideration the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. *D.D.*, 804 N.E.2d at 266. In the present case, the juvenile court had the responsibility of judging Mother’s credibility and of weighing her testimony of improved conditions against the abundant evidence demonstrating Mother’s past and current inability to provide her children with a consistently stable home environment, coupled with her unresolved mental health issues and habitual refusal to consistently take her medication as prescribed. It is clear from the language of the judgment that the juvenile court gave more weight to evidence of the latter, rather than the former, which it was permitted to do. *See Bergman v. Knox County Office of Family & Children*, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding trial court was permitted and in fact gave more weight to abundant evidence of mother’s pattern of conduct in neglecting her children during several years prior to termination hearing than to mother’s testimony she had changed her life to better accommodate her children’s needs). Mother’s arguments on appeal amount to an invitation to reweigh the

evidence, and this we may not do. *D.D.*, 804 N.E.2d at 264; *see also In re L.V.N.*, 799 N.E.2d 63, 68-71 (Ind. Ct. App. 2003) (concluding that mother's argument conditions had changed and she was now drug-free constituted impermissible invitation to reweigh evidence).

The judgment of the juvenile court is affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.