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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF J.H AND S.H, MINOR CHILDREN, AND THEIR MOTHER,	)	
MONIQUE HAYES	)	
Appellant-Respondent,	)	
vs.	)	No. 49A02-0701-JV-45
MARION COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner,	)	
and	)	
CHILD ADVOCATES, INC.,	)	
Co-Appellee (Guardian ad Litem).	)	

APPEAL FROM THE MARION SUPERIOR COURT, JUVENILE DIVISION
The Honorable Viola Taliaferro, Judge
Cause No. 49D09-0512-JT-048018

August 7, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Monique Hayes ("Hayes") appeals the termination of her parental rights to J.H. and S.H. Specifically, she contends that the Marion County Department of Child Services' ("MCDCS") plan for the care and treatment of her children—adoption by different grandmothers—is not satisfactory. Because the MCDCS proved by clear and convincing evidence that the children have bonded with their respective grandmothers and are thriving in that environment and that the grandmothers have agreed to maintain a sibling relationship between the children, the trial court's finding that the plan for the care and treatment of the children is satisfactory is not clearly erroneous. We therefore affirm the trial court.

Facts and Procedural History

Hayes is the mother of J.H., who was born on July 5, 2003, and S.H., who was born on February 12, 2005.[1] It appears that Michael Green ("Green") is the biological father of J.H., and Darod Wheeler ("Wheeler") is the biological father of S.H.[2] On February 14, 2005, when J.H. was one and a half years old and S.H. was two days old, the State filed a petition alleging that J.H. and S.H. were children in need of services

[1] Hayes has another child, D.H., who is not a part of these proceedings.

[2] It was first thought that Green was the father of both J.H. and S.H. However, it was later determined that Wheeler was the father of S.H. Green later signed a consent for his mother to adopt J.H. Neither Green nor Wheeler are part of these proceedings.

("CHINS"). The petition alleged that the children were CHINS because Hayes tested positive for marijuana and cocaine at S.H.'s birth and admitted to using marijuana and crack cocaine during her pregnancy. The MCDCS removed the children from Hayes' custody that day. At an initial hearing on the following day, Hayes admitted to the allegations contained in the petition, and the trial court found the children to be CHINS and ordered them to be wards of the MCDCS with authorization for placement with relatives. J.H. was placed with Green's mother, Harriet Briggs ("Briggs"), on or about February 19, 2005, and S.H. was placed with Hayes' mother, Vera Hayes ("Vera"), upon S.H.'s discharge from the hospital following her birth. Both children have remained in these placements ever since.

On December 13, 2005, the MCDCS filed a Petition for Involuntary Termination of the Parent-Child Relationship between Hayes and J.H. and S.H. At the trial, evidence was presented that J.H. and S.H. are bonded to their respective grandmothers and are thriving in those environments. The guardian ad litem as well as the family case manager recommended keeping J.H. and S.H. in their current placements. Following trial, the trial court entered findings of fact and conclusions of law on December 29, 2006, terminating the parent-child relationship between Hayes and J.H. and S.H. Specifically, the trial court found:

> 37. The plan that MCDCS has for [J.H.] is adoption by [Briggs]. The plan that MCDCS has for [S.H.] is adoption by Vera. MCDCS believes that adoption of [J.H.] by [Briggs] and [S.H.] by Vera . . . is a satisfactory plan for the care and treatment of the children. The children are receiving excellent care in their respective homes. Efforts are being made by the grandmothers to ensure that the children visit each other periodically and maintain sibling bonds.

Appellant's App. p. 18. As such, the court concluded: "The plan of the Marion County Department of Child Services for the care and treatment of the children if the parent-child relationship is terminated is adoption and that plan is acceptable and satisfactory." *Id.* at 20. Hayes now appeals.

Discussion and Decision

Hayes appeals the termination of her parental rights to J.H. and S.H. When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). 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 of law in granting the MCDCS's petition to terminate Hayes' parental rights. When reviewing findings of fact and conclusions of law entered in a case involving a termination of parental rights, we apply a two-tiered standard of review. 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 trial court's judgment only if it is clearly erroneous. *Id.* A judgment is "clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment." *Id.* (quotation omitted).

Indiana Code § 31-35-2-4(b)(2) provides that a petition to terminate parental rights must allege, in pertinent part, 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;
(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.

The Department of Child Services must prove each of these elements by clear and convincing evidence. Ind. Code § 31-37-14-2; *In re D.L.*, 814 N.E.2d 1022, 1026 (Ind. Ct. App. 2004), *trans. denied*.

On appeal, Hayes challenges only one of these elements. Specifically, she argues that the "MCDCS failed to prove, by clear and convincing evidence, that its plan for the care and treatment of J.H. and S.H. was satisfactory." Appellant's Br. p. 5. Hayes elaborates: "In light of the fact that it was possible to keep the children together, MCDCS'[s] plan was not satisfactory." *Id.*

Hayes acknowledges that adoption is generally a satisfactory plan. *Castro v. State Office of Family & Children*, 842 N.E.2d 367, 373 n.2 (Ind. Ct. App. 2006), *trans. denied*. Relying on *In re Adoption of B.C.S.*, 793 N.E.2d 1054 (Ind. Ct. App. 2003), however, she asserts that Indiana law prefers the placement of sibling groups in the same adoptive home, and therefore, the adoption of J.H. and S.H. by different grandmothers in this case is not satisfactory because Vera is willing to adopt both children.

In *In re Adoption of B.C.S.*, this Court interpreted Indiana Code § 31-19-8-6, which discusses what a licensed child placing agency's report to the court must include. Specifically, the agency's report must include whether the child "is a member of a sibling group that should be placed in the same home." Ind. Code § 31-19-8-6(a)(3)(B). Although this statute does not apply here, Hayes points out that subsection (a)(3)(B) indicates a preference for placing sibling groups in the same home. On this point, we

stated: "While that subsection could be read to imply a preference for placing sibling groups in the same home, it by no means indicates that siblings must be placed in the same home." *In re B.C.S.*, 793 N.E.2d at 1062. We added that the siblings in that case, who had different fathers, were "not a typical 'sibling group.' They interacted once before the death of their mother and have spent visitation time together since then; they are not children who grew up in the same household for a number of years." *Id.*

It goes without saying that Indiana law prefers keeping siblings together. However, that is not always the case. Here, the record shows that J.H. and S.H. have different fathers. J.H. was one and a half years old when S.H. was born in February 2005. Before S.H. was even born, Briggs served as a caregiver for J.H., often for long periods of time. When the CHINS petition was filed two days after S.H.'s birth, J.H. was placed with Briggs and S.H. was placed with Vera, where they have remained ever since. Because J.H. and S.H. have never lived together, they, too, are not the typical sibling group. Although Vera is willing to adopt both J.H. and S.H., J.H. has not spent much time with Vera because of J.H.'s long association with Briggs. By all accounts, J.H. and S.H. have bonded with their respective grandmothers and are thriving in that environment, and the grandmothers are making efforts to ensure that the children visit each other periodically and maintain sibling bonds. The guardian ad litem as well as the family case manager recommended keeping J.H. and S.H. in their current placements. The MCDCS has proved by clear and convincing evidence that the plan for the care and treatment of the children is satisfactory. As such, the trial court's judgment terminating the parent-child relationship is not clearly erroneous. We therefore affirm the trial court.

Affirmed.

BAKER, C.J., and BAILEY, J., concur.