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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE TERMINATION OF THE)
PARENT-CHILD RELATIONSHIP OF:)
C.E.B., K.H.B., JR., and M.R.B. (Minor Children),)
And C.M.B. (Mother).)

Appellant,)

vs.)

THE INDIANA DEPARTMENT OF CHILD)
SERVICES,)

Appellee.)

No. 02A03-1012-JT-665

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Charles F. Pratt, Judge
The Honorable Lori K. Morgan, Magistrate
Cause Nos. 02D08-1003-JT-143, 145, and 147

September 7, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

C.M.B. (“Mother”) appeals the involuntary termination of the parent-child relationship with her children, C.E.B., K.H.B., Jr., and M.R.B. (collectively, “the Children”).¹

We affirm.

ISSUE

Whether there is clear and convincing evidence to support the termination of Mother’s parental rights to Children.

FACTS

Mother and Father had three children, C.E.B., born in March, 1997; K.H.B., Jr., born in July, 1998; and M.R.B., born in July, 1999. Mother and Father divorced in 2006. The Children were living with Mother when she had her first interaction with the Allen County Department of Child Services (“DCS”) in November 2007. At that time, DCS received a report that a person had molested C.E.B. on three occasions. On December 19, 2007, the trial court entered a “Preliminary Inquiry Order” and provisionally ordered, among other things, that Mother’s then-boyfriend, convicted sex offender S.L., have no unsupervised contact with the Children. The Children remained in Mother’s custody

¹ K.B., Sr. (“Father”) voluntarily terminated his parental rights to the Children. He is not involved in this appeal but will be discussed as necessary in the presentation of the facts.

after Mother signed a safety plan wherein she agreed that she would not allow any unsupervised contact between S.L. and the Children.

On January 9, 2008, DCS removed the Children from Mother's custody because Mother had been leaving the children in the care of S.L. Indeed, Mother violated the safety plan by residing with S.L. After a detention hearing, the trial court placed the Children in licensed foster care.

On February 5, 2008, the trial court held a children in need of services ("CHINS") hearing, wherein Mother testified that C.E.B. had been sexually and inappropriately touched on three occasions in 2007. Mother also testified that she had had relationships with three men, all of whom were registered sex offenders. Mother further testified that she had married S.L. on January 15, 2008, and that S.L. had spent the majority of time at Mother's residence since November 2007. S.L. admitted that he was a registered sex offender, having sexually battered his biological daughter in 2000.

At the conclusion of the CHINS hearing, the trial court found C.E.B., K.H.B., Jr., and M.R.B. to be CHINS. After a February 11, 2008 dispositional hearing, the trial court placed Mother under a parent participation plan. The court ordered Mother to, among other things: (1) maintain clean, safe, and appropriate housing at all times; (2) notify DCS within forty-eight hours of all changes in household composition, housing, and employment; (3) cooperate with all caseworkers, the Guardian ad Litem and/or court appointed special advocate ("CASA") by attending all case conferences as directed, maintaining contact, and accepting announced and unannounced home visits; (4) obtain suitable employment by March 4, 2008, and keep that employment; (5) enroll in family

counseling at the Bowen Center by March 4, 2008, attend all sessions, and successfully complete the counseling program; (6) enroll in individual counseling at the Bowen Center by March 4, 2008, attend all sessions, and successfully complete the counseling program; (7) obtain a psychological evaluation at the Park Center by March 4, 2008, and follow the recommendations; (8) obtain a psycho-social assessment at DCS by March 4, 2008; (9) enroll in a home-based parenting skills program by March 4, 2008, attend all sessions, follow all recommendations, and successfully complete the program; (10) ensure that S.L. has no unsupervised contact with the Children; and (11) attend and appropriately participate in all visits with the Children as directed.

On June 3, 2008, the trial court held a CHINS review hearing and found that Mother had substantially complied with the parent participation plan. However, the court also found that there were concerns regarding Mother's relationship with S.L. and her ability to protect the Children from him and others like him. The trial court ordered a concurrent plan of reunification with Mother and termination of parental rights.

In July of 2008, the trial court held further hearings. It ordered Mother to engage in supervised visitation with the Children, and it restated the limitations regarding S.L.'s contact with the Children. The trial court also rescinded the order for family counseling, as it found that Mother needed to make further progress in her individual counseling before family counseling would be of any value.

In an August 2008 hearing, the trial court found that Mother continued to associate with sex offenders who posed a threat to the Children. On February 2, 2009, the trial court held a review hearing and found that Mother had not demonstrated an ability to

benefit from services. On November 9, 2009, the trial court held a detention review hearing, at which it found that Mother remained non-compliant and that she had not demonstrated an ability to benefit from services. The court further found that Mother had missed a number of visits with the Children, and it ordered that the supervised visitation be cut back from one day per week to one day per month. The court stated that as a result of concerns expressed regarding the number of visitations missed by Mother and the impact that the missed visitations were having on the Children, Mother was “to arrive 45 minutes prior to each visit. [Mother] is advised that failure to attend and participate in visits may result in termination of her visits.” (DCS’s App. 170).

In December of 2009, the trial court found that Mother was non-compliant and unable to demonstrate an ability to benefit from services. The court terminated Mother’s visitation. Because of Mother’s continued non-compliance and her inability to benefit from services, the court subsequently approved and adopted DCS’s permanency plan of termination of parental rights. On March 10, 2010, DCS filed petitions for involuntary termination of Mother’s parental rights, and the trial court held termination hearings on August 24, 31, and September 1, 2010.

Following the termination hearings, the trial court issued an order terminating Mother’s parental rights to the Children. The trial court first concluded that there was clear and convincing evidence that the allegations of the termination petition were true “in that there is a reasonable probability that the conditions that resulted in the [Children’s] removal and the reasons for the placement outside the parent’s home will not be remedied, and/or that continuation of the parent/child relationship poses a threat to the

well-being of the [Children].” (Mother’s App. 3). The court then found that (1) Mother’s marriage to S.L., a convicted sex offender, led to the removal of the Children from her custody; (2) Mother failed to participate in or complete individual or family counseling; (3) Mother failed to complete any of the drug and alcohol treatment programs referred by DCS; (4) Mother’s lack of consistency in visiting the Children had such a devastating impact on the Children that visitation was cancelled; (5) Mother continued to live with S.L. after the Children were removed from her custody; (6) Mother divorced S.L. during the CHINS proceedings, but subsequently married J.B., a convicted sex offender; (7) Mother failed to notify the DCS case manager of her marriage within the forty-eight hour period mandated by the safety plan; (8) the Children originally exhibited sexualized behaviors but have made significant progress since being removed from Mother’s custody; (9) Mother had “demonstrated an inability to protect [the Children] or to provide them with a safe and stable home environment”; and (10) Mother did not have stable or regular employment or income “with which to support herself and [the Children].” *Id.* at 3-4.

The trial court also concluded that termination was in the best interests of the Children because Mother had shown in “the related CHINS cause, and in the fact of a treatment plan or plans, and numerous specific services made available and/or provided, that said parent continues to be unable, refuse, or neglect to provide for the basic necessities of a suitable home for the raising of the children.” (Mother’s App. 4). The court then found that (1) Mother failed to participate in counseling that would have assisted her in dealing with her own paranoia and delusional symptoms, thus leaving the

Children vulnerable to the effects of her psychological problems; (2) Mother did not complete programs to deal with her substance abuse, thus leaving the Children vulnerable to the effects of her addictions; (3) Mother was inconsistent in visiting with her Children, thus negatively impacting them; (4) Mother showed no ability to provide housing or regular financial support of the Children; (5) Mother “continues to be unable, refuse, or neglect to provide for the basic necessities of a suitable home for the raising of [the Children]”; and (6) Mother showed no ability to avoid the company of sex offenders. (Mother’s App. 4-5).

DECISION

I. Reasons for Removal/Placement

Mother contends that the trial court overstated her failures while overlooking her accomplishments during the process of reunification. Stated simply, she contends that the trial court erred in weighing and interpreting the evidence.

The traditional right of parents to establish a home and raise their child is protected by the Fourteenth Amendment of the United States Constitution. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). Parental rights may be terminated when parents are unable or unwilling to meet their parental responsibilities. *Id.* The purpose of terminating parental rights is not to punish parents but to protect the child. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied*, 534 U.S. 1161(2002).

When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *Bester*, 839 N.E.2d at 147. We will only

consider the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.* When reviewing findings of fact and conclusions thereon entered in a case involving a termination of parental rights, we apply a two-tiered standard of review. *Id.* First, we determine whether the evidence supports the findings. *Id.* Then, we determine whether the findings support the judgment. *Id.* The trial court’s judgment will be set aside 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.* (quoting *In re R.J.*, 829 N.E.2d 1032, 1034 (Ind. Ct. App. 2005)).

When DCS seeks to terminate parental rights, it must plead and prove in relevant part:

(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.²

Ind. Code § 31-35-2-4(b)(2).³ These allegations must be established by clear and convincing evidence. *In re I.A.*, 934 N.E.2d 1127, 1133 (Ind. 2010).

² There is no dispute about this portion of the statute. The trial court found that DCS “has a satisfactory plan for the care and treatment of the [Children], which is placement of the [Children] for adoption.” (Mother’s App. 6).

³ Indiana Code section 31-35-2-4 was amended by Public Law Number 21-2010, Section 8 (effective March 12, 2010). We have quoted the version of the statute in effect at the time that the petition was filed. See *In re A.B.*, 924 N.E.2d 666, 670 n.2 (Ind.Ct.App.2010) (applying the version of the statute in effect at the time the petition was filed).

Because subsection (b)(2)(B) is written in the disjunctive, DCS need prove only one of the two elements by clear and convincing evidence. *See I.A.*, 934 N.E.2d at 1133. Thus, if we hold that the evidence sufficiently shows that the conditions resulting in removal will not be remedied, we need not address whether the continuation of the parent-child relationship poses a threat to the well-being of the child. *See I.C. § 31-35-2-4(b)(2)(B); In re A.N.J.*, 690 N.E.2d 716, 721 n.2. (Ind. Ct. App. 1997).

To determine whether the conditions are likely to be remedied, the trial court must examine the parent's fitness to care for the child "as of the time of the termination hearing and take into account any evidence of changed conditions." *In re S.P.H.*, 806 N.E.2d 874, 881 (Ind. Ct. App. 2004). The trial court, however, also must determine whether there is a substantial probability of future neglect or deprivation. *Id.* In so doing, the trial court "may properly consider 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." *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003).

The trial court may also consider the services offered to the parent and the parent's response to those services. *Id.* "Finally, we must be ever mindful that parental rights, while constitutionally protected, are not absolute and must be subordinated to the best interests of the child when evaluating the circumstances surrounding termination." *Id.* Thus, the trial court need not wait until a child is irreversibly harmed such that the child's physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

Here, DCS initiated a CHINS proceeding because Mother was unable or unwilling to protect the Children from a convicted sex offender, S.L. The evidence presented showed that after the Children were removed, Mother married S.L. She then divorced S.L. and married another convicted sex offender, J.B. Although Mother claimed at the termination hearing that she was going to file for dissolution of her marriage to J.B., the court could have concluded that Mother would not divorce J.B. or that Mother would divorce him but get involved with yet another sex offender.

Despite being offered multiple services, Mother failed several alcohol tests and failed to complete court-ordered therapy, missing numerous sessions and meetings throughout the entire CHINS case. Mother did not comply with her service provider's recommendations, including the recommendation that she deal with her alcohol dependence and psychological problems (adjustment disorder, mixed anxiety, persecution ideations, and depression). Mother's "no shows" caused her to be terminated from a number of services. Indeed, her "no shows" increased in number as she began to test positive for alcohol use. At best, Mother showed a "slight amount of progress" after the first year of her on-again-off again therapy. (Tr. 119). However, she never completed the individual counseling that served as a precursor to important family counseling. Rex McFarren, CASA, testified, "We're almost three years into this case and we're no closer to having these, [Mother is] no closer to being able to show that she has benefitted in any way, in any shape, [in] any manner, in getting her children back." (Tr. 238).

The evidence presented also shows that Mother did not follow the plan for reunification, which was necessary to assist Mother in providing a safe environment for

the Children. She moved frequently and did not have a consistent job, causing Dr. Therese Muhlbauer, C.E.B.'s psychologist, to worry that Mother's instability would "further impair [C.E.B.'s] ability to be successful in her life and be emotionally stable." (Tr. 65). Kristine Bohnsteadt, Mother's therapist, testified that she was concerned that Mother could not "follow through consistently with things that would indicate that she might be able to care for her children," maintain continuous sobriety, or follow through with needed treatment. (Tr. 124). Bohnsteadt was also concerned that Mother had reported that "some of [Mother's] other children had been removed and that one had died" *Id.* Finally, Bohnsteadt was concerned that Mother could not consistently place her children's needs ahead of herself and that she could not protect her children from sex offenders. Nancy Hormann, the person who supervised Mother's visits with C.E.B. and K.H.B., Jr., testified that Mother "did care and love her children but I felt that she cared and loved herself more." (Tr. 137). McFarren testified that Mother puts her needs above the Children's needs and that the Children have special needs because of their experiences "in the care of [Mother]." (Tr. 235).

The evidence presented also shows that Mother caused C.E.B. and K.H.B., Jr. to suffer much emotional turmoil, as they never knew whether she would show up for visitation. Dr. Muhlbauer testified that C.E.B. and K.H.B., Jr. initially reacted to Mother's failure to visit with "anger and disappointment and hurt," which eventually evolved into detachment as a means of self-protection against the pain. (Tr. 72-73). In addition, while M.R.B. was in residential care during the majority of the time from the CHINS determination to the termination hearing, Mother visited him only once.

Furthermore, while she started out calling him once a week, she stopped completely in July of 2009.

The evidence further shows that the Children were suffering from emotional problems after living with Mother. All three children were “combustible,” at risk of losing control at anytime. (Tr. 219). C.E.B. was “pretty much out of control,” (tr. 81), and would act in a sexually inappropriate manner. K.H.B., Jr. was insecure about himself and became a behavior problem at school. By the time of the termination hearing, C.E.B. and K.H.B., Jr. were calmer, more focused on the future and school grades. However, they both required “strict rules and boundaries and guidelines to follow.” (Tr. 221).

M.R.B. initially was so emotionally damaged that he required treatment in a full-time residential program, as he had killed small animals and attacked smaller children. By the time of the termination hearing, M.R.B., although still using sexually suggestive language and attacking smaller children if left unsupervised, was eligible to live in a foster home where he was the only child and the foster parents were willing to comply with strict instructions pertaining to supervision of M.R.B. Most importantly, the Children have reached a point where “they now feel safe.” (Tr. 228).

Given Mother’s pattern of conduct, we hold that DCS established by clear and convincing evidence that the conditions that resulted in the Children’s removal and placement outside the home will not be remedied.

2. Best Interests of the Children

Mother makes a brief argument concerning the best interests of the Children, essentially relying on the evidence already discussed. We are mindful that, in

determining what is in the best interests of the Children, the trial court is required to look beyond the factors identified by DCS and to consider the totality of the evidence. *In re B.J.*, 879 N.E.2d 7, 22 (Ind. Ct. App. 2008), *trans. denied*. The court need not wait until the Children are irreversibly harmed before terminating the parent-child relationship. *In re J.S.*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009). Moreover, we have previously held that “the recommendations of the case manager and the court-appointed advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal and placement will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the [Children’s] best interests.” *Id.*

Here, the evidence discussed in our consideration of the conditions that existed at the time of removal and placement is relevant to the court’s determination that termination is in the Children’s best interests. Indeed, the trial court used some of the same findings and conclusions to bolster both its determination that the conditions resulting in removal and placement will not be remedied and its best interests determinations. The record is teeming with evidence from psychologists, therapists, the family case manager, and the CASA that supports the trial court’s findings and conclusions regarding the best interests of the Children. In short, the evidence supports the conclusion that reunification of the Children with their Mother would place them in danger from sex offenders and from Mother’s instability.

CONCLUSION

The evidence supports the trial court's findings, and the findings support the conclusions. Clear and convincing evidence supports the trial court's determination that Mother's parental rights should be terminated.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.