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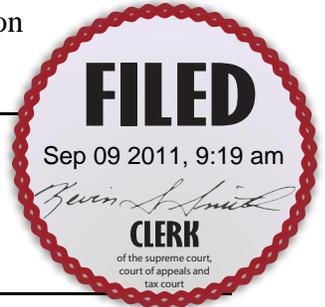
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**IN THE
COURT OF APPEALS OF INDIANA**



IN RE THE TERMINATION OF THE PARENT-)
CHILD RELATIONSHIP OF J.B. and L.B.:)

T.B. and R.B.,)
Appellants-Respondents,)

vs.)

THE INDIANA DEPARTMENT OF CHILD)
SERVICES,)

Appellee-Petitioner.)

No. 15A04-1103-JT-130

APPEAL FROM THE DEARBORN CIRCUIT COURT
The Honorable James Humphrey, Judge
Cause No. 15C01-1011-JT-14
Cause No. 15C01-1011-JT-15

September 9, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

R.B. (Father) and T.B (Mother) appeal the involuntary termination of their parental rights to their children, J.B. and L.B. In so doing, both parents challenge the sufficiency of the evidence supporting the trial court's termination order.

We affirm.

Father and Mother are the biological parents of J.B., born in March 2006, and L.B., born in November 2007. The facts most favorable to the trial court's judgment reveal that in June 2009, the local Dearborn County office of the Indiana Department of Child Services (DCDCS) received a report that the parents were not providing a safe environment for the children due to heavy drug use in the home. It was further reported that the parents had recently taken their children with them to Ohio to purchase illegal drugs and that the children often wore the same clothing for two or three consecutive days. During its investigation of the matter, DCDCS spoke with Father who admitted to using heroin, but denied doing so while caring for the children. Father further acknowledged that he had asked his own mother (Grandmother) to call DCDCS because he knew he had a drug problem and wanted help with his addiction. Mother, on the other hand, denied any drug use and refused to meet with DCDCS.

During its investigation, DCDCS also learned that Father had been arrested in Ohio for possession of heroin and possession of a drug abuse instrument just days before receiving the referral from Grandmother. DCDCS thereafter contacted the arresting officer, who reported that Mother and a small child were with Father at the time of his arrest. Although the police officer stated that Mother did not appear to be under the influence of drugs at that

time, he further stated that Mother had admitted to being a heroin user and that he had observed multiple track marks covering Mother's arms. In addition, the officer indicated that Father had admitted to using heroin approximately three times a day, for a total estimated cost of one thousand dollars per week.

As a result of its investigation, DCDCS filed a petition alleging J.B. and L.B. were children in need of services (CHINS). The children were not immediately taken into custody, however, because Father had informed DCDCS that the children's primary caregiver was Grandmother and that Mother had not seen the children since June. When Mother attempted to regain custody of the children after the CHINS petition was filed, however, DCDCS sought, and was granted, emergency custody of J.B. and L.B. The children were subsequently removed and placed in foster care.

Father and Mother admitted to the allegations of the CHINS petition during a hearing in September 2009. Following a dispositional hearing in October 2009, the trial court issued its Order of Participation directing both parents to successfully complete a variety of tasks and services designed to help them overcome their parenting and substance abuse issues and to facilitate reunification of the family. Specifically, both parents were ordered to, among other things: (1) obtain and/or maintain stable employment and housing; (2) participate in a parenting assessment and follow all resulting recommendations, including any recommended parenting classes; (3) refrain from all use of illegal substances, submit to random drug screens, complete a substance abuse assessment, and follow all treatment recommendations; and (4) actively participate with all family members in a home-based counseling program and be able to demonstrate positive changes in the family's life as a result of this counseling.

Throughout the remaining CHINS case, both parents' participation in court-ordered reunification services was sporadic and ultimately unsuccessful. Although Father submitted to a substance abuse assessment and began participating in the recommended out-patient counseling through Community Mental Health Center, Inc. (CMHC), he continued to test positive for heroin and other substances. Mother likewise submitted to a substance abuse assessment, but never began the recommended out-patient counseling programs and continued to test positive for marijuana and oxycodone. Mother also overdosed on heroin and was admitted to the hospital in the fall of 2009

Following a hearing in December 2009, the trial court ordered both parents to participate in an inpatient detoxification program. Because CMHC's inpatient unit did not accept married couples, DCDCS determined that Father should attend detoxification first and made the necessary arrangements. Father checked into the program three days late and subsequently checked himself out against medical advice only two days later, stating he feared Mother was "cheating" on him. *Appellant Father's Appendix* at 73. When Mother refused to talk with Father later the same day, Father attempted to cut his wrists with a razor and the police were called. Father's refusal to cooperate with police officers ultimately resulted in Father being tasered and then taken to CMHC's inpatient unit on a 24-hour hold. During this same time period, Mother was not allowed to participate in any outpatient individual or group counseling sessions through CMHC because of her continued use of illegal drugs.

As a result of their respective ongoing drug use and noncompliance with the trial court's orders, both parents were found to be in contempt of court by the end of December

2009. Father and Mother were then sentenced to thirty days of incarceration. Father agreed to participate in a ninety-day, inpatient substance abuse program offered through Richmond State Hospital in lieu of incarceration. Mother was ordered to serve her thirty-day sentence.

After serving her sentence, Mother was released in March 2010. Meanwhile, Father was unsuccessfully discharged from the Richmond State Hospital inpatient program in February 2010 after he was observed chewing tobacco on the hospital campus and engaging in other bad conduct, including a verbal altercation with a group of men. Father was thereafter found in contempt of court and his original thirty-day contempt sentence was reinstated. While incarcerated in Dearborn County, Father failed to appear for a court hearing regarding the pending possession charges in Ohio, and a warrant for his arrest was issued. After completing his sentence in Indiana, Father remained incarcerated on the Ohio charges and was eventually released in May 2010.

Following their respective releases from incarceration in the spring of 2010, Father and Mother both began cooperating with DCDCS and services providers for a brief period of time. They obtained employment, visited with the children, produced negative drug screens, and were working on their marriage. By June 2010, however, Father tested positive for heroin and cocaine. He was later arrested and reincarcerated for violating the terms of his probation. Although Mother's June 2010 drug screens were negative, she admitted to DCDCS caseworkers that she had used drugs with Father. In addition, Mother relapsed in August 2010 by using oxycodone without a valid prescription and then attempted to commit suicide. Although Mother agreed to participate in a treatment program through Harbor Lights following her suicide attempt, she never followed through with this promise and

severed all contact with DCDCS until December 2010.

Based on the parents' lack of progress and unresolved substance abuse issues, DCDCS filed petitions in November 2010 seeking the involuntary termination of Father's and Mother's parental rights to both children. A consolidated hearing on the termination petitions was held in February 2011. During the termination hearing, DCDCS presented evidence showing neither parent had successfully completed a substance abuse treatment program. In addition, Father remained incarcerated and the children were living and thriving together in a pre-adoptive foster home.

At the conclusion of the termination hearing, the trial court took the matter under advisement. Several days later, the trial court entered its judgment terminating Father's and Mother's parental rights to J.B. and L.B. Both parents now appeal.

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 (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 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* 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 (Ind. Ct. App. 1999), *trans. denied*. Thus, if the evidence and inferences support the trial court's decision, we must affirm. *Id.*

Here, the trial court made several detailed findings and conclusions in its order terminating Father's and Mother's parental rights. Where the trial court enters specific findings and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143 (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). A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment thereon. *Id.* We will reverse a judgment as clearly erroneous only if, after reviewing the record, we have a "firm conviction that a mistake has been made." *Lang v. Starke Cnty. Office of Family & Children*, 861 N.E.2d 366, 371 (Ind. Ct. App. 2007), *trans. denied*.

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*. Although parental rights are of a constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144 (Ind. Ct. App. 2008). In addition, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In re K.S.*, 750 N.E.2d 832.

Before an involuntary termination of parental rights may occur, the State is required to allege and prove, among other things:

- (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; [and]
- (C) that termination is in the best interests of the child

Ind. Code Ann. § 31-35-2-4(b)(2) (West, Westlaw through end of 2011 1st Regular Sess.). The State’s burden of proof for establishing these allegations in termination cases “is one of ‘clear and convincing evidence.’” *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code Ann. § 31-37-14-2 (West, Westlaw through end of 2011 1st Regular Sess.)). 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. I.C. § 31-35-2-8 (West, Westlaw through end of 2011 1st Regular Sess.). Father and Mother challenge the sufficiency of the evidence supporting the trial court’s findings as to subsections (b)(2)(B) and (C) of the termination statute cited above. *See* I.C. § 31-35-2-4(b)(2).

At the outset, we note that I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, DCDCS needed to establish only one of the requirements of subsection (b)(2)(B) by clear and convincing evidence before the trial court could terminate parental rights. *See In re L.V.N.*, 799 N.E.2d 63 (Ind. Ct. App. 2003). Here, the trial court found DCDCS presented sufficient evidence to satisfy both subsections of (b)(2)(B) of the termination statute. *See* I.C.

§ 31-35-2-4(b)(2)(B)(i) & (ii). Because we find it dispositive under the facts of this particular case, we shall consider only whether clear and convincing evidence supports the trial court's findings regarding subsection (b)(2)(B)(i), namely, whether 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* I.C. § 31-35-2-4(b)(2)(B)(i).

In determining whether there is a reasonable probability that the conditions leading to a child's removal from the family home will be remedied, a trial 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 (Ind. Ct. App. 2001), *trans. denied*. The court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. *In re M.M.*, 733 N.E.2d 6 (Ind. Ct. App. 2000). Similarly, courts may 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. *A.F. v. Marion Cnty. Office of Family & Children*, 762 N.E.2d 1244 (Ind. Ct. App. 2002), *trans. denied*. The trial court may also consider the services offered to the parent by a county office of the Indiana Department of Child Services and the parent's response to those services as evidence of whether conditions will be remedied. *Id.* Finally, a trial court need not wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth are permanently impaired before terminating the parent-child relationship. *In re E.S.*, 762 N.E.2d 1287 (Ind. Ct. App. 2002).

Here, in finding there is a reasonable probability the conditions resulting in the children's removal and continued placement outside of Father's and Mother's care will not be remedied, the trial court made multiple, detailed findings regarding the parents' respective "ongoing battle with substance abuse," and lack of progress in improving their ability to care for and successfully parent the children. *Appellant Father's Appendix* at 20. In so doing, the trial court noted Father's and Mother's repeated positive drug screens for "cocaine, heroin, oxycodone, and marijuana over the course of the case," as well as the fact that "[b]oth parents spent time at inpatient facilities as a result of their addictions," and both "were held in contempt of court for failure to complete services, failure to refrain from the use of illegal substances, and in [Father's] case[,] failure to follow the medical advice of a doctor." *Id.* The court also acknowledged that Father remained incarcerated at the time of the termination hearing. The court also noted the Guardian ad Litem's (GAL's) testimony that she "did not believe [the] parents' substance abuse treatment had succeeded in helping them defeat their addictions and that neither parent was ready, willing, and able to adequately care for the children." *Id.* at 20-21. Our review of the record convinces us that these findings are supported by abundant evidence.

During the termination hearing, DCDCS case manager Denise Kirschgassner and GAL Robin Cleeter both confirmed that neither parent had adequately addressed their respective substance abuse issues such that they were "ready and able to parent [J.B.] and [L.B.]." *Transcript* at 22, 26. When asked if she believed that the conditions that resulted in the children's removal from Father and Mother "will be fixed anytime soon," Kirschgassner answered, "No." *Id.* at 23. In addition, both Kirschgassner and Cleeter expressed concerns

over the parents' ongoing housing and financial instability. Finally, the parents' own prepared statements, relayed to the trial court during the termination hearing through their respective attorneys, lend further support to the trial court's findings referenced above. In these prepared statements, Mother acknowledged she had "struggled with . . . numerous types of drugs" in the past, "attempted a number of [drug rehabilitation] programs" with relatively little success, and relapsed as recently as August 2010. *Id.* at 32. Similarly, Father admitted in his statement that he failed to complete the inpatient substance abuse program through Richmond State Hospital, is still "addressing" his drug addiction issues while incarcerated, and "understands he has had the opportunity" to remedy the conditions that resulted in the children's removal, but nevertheless wants "one more opportunity." *Id.* at 33-34.

Where a parent's "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). Moreover, we have previously explained that "the time for parents to rehabilitate themselves is during the CHINS process, prior to the filing of the termination petition." *Prince v. Dep't of Child Servs.*, 861 N.E.2d 1223, 1230 (Ind. Ct. App. 2007). Here, Father and Mother have demonstrated a persistent unwillingness and/or inability to take the actions necessary to show they are capable of overcoming their addiction to illegal substances and of providing J.B. and L.B. with the safe, stable, drug-free home environment they need. The parent's arguments on appeal amount to an invitation to reweigh the evidence, a task that is beyond our purview on appeal. *D.D.*, 804 N.E.2d at 265.

We next consider Father's and Mother's assertion that DCDCS failed to prove termination of their respective parental rights is in the children's best interests. In determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Indiana Department of Child Services and look to the totality of the evidence. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185 (Ind. Ct. App. 2003). In so doing, the trial court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* Moreover, we have previously held that the recommendations of the case manager and child advocate to terminate parental rights, plus evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. *In re M.M.*, 733 N.E.2d 6.

In addition to the findings previously discussed, the trial court made several other pertinent findings in determining that termination of Father's and Mother's parental rights is in the children's best interests. Specifically, the trial court acknowledged that the children were living together and "doing well" in a pre-adoptive foster home." *Appellant Father's Appendix* at 196. The court also found Kirschgassner and Cleeter had both recommended termination of Father's and Mother's parental rights as in the children's best interests, and further acknowledged Cleeter's testimony regarding the children's need for "stable and appropriate" caregivers. *Id.* These findings, too, are supported by the evidence.

During the termination hearing, Kirschgassner confirmed that neither parent was "currently ready and able to parent [the children]" and that J.B. and L.B. were living together

in a pre-adoptive foster home. *Transcript* at 22. In addition, GAL Cleeter's June 2010 report to the court indicated that the children were "doing well" with their foster family, that they had "adjusted to the routine" of the foster home, were "well taken care of by the foster family and have bonded with them." *Appellant Father's Appendix* at 103. When asked during the termination hearing whether she was "satisfied with the plan [DCDCS] has put forth regarding the future placement of the children," Cleeter responded, "Yes." *Transcript* at 27. Cleeter again answered in the affirmative when asked if she felt DCDCS's future plan for the children was in the children's best interests.

Based on the totality of the evidence, including Father's current incarceration, both parent's history of employment and housing instability, unresolved struggle with substance abuse, and current inability to demonstrate they are capable of providing the children with a safe and stable home environment, coupled with the testimony from Kirschgassner and Cleeter recommending termination of the parent-child relationships, we conclude that clear and convincing evidence supports the trial court's determination that termination of Father's and Mother's respective parental rights to J.B. and L.B. is in the children's best interests.

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 *Egley v. Blackford Cnty. Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Judgment affirmed.

DARDEN, J., and VAIDIK, J., concur.