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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF J.K., MINOR CHILD, AND MOTHER,	)	
MICHELLE KENDALL BLUCK,	)	
Appellant-Respondent,	)	
vs.	)	No. 53A01-0705-JV-204
MONROE COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MONROE CIRCUIT COURT
The Honorable David Welch, Judge
Cause No. 53C07-0608-JT-564

October 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Michelle Kendall Bluck ("Mother") appeals the involuntary termination of her parental rights to her son, J.K. Concluding that the Monroe County Department of Child Services ("DCS") proved by clear and convincing evidence that termination is in the best interests of J.K., we affirm the termination of Mother's parental rights.

Facts and Procedural History

Mother and James Loyd ("Father")[1] are the parents of J.K., born October 6, 1996. On May 26, 2004, the DCS filed a petition alleging J.K. to be a Child In Need of Services ("CHINS"), due to the battery of J.K.'s elder half-sister by an uncle, the unsanitary conditions of Mother's home, and repeated, substantiated allegations of neglect by Mother. Appellee's App. p. 1-2. Mother admitted to the allegations contained in the CHINS petition during a hearing held on August 9, 2004, and the trial court adjudicated J.K. to be a CHINS and removed him from Mother's care. *Id.* at 3-4. J.K. was initially placed in foster care upon removal from Mother's home, but he was moved to Bloomington Meadows Hospital on August 22, 2004, for treatment of aggression. He returned to Mother's home between September 17 and November 16, 2004, but required a number of hospitalizations as a result of aggressive and destructive behaviors. He was then admitted to Larue D. Carter Memorial Hospital, where he remained until March 15, 2005. On March 15, 2005, J.K. was transferred to a residential treatment facility, where he remained at the time of the fact-finding hearing in this matter.

[1] The record reflects that Father, who was incarcerated throughout the proceedings, voluntarily relinquished his parental rights to J.K. Appellant's App. p. 15, 19.

J.K. has had a number of psychological, educational, and physical diagnoses, including autism, bipolar disorder, schizophrenia, oppositional defiant disorder, mild mental retardation, pervasive developmental disorder, attention deficit hyperactivity disorder ("ADHD"), asthma, and papular urticaria, which is an allergy to flea bites. His current primary diagnoses are oppositional defiant disorder, ADHD, and mild mental retardation. Tr. p. 208-09. He has shown significant improvement in his current treatment program.

Among other things, the initial case plan developed after J.K.'s removal from Mother's care in 2004 called for Mother to attend scheduled appointments with her case manager, demonstrate her parenting skills during supervised visitation, attend a series of twelve parenting classes and be able to demonstrate her new parenting skills during visits with J.K., follow through with all recommendations of J.K.'s therapists and psychiatrists, maintain a clean home, and attend personal therapy. Appellee's App. p. 21-22. Further, Mother's case manager recommended to the court at that time that Mother's father, John Kendall, Sr. ("Kendall"), have no contact with J.K. because Kendall was a convicted child molester. *Id.* at 10-11, 28.

The record reflects that, for a period of time, Mother's home remained clean, Tr. p. 59, she maintained her therapy appointments, Appellee's App. p. 42, and she exercised visitation with J.K. She also received home based services, Tr. p. 51-54, and attended some parenting classes, *id.* at 500; Appellant's Br. p. 3. Throughout J.K.'s removal from her home, however, Mother failed to meet the specific expectations required of her.

Despite being instructed to rid her home of cats and dogs,[2] Mother continued to keep many pets. Tr. p. 61. This was of particular concern to the family's case manager because J.K. is highly allergic to flea bites and developed infected sores all over his body from bites sustained in Mother's home. *Id.* at 60, 259. The condition of Mother's home initially improved but then deteriorated such that, during a home visit in late September 2005, J.K. suffered eighty-seven flea bites. *Id.* at 128-29. Subsequently, when J.K. returned to his treatment facility from a visit with Mother in December 2005, he was dirty and improperly clothed, smelled of dog urine and feces, was without his luggage, and informed a facility supervisor that Mother's dogs chewed up his toys. *Id.* at 127-28. He also indicated to his counselor that he did not receive his medications during the visit and that there were five large dogs and multiple cats—"more than he could count"—living in Mother's home. *Id.* at 128. Home visits were thereafter suspended.

By April 2006, Mother's home was again sanitary enough for visitation, and it was determined that home visitation would resume in June 2006. *Id.* at 90. However, home visitation did not begin again because Mother discontinued her personal therapy and depression medication in April and stopped attending family therapy and visitation with J.K. in May 2006. *Id.* at 120, 267-68. Sometime during June 2006, Mother informed J.K. by telephone that she had gotten married and that he had five new stepbrothers, two

[2] The trial court subsequently ordered Mother to maintain a pet-free residence in May 2006. Tr. p. 275. However, a DCS employee visiting the home on July 31, 2006, observed two dogs inside the residence, *id.* at 277, and during the DCS's last visit to the home, on November 17, 2006, a dog was present, *id.* at 273-74.

of whom were living in her home.[3] *Id.* at 122. The DCS later learned that Mother's new husband, Jared Bluck ("Bluck"), was a convicted child molester. *Id.* at 281. On June 30, 2006, a case plan conference was convened, during which the DCS decided to discontinue its goal of family preservation. *Id.* at 269. The DCS filed a Petition for Termination of Parental Rights on August 17, 2006.[4] Appellant's App. p. 10.

Mother did not visit J.K. again until September 2006, when employees of his treatment center drove him to visit her in Bloomington twice. Tr. p. 124. After the second supervised visit, however, J.K. reported that he did not want to visit Mother in Bloomington again because she and Bluck frightened him by yelling at each other in a park. *Id.* Mother did not visit J.K. again until December 2006. On both December 14 and December 22, 2006, Mother arrived at J.K.'s treatment facility for visitation and expressed anger at his therapist, which led to renewed bouts of anger and aggressive behaviors by J.K. *Id.* at 132-33. Visitation thereafter ceased.

During fact-finding hearings on January 18, 2007, and February 16, 2007, J.K.'s Court Appointed Special Advocate ("CASA"), therapist, and the family's case manager

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[3] One of these stepbrothers was seventeen years old at the time and did not attend school or have employment. Mother expected J.K. to share a bedroom with this stepbrother if he returned to her care. Tr. p. 280, 506.

[4] We remind counsel that an appellant's appendix must contain "pleadings and other documents from the Clerk's Record . . . that are necessary for resolution of the issues raised on appeal[.]" Ind. Appellate Rule 50(A)(2)(f). Mother failed to include the Petition for Termination of Parental Rights in her appendix.

The DCS filed an appellee's appendix containing a number of helpful documents pursuant to Indiana Appellate Rule 50(A)(3). The appellee's appendix, however, does not contain a copy of the termination petition. Additionally, the table of contents groups all of the trial exhibits under the heading "Selection from Trial Exhibits" and does not tell us what documents comprise this one hundred ninety-seven page selection or the order in which they are found. A table of contents "shall specifically identify each item contained in the Appendix, including the item's date." Ind. Appellate Rule 50(C). The DCS's failure to include a sufficient table of contents has hindered our review of the record.

all testified that termination of Mother's parental rights would be in J.K.'s best interests. Following these hearings, the trial court granted DCS's Petition for Termination of Parental Rights. In its Order of Involuntary Termination of Parent-Child Relationship, the trial court issued detailed findings of fact and concluded:

> A. [J.K.] was removed from the care and custody of [his] mother, and has been under the supervision of the DCS for at least fifteen (15) of the last twenty-two (22) months as well as six months from the date of the disposition;
>
> B. There is a reasonable probability that the conditions which resulted in the removal of [J.K.] from the home will not be remedied, as set forth in this order;
>
> C. Continuation of the parent-child relationship poses a threat to the well-being of [J.K.], as set forth in this order;
>
> D. Termination of the parent-child relationship is in the best interest of [J.K.], for the reasons set forth above;
>
> E. The DCS has a satisfactory plan for the care and treatment of [J.K.]. The plan is adoption. . . .
>
> [T]he parent-child relationship between [J.K.] and his mother, Michelle Kendall, is hereby terminated . . . .

Appellant's App. p. 22-23. Mother now appeals.

Discussion and Decision

Mother raises only one issue on appeal: whether the trial court erred in concluding that termination of the parent-child relationship is in the best interests of J.K. 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 DCS's petition to terminate Mother's 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).

In order to involuntarily terminate a parent's rights to his or her child, a trial court must conclude:

> (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; . . .
>
> or . . .
>
> (iii) after July 1, 1999, 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) 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); Ind. Code § 31-35-2-8(a). The DCS must prove each necessary element by clear and convincing evidence. Ind. Code § 31-37-14-2; *Bester*, 839 N.E.2d at 148. Here, the trial court found that each of these factors was proven by clear and convincing evidence. Appellant's App. p. 22.

Mother challenges the trial court's conclusion that termination is in the best interests of J.K. in several respects. First, she contends that the trial court did not delineate which factual findings supported its conclusion that termination is in J.K.'s best interests. However, the trial court's order clarifies that it relied upon "the reasons set forth above" in reaching this conclusion. *Id.* Therefore, it is apparent that the trial court used its thirty-six findings of fact to evaluate J.K.'s best interests.

Mother's appellate brief appears to argue that the findings do not support the trial court's conclusion. Specifically, she cites to the trial court's recognition that she "loves [J.K.] and wants him returned to her home," *id.*, and that she has, in the past, completed a number of services aimed at reunifying the family, *id.* at 20, for the proposition that J.K.'s best interests would be served by a continuing familial relationship with her rather than placement for adoption. Mother correctly contends that the Fourteenth Amendment to the United States Constitution safeguards parents' rights to raise their children. *Bester*, 839 N.E.2d at 147. Indeed, the United States Supreme Court has articulated that a parent's interests in raising his or her children is "perhaps the oldest of the fundamental liberty interests," *Troxel v. Granville*, 530 U.S. 57, 65 (2000), and the Indiana Supreme Court has described it as "one of the most valued relationships in our culture," *Bester*, 839 N.E.2d at 147 (quoting *Neal v. DeKalb County Div. of Family & Children*, 796 N.E.2d 280, 285 (Ind. 2003)). However, the interests of parents in this regard are subordinate to those of the children involved in termination proceedings. *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615, 620 (Ind. Ct. App. 2006), *trans. denied*. Rather, when the evidence shows that the emotional and physical

development of a child in need of services is threatened, termination of the parent-child relationship is appropriate. We have previously explained:

> [T]he law allows for termination of [parental] rights when the parties are unable or unwilling to meet their responsibility as parents. This policy balances the constitutional rights of the parents to the care and custody of their children with the State's limited authority to interfere with these rights. Because the ultimate purpose of the law is to protect the child, the parent-child relationship must give way when it is no longer in the child's best interest to maintain the relationship.

Castro v. State Office of Family & Children, 842 N.E.2d 367, 372 (Ind. Ct. App. 2006), *trans. denied* (quotation omitted).

In determining the best interests of J.K., the trial court was required to look at the totality of the evidence and subordinate the interests of Mother to those of J.K. *In re D.L.*, 814 N.E.2d 1022, 1030 (Ind. Ct. App. 2004), *trans. denied*. The record supports the trial court's conclusion that termination of the parent-child relationship is in J.K.'s best interests. The trial court determined that J.K.'s need for permanency trumps Mother's wishes. The trial court found that

> [w]hile having [J.K.] deal with the termination of parental rights will be difficult for him, staying at [his current placement] in order for [Mother] to complete the services required of her will not only significantly delay permanency, there is no indication [Mother] will choose or be able to follow through with all of the recommendations.

Appellant's App. p. 22. Although the trial court noted the emotional bond between Mother and J.K., the court's findings recognize the relationship between Mother's repeated failure to follow through with the case plan, services, and visitation and J.K.'s therapeutic regression. *Id.* at 20-21. Additionally, Mother repeatedly put J.K. in harm's way by ignoring his need for a clean environment, and she refused to comply with the

DCS's instruction that J.K. have no contact with his grandfather, who has apparently been convicted of molesting a member of his family. *See* Appellee's App. p. 10-11, Tr. p. 475-76, 543. The trial court's conclusion is supported by testimony from the CASA, Tr. p. 375-76, the family's case manager, *id.* at 284, and J.K.'s therapist, *id.* at 145, who all unequivocally opined that termination was in J.K.'s best interests. This testimony is sufficient to support the finding that termination is in his best interests. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003).

Although Mother does not specifically challenge the DCS's plan for the care and treatment of J.K., Ind. Code § 31-35-2-4(b)(2)(D), as an element of her argument about J.K.'s best interests she contends that he may not be adoptable: "Although the State was confident during the fact-finding hearing that they could place [J.K.] in a home where he could get the care he needs, there was no concrete evidence offered during the hearing to support such a clam [sic]." Appellant's Br. p. 8. We note that adoption is a "satisfactory plan" for the purposes of Indiana Code § 31-35-2-4(b)(2)(D). *In re A.K.*, 755 N.E.2d 1090, 1098 (Ind. Ct. App. 2001). A plan for the future care and treatment of the child need not be detailed "as long as it offers a general sense of the direction in which the child[] will be going after the termination." *Id.* At the time of the termination hearing, the DCS's plan was to place J.K. in a pre-adoptive home upon his release from his treatment facility. Appellant's App. p. 22. This was sufficient. Mother's argument is essentially that J.K. is better off maintaining a legal relationship with her than facing the uncertainty of adoption. We agree with the trial court, however, that J.K. deserves the

opportunity to have permanency and stability in his life after three years of unmet expectations.

Ample evidence supports the trial court's conclusion that termination of the parent-child relationship is in J.K.'s best interests. Thus, the trial court did not clearly err.

Affirmed.

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