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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF D.D.,)

TABITHA DENT,)

Appellant,)

vs.)

DEPARTMENT OF CHILD SERVICES OF)
ALLEN COUNTY,)

Appellee.)

No. 02A03-0707-JV-304

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable William Briggs, Judge
Cause No. 02D07-0607-JT-145

December 7, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Tabitha Dent appeals the termination of her parental rights to D.D. We reverse.

Issue

Dent raises one issue, which we restate as whether there is sufficient evidence to support the termination of her parental rights.

Facts

Dent is the mother of D.D., who was born on January 29, 2003. On October 21, 2005, D.D. was alleged to be a child in need of services (“CHINS”). On January 30, 2006, the trial court entered its “Order on Initial Hearing and/or Dispositional Hearing,” in which it determined D.D. was a CHINS and continued D.D.’s placement in foster care. App. p. 13. On July 14, 2006, the Department of Child Services of Allen County (“DCS”) filed its petition to terminate Dent’s parental rights. After a hearing, the trial court terminated Dent’s parental rights. Dent now appeals.

Analysis

Dent argues that the trial court improperly terminated her parental rights because D.D. had not been removed from her custody under a dispositional decree for at least six months prior to the DCS petitioning to terminate her parental rights. In reviewing the termination of one’s parental rights, we will not set aside a trial court’s judgment unless it is clearly erroneous. Castro v. State Office of Family & Children, 842 N.E.2d 367, 372 (Ind. Ct. App. 2006), trans. denied. Where, as here, the trial court issues findings and conclusions, we first determine whether the evidence supports the findings, and then we determine whether the findings support the judgment. 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 Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005)). When reviewing a termination of parental rights, we neither reweigh the evidence nor judge the credibility of witnesses. Id. Instead, we consider only the evidence and reasonable inferences drawn therefrom that are most favorable to the judgment. Id.

Indiana Code Section 31-35-2-4(b)(2) provides that a CHINS petition must allege that:

(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;

(ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; 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) months 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.

If the trial court finds that the allegations in a petition are true, it shall terminate the parent-child relationship. See Ind. Code § 31-35-2-8(a). The DCS must prove these allegations by clear and convincing evidence. Bester, 839 N.E.2d at 148. “Clear and convincing evidence need not reveal that the continued custody of the parents is wholly inadequate for the child’s very survival. Rather, it is sufficient to show by clear and convincing evidence that the child’s emotional and physical development are threatened by the respondent parent’s custody.” Id. (quotations and citations omitted).

Dent argues that because the dispositional order was entered on January 30, 2006, and the DCS petitioned to terminate her parental rights on July 14, 2006, Indiana Code Section 31-35-2-4(b)(2)(A)(i) was not satisfied and there is not sufficient evidence to terminate her parental rights. Although Dent did not make this argument to the trial court, the constitutionally protected right of parents to establish a home and raise their children mandates that the failure of a trial court to require compliance with any condition precedent to the termination of this right constitutes fundamental error. Parent-Child Relationship of L.B. & S.B. v. Morgan County Dep’t of Pub. Welfare, 616 N.E.2d 406, 407 (Ind. Ct. App. 1993), trans. denied. The DCS agrees and concedes “that a

fundamental error was made.” Appellee’s Br. p. 7. Accordingly, we reverse the termination of Dent’s parental rights.¹

Conclusion

D.D. had not been removed from Dent’s custody under a dispositional decree for at least six months prior to the DCS filing its petition to terminate her parental rights. There is insufficient evidence to support the termination of Dent’s parental rights. We reverse.

Reversed.

SHARNACK, J., and VAIDIK, J., concur.

¹ The parties do not mention Indiana Code Section 31-35-2-4(b)(2)(A)(ii) or (iii). Nevertheless, it does not appear that the trial court made a finding under Indiana Code Section 31-34-21-5.6 or that D.D. had been removed from Dent’s care for at least fifteen of the most recent twenty-two months. See App. p. 23 (finding that D.D. lived with Dent from birth until September 28, 2005).