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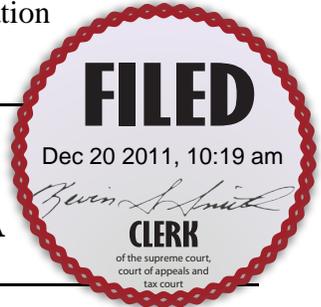
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**IN THE
COURT OF APPEALS OF INDIANA**



IN RE: THE MATTER OF THE)
TERMINATION OF THE PARENT CHILD)
RELATIONSHIP OF:)

D.F. & R.F. (Minor Children),)

And)

B.G. (Mother),)

Appellant-Respondent,)

vs.)

INDIANA DEPARTMENT OF CHILD)
SERVICES,)

Appellee-Petitioner.)

No. 84A01-1105-JT-308

APPEAL FROM THE VIGO CIRCUIT COURT - JUVENILE DIVISION
The Honorable David R. Bolk, Judge
Cause No. 84C01-1006-JT-765

December 20, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

B.W. (“Mother”) appeals the involuntary termination of her parental rights to her children, D.F. and R.F. Concluding that the Indiana Department of Child Services, local office in Vigo County (“VCDCS”), presented clear and convincing evidence to support the trial court’s judgment, we affirm.

Facts and Procedural History

Mother is the biological mother of D.F., born September 17, 2007, and R.F., born July 6, 2008.¹ The facts most favorable to the trial court’s judgment reveal that on the day R.F. was born, R.F. tested positive for methamphetamine and Mother tested positive for methamphetamine and marijuana. The same day, police were called to the hospital because of an altercation between Mother and the children’s father in the hospital room. Because of these events, VCDCS sought and received a petition requesting the emergency removal of both D.F. and R.F. from Mother’s care on July 8.

Two days later, VCDCS filed a petition alleging that D.F. and R.F. were children in need of services (“CHINS”). In late July, Mother admitted that D.F. and R.F. were CHINS, and the children were placed in foster care. The trial court entered a dispositional order requiring Mother to participate in individual therapy, substance-abuse

¹ The parental rights of the children’s biological father, D.F. (“Father”), were also involuntarily terminated by the trial court’s judgment. *See* Appellant’s App. p. 201. Because Father does not participate in this appeal, we limit our recitation of the facts to those pertinent solely to Mother’s appeal.

treatment, mental-health treatment, and domestic-violence classes in order to achieve reunification with D.F. and R.F. *See* Appellant's App. p. 116. Mother was permitted supervised visitation with the children at the VCDCS offices for three hours each week.

In the winter of 2009, VCDCS filed a progress report indicating that Mother was living with Father and the environment was prone to domestic violence. The report also stated that from July 10, 2009, until December 11, 2009, Mother had provided twenty-eight negative drug screens. *Id.* at 127. However, Mother had failed to provide drug screens on twenty-three occasions and missed or cancelled ten therapy sessions. *Id.* The report indicated that the plan for D.F. and R.F. remained reunification. *Id.* at 129.

Six months later, VCDCS filed another progress report and accompanying case plan. The progress report stated that Mother had recently been incarcerated for violating Drug Court program rules by testing positive for illegal drugs. *See id.* at 162. In June 2010, VCDCS filed petitions seeking the involuntary termination of Mother's parental rights to D.F. and R.F. An evidentiary hearing on the termination petitions was held in April 2011. During the termination hearing, VCDCS presented evidence concerning Mother's unresolved substance-abuse issues. More specifically, Mother tested positive for marijuana and had six cocaine-positive drug tests during the CHINS proceedings. Tr. p. 15. After her release from jail in January 2011, Mother tested positive on more than one occasion for marijuana and on another occasion tested positive for amphetamine and methamphetamine. *Id.* at 18-19. Mother also tested positive for marijuana ten days before the termination hearing. *Id.* at 19. VCDCS also presented evidence regarding Mother's tumultuous relationship with Father. While the CHINS proceedings were

ongoing, Mother was hospitalized several times and sometimes resided at the local domestic violence shelter. *Id.* at 11-13. Despite this, after her release from jail, Mother resumed living with Father. At the termination hearing, Mother testified that Father had moved out of the home, but they had not ended their relationship.² *Id.* at 34.

At the conclusion of the termination hearing, the trial court took the matter under advisement. The court thereafter issued its judgment terminating Mother's parental rights to D.F. and R.F. Mother now appeals.

Discussion and Decision

When reviewing the termination of parental rights, we will neither reweigh the evidence nor judge witness credibility. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

Here, in terminating Mother's parental rights, the trial court entered specific findings and conclusions. When a trial court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine whether the

² Mother argues that at the time of the termination hearing she was no longer living with Father nor was she his girlfriend. *See* Appellant's Br. p. 10. In fact, Mother testified that she had a "friendship" with Father and saw him on the weekends. Tr. p. 29. When questioned further, Mother stated that she had not ended her relationship with Father but simply asked him to move out. *Id.* at 34.

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). If the evidence and inferences support the trial court’s decision, we must affirm. *L.S.*, 717 N.E.2d at 208.

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*. These parental interests, however, are not absolute and must be subordinated to the child’s interests when determining the proper disposition of a petition to terminate parental rights. *Id.* In addition, although the right to raise one’s own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001)

In Indiana, 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;

(C) that termination is in the best interests of the child

Ind. Code § 31-35-2-4(b)(2). 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 § 31-37-14-2). If the trial 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. Ind. Code § 31-35-2-8. Mother challenges the sufficiency of the evidence supporting the trial court’s findings as to subsections (b)(2)(B) of Indiana’s termination statute. *See id.* § 31-35-2-4.

At the outset, we point out that Indiana Code section 31-35-2-4(b)(2)(B) provides that VCDCS need establish only one of the three requirements of subsection (b)(2)(B) by clear and convincing evidence before the trial court may terminate parental rights. Here, the trial court found that VCDCS presented sufficient evidence to satisfy subsection (b)(2)(B)(i) of the termination statute, namely, that there is a reasonable probability the conditions resulting in the children’s removal and continued placement outside of Mother’s care will not be remedied. In challenging this conclusion, Mother does not dispute any of the trial court’s specific findings as unsupported by the evidence. Rather, Mother simply asserts that the trial court’s judgment is not supported by the evidence and directs our attention to her self-serving testimony during the termination hearing that she felt she had changed her life, was no longer dating or living with Father, was attending group meetings to address her substance-abuse issues, and had not completed services previously offered by VCDCS because she could not afford it.

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, 512 (Ind. Ct. App. 2001), *trans. denied*. The trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.* Pursuant to this rule, courts have properly considered 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, 1251 (Ind. Ct. App. 2002), *trans. denied*. Moreover, a county department of child services is not required to provide evidence ruling out all possibilities of change; rather, it need only establish that there is a reasonable probability the parent's behavior will not change. *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). Finally, we have previously explained that Indiana's termination statute makes clear that "it is not just the basis for the initial removal of the child that may be considered for purposes of determining whether a parent's rights should be terminated, but also those bases resulting in the continued placement outside of the home." *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*.

In determining there is a reasonable probability that the conditions leading to D.F. and R.F.'s removal and/or continued placement outside Mother's care will not be remedied, the trial court made numerous findings regarding Mother's unresolved substance-abuse issues and volatile relationship with Father. In so doing, the trial court stated, "there continue to be domestic violence problems with mother and father. . . ."

Appellant's Br. p. 12.³ Regarding Mother's substance abuse, the trial court noted "[M]other failed to complete her drug treatment" and "[M]other continued to test positive for methamphetamine and marijuana" *Id.* The court also pointed out that during the case, Mother had another drug-related arrest and was incarcerated from May 2010 until January 2011. *Id.* The trial court also described Mother's history with VCDCS, stating "[M]other failed to work with service providers, mother failed to follow her mental health treatment, and when mother was released . . . she continued to miss drug screens and tested positive for marijuana and methamphetamine" *Id.* Review of the record reveals that the trial court's findings are supported by sufficient evidence.

As previously explained, a trial court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the children. *See D.D.*, 804 N.E.2d at 266. In addition, "[w]here there are only temporary improvements and the 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). Based on the foregoing, we conclude that VCDCS presented clear and convincing evidence to support the trial court's findings and ultimate determination that there is a reasonable probability the conditions resulting in D.F. and R.F.'s removal and continued placement outside Mother's care will not be remedied. Mother's arguments to the contrary, including her arguments regarding changed conditions and significant adverse effects to the children,

³ The trial court's April 25, 2011, judgment terminating Mother's parental rights is not included in Mother's appendix and can be found only in Mother's appellate brief.

amount to nothing more than an invitation to reweigh the evidence, which we may not do.⁴ *See D.D.*, 804 N.E.2d at 264.

Further, we reject Mother's contention that the trial court should have "extended the CHINS wardship" rather than terminating her parental rights. Appellant's Br. p. 10. In making this argument, Mother claims that the court could have waited to "see if [Mother] would be able to continue and build upon the lifestyle changes to which she testified she was dedicated, or if she would return to the style of living that led to her children's removal in the first place." *Id.* at 11. Mother cites *In re I.A.* in support of this proposition. 934 N.E.2d 1127, 1136 (Ind. 2010). We note that in *I.A.*, the record indicated that the father had complied with the case plan, increased his ability to fulfill parental obligations, visited regularly with the child, and cooperated fully with DCS. *Id.* at 1130-31. In short, the father had done everything asked of him, resulting in the Supreme Court's conclusion that there would be "little harm in extending the CHINS wardship" *Id.* at 1136. As previously illustrated, that is not the case here.

The trial court was charged with the task of determining Mother's fitness to care for D.F. and R.F. *at the time of the termination hearing*. The court owed Mother no duty to consider alternatives to termination so that Mother could demonstrate changed behavior at some time in the future. *See Prince v. Dep't of Child Servs.*, 861 N.E.2d 1223, 1230 (Ind. Ct. App. 2007) (stating that the rehabilitative focus under the CHINS

⁴ We note, however, that with respect to harm to D.F. and R.F., R.F. was born with methamphetamine in her system. We further note that the juvenile court need not wait until a child is irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship. *See In re W.B.*, 772 N.E.2d 522, 529 (Ind. Ct. App. 2002).

statutory scheme reinforces that the time for parents to rehabilitate themselves is during the CHINS process, *before* the filing of the petition for termination.)⁵

Affirmed.

ROBB, C.J., and NAJAM, J., concur.

⁵ Though discussed by VCDCS, Mother does not raise, and therefore we do not address, the issue of whether termination of her parental rights is in the best interests of D.F. and R.F.