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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF G.H. IV,	)	
S.R.,	)	
Appellant-Respondent,	)	
vs.	)	No. 82A04-0909-JV-525
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Brett Niemeier, Judge
Cause No. 82D01-0801-JT-3

March 2, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BARNES, Judge

Case Summary

S.R. ("Mother") appeals the termination of her parental rights to G.H. We affirm.

Issue

Mother raises two issues, which we consolidate and restate as whether there is sufficient evidence to support the termination of her parental rights.

Facts

Mother and G.H., III, ("Father") were married, and G.H. was born on September 8, 2006. The Department of Child Services ("DCS") received a report while Mother and G.H. were still in the hospital after G.H.'s birth that Mother and Father had violent altercations at the hospital and that Mother did not appear capable of caring for G.H. Father was heard telling Mother that "he wished [Mother] would die and that he wished that the baby's heart rate would drop and the baby would die." Tr. p. 331. Mother was more focused on Father than G.H.'s needs.

On September 12, 2006, DCS removed G.H. and placed him in protective custody. On September 14, 2006, the DCS filed a petition alleging that G.H. was a child in need of services ("CHINS") because Mother and Father had limited parenting skills and were unable to provide appropriate supervision and because of "volatile outbursts, anger management, and domestic violence" between the parents. Appellee's App. p. 216. The trial court found that G.H. was a CHINS. In October 2006, the trial court ordered Mother to, among other things, participate in In-Home Therapy and Parent Aide Programs,

maintain adequate housing, complete parenting classes, provide appropriate supervision for G.H., cooperate with persons providing care, treatment, and rehabilitation for G.H., and maintain a means to provide financial support to G.H. The trial court ordered that G.H. remain in foster care. The trial court eventually placed G.H. with his paternal grandfather and paternal step-grandmother over DCS's objection.

G.H. is a special needs child. He is "globally delayed" in his cognitive and physical development. Tr. p. 215. He began receiving therapy when he was six months old. G.H. receives speech, occupational, physical, and developmental therapy. At two and one-half years old, G.H. has no verbal communication and must eat baby food due to feeding issues.

In December 2006 and January 2007, the DCS filed a petition for contempt, alleging that Mother had failed to attend parenting classes, that Mother had failed to maintain stable housing, and that Mother had cancelled three supervised visitations and was late for another. Mother admitted the allegations, and the trial court found her in contempt. The trial court sentenced her to ninety days but took execution of the sentence under advisement.

Mother and Father separated in late 2006 or early 2007 and divorced in April 2007. After Mother and Father separated, Mother resided at the Albion Fellows Bacon Center. However, she was asked to leave the facility because she violated the rules and continued to see Father. She then resided at the YWCA, but she was again asked to leave because she violated the facility's rules. In May 2007, Mother moved into the Goodwill Family Center, which assists residents in obtaining self-sufficiency. Although Mother

was eligible to live there for two years, she only lived there for six months. Mother was not compliant with making payments to the Center, paying her debts, or budgeting. She received multiple write-ups due to her failure to follow the Center's rules. When staff discussed Mother's failure to follow rules with her, she often raised her voice, yelled, and left the room.

The Center's staff observed that Mother was more focused on her new boyfriend, Joe Wheat, than her other responsibilities. Other residents complained that Mother and Wheat had inappropriate sexual relations at the Center where children could hear. Wheat was banned from the Center after Mother sneaked him in and he stayed all night. At times when G.H. was allowed to visit Mother at the Center, the Center's staff observed that Mother had trouble feeding G.H. and remembering when to feed him, disciplined him inappropriately, and failed to properly supervise him. Mother left the Center in November 2007, despite the staff's warning that her budget would not support her proposed living arrangements. Mother "blew up" at the Center's staff when they would not let her remove her belongings from the Center on a weekend. Tr. p. 395. Mother then moved into an apartment with Wheat.

In December 2007, Sandra Haywood evaluated Mother for Medicaid waiver services after Mother applied for the Supported Living program. During the evaluation, Mother reported that she has trouble following through on tasks and has emotional outbursts. Mother did not have her medication or her glasses. During the evaluation, Mother commented to Wheat that "maybe [they] should leave town after [they] get the baby." Id. at 252. As a result of the evaluation, Haywood concluded that it would be

dangerous for Mother to live by herself because she does not understand the consequences of her actions. Haywood concluded that she "would be afraid" for G.H. if Mother were allowed to care for him. Id. at 257. Mother qualified for the services, but she failed to respond to the paperwork.

A psychological evaluation by Dr. Rebecca Luzio revealed that Mother has attention deficient hyperactivity disorder, an anxiety disorder, and borderline intellectual functioning. Some of Dr. Luzio's tests on Mother resulted in invalid test results because Mother was unable to read or understand the tests. One of the tests required a third or fourth grade reading level. Dr. Luzio found that Mother was at high risk for committing physical child abuse. She was also concerned that Mother would need a lot of support if G.H. were placed with her and that Mother would be unable to understand G.H.'s required medical procedures or medications.

In the fall of 2007, the DCS attempted to involve Mother with G.H.'s therapy sessions. However, Mother did not want to participate in the therapy because she was unable to get on the floor with G.H. due to an injured knee. Mother's participation with the therapy was then discontinued until June 2008, when she requested to participate again. When Mother began participating in the therapy again, service providers saw that Mother had problems interacting with G.H. and getting involved in his therapy. Mother failed to fully understand G.H.'s delays and required therapies. She needed to be prompted to participate in the therapies and meet G.H.'s needs, and she had difficulty implementing therapy techniques.

In January 2008, the DCS filed a petition to terminate Mother's parental rights. In October 2008, Father consented to adoption of G.H. by G.H.'s paternal grandfather and step-grandmother. Hearings were held on the termination petition in October 2008, January 2009, and February 2009. In March 2009, Mother filed a motion to stay the trial court's order regarding the termination of her parental rights to G.H. and to reopen the termination proceedings. Mother alleged that she gave birth to a second child, J.W., on February 18, 2009. Although DCS initially removed J.W. from her care, the trial court ordered that J.W. be placed with Wheat and that a safety plan be put into place regarding Mother's supervision of J.W. Mother argued that this evidence was relevant to the termination case involving G.H. The trial court agreed and granted Mother's motion.

The trial court then held additional hearings at which Mother presented evidence regarding her care of J.W. After the hearings, the trial court entered findings of fact and conclusions thereon terminating Mother's parental rights to G.H. Mother now appeals.

Analysis

The issue is whether the trial court's termination of Mother's parental rights to G.H. is clearly erroneous. The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment to the United States Constitution. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). However, these parental interests are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. Id. Parental rights may be terminated when the 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 children. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied, cert. denied.

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 consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. Id. Here, the trial court made findings in granting the termination of Mother's parental rights. 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. (citation and internal quotations omitted).

Indiana Code Section 31-35-2-8(a) provides that "if the court finds that the allegations in a petition described in [Indiana Code Section 31-35-2-4] are true, the court shall terminate the parent-child relationship." Indiana Code Section 31-35-2-4(b)(2)[1] provides that a petition to terminate a parent-child relationship involving a child in need of services must allege that:

> (A) one (1) of the following exists:

[1] Indiana Code Section 31-35-2-4(b)(2)(A)(iii) was amended effective July 1, 2009, by Public Law No. 131-2009, § 65. We quote the version of the statute in effect at the time of the proceedings in this case.

(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) 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.

The State must establish these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992); Doe v. Daviess County Div. of Children & Family Serv., 669 N.E.2d 192, 194 (Ind. Ct. App. 1996), trans. denied.

A. Remedy of Conditions Resulting in Removal

Mother first argues that the trial court's findings and conclusions are clearly erroneous regarding whether there was a reasonable probability that the conditions resulting in G.H.'s removal or the reasons for placement outside Mother's home would not be remedied.[2] In making this determination, the trial court must judge a parent's fitness to care for her child at the time of the termination hearing and take into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. However, 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. When assessing a parent's fitness to care for a child, the trial court should view the parent as of the time of the termination hearing and take into account any evidence of changed conditions. In re C.C., 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), trans. denied. The trial court can properly consider the services that the State offered to the parent and the parent's response to those services. Id.

Mother argues that she has been compliant with services, had a parent aide for two years, maintained employment until she qualified for disability, had stable housing for two years, attended three separate parenting programs, and is no longer in a violent relationship with G.H.'s father. Despite Mother's progress, DCS presented evidence that she lacks an understanding of G.H.'s needs. As the trial court noted: "After three

[2] We need not address the trial court's conclusion that the continuation of the parent-child relationship poses a threat to the children's well-being because the statute is written in the disjunctive. Thus, DCS was not required to prove both. See Bester, 839 N.E.2d at 148 n.5.

separate parenting courses, it was observed that Mother continued to display poor parenting skills, failed to consistently implement therapy during her time with the child, would leave the child unattended or allow the child to wander out of her sight and not check on him unless prompted, and that she did not know how to respond to his needs." Appellant's App. p. 129.

Additionally, Mother contends that some of the service providers testified that Mother knew basic parenting skills, was attentive to G.H., and interacted with G.H. However, other service providers testified that Mother had very little interaction with G.H., had difficulty implementing therapy techniques, had problems feeding G.H., and had problems understanding G.H.'s delayed development. Mother's argument is a request that we reweigh the evidence, which we cannot do.

Mother also argues that she is doing well caring for J.W. She has engaged the services of Healthy Families, a public health nurse, and two nursing students to assist her with caring for J.W. and to teach her parenting skills. Now that she is not pregnant, she is taking her ADHD medication and appears to be more focused. We commend Mother for her efforts at caring for J.W., but we note, as the trial court did, that J.W. and G.H. are very different children. J.W. does not appear to have any medical conditions, while G.H. is a special needs child. G.H. has global delays and requires significant and ongoing therapy and care. Even after J.W.'s birth, Mother struggled to care for G.H. during supervised visitations. After the trial court reopened the proceedings, G.H. choked on food during a supervised visitation and, despite years of training, Mother was unable to appropriately respond to the issue.

Finally, Mother contends that DCS did not offer appropriate and timely services to her. Mother argues that Wheat should have been involved with the services and that services should have been changed as a result of her psychiatric evaluation. The trial court noted that DCS had provided many services to Mother, including parent aide and visitation services, psychiatric evaluations and bonding assessments, multiple parenting classes, shelter at three different facilities, mental health services, Medicaid waiver assistance, and education on G.H.'s therapies and feeding problems. Despite the services, Mother continued to struggle to meet G.H.'s needs. The trial court addressed Mother's argument and noted, "While much has been made of the state's handling of this case, this doesn't change the fact that the mother cannot adequately parent this child due to his special needs and condition." Appellant's App. p. 126. Our review of the record reveals that DCS offered appropriate and timely services to Mother.

The trial court found there was a reasonable probability that the conditions resulting in G.H.'s removal or the reasons for placement outside Mother's home would not be remedied. We conclude that the trial court's finding is not clearly erroneous.

B. Best Interest

Mother also argues that termination of her parental rights was not in G.H.'s best interest. The DCS was required to prove by clear and convincing evidence that the termination was in G.H.'s best interests. In determining what is in the best interests of a child, the trial court is required to look at the totality of the evidence. A.F. v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1253 (Ind. Ct. App. 2002), trans. denied. In doing so, the trial court must subordinate the interests of the parents to those

of the child involved. Id. "[T]he historic inability to provide adequate housing, stability, and supervision, coupled with the current inability to provide the same, will support a finding that continuation of the parent-child relationship is contrary to the child's best interests." In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005).

The CASA recommended that Mother's parental rights be terminated and testified that termination was in G.H.'s best interest. According to the CASA, Mother failed to understand the importance of G.H.'s therapy and does not understand how serious G.H.'s disabilities are or the ongoing nature of his disabilities. The DCS case manager noted that, despite numerous services, Mother never progressed beyond supervised visitation. Mother continued to have problems feeding G.H., parenting, understanding normal child development, and understanding G.H.'s delayed development. The case manager also concluded that termination was in G.H.'s best interest.

Although Mother clearly loves G.H. and has attempted to take advantage of the services offered to her, the evidence demonstrated that she is unable to meet G.H.'s special needs. Given the totality of the evidence presented by DCS, the trial court's finding that termination is in G.H.'s best interest is not clearly erroneous.

Conclusion

Clear and convincing evidence supports the trial court's judgment terminating Mother's parental rights to G.H. Accordingly, we affirm.

Affirmed.

MATHIAS, J., and BROWN, J., concur.