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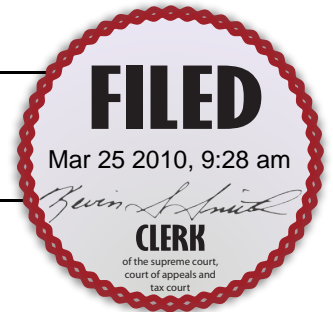
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**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP OF)
S.B., Minor Child,)
)
A.B., Mother,)
)
Appellant-Respondent,)
)
vs.)
INDIANA DEPARTMENT OF CHILD)
SERVICES and LAKE COUNTY COURT)
APPOINTED SPECIAL ADVOCATE,)
)
Appellees-Petitioners.)

No. 45A03-0909-JV-417

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Judge
Cause No. 45D06-0811-JT-452

March 25, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

A.B. (“Mother”) appeals the termination of her parental rights to S.B. Mother alleges the evidence does not support the trial court’s findings or judgment. We affirm.

FACTS AND PROCEDURAL HISTORY

The order terminating Mother’s rights includes the following findings and conclusions:

There is a reasonable probability that the conditions resulting in the removal of the child from her parents’ home will not be remedied in that: The Child was removed at birth due to the mother having a current open case with the Department of Child Services. The siblings were in relative placement. Mother had a pending child molestation charge against her which was eventually dropped. Father was a registered sex offender and mother was living with father. Mother was offered services pursuant to a case plan for reunification which included home based services, visitation, psychological evaluation, therapy and mother to obtain stable housing and secure employment. There was a no contact order issued for father. Mother violated the visitation order and the visits had to cease. Mother eventually participated in services and the visitations were reinstated. Mother continued to live with the father. When mother eventually obtained housing, mother was living with various individuals. Mother could not maintain stable housing and employment. Mother was offered services including transportation and financial support to try and make mother self-sufficient for herself and her child. Mother attempted services and could not seem to maintain her consistency. Mother had no family support. Mother did not progress in her case plan. Services were offered to Mother for years and reunification was not any closer than it was in 2007. Mother has been evicted from her apartment three times. Mother has had seven addresses in the last two years. The Department of Child Services offered mother educational services, mother did not participate in the educational programs offered. Mother has two other children whom she is unable to care for and support. Mother has no stable housing. Mother currently does not have housing for herself. The well-being of the child would be in jeopardy [sic] due to mother’ instability.

* * * * *

Neither parent is providing any financial or emotional support for the child. Neither parent has been compliant with the case plan for reunification. The child was removed in 2007 and has never been placed in parental care. The

child has been in placement with the foster mother since birth and has bonded with the foster parent.

There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child in that: for the reasons stated above. Additionally, the child deserves a loving, caring, stable, safe and secure adoptive home.

It is in the best interest of the child and her health, welfare and future that the parent-child relationship between the child and her parents be forever fully and absolutely terminated.

The Lake County Division of Family and Children has a satisfactory plan for the care and treatment of the child which is Adoption by the foster mother.

(Appellant's App. at 1-2.) In accordance therewith, the court terminated Mother's parental rights.¹

DISCUSSION AND DECISION

We are highly deferential when reviewing termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We do not reweigh evidence or judge the credibility of witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied sub nom. Peterson v. Marion County OFC*, 822 N.E.2d 970 (Ind. 2004). Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.* In deference to the juvenile 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 sub nom. Swope v. Noble County Office of Family & Children* 735 N.E.2d 226 (Ind. 2000), *cert. denied* 534 U.S. 1161

¹ In the same order, the court terminated the parental rights of S.B.'s alleged father, C.C., who does not participate in this appeal.

(2002).

A petition to terminate a parent-child relationship must allege:

- (A) [o]ne (1) of the following exists:
 - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
* * * * *
- (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). The State must establish each of these allegations by clear and convincing evidence. *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992).

Mother challenges the trial court's conclusions under part (B) of that statute. Because Ind. Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, the juvenile court needed to find by clear and convincing evidence only one of the two alternative requirements of part (B). *See L.S.*, 717 N.E.2d at 209. Where, as here, the juvenile court found both, we may affirm if the evidence supports either. *See In re B.J.*, 879 N.E.2d 7, 22 n.4 (Ind. Ct. App. 2008), *trans. denied sub nom. Watkins/Johnson v. Marion County DCS*, 891 N.E.2d 42 (Ind. 2008).

When determining whether there is a reasonable probability the conditions justifying a child's removal and continued placement outside the home will not be remedied, the juvenile court must judge a parent's fitness to care for his or her children 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 sub nom. Timm v. Office of Family & Children*, 753 N.E.2d 12 (Ind. 2001). However, the 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 criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied sub nom. Faver v. Marion County Office of Family & Children* 774 N.E.2d 515 (Ind. 2002). A department of child services is not obliged to rule out all possibilities of change; it need establish only a reasonable probability a parent’s behavior will not change. *See In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

Mother alleges termination of her rights was improper because the conditions causing S.B.’s removal had been remedied: the child molesting charge against her had been dropped and her involvement with DCS regarding her other two children had been “resolved.” (Br. of the Appellant at 6.) However, as Mother admits, her involvement with DCS regarding her other two children was “resolved” because she gave custody of those children to her mother. That resolution does not demonstrate DCS no longer had cause for concern about Mother’s ability to care for S.B. Thus, we disagree with her suggestion that, as a factual matter, the reasons for S.B.’s removal had been resolved.²

² Because we hold Mother’s argument is not supported by the facts, we do not address her corresponding legal argument: that her “employment and housing issues are matters collateral to” the reasons S.B. was removed, (*id.* at 7), and therefore, “the Court’s dependence on the ancillary matters (where ancillary/collateral factors are

We acknowledge Mother may have had health and transportation issues that interfered with some employment opportunities. But there was evidence those factors were not completely responsible for Mother's difficulty maintaining employment or housing.³ DCS provided Mother with money to assist with her rent, but the landlord did not receive payment. Mother testified that when she was employed, she used her money on "[s]tupid stuff, going out and trying to stay at hotels Boyfriends saying that they're going to reimburse it, then they never do." (Tr. at 107.)

Case Manager Karla Garcia testified Mother has had difficulty maintaining employment and financial stability for the past two years and "adding a child to the mix, that would just add more financial instability" to Mother's situation. (*Id.* at 69.) Garcia was not confident that Mother ever would be able to reunify with S.B. because Mother "seems to get stable at times and then just drops off." (*Id.* at 63.) Because of that instability, Garcia believed termination was in S.B.'s best interest. (*Id.* at 65.)

The evidence supports the trial court's findings, which support its judgment. Accordingly we affirm the termination of Mother's parental rights to S.B.

those factors that did not contribute to the removal of the children but surfaced during the life of the case plan) is an abuse of its discretion." (*Id.*) Mother offers no authority to support that argument, and thus she has waived it for appeal. See Ind. Appellate Rule 46(A)(8) (argument requires citation to authority); *Carter v. Indianapolis Power & Light Co.*, 837 N.E.2d 509, 514 (Ind. Ct. App. 2005) (finding issue waived where party failed to cite record or authority to support the argument), *reh'g denied, trans. denied* 860 N.E.2d 586 (Ind. 2006).

³ Nor, evidently, was the transportation issue completely out of her control. Mother does not have a current driver's license because she did not pay a parking ticket and a fee for running a red light. And Mother stopped using the bus for over a year because she "didn't have the [bus] schedule, so I didn't want to just be standing out there not knowing which bus to go onto." (Tr. at 103.)

Affirmed.

DARDEN, J., and KIRSCH, J., concur.