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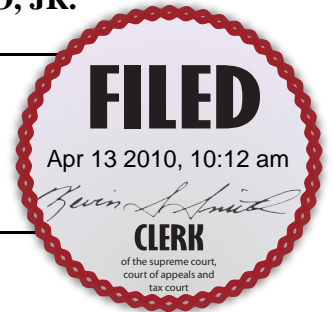
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**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF R. V. and O. V.,)
)
C.V. (Mother))
)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES and,)
)
LAKE COUNTY COURT APPOINTED)
SPECIAL ADVOCATE,)
)
Appellees-Petitioners.)

No. 45A03-0911-JV-549

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Judge
Cause No. 45D06-0807-JT-328
45D06-0807-JT-329

April 13, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BARNES, Judge

Case Summary

C.V. (“Mother”) appeals the involuntary termination of her parental rights to R.V. and O.V. We affirm.

Issue

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

Facts

Mother has four children, including R.V., born November 3, 2003, and O.V., born March 30, 2005.¹ Maternal grandmother is caring for Mother’s two older children because Mother “couldn’t handle all four of her children.” Tr. p. 111. Before maternal grandmother took the older children, they were dirty all the time, they did not eat enough food, and they had ringworm. Id. at 114.

On October 25, 2006, the Department of Child Services (“DCS”) received a referral regarding O.V., who had been admitted to a hospital for burns to his face and hand. Mother explained to DCS that R.V. might have knocked an iron off and burned O.V. Mother then said that she left O.V. with a friend for a few minutes. Mother also said that she gave O.V. a bottle and that, when he woke up crying a few hours later, she discovered the burns. Ultimately, Mother said that she “didn’t really know what had happened to” O.V. Id. at 22. Mother was afraid to take O.V. to the hospital because she was concerned that DCS would be called. Mother applied Neosporin to the burns and did

¹ The parental rights of R.M. and D.W., alleged fathers of R.V. and O.V., also were terminated, and the alleged fathers are not participating in this appeal.

not take O.V. to the emergency room until twenty-four hours later. O.V. had second degree burns, and he was transferred to a burn unit in another hospital.

DCS took custody of R.V. and O.V. and filed a petition alleging that the children were children in need of services (“CHINS”). At a hearing, Mother admitted the material allegations of the CHINS petition. The trial court placed the children with their aunt, Mother’s sister, and ordered Mother to participate in a psychological and psychiatric evaluation and any recommended treatment, a drug and alcohol evaluation and any recommended treatment, parenting classes, home based services, and supervised visitation.

The children remained with their aunt until March 14, 2007, when she requested their removal because she was struggling to care for the children along with her own six children. The children were then placed in foster care with A.Y., where they have remained. R.V. and O.V. have developmental delays and behavior issues. R.V. is taking medication for hyperactivity. Both R.V. and O.V. were “diagnosed with pervasive developmental disorder” and receive therapy and psychiatric services. *Id.* at 72. R.V. has a speech impediment, and both R.V. and O.V. had problems with potty training. The foster mother must constantly supervise and redirect them.

When she was a child, Mother was injured in a train accident, and her foot was amputated. She now has a prosthetic. Mother is not employed, but she receives benefits from a settlement as a result of the train accident. Mother stopped going to school after the eighth grade. Mother admitted to using marijuana, but claimed to have stopped using drugs after the children were removed from her custody.

Initially, Mother complied with the required services. She participated in psychological and psychiatric evaluations, attended supervised visitations, and participated in a drug evaluation. However, Mother's participation in services became inconsistent.

She completed random drug screens for six months. However, DCS lost contact with Mother when she moved from East Chicago and failed to inform DCS of her new addresses. DCS then received several reports that Mother was using marijuana again and drinking alcohol. DCS located Mother in November 2007, after her case manager had to drive up and down a street in Gary looking for her. DCS requested that Mother undergo a hair follicle test, but she refused because she thought the test would be positive for drug use.

The case manager also viewed Mother's new residence in November 2007, and noticed that other children were living there and no stove or refrigerator was in the residence. The case manager informed Mother that she would need a stove and refrigerator before overnight visitation could begin. In April 2008, Mother still did not have a stove or refrigerator.

Mother completed psychological and psychiatric evaluations but "had a problem following through with the recommended services for those." *Id.* at 42. She participated in individual counseling, but her attendance was inconsistent. Mother was also inconsistent in participating in the supervised visitations. At times, Mother would call and cancel visitations because she "had a job interview" or was "going on vacation" for several weeks. *Id.* at 53. At one point, Mother was supposed to participate in counseling

immediately after her visitation with the children, but she would leave the facility without attending the counseling sessions. The counseling and visitation were then moved to Mother's residence to ensure Mother's attendance at both the counseling and visitation sessions.

In April 2008, the plan was changed from reunification to termination of parental rights. On July 1, 2008, DCS filed a petition to terminate Mother's parental rights. After the plan changed to termination of Mother's parental rights, she "appeared to be more motivated." Id. at 50. In June 2008, Mother submitted to a hair follicle test, and the results were negative. However, Mother never progressed beyond supervised visitation. Although she eventually completed a parenting class, Mother still needed assistance in disciplining and redirecting the children during visitations. The DCS case manager noted that Mother's progress was "moving very slow." Id. at 76.

The DCS case manager recommended termination of Mother's parental rights due to her noncompliance with services. The case manager noted that, prior to the filing of the petition to terminate Mother's parental rights, Mother was "inconsistent with completing services" and "[s]he would do the services when she wanted to do the services." Id. at 64. At the termination hearing, maternal grandmother was concerned that if all of the children were returned to Mother, she would not "be able to control them." Id. at 114. At the time of the hearing, Mother had moved again, and her residence had a stove and refrigerator. Mother testified that she was unemployed, she did not have custody of any of her children, and she had again enrolled in a GED program. When questioned why she had not completed a GED program, Mother replied, "Maybe

because a lot of personal problems get in my way, and then a lot of people being in my area – maybe my mother or my sister. Something like that.” Id. at 146. When asked what she does with her time, Mother said, “Maybe I’ve been in the house watching TV or go to my friend’s house.” Id. The trial court entered findings of fact and conclusions thereon terminating Mother’s parental rights to R.V. and O.V.

Analysis

The issue is whether the trial court’s termination of Mother’s parental rights to R.V. and O.V. 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) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege, in part, that:

- (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 R.V. and O.V.'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.

According to Mother, she fully complied with the services offered to her, and she now has suitable housing.³ However, Mother's argument is merely a request that we reweigh the evidence, which we cannot do. DCS presented evidence that the children

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.

³ Mother argues that the trial court relied upon her refusal to take medication but that medication was never recommended. Respondent's Exhibit B, which is the psychiatric evaluation, notes a diagnosis of mild to moderate depressive symptoms. The doctor reviewed medication and therapy options with Mother, but she refused to take depression medication based on her "personal belief[s]." Respondent's Exhibit B at 3. The doctor did not require Mother to take medication, and Mother agreed to reevaluate the situation in one month.

were removed after O.V. was severely burned, and Mother was unable to explain how the burns occurred. Although Mother did take part in psychological and psychiatric evaluations and a drug evaluation, Mother was inconsistent in participating in the supervised visitation, individual counseling, and drug screening. She moved without informing DCS of her new address, requiring her case manager to drive up and down a street in Gary looking for her.

Mother's participation in services slightly improved after the petition to terminate her parental rights was filed, but the case manager noted that Mother's progress was "moving very slow." Tr. p. 76. Mother never progressed beyond supervised visitations with the children. She eventually completed a parenting class, but Mother still needed assistance in disciplining and redirecting the children during visitations. Mother's lack of motivation is also evidenced by the fact that, although Mother was unemployed and did not have custody of any of her children, she had not completed her GED classes. When questioned why she had not completed a GED program, Mother replied, "Maybe because a lot of personal problems get in my way, and then a lot of people being in my area – maybe my mother or my sister. Something like that." Id. at 146. When asked what she does with her time, Mother said, "Maybe I've been in the house watching TV or go to my friend's house." Id.

The trial court found there was a reasonable probability that the conditions resulting in the children's removal or the reasons for placement outside Mother's home would not be remedied. Given the evidence presented at the termination hearing, 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 R.V. and O.V.'s best interest. The DCS was required to prove by clear and convincing evidence that the termination was in the children'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).

Mother argues that termination is not in the children's best interest because the foster mother "is a grandmother, and the boys are a handful." Appellant's Br. p. 12. Mother also argues that the children will "experience severe mental anguish" at Mother's parental rights being terminated. Id.

The children were removed from Mother in October 2006, and have been in foster care with A.Y. since March 2007. R.V. and O.V. have developmental delays and behavior issues. R.V. is taking medication for hyperactivity. Both R.V. and O.V. were "diagnosed with pervasive developmental disorder" and receive therapy and psychiatric services. Tr. p. at 72. R.V. has a speech impediment, and both children had problems with potty training. The foster mother must constantly supervise and redirect them. The children are bonded with their foster mother, and their therapist testified that the children

feel “safe and protected” with A.Y. and that removal from A.Y. could be “detrimental in a lot of ways” to the children. Id. at 105. At the time of the termination hearing, Mother still needed help disciplining the children and redirecting them. Even the maternal grandmother testified that if all of the children were returned to Mother, Mother would not “be able to control them.” Id. at 114.

Although Mother participated in some services, the evidence demonstrated that she is unable to meet the children’s needs. Given the totality of the evidence presented by DCS, the trial court’s finding that termination is in the children’s best interest is not clearly erroneous.

C. Satisfactory Plan

Although Mother concedes that “the trial court was correct in its ruling that there is a satisfactory plan for the care and treatment of the children,” Mother also argues that “there must be concern for [A.Y.’s] ability to handle R.V. and O.V. . . .” Appellant’s Br. p. 12. DCS was required to prove that it had “a satisfactory plan for the care and treatment of the child.” Ind. Code § 31-35-2-4(b)(2)(D). “This plan need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated.” In re A.J., 881 N.E.2d 706, 719 (Ind. Ct. App. 2008), trans. denied. The DCS caseworker testified that adoption of the children by the foster mother, A.Y., was the current plan for the children. The foster mother also testified that she was willing to adopt the children. Given this evidence, DCS demonstrated a satisfactory plan for the care and treatment of the children by clear and convincing evidence.

Conclusion

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

Affirmed.

BAILEY, J., and MAY, J., concur.