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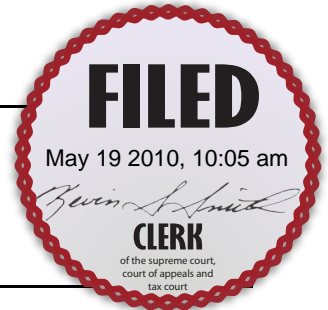
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**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIPS OF D.D., M.W., M.W., JR.,)
D.T., AND J.T., MINOR CHILDREN,)
AND THEIR MOTHER, L.T.,)

L.T. (Mother),)

Appellant/Respondent,)

vs.)

No. 49A05-0910-JV-599

MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee/Petitioner,)

and)

CHILD ADVOCATES, INC.,)

Appellee/Guardian ad Litem.)

APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Marilyn A. Moores, Judge

The Honorable Larry E. Bradley, Magistrate

Cause Nos. 49D09-0810-JT-44425, 49D09-0810-JT-44426, 49D09-0810-JT-44427,
49D09-0810-JT-44428, and 49D09-0810-JT-44429.

May 19, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Respondent L.T. (“Mother”) appeals the involuntary termination of her parental rights to her biological children D.D.; M.W.; M.W., Jr.; D.T.; and J.T., claiming that Appellee/Petitioner Marion County Department of Child Services (“MCDCS”) failed to produce sufficient evidence to sustain the juvenile court’s conclusions that the reasons for the original removal of the children are unlikely to be remedied and that continuing the parent-child relationship poses a threat to the children. We affirm.

FACTS AND PROCEDURAL HISTORY

Mother, born in 1984, first tried marijuana when she was eleven years old. Mother successfully completed a drug treatment program in 2006, but began using marijuana again in August of 2007 due to stress caused by the return of her children (who had been removed from her by MCDCS at some point) and being incarcerated for thirty days. On November 27, 2007, MCDCS filed petitions alleging that Mother’s biological children M.W.; M.W. Jr.; D.T.; and J.T. were children in need of services (“CHINS”). On January 16, 2008, Mother admitted the allegations in the CHINS petition and the four children were removed from her custody on that date. On February 8, 2008, MCDCS alleged that Mother’s child D.D., who had been living with a relative who was no longer able to take care of him, was a CHINS. That day, Mother admitted the allegations in the second CHINS petition, and D.D. was removed from her custody.

On January 16 and February 8, 2008, the juvenile court issued participation decrees in which it ordered services to be completed by Mother. *Inter alia*, the participation decrees provided that Mother was to participate in any program that she was ordered to within thirty days, secure and maintain a secure and legal source of income adequate to support all household members and her children, and obtain and maintain suitable housing. At some point in 2008, Mother was ordered to participate in services designed to address her chronic marijuana use. In June of 2008, Mother was unsuccessfully discharged from the treatment program, having attended five or six out of forty-eight scheduled sessions and failing two drug screens.

Additionally, supervised visitation between Mother and the children began in March of 2008. On several occasions, Mother failed to attend the scheduled weekly visitations, arrived late, or was “very disengaged[.]” Tr. p. 341. Debra Fleming and Rebecca Reed supervised the visits, described many of them as chaotic or “out of control[.]” and expressed concerns regarding the children’s safety. Tr. p. 230. Reed observed no improvement in Mother’s parenting skills during the period of her supervision, which was approximately two months. Visitation was suspended in October of 2008 due to Mother’s inconsistent participation.

On October 1, 2008, MCDCS petitioned to terminate the parent-child relationships between Mother and D.D.; M.W.; M.W., Jr.; D.T.; and J.T. In May of 2009, Mother successfully completed a substance abuse treatment program. On June 4, 2009, MCDCS required Mother to perform twenty-four random drug screens over the following six

months. Samples collected on June 7, June 26, and July 6, 2009, tested positive for marijuana, indicating continued use.

Mother also submitted herself to in-home counseling with Sara Jackson, beginning on June 17, 2009. Mother participated well at first, but missed four appointments in August and September of 2009. Jackson suggested to Mother that she contact Narcotics Anonymous, but she never did. At the time, Mother had only a refrigerator in the kitchen of the residence she shared with her partner, was in need of furniture in living areas, and did not have adequate beds or bedding for her children to use. Mother was given the contact information for the St. Vincent DePaul Society so that she could receive help furnishing her residence, but did not pursue the opportunity. Moreover, Mother had lived in six different places in the previous one-and-one-half years and had been incarcerated more than once. Jackson specifically asked Mother to investigate the local schools which her children would be attending in the event of reunification, but she never did. Mother worked an average of twenty hours a week making minimum wage, earning approximately \$300 per month. Jackson noted that Mother very rarely initiated any conversation regarding her children and lacked insight into their needs.

Far varying lengths of time, the children have been residing with foster parents Bertha and Fred Owens, who have indicated a desire to adopt all five of them. M.W.; M.W., Jr.; and D.T. were first placed with the Owenses in December of 2004 and January of 2005 in an earlier CHINS proceeding until they were reunited with Mother in March of 2007. D.D. was first placed with the Owenses in February of 2006 and was reunited with Mother in March of 2007. M.W.; M.W., Jr.; and D.T. were placed again with the

Owenses in November of 2007, J.T. joined them in December of 2007, and D.D. came “a few months later[.]” Tr. p. 412. At the time of the November 2007 placement, D.D. was eight years old, M.W. was five, M.W., Jr., was four, D.T. was three, and J.T. was one.

When J.T. was first placed with the Owenses, he was “very overweight” and could walk, but not very far. Tr. p. 426. J.T.’s situation “straighten[ed] up after a while[.]” Tr. p. 427. When D.D. was first placed with the Owenses, he was “very obese[,], was more or less like a couch potato[,], didn’t like to do anything[, and] didn’t like to go outside.” Tr. p. 427. Since D.D. has been in the Owenses’ care, he has lost twenty pounds, receives “high honors in all of his classes[.]” and enjoys playing football and exercising. Tr. p. 428. At the time of trial, D.D. had been in therapy for two months.

M.W. has been diagnosed with attention deficit hyperactivity disorder and is taking Risperidone, Metadate, and Clonidine to treat it. When M.W. was placed with the Owenses the second time in November of 2007, he was exhibiting inappropriate sexual behavior at school. Therapist John Polstra first worked with M.W. for approximately nine months beginning in April of 2008 and then again beginning in January of 2009. The initial referral was made because M.W. was placing his hands down the underwear of girls at school and using vulgar language describing adult sexual behavior. The first period of therapy was successful, and Polstra noted that his success with M.W. was due in large part to the “safe, structured and loving home” provided by the Owenses. Tr. p. 93. Polstra, who had also worked with M.W., Jr., and D.T., noted that all three children had shown “overall improvement” since visitation with mother had

been suspended, with M.W. in particular “very well connected to his foster parents and ... doing very well.” Tr. pp. 110, 111.

Trial on the termination petitions was held on September 11 and 28, 2009. Polstra testified that M.W. would pose a threat to himself and others if he were returned to Mother and that M.W., Jr., and D.T., who had previously been having behavior problems at home, would revert to their default behaviors if returned. Current case manager Victoria Maddox testified that it would be harmful to all five children if a permanent placement were not settled upon and that there was a “high probability” that reunification with Mother “would not go well[.]” Tr. p. 582. Guardian *ad litem* Claudia Swhier testified that the four oldest children wanted to be adopted by the Owenses and recommended that the Owenses adopt all five. On September 30, 2009, the juvenile court issued an order terminating Mother’s parental rights to all five children.

DISCUSSION AND DECISION

The Fourteenth Amendment to the United States Constitution protects the traditional right of a parent to establish a home and raise her children. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 145 (Ind. 2005). Further, we acknowledge that the parent-child relationship is “one of the most valued relationships of our culture.” *Id.* However, although parental rights are of a constitutional dimension, the law allows for the termination of those rights when a parent is unable or unwilling to meet her responsibility as a parent. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Therefore, parental rights are not absolute and must be subordinated to the

children's interest in determining the appropriate disposition of a petition to terminate the parent-child relationship. *Id.*

The purpose of terminating parental rights is not to punish the parent but to protect the children. *Id.* Termination of parental rights is proper where the children's emotional and physical development is threatened. *Id.* The juvenile court need not wait until the children are irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

Sufficiency of the Evidence

Mother contends that the evidence presented at trial was insufficient to support the juvenile court's order terminating her parental rights. In reviewing termination proceedings on appeal, this court will not reweigh the evidence or assess the credibility of the witnesses. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We only consider the evidence that supports the juvenile court's decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the juvenile court includes findings of fact and conclusions thereon in its order terminating parental rights, our standard of review is two-tiered. *Id.* First, we must determine whether the evidence supports the findings, and, second, whether the findings support the legal conclusions. *Id.*

In deference to the juvenile court's unique position to assess the evidence, we set aside the juvenile court's findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id.* A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it. *Id.* A judgment is clearly

erroneous only if the legal conclusions made by the juvenile court are not supported by its findings of fact, or the conclusions do not support the judgment. *Id.*

In order to involuntarily terminate the parents' parental rights, MCDCS must establish by clear and convincing evidence 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) the child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;
- (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) (2008). Specifically, Mother claims that MCDCS failed to establish that the conditions that resulted in the children's removal or the reasons for placement outside of Mother's home are unlikely to be remedied and that the continuation of the parent-child relationship posed a threat to the children's well-being.

Conditions Resulting in Removal Not Likely to be Remedied

Mother claims that MCDCS failed to establish by clear and convincing evidence that the conditions resulting in the children's removal from her home will not be remedied and that the continuation of the parent-child relationship poses a threat to the

children. Although Mother claims that MCDCS failed to establish both of the elements outlined in Indiana Code section 31-35-2-4(b)(2)(B), we note that because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, the juvenile court need only find either that the conditions resulting in removal will not be remedied *or* that the continuation of the parent-child relationship poses a threat to the children. *In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*. Therefore, “where, as here, the trial court specifically finds that there is a reasonable probability that the conditions which resulted in the removal of the child[ren] would not be remedied, and there is sufficient evidence in the record supporting the trial court’s conclusion, it is not necessary for [MCDCS] to prove or for the trial court to find that the continuation of the parent-child relationship poses a threat to the child[ren].” *In re S.P.H.*, 806 N.E.2d at 882. In order to determine that the conditions will not be remedied, the juvenile court should first determine what conditions led MCDCS to place the children outside their Mother’s home, and, second, whether there is a reasonable probability that those conditions will be remedied. *Id.*

When assessing whether a reasonable probability exists that the conditions justifying the children’s removal and continued placement outside the parent’s home will not be remedied, the juvenile court must judge the parent’s fitness to care for her children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re A.N.J.*, 690 N.E.2d 716, 721 (Ind. Ct. App. 1997). The juvenile court must also evaluate the parent’s habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* A juvenile court may

properly consider evidence of the parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate employment and housing. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). Moreover, a juvenile court “can reasonably consider the services offered by [MCDCS] to the parent and the parent's response to those services.” *Id.* (quoting *In re A.C.C.*, 682 N.E.2d 542, 544 (Ind. Ct. App. 1997)).

On the question of whether there is a reasonable probability that the conditions that led to the removal of the children will not be remedied, the juvenile court found as follows:

There is a reasonable probability that the conditions that led to the removal and continued placement of the children outside the home will not be remedied by [Mother]. [Mother] has not made the needed progress, since the initial filing of the CHINS Petitions in November 2007, to be in a position to have the children returned to her at this time based on her lack of having adequate furniture and bedding in the house she currently lives in, the concerns of being able to safely supervise and parent her children, her lack of insight and attention to the special needs of her children and inability to maintain sobriety. These barriers to reunification have been addressed by [MCDCS] and services providers. [Mother] had demonstrated a lack of initiative to follow up with Narcotics Anonymous or obtain a sponsor, and has tested positive for marijuana as late as July 2009; she did not follow up with St. Vincent DePaul to obtain furniture, she has been inconsistent with home based counseling, did not appear interested in obtaining information regarding the special needs of [M.W. and M.W., Jr.], and school and daycare information for the children. Historically, in the present CHINS matter and previous CHINS matter, [Mother] still has a hard time maintaining her sobriety. To remedy conditions, [Mother] would still need additional substance abuse education and screens, counseling, and continued home based services. She has made a better attempt within the few months prior to this trial, but not enough progress to lead this Court to believe that she can maintain progress forward, given her history of not following up on goals and her history of relapsing to marijuana use, especially in stressful situations.

Appellant's App. pp. 80-81.

Our review of the record establishes that the findings above are, in all particulars, supported by sufficient evidence. The record reveals that Mother has a history of failing to complete services and continuing marijuana use, cannot currently adequately provide for the children, and has little insight into how to adequately parent her children, especially those with special needs. Perhaps even more troubling, however, is Mother's seeming unwillingness to address any of the above problems. Mother has consistently failed to avail herself of opportunities to address her marijuana abuse, her lack of the basics needed to provide for the children, and her inadequate parenting skills. "A pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change." *In re L.S.*, 717 N.E.2d 204, 210 (Ind. Ct. App. 1999), *trans. denied*.

When considered as a whole, the evidence is sufficient to demonstrate a reasonable probability that the conditions which resulted in the children's removal from Mother's home will not be remedied. It was within the province of the juvenile court, as the finder of fact, to minimize any contrary evidence of changed conditions in light of its determination that the conditions which resulted in the children's removal from Mother's home were unlikely to change. Mother is effectively asking this court to reweigh the evidence on appeal, which, again, we will not do. *See In re S.P.H.*, 806 N.E.2d at 879. Consequently, we need not consider whether the continuation of the parent-child relationship poses a threat to the children's well-being because MCDCS has satisfied the

requirements of Indiana Code section 31-35-2-4(b)(2)(B) by clear and convincing evidence.

The judgment of the juvenile court is affirmed.

RILEY, J., and MATHIAS, J., concur.