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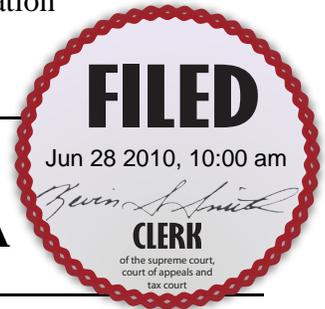
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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE TERMINATION OF THE)
PARENT-CHILD RELATIONSHIP OF)
T.L., A Minor Child,)
)
H.L., Mother,)
)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
Appellee-Petitioner.)

No. 02A03-1002-JT-100

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Charles F. Pratt, Judge
The Honorable Lori K. Morgan, Magistrate
Cause No. 02D07-0902-JT-46

June 28, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

H.L. (“Mother”) appeals the involuntary termination of her parental rights to her child, T.L. Concluding that the Indiana Department of Child Services, Allen County (“ACDCS”), presented clear and convincing evidence to support the trial court’s judgment, we affirm.

Facts and Procedural History

Mother is the biological mother of T.L., born on August 13, 2007. The evidence most favorable to the trial court’s judgment reveals that in May 2008 Mother voluntarily contacted ACDCS and requested the Department to take her children because she had no place to live and could no longer care for them. ACDCS took T.L. and her half-sibling, R.E., into custody and an initial detention hearing was held on May 29, 2008. Following the hearing, the trial court determined there was probable cause to believe the children were children in need of services (“CHINS”). T.L. was subsequently placed in licensed foster care with her current foster family.¹

During an evidentiary hearing in June 2008, Mother admitted to the allegations contained in ACDCS’s CHINS petition. In light of the evidence presented and Mother’s admission, the trial court adjudicated T.L. a CHINS and proceeded to disposition the same day. The trial court’s June 2008 dispositional order formally removed T.L. from Mother’s care and included a Parent Participation Plan directing Mother to participate in a variety of services in order to achieve reunification with T.L. Specifically, Mother was

¹ R.E. was placed with the child’s biological father, B.E. Mother’s parental rights to R.E. were not terminated in the trial court’s October 2009 termination order now being appealed. The trial court did, however, terminate the parent-child relationship between T.L. and her alleged biological father, M.L. (“Father”), as well as any unknown father. Because Father does not participate in this appeal, we limit our recitation of the facts to those pertinent solely to Mother’s appeal.

ordered to, among other things: (1) refrain from all criminal activity; (2) maintain clean, safe, and appropriate housing at all times; (3) obtain a drug and alcohol assessment at Caring About People, Inc. (“CAP”) by July 30, 2008, and follow all recommendations of the assessment; (4) submit to random drug screens and refrain from all use of alcohol, illegal drugs, and other substance abuse; (5) obtain psychiatric and psychological evaluations at Park Center and follow all resulting recommendations; and (6) exercise regular visitation with T.L.

Mother initially engaged in some court-ordered services by participating in weekly supervised visits with T.L. Mother’s participation in visits, however, soon began to wane, and after three no-shows Mother’s visitation privileges were suspended. Mother also scheduled an appointment for a substance abuse assessment to be held on July 30, 2008, but Mother failed to show for the appointment and failed to re-schedule the assessment. CAP eventually closed Mother’s case for non-compliance in November 2008. Mother also never completed the psychological and psychiatric evaluations and failed to obtain stable housing and employment.

With regard to Mother’s criminal activities, Mother was arrested and incarcerated on multiple occasions in October and November 2008 for various alcohol-related charges, including public intoxication and resisting law enforcement. In December 2008, Mother was arrested and incarcerated on charges of welfare fraud, identity deception, and theft. Mother subsequently pled guilty to the theft and identity deception charges, and in February 2009 was placed on probation. On March 9, 2009, Mother was arrested for battery after slamming a police officer’s finger in a door. The police had been dispatched

to the residence where Mother was living with a friend because they had received a report that Mother was intoxicated and threatening to jump off of a bridge. Mother's probation was thereafter revoked and Mother remained incarcerated at the time of the termination hearing.

Meanwhile, in December 2008, ACDCS sought and was granted permission to change the permanency plan for T.L. from unification to termination of parental rights and adoption. On February 17, 2009, ACDCS filed a petition seeking the involuntary termination of Mother's parental rights. A three-day evidentiary hearing on the termination petition commenced on July 1, 2009, was continued on August 19, 2009, and concluded on November 24, 2009.

During the termination hearing, Mother admitted she had failed to participate in and/or successfully complete all of the dispositional court-ordered services. Mother also testified that she was not expected to be released from incarceration until March 2010. At the conclusion of the termination hearing, the trial court took the matter under advisement. On October 26, 2009, the trial court issued its judgment terminating Mother's parental rights to T.L. Mother now appeals.

Discussion and Decision

This Court has long had a highly deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. In re D.D., 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable

inferences that are most favorable to the judgment. Id. Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the court's 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), reh'g denied, trans. denied, cert. denied, 534 U.S. 1161, 122 S. Ct. 1197 (2002). If the evidence and inferences support the trial court's decision, we must affirm. Id.

“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. A trial court must subordinate the interests of the parent to those of the child, however, when evaluating the circumstances surrounding a termination. K.S., 750 N.E.2d at 837. 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. Id. at 836.

When seeking an involuntary termination of parental rights, the State is required to allege and prove, among other things, 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; [and]
- (C) termination is in the best interests of the child

Ind. Code § 31-35-2-4(b)(2)(B) and (C).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, 1260-1261 (Ind. 2009) (quoting Ind. Code § 31-37-14-2 (2008)), reh’g denied. If the 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(b) (2008).

Remedy of Conditions

Mother alleges ACDCS failed to establish, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in T.L.’s continued placement outside of her care will not be remedied or continuation of the parent-child relationship poses a threat to T.L.’s well-being, and therefore she is entitled to reversal. See I.C. § 31-35-2-4(b)(2)(B). In making this argument, Mother acknowledges that she had not been fully participating in services prior to her most recent incarceration, but nevertheless claims she did make efforts to comply with some of the trial court’s orders. Mother further asserts that since her incarceration she has “taken a number of steps to better herself as a person and as a parent” by making requests to participate in parenting, substance abuse, and G.E.D. classes and states that at the time of the termination hearing she was “on the waiting lists to begin each of those classes.” Appellant’s Brief at 7. Finally, Mother complains that the trial court’s findings fail to acknowledge certain favorable evidence presented during the termination hearing, including Mother’s

² Indiana Code section 31-35-2-4 was amended by Pub. L. No. 21-2010, § 8 (eff. March 12, 2010). Because the changes to the statute became effective in March 2010 following the filing of the termination petition herein, they are not applicable to this case.

testimony that she was invited to live with a friend upon her release from incarceration and that the same friend believes she might be able to help Mother obtain a job with the friend's current employer.

Initially, we observe that Ind. Code § 31-35-2-4(b)(2)(B) is written in the disjunctive. The trial court was therefore required to find only one of the two requirements of subsection 2(B) had been met before issuing an order to terminate Mother's parental rights. See In re L.V.N., 799 N.E.2d 63, 69 (Ind. Ct. App. 2003). Nevertheless, the trial court found both prongs of this statute had been satisfied. See I.C. § 31-35-2-4(b)(2)(B)(i) & (ii). Because we find it to be dispositive, we address only subsection 2(B)(i).

In determining whether there exists a reasonable probability that the conditions resulting in a child's removal or continued placement outside a parent's care will not be remedied, 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 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 County Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. A trial court may also properly consider the services offered to the parent by a county department of child services and the parent's response to those

services as evidence of whether conditions will be remedied. Id. Finally, we point out that a county department of child services is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability a parent's behavior will not change. In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

Here, in terminating Mother's parental rights to T.L., the trial court made multiple pertinent findings regarding Mother's failure to participate in court-ordered services including: (1) a substance abuse assessment with CAP; (2) an in-patient treatment program at CHARIS House, as recommended and referred by ACDCS case manager Graydon Vanderwall; and (3) psychological and psychiatric evaluations, despite offers of transportation to the appointments by Vanderwall. The trial court further found as follows:

4.

* * * * *

[M]other's anticipated release date is March of 2010. At trial, [Mother] testified that while she has been incarcerated, she has begun the paperwork to enroll in substance abuse and parenting classes, but has not received information regarding whether or when she will be able to participate in services.

Evidence presented at trial revealed that prior to the initiation of the CHINS proceedings in June 2008, [Mother] did not have stable housing and alternated between her mother and boyfriend's homes as well as the homes of friends. . . .

Evidence presented at trial revealed that [Mother] did not have stable employment during the CHINS proceedings and that her visits at SCAN were put on hold because of three no-shows.

The Court finds that [Mother's] inability to provide safe, stable housing for her child and to provide materially and financially for her child and her

inability or refusal to participate in treatment programs designed to assist her with maintaining sobriety and with her depression and bipolar disorder which conditions existed at the initiation of the CHINS proceedings in the underlying CHINS case continued to exist at the time of the [termination] hearing. . . .

* * * * *

Accordingly, the Magistrate finds that [ACDCS] has proven by clear and convincing evidence that the allegations of the Petition are true in that there is a reasonable probability that the conditions that resulted in the child's removal . . . will not be remedied

Appellant's Appendix at 11. A thorough review of the record reveals that clear and convincing evidence supports the trial court's findings set forth above. These findings, in turn, support the trial court's ultimate decision to terminate Mother's parental rights to T.L.

T.L. was initially removed from Mother's care, at Mother's request, because of her admitted inability to provide T.L. with a safe and stable home environment. T.L.'s continued placement outside of Mother's care was the direct result of Mother's refusal to consistently participate in court-ordered reunification services, lack of stable housing and employment, and ongoing criminal activities. At the time of the termination hearing, these conditions remained unchanged as Mother remained incarcerated and unavailable to parent T.L.

In recommending termination of Mother's parental rights, Vanderwall confirmed that during the CHINS case Mother participated in the initial portion of the psychological evaluation but failed to complete the evaluation, never underwent a substance abuse assessment, lost her visitation privileges for failure to show for three separately scheduled

visits with T.L., and was incarcerated on multiple occasions. When asked why ACDCS did not wait longer to request a change in the permanency plan, Vanderwall answered:

We had multiple attempts at providing [Mother] with services. I was very brunt [sic] and open with [Mother]. She knew exactly what she had to do and she continued not to do them. She continued to get in trouble with the law

Transcript, Vol. I, at 131. When later questioned whether it was the ACDCS's position that the conditions resulting in T.L.'s removal from Mother will not be remedied, Vanderwall answered in the affirmative, citing Mother's history of being unable to provide T.L. with "stable housing, clothing, [and] food," and Mother's "inability to perform court[-]ordered services." Id. at 141. When pressed on cross-examination Vanderwall maintained this position, stating Mother had "shown no sign" of being able to establish a stable home environment. Id. at 142.

Similarly, court-appointed special advocate ("CASA") Suzanne Lange also recommended termination. When asked whether she would have a different opinion were Mother receiving services while incarcerated, Lange replied: "At this point, I would have to say no." Id. at Vol. III, p. 14. Lange explained that she based her opinion on Mother's "lack of progress" when she was "out" stating, "I think it's fairly easy when you are incarcerated . . . you get benefits if you participate in services while . . . incarcerated. What we saw while she was out and here in Fort Wayne would not lead me to believe that these services would continue or that the benefit would be there." Id. at 14-15.

Mother's own testimony provides additional support for the trial court's findings. During the termination hearing, Mother informed the court that she had asked ACDCS to take custody of T.L. because she had been "bouncing from home to home" for approximately "twelve months, off and on" and "needed [T.L.] to be safe." Id. at Vol. I, pp. 65-66. Mother also admitted that she did not participate in services during the CHINS case, and when asked if there were any reasons "holding her back or not allowing her to participate" Mother answered: "Not no [sic] good ones, no." Id. at 86. We have previously stated that "[t]he time for parents to rehabilitate themselves is during the CHINS process, prior to the filing of the termination petition." Prince v. Dep't of Child Servs., 861 N.E.2d 1223, 1230 (Ind. Ct. App. 2007).

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. D.D., 804 N.E.2d at 266. Here, Mother repeatedly chose to engage in criminal conduct resulting in extended periods of incarceration throughout the duration of the CHINS and termination proceedings, rather than to cooperate with ACDCS caseworkers and service providers in an effort to achieve reunification with T.L. Consequently, at the time of the termination hearing, Mother was incarcerated and unavailable to parent T.L. In addition, because Mother had failed to successfully complete a single court-ordered service, she remained unable to demonstrate she would be capable of providing T.L. with a consistently safe and stable home environment upon her projected release in March 2010. This court has previously recognized that "[i]ndividuals who pursue criminal activity run

the risk of being denied the opportunity to develop positive and meaningful relationships with their children.” Castro v. State Office of Family & Children, 842 N.E.2d 367, 374 (Ind. Ct. App. 2006), trans. denied.

Based on the foregoing, we conclude that ample evidence supports the trial court’s determination that there is a reasonable probability the conditions resulting in T.L.’s removal and continued placement outside Mother’s care will not be remedied. “A pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, supports a finding that there exists no reasonable probability that the conditions will change.” Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied. Mother’s arguments on appeal, emphasizing her self-serving testimony regarding the services she *planned* to participate in while incarcerated and the uncorroborated offers by a friend of housing and *possible* employment upon Mother’s release from incarceration, rather than the evidence cited by the trial court in its termination order, amount to an invitation to reweigh the evidence, which we may not do. D.D., 804 N.E.2d at 265.

Best Interests

We next consider Mother’s assertion that ACDCS failed to prove that termination of Mother’s parental rights is in T.L.’s best interests. We are mindful that, in determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Department of Child Services and look to the totality of the evidence. McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the trial court must subordinate the interests of the parent to

those of the child. Id. The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. Id. Moreover, we have previously held that the recommendations of both the case manager and child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

In addition to the findings previously cited, the trial court made several additional pertinent findings in arriving at its determination that termination of Mother's parental rights is in T.L.'s best interests, including the following:

5.

* * * * *

[P]rior to her current incarceration, [Mother] had a period of approximately five months within which she could have availed herself of services, however, she failed to do so.

* * * * *

[T.L.] has been [in] her current foster home for approximately one year and has thrived in the foster home [T]he child views her foster parents as her parents and . . . the foster parents have expressed a desire to adopt [T.L.]. The child is in need of a permanent, safe[,] and stable home environment. While [Mother] maintains that she is making attempts to initiate services while incarcerated, the Court finds that [Mother] will not be released from incarceration until March 2010, and that she has not begun any of the services at this time. [Mother] could not provide information as to when services would begin or how long it would take to complete them. Additionally, the Court finds that [Mother] has demonstrated a pattern of engaging in criminal activity, a history of engaging in substance abuse[,] and a history of being unable to provide a safe, stable home environment for [T.L.][,] which history and patterns are not outweighed by [Mother's] recent attempts at compliance with the Court's Orders.

* * * * *

[Mother] . . . continue[s] to be unable, refuse[s], or neglect[s] to provide for the basic necessities of a suitable home for the raising of the child and . . .

termination of the parent/child relationship is in the best interests of the child.

Appellant's Appendix at 12-13. These findings are also supported by the evidence.

Both CASA Lange and ACDCS family case manager Vanderwall testified that they believed termination of Mother's parental rights was in T.L.'s best interests. In addition, when asked to explain why ACDCS felt it was in T.L.'s best interests to "move forward with [its] request for termination of parental rights," Vanderwall testified:

T.L. has been with this family . . . since June of 2008. [Mother] has shown no stability. [T.L.'s] family has shown no stability in being able to care for T.L. [Mother] has not done any services, even when services were offered. T.L. has thrived in [foster] care. And at this point, [T.L.'s foster family] is the family that T.L. knows. T.L. calls them mom and dad. I've observed that. She has thrived in their care.

Transcript, Vol. I, at 130.

Based on the totality of the evidence, including Mother's lack of initiative in seeking stable housing and employment, her refusal to refrain from criminal activity, and her inability to provide T.L. with basic life necessities at the time of the termination hearing, due in part to her ongoing incarceration, along with the testimony from Lange and Vanderwall, we conclude that there is sufficient evidence to support the trial court's determination that termination of Mother's parental rights is in T.L.'s best interests. See, e.g., In re A.I., 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding that testimony of court-appointed advocate and family case manager, coupled with evidence that conditions resulting in continued placement outside family home will not be remedied, is sufficient to prove by clear and convincing evidence termination is in child's best interests), trans. denied.

Conclusion

This Court will reverse a termination of parental rights “only upon a showing of ‘clear error’– that which leaves us with a definite and firm conviction that a mistake has been made.” In re A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting Egly v. Blackford County Dep’t of Public Welfare, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Affirmed.

NAJAM, J., and VAIDIK, J., concur.