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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF B.G., C.G., D.G., Jr., S.G., Dy.G. and M.G. AND THE CHILDREN'S PARENTS

M.G. and D.G.,
Appellants-Respondents,

vs.

INDIANA DEPARTMENT OF CHILD SERVICES,
Appellee-Petitioner.

No. 82A05-1002-JT-60

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
JUVENILE DIVISION
The Honorable Brett J. Niemeier, Judge
The Honorable Renee Allen Ferguson, Magistrate
Cause Nos. 82D01-0902-JT-6, 82D01-0902-JT-7, 82D01-0902-JT-8,
82D01-0902-JT-9, 82D01-0902-JT-15 and 82D01-0902-JT-16

July 15, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellants-Respondents, M.G. (Mother), and D.G. (Father), appeal the trial court's Order terminating their parental rights to their minor children S.G., D.G., Jr., B.G., C.G., M.G., and Dy.G.

We affirm.

ISSUE

Mother and Father present one issue for our review, which we restate as: Whether the Department of Child Services, Division of Vanderburgh County (DCS), presented clear and convincing evidence that the conditions which resulted in the removal of the minor children from their home would not be remedied, or that the continuation of the parent-child relationship poses a threat to the well-being of the children.

FACTS AND PROCEDURAL HISTORY

Mother and Father are the biological parents of S.G., born on June 13, 2001; D.G., Jr., born on August 23, 2002; B.G., born on September 12, 2003; C.G., born on October 3, 2005; Dy.G., born on April 10, 2007; and M.G., born on February 15, 2008. The DCS first intervened in the relationship between Mother, Father, and their children in 2003. However, the record does not contain the details which caused DCS's intervention or the actions taken by DCS or the parents, only that a report of "substantiated neglect" on the part of Mother is

listed in S.G.'s "Predispositional Report." (Appellee's App. p. 153). In 2004, DCS again intervened, and an instance of substantiated neglect was again found, this time with respect to both Mother and Father. DCS entered into an Informal Adjustment Agreement with Mother and Father to provide services addressing Mother's provision of alcohol to one of the children and the lack of appropriate shelter and food available to the children. Mother and Father failed to comply with the Informal Adjustment Agreement and DCS filed a petition alleging S.G., D.G., Jr., and B.G. were Children In Need of Services (CHINS). The children were made wards of the county, and Mother and Father were provided with services. In 2005, Father was awarded full custody of the children and the CHINS proceedings were dismissed.

In November 2006, the children, this time including C.G. as well, were found to be living in an unsafe and unsanitary environment. In the home, all of the children were sharing one mattress on the floor. There was an open tool box within reach of the children, doors off the hinges with a mattress covering a door, dog feces on the floor, a strong smell of urine, and broken glass on the porch of the home. Further, the children that were of school age had accumulated several absences. On January 2, 2007, DCS filed a petition alleging the children to be CHINS.

Father cleaned the home, and was allowed to have custody of the three older children, and the youngest child was placed with Mother once she moved in with her parents. In addition, the parents signed parental participation agreements which required, among other things, the parents to participate in in-home services; submit to random drug screens; attend

substance abuse treatment; provide adequate supervision for the children; maintain adequate and clean housing; accept all home visits, announced or unannounced, from the Family Case Manager and service providers; cooperate with service providers; provide appropriate medical care; not leave the children in the care of anyone not approved by the DCS; maintain the means of financial support; protect the children from abuse; and remain drug and alcohol free. In July of 2007, the children were removed from the parents because: "[T]here is no electricity or gas in the home. [] On 07/06/07 [Father] was seen drinking a beer and slurring his words by a Parent Aide. [] Children said to be staying up until 4-6 a.m. in the morning partying with [Father]." (Appellee's App. p. 157).

As of March, 2008, the parents, who were then living together, had made some progress and the court ordered the return of the children to their care. However, the court ordered frequent monitoring of the home. By June of 2008, the condition of the home had become unsafe and unsanitary, and the parents were not providing appropriate care for the children. Specifically, on May 29, 2008, M.G. was hospitalized with a diagnosis of malnourishment/failure to thrive, and on June 2, 2008, Dy.G. was found sleeping on the floor, along with dirty diapers, unwashed formula bottles, and garbage. A CHINS petition alleging the two youngest children to be CHINS was filed and all six children were removed from the home. The parents made progress again, and a trial home weekend visit was arranged for late October 2008. During the weekend, the parents failed to give the children their medicine for at least a day due to the parent's lack of communication with each other.

On February 3, 2009, DCS filed petitions to terminate the parental rights of both Mother and Father to S.G, D.G., Jr., B.G., and C.G. On March 3, 2009, DCS filed petitions to terminate Mother and Father's parental rights to Dy.G. and M.G. The trial court conducted a hearing on the petitions beginning on June 11, 2009, which was continued on September 21, 2009. On November 10, 2009, the trial court made findings of fact and conclusions, which include the following:

> 5) DCS caused a psychological evaluation to be performed on [Mother] in July and August 2007 which revealed that [Mother] is likely bi-polar.
>
> 6) A psychological evaluation was performed on [Father] in June and July of 2007 at the request of [DCS] and [Father] was diagnosed with likely major depressive disorder, generalized anxiety disorder, and possible attention deficit/hyperactive disorder.
>
> 7) The parents' psychological symptoms associated with the diagnosis are [the] likely cause of [] the parents' inability to properly maintain a safe home, adequate food, and proper supervision of the children.
>
> 8) The parents sought no counseling or therapy on their own.
>
> 9) The parents have access to the same agencies and services that DCS has available to it.
>
> 10) Various parent aides advised both parents to seek counseling for their psychological issues.
>
> 11) Over the course of the underlying CHINS cases, the children were removed from their parents a majority of the time.
>
> 12) The FCM and parent aide worked with parents to help them bring their home up to acceptable standards. When the parents were left to care for the home on their own, upon returning, the FCM or parent aid[e] would find the house had fallen back into unacceptable conditions.
>
> 13) There continued to be reports of no food in the home due to [Mother] selling the family's food stamps.

14) On many occasions the home was found to be in an unsafe condition for the children due to broken window glass left laying on the floor within reach of the children, animal feces on the floor, spoiled food left out, baby bottles with old milk left within the reach of the children, garbage accumulated in the house, a window fan held in with a broomstick, and the children had access to cigarettes and lighters.

15) The boys slept on a mat on the floor that had the odor of urine.

16) There was a lack of supervision and parenting of the children by [M]other and [F]ather.

17) During many parenting sessions, there was little interaction between the parents and the children. At one parenting session [Father] did not speak the entire session.

18) There has [been] little bonding between the parents and the children due to the lack of time the children spend with the parents and the emotional distance the parents display with the children.

19) When at home with the parents, the children went unsupervised.

20) The children[,] at time[s,] were found to be in a dirty and hungry condition when with the parents.

21) Discipline many times took the form of yelling and screaming by the parents at the children.

22) The parents failed to provide adequate medical care for the children.

23) The child [M.G.], soon after birth[,] was diagnosed with a failure to thrive when in the parent's care.

24) The child [Dy.G.] at one year old was unable to put weight on his legs due to spending too much time in a high chair.

25) The parents failed to see that the children attended school.

CONCLUSIONS OF LAW

* * *

> 3) DCS did prove by clear and convincing evidence that the conditions that resulted in the children's removal and placement outside the home will not be remedied.
>
> * * *
>
> 5) DCS did prove by clear and convincing evidence that the continuation of the parent-child relationship poses a threat to the well-being of the children.
>
> 6) DCS did prove by clear and convincing evidence that termination is in the best interests of the children.

(Appellant's App. pp. 98-100).

Mother and Father now appeal. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Mother and Father contend that the DCS did not prove by clear and convincing evidence that the conditions which resulted in the removal of their children would not be remedied, or that the continuation of the parent-child relationship poses a threat to the well-being of the children. Specifically, Mother and Father argue that they were not advised appropriately about their mental health conditions and given an adequately opportunity to seek treatment for those conditions.

Indiana Code section 31-35-2-4(b) defines the requirements for a petition to terminate parental rights, and requires, among other things, that the DCS prove one of the three following allegations:

> (i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.

> (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.
>
> (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services[.]

I.C. § 31-35-2-4(b)(2)(B). "To involuntarily terminate a parent-child relationship, the State must establish the elements of Ind. Code § 31-35-2-4(b) [] by clear and convincing evidence." *In re J.W.*, 779 N.E.2d 954, 959 (Ind. Ct. App. 2002), *trans. denied*.

The Fourteenth Amendment of the United States Constitution protects the traditional right of parents to establish a home and raise their children. *Bester v. Lake County Office of Family and Children*, 839 N.E.2d 143, 147 (Ind. 2005). Our supreme court has acknowledged that the parent-child relationship is "one of the most valued relationships in our culture." *Id*. (quoting *Neal v. DeKalb County Div. of Family and Children*, 796 N.E.2d 280, 285 (Ind. 2003)). That being said, parental interests are not absolute and must be subordinated to the child's interest in determining the proper disposition of a petition to terminate parental rights. *Id*.

We have long applied a highly deferential standard of review in cases concerning the termination of parental rights. *R.W., Sr. v. Marion County Dep't of Child Servs.*, 892 N.E.2d 239, 244 (Ind. Ct. App. 2008).

> When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. Moreover, in deference to the juvenile court's unique position to assess the evidence, we will set aside its judgment terminating a parent-child relationship only if it is clearly erroneous. If the evidence and inferences support the juvenile court's decision, we must affirm.

Id. (citations omitted).

Where, as here, the trial court has entered findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester*, 839 N.E.2d at 147. First, we determine whether the evidence supports the findings, and second we determine whether the findings support the judgment. *Id*.

Mother and Father rely largely on *In re D.Q.*, 745 N.E.2d 904 (Ind. Ct. App. 2001) to argue that the termination of their parental rights was inappropriate. In *D.Q.*, we considered an appeal of the trial court's denial of a petition to involuntarily terminate the parental rights of a mother, Qualls. *Id*. at 907. Qualls had admitted to allegations of neglect, and that her six children were CHINS. *Id*. She actively engaged in services proscribed by the State, but was unable to hold a job and find adequate housing. *Id*. On March 9, 1999, the Office of Family and Children (OFC) filed a petition to terminate her parental rights. *Id*. While that petition was pending, but before any hearing, Qualls was diagnosed with Graves' Disease, a hyperthyroid condition, and placed on medication. *Id*. Thereafter, Qualls maintained consistent employment. *Id*. The trial court held a hearing on the petition on February 17, 2000, and, at that time, Qualls had not yet obtained suitable housing for her children. *Id*. at 908. However, on February 21, 2008, Qualls moved to stay the proceedings and presented evidence that she had signed a lease since the hearing. *Id*. The trial court granted Qualls' motion and conducted a hearing on the housing issue. *Id*. On July 27, 2000, the trial court denied the petition to terminate Qualls' parental rights after she presented evidence that she

had obtained suitable housing and furnishings for the children. *Id.* On appeal, we affirmed the judgment of the trial court. *Id.* at 911.

Mother and Father argue, "[just] as in [*D.Q.*], the DCS is attempting to terminate parental rights before giving the parents a reasonable opportunity to treat the medical condition whose symptoms played a role in the parent's inability to care for their children." (Appellant's Br. p. 11). However, we note significant distinctions between the facts in *D.Q.* and those before us here.

First, the trial court had ruled in favor of the parent in *D.Q.*; thus, it was the State who held the burden associated with appealing from a negative judgment. Here, Mother and Father are appealing from a negative judgment, and must "establish that the judgment is contrary to law." *Id.* at 909 (citing *Drudge v. Brandt*, 698 N.E.2d 1245, 1249 (Ind. Ct. App. 1998)). "A judgment is contrary to law when the evidence is without conflict and all reasonable inferences to be drawn from that evidence lead to but one conclusion, but the trial court has reached a different conclusion." *Id.*

Second, Qualls presented evidence to the trial court that she had not only been diagnosed with a health condition, but, more importantly, she had taken steps to address that condition and made significant strides towards the goal of reunification while doing so. Here, Mother and Father were made aware of their diagnosed mental health conditions at least by the first day of the hearing on the petition for the termination of their parental rights, and likely before. However, unlike Qualls, Mother and Father have not exhibited any sense of urgency in addressing their mental health conditions. The trial court's ruling did not come

until five months after the first day of hearing on DCS's petition. Yet, we have no facts before us that Mother or Father have sought treatment for their conditions.

Moreover, there was evidence in the record which establishes that mental health concerns were explored with both Mother and Father, long before the hearing on parental rights. During the termination hearing, Robert Haywood (Haywood), the FCM assigned to Mother and Father's family, testified that he explored the possibility of counseling with both Mother and Father.

> I did provide [Mother], through her parent aide, with a self help evaluation for depression. Obviously not a clinical diagnosis, but it is a good self help tool to begin a discussion if there is mental health help needed. [Mother] looked into the evaluation with a parent aide, and although she answered yes to a high number of the questions, she did not believe that she should go to counseling. I had a similar conversation with [Father], and he expressed his belief that mental health issues were basically used by people to obtain public assistance. That if you could prove you had a mental health problem, you could receive some sort of Social Security benefits, and that people who claim to have mental health problems were just trying to scam the system by doing so. So neither parent expressed a willingness or interest they should follow up on any mental health services. I did let them know that they were available at any time they felt that that would be beneficial to them. I did not direct them to the services, because I feel that counseling, therapy, any kind of mental health services are something that people need to go into by their own accord. And we were willing to provide that, but I was not willing to force them into it. I did not believe that there would be a benefit in forcing someone to attend counseling.

(Transcript pp. 31-32).

In sum, we conclude that the trial court's finding that Mother and Father had opportunity to address their mental health conditions, but chose not to, is supported with sufficient evidence. The trial court also found that the unsafe home environment and

insufficient supervision of the children likely stemmed from the parents' mental health conditions. In turn, the trial court's conclusion that there is a reasonable probability that the conditions which resulted in the children's removal from their home will not be remedied, and that the continuation of the parent-child relationship poses a threat to the well-being of the children is supported by the trial court's findings.

CONCLUSION

Based on the foregoing, we conclude that the trial court's conclusion that there is a reasonable probability that the conditions which resulted in the removal of the children from the home will not be remedied and that the continuation of the parent-child relationship poses a threat to the well-being of the children is supported by the trial court's findings, which are supported by the evidence.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.