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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF J.A., a child, and H.P., her mother,	)	
Appellant-Respondent,	)	
vs.	)	No. 45A03-1001-JT-80
INDIANA DEPARTMENT OF CHILD SERVICES	)	
Appellee-Petitioner.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Senior Judge
Cause No. 45D06-0906-JT-157

August 30, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

H.P. ("Mother") appeals the involuntary termination of her parental rights to her child, J.A., claiming there is insufficient evidence supporting the juvenile court's termination order. We affirm.

Facts and Procedural History

Mother is the biological mother of J.A., born in February 2002.[1] The facts most favorable to the juvenile court's judgment reveal that in December 2007, the Indiana Department of Child Services, Lake County ("LCDCS") received a report that multiple men had been observed going in and out of Mother's home, there was no food in the house, and both the house and J.A. were filthy. LCDCS attempted to contact Mother on several occasions but was unsuccessful. In January 2008, LCDCS caseworkers went to J.A.'s maternal grandmother's ("Grandmother") home in an attempt to determine J.A.'s whereabouts and well-being. Grandmother admitted that J.A. had been staying with her and that she had not heard from Mother in over a month. This was not LCDCS's first encounter with Mother and her family.

Despite repeated attempts, LCDCS was unable to locate Mother. Consequently, in February 2008, LCDCS filed a petition alleging J.A. was a child in need of services ("CHINS"). A detention hearing was held after which the juvenile court found there was probable cause to believe J.A. was a CHINS. The juvenile court then issued an order making J.A. a temporary ward of LCDCS.

[1] The parental rights of J.A.'s biological father, J.A., ("Father"), were also terminated by the juvenile court in its December 2009 termination order. Father does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother's appeal.

Although Mother was not present at the detention hearing, the juvenile court's order directed Mother to participate in a variety of pre-dispositional services including: (1) a psychological examination and any resulting recommended treatment; (2) a drug and alcohol evaluation and any resulting recommended treatment; (3) random drug screens; and (4) supervised visitation with J.A. Mother was also directed to obtain and maintain stable and suitable housing. No referrals for services were made, however, because Mother's whereabouts remained unknown. For the next several months, J.A. continued to live with Grandmother.

In May 2008, a hearing on the CHINS petition was held. Mother did not appear. At the conclusion of the CHINS hearing, J.A. was determined to be a CHINS and the court proceeded to disposition. Following the dispositional hearing, the juvenile court entered an order formally removing J.A. from Mother's care, retroactive to the child's removal in February.

In November 2008, Mother contacted LCDCS. Mother claimed she had left J.A. with Grandmother so she could move to California to work as an exotic dancer and get away from Father, who Mother claimed was abusive. Mother then requested visitation privileges with J.A., and referrals for services were ordered for Mother. Although Mother had provided a new address to LCDCS, service providers experienced difficulties in locating Mother. Consequently, Mother did not begin services until January 2009. Meanwhile, in December 2008, Grandmother became seriously ill, necessitating the

removal of J.A. from Grandmother's care. After a plan for guardianship with another relative could not be finalized, J.A. was placed in her current foster care home.

Mother's participation in services during the ensuing months was sporadic at best. Mother completed parenting classes, but missed multiple scheduled appointments with service providers and had several gaps in services. In addition, although Mother participated in a substance abuse evaluation, she only attended one of the recommended counseling sessions in March 2009 and then did not attend another session until August 2009. Of the recommended total of fifty hours of substance abuse counseling, Mother only completed approximately six classes. Mother also failed to obtain and maintain suitable housing and steady employment.

Regarding Mother's compliance with requests for random drug screens, Mother participated in a total of twelve random drug screens. Mother tested positive for cocaine in January 2009, positive for marijuana and opiates in February 2009, and positive for opiates only on several additional occasions. Mother was able to produce a valid prescription for Vicodin, however, which may have accounted for the positive test results for opiates. Mother did not submit to any drug screens between late April 2009 and mid-July 2009.

In June 2009, LCDCS filed a petition seeking the involuntary termination of Mother's parental rights to J.A. A two-day evidentiary hearing on the termination petition was held in November 2009. During the termination hearing, Mother admitted she was unemployed, without independent housing, no longer attending school, and

seven months pregnant. At the conclusion of the hearing, the juvenile court took the matter under advisement. In December 2009, the court issued an order terminating Mother's parental rights to J.A. Mother now appeals.

Discussion and Decision

We begin our review by acknowledging that 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 a 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, 265 (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 juvenile 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), trans. denied.

Here, in terminating Mother's parental rights, the juvenile court entered specific factual findings and conclusions. When a juvenile court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. Id. "Findings are clearly erroneous only when the record contains no facts to support them either directly or by

inference." Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the juvenile court's decision, we must affirm. L.S., 717 N.E.2d at 208.

"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. However, a juvenile court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. K.S., 750 N.E.2d at 837. Termination of a parent-child relationship is proper where a child's emotional and physical development is threatened. Id. 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.

Before an involuntary termination of parental rights can occur, 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) & (C) (2009).[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). 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).

Mother challenges the sufficiency of the evidence supporting the juvenile court's findings as to subsections 2(B) and (C) of the termination statute cited above. Initially, we observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. It therefore requires the juvenile court to find that only one of the two requirements of subsection 2(B) has been established by clear and convincing evidence. See L.S., 717 N.E.2d at 209. Here, the juvenile court found both prongs of subsection 2(B) had been satisfied. Because we find it to be dispositive under the facts of this case, we need only consider whether LCDCS established, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in the children's removal or continued placement outside Mother's care will not be remedied. See Ind. Code § 31-35-2-4(b)(2)(B)(i).

[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.

Conditions Not Remedied

When determining whether there is a reasonable probability the conditions resulting in a child's removal or continued placement outside the family home will not be remedied, a juvenile 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. However, the juvenile 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. The juvenile court may also consider any services offered to the parent by the county department of child services, and the parent's response to those services, as evidence of whether conditions will be remedied. Id. Moreover, a county department of child services (here, LCDCS) is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In determining that there is a reasonable probability the conditions resulting in J.A.'s removal and continued placement outside of Mother's care will not be remedied, the juvenile court made several pertinent findings. Specifically, the juvenile court found

that following Mother's initial absence, referrals for multiple services were made for Mother, and that LCDCS family case manager Lila Martinez had "stressed" to Mother the importance of her "completing the services in a timely manner." Appellant's App. p. 3. The juvenile court further noted that Mother nevertheless remained "difficult to contact despite having moved back to the area in late 2008 because she did not have stable housing or a consistent phone number." Id. Although the juvenile court acknowledged Mother had "completed her drug/alcohol evaluation," "psychological evaluation," and "parenting classes," the court also found Mother had "missed many drug/alcohol screens," "missed or cancelled more [substance abuse counseling] appointments than she attended despite being advised of the importance of attendance," and still needed to complete her drug/alcohol treatment "which was to include at least 50 hours of counseling and at least 19 additional drug/alcohol screens due to her history of alcohol abuse and positive drug screens." Id. In addition, the juvenile court found that at the time of the termination hearing, Mother had "failed to obtain stable housing," was not living in the home she was renting "because her appliances (stove and refrigerator) [had been] stolen," and was "currently unemployed, pregnant, and living with her boyfriend's mother." Id. The court then found that "[d]espite brief periods of compliance, Mother also has failed to visit regularly with [J.A.] for any extended length of time." Id. A thorough review of the record leaves us satisfied that clear and convincing evidence supports these findings, and that they in turn support the court's conclusions and ultimate decision to terminate Mother's parental rights to J.A.

Testimony from various caseworkers and service providers makes clear that despite a wealth of services available to her for nearly two years, at the time of the termination hearing in 2009, Mother's circumstances remained largely unchanged, and she remained incapable of providing J.A. with a safe and stable home environment. During the termination hearing, when asked how much progress Mother had made in successfully completing the juvenile court's dispositional goals, LCDCS family case manager Jacquelyn Sims explained that services had been discontinued in October 2009 because Mother "had not obtained stable housing[,]" and was "not following through with her substance abuse counseling" or "random drug screens." Transcript at 94. Sims further indicated that Mother was currently unemployed, pregnant, and living with her boyfriend at his Mother's home. In addition, Sims acknowledged that Mother "needs financial assistance from the township in order to pay her rent." Id. at 98-99. When asked if Mother was "in a position to take [J.A.] back," Sims answered, "No." Id. at 94. Sims later explained that she did not believe returning J.A. to Mother was "an appropriate placement" for the child because Mother's home did not have a stove, refrigerator, or working furnace, and because Mother had "not completed the case plan." Id. at 99.

Jennifer Vickers, Substance Abuse Program Supervisor for Metropolitan Oasis, testified that Mother had submitted to twelve drug screens during the underlying proceedings and had tested positive for marijuana, cocaine, and opiates. Vickers further acknowledged that Mother's five positive screens for opiates could have resulted from either the ingestion of "pain pills, such as Vicodin" or from certain illegal substances

such as "Heroin," but that Mother had produced a "legal prescription" for Vicodin. Id. at 56-57. When asked about Mother's participation in substance abuse counseling, Vickers indicated there had been significant "gaps in services" for Mother, and that Mother had only attended "about six [substance abuse] sessions" as of the time of the termination hearing. Id. at 55, 65. Vickers also confirmed that Mother had "disclosed four separate residences" during the twelve-month-period they had provided services to Mother, making it difficult to provide services at her home because Mother "was moving around, and she didn't have a permanent, stable [residence]." Id. at 76.

Where a parent's "pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve." In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). We conclude that LCDCS presented clear and convincing evidence to support the juvenile court's findings and ultimate conclusion that there is a reasonable probability the conditions leading to J.A.'s removal or continued placement outside of Mother's care will not be remedied. As noted earlier, a juvenile court must judge a parent's fitness to care for his or her child 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 child. D.D., 804 N.E.2d at 266. Here, the juvenile court had the responsibility of judging Mother's credibility and of weighing her testimony of recently improved conditions against the abundant evidence demonstrating Mother's past and current inability to provide J.A. with a consistently safe and stable home environment. It is clear from the language of the

judgment that the juvenile court gave more weight to evidence of the latter, rather than the former, which it was permitted to do. See Bergman v. Knox County Office of Family & Children, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding trial court was permitted and in fact gave more weight to abundant evidence of mother's pattern of conduct in neglecting her children during several years prior to termination hearing than to mother's testimony she had changed her life to better accommodate her children's needs).

Best Interests

Next, we turn to Mother's assertion that LCDCS failed to prove termination of her parental rights is in the children's best interests. We are ever mindful that, when determining what is in a child's best interests, a juvenile court is required to look beyond the factors identified by the Indiana Department of Child Services and to 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, however, the court must subordinate the interests of the parent to those of the child. Id. Moreover, we have previously explained that recommendations from the case manager and child advocate that parental rights should be terminated support a finding that termination is in the child's best interests. Id.

Here, in addition to the findings and conclusions set forth previously, the juvenile court found J.A. "was often sad and disappointed when Mother . . . missed the scheduled visits." Appellant's App. p.3. In addition, the juvenile court found as follows:

> Termination is in the best interest[s] of the child in that: The child needs a loving, caring, nurturing, drug and alcohol free, safe and adoptive home.
>
> The parents have been unable to complete their necessary drug/alcohol counseling and drug/alcohol screens, find stable and suitable housing, and visit regularly with their child to re-establish their relationship with the child. The parents have made little progress toward compliance with the case plan. The child has suffered as a result of missed visitations with her parents. The child, having worked with a therapist for nearly two years, is finally making progress with respect to her educational delays and abandonment issues. Being placed back in the care of her parents would be an unnecessary emotional and educational set[-]back for the child.

Id. These findings are likewise supported by the evidence.

During the termination hearing, E. Mae Pittman, Special Education Teacher with Gary Community School Corporation and Contract Therapist with Metropolitan Oasis, informed the juvenile court that she had worked with J.A. as her therapist for nearly two years. Pittman explained that when she first began working with then six-year-old J.A., she had to teach J.A. "her personal information, how to count, her shapes, her alphabet, her colors, how to color, how to cut, just basically, preschool, kindergarten type things." Transcript p. 45. Pittman further confirmed that although J.A. had made significant progress, she was still functioning "below grade level" but would likely "master the skills at her grade level" with extra tutoring from her teachers. Id. at 46. Pittman also testified that she continues to use play therapy with J.A. to address the child's "abandonment" and "safety issues," explaining J.A. "has a fear that she cannot be safe if she's returned [to] her mother" because of the fact Mother left her at Grandmother's house and J.A. "didn't

know of [Mother's] whereabouts, and nobody told her . . . and [J.A.] showed concern for that." Id. at 44.

When asked why she believed termination of Mother's parental rights is in J.A.'s best interests, family case manager Sims stated, "[J.A.] has been out of her mother's care for over the . . . 15[-]month period of time, [and] she has bonded with her current placement in the foster home of [E.B. ("Foster Mother")]." Id. at 95. Similarly, when asked why she would like to adopt J.A., the Foster Mother said, "[J.A.] is . . . a beautiful child[.] [S]he's . . . willing to learn, she's trying very hard to catch up with . . . her classmates. She's adjusted very well in my home, and I just love the little girl." Id. at 105.

A court need not wait until a child's physical, mental, and/or social growth is irreversibly damaged or permanently impaired by a parent's consistent and serious, poor life choices before terminating the parent-child relationship. See In re E.S., 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002). Moreover, 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.'" Matter of A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting Egly v. Blackford Co. Dep't of Public Welfare, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here. Based on the totality of the evidence, we conclude that the juvenile court's determination that termination of Mother's parental rights is in J.A.'s best interests is supported by clear and convincing evidence.

Affirmed.

BAKER, C.J., and NAJAM, J., concur.