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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF K.G., Minor Child, and	)	
A.G., the Mother, Appellant-Respondent,	)	
vs.	)	No. 02A03-1003-JT-341
ALLEN COUNTY DEPARTMENT OF CHILD SERVICES, Appellee-Petitioner.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Charles F. Pratt, Judge
Cause No. 02D08-0904-JT-110

October 21, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

A.G. ("Mother") appeals the Allen Superior Court's judgment terminating Mother's parental rights to her child, K.G. We affirm.

Issues

Mother challenges the sufficiency of the evidence supporting the trial court's judgment. In so doing, Mother presents the following issues for review:

> (1) Whether clear and convincing evidence supports the trial court's determination that there is a reasonable probability the conditions resulting in K.G.'s removal and/or continued placement outside Mother's care will not be remedied; and
>
> (2) Whether clear and convincing evidence supports the trial court's determination that termination of the parent-child relationship is in K.G.'s best interests.

Facts and Procedural History

Mother is the biological mother of K.G., born in December 2002. The facts most favorable to the judgment reveal that in August 2007, Mother contacted the Indiana Department of Child Services, Allen County ("ACDCS") after discovering K.G. in a hotel room with the child's father. K.G. was in the bed, wearing only a shirt, and informed Mother that father had directed K.G. to touch his penis.[1] A Preliminary Inquiry was held during which the trial court determined K.G. was a child in need of services ("CHINS"). K.G. was thereafter adjudicated a CHINS and provisional services were ordered for the family. In

[1] Mother later admitted to the trial court that she was aware of the fact K.G.'s father had a criminal history prior to this incident, had served two years in prison on a conviction for sexual misconduct with a minor, and was prohibited from having contact with any children following his release from prison. K.G.'s father committed suicide during the underlying proceedings. Consequently, we limit our recitation of the facts to those pertinent solely to Mother's appeal.

addition, K.G. was allowed to remain with Mother, who adamantly promised to protect K.G., participate in services, and not allow any future contact between K.G. and the father.

Following a dispositional hearing in September 2007, the trial court issued an order formally removing K.G. from Mother's custody. K.G. was allowed to remain in Mother's physical care, however, so long as Mother agreed to abide by the terms of the Parent Participation Plan, which was incorporated into the court's dispositional order. Among other things, the Parent Participation Plan directed Mother to: (1) refrain from criminal activity; (2) maintain safe, clean, and stable housing; (3) successfully complete individual counseling at Park Center Behavioral Health ("Park Center"); (4) successfully complete a Stop Child Abuse Now Intensive Intervention Treatment Program; (5) submit to a psychological evaluation and follow all resulting recommendations; (6) enroll K.G. in counseling; (7) ensure that K.G.'s father had no contact with the child; (8) and obtain and maintain employment and/or a stable source of income.

In May 2008, the trial court determined during a review hearing that Mother was not in compliance with the Parent Participation Plan after evidence showed Mother had changed residences several times, remained unemployed, and neither she nor K.G. was participating in therapy. The trial court ordered Mother to comply with the Parent Participation Plan but allowed K.G. to remain in Mother's physical custody. In July 2008, K.G. was removed from Mother and placed in licensed foster care after authorities discovered K.G. and Mother had been living with the father's uncle and that the father had been observed in the uncle's home in the presence of Mother and K.G.

Following K.G.'s physical removal from Mother, Mother's participation in services, including visitation with K.G., continued to be sporadic and ultimately unsuccessful. Mother was also in and out of jail on charges of theft and forgery. Eventually, ACDCS filed a petition seeking the involuntary termination of Mother's parental rights. A two-day evidentiary hearing on the involuntary termination petition commenced in September 2009 and concluded in November 2009. At the conclusion of the hearing, the trial court took the matter under advisement, and on February 24, 2010, the court entered a judgment terminating the parent-child relationship. Mother now appeals.

Discussion and Decision

A. Standard of Review

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 the termination of parental rights, we will neither reweigh the evidence nor judge witness credibility. 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 most favorable to the judgment. Id. Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside a 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 trial court entered specific findings and conclusions. When a trial 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 trial court's decision, we must affirm. L.S., 717 N.E.2d at 208.

B. Analysis

"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 trial court must subordinate the interests of the parent 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:

> (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) (2008).[2] "The State's burden of proof in termination of parental rights cases is one of 'clear and convincing evidence.'" In re G.Y., 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code § 31-37-14-2). If the court finds 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(a). Mother challenges the sufficiency of the evidence supporting the trial court's findings as to subsections 2(B) and (C) of the termination statute cited above. See Ind. Code § 31-35-2-4(b)(2).

1. Conditions Not Remedied

Initially, we observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. It therefore requires the trial 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. Because we find it to be dispositive under the facts of this case, we need only consider whether ACDCS established, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in K.G.'s removal or continued placement outside Mother's care will not be remedied. See Ind. Code § 31-35-2-4(b)(2)(B)(i).

Although Mother acknowledges she missed many visits with K.G., never obtained

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

stable housing, and her attendance in therapy was inconsistent, she nevertheless argues she was "making progress toward her goals," and further states progress "cannot be obtained instantaneously." Appellant's Br. p. 17. Mother therefore contends she is entitled to reversal because ACDCS failed to present clear and convincing evidence that the conditions resulting in K.G.'s removal and/or continued placement outside her 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 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. 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 trial 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. at 1252. Moreover, 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 the parent's behavior will not change. In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In determining there is a reasonable probability the conditions leading to K.G.'s removal and continued placement outside Mother's care will not be remedied, the trial court

acknowledged Mother initially visited with K.G. regularly between August and October, 2007. The trial court noted, however, that Mother did not visit K.G. again until late February 2008, and that subsequent visits oftentimes involved "inappropriate" interactions with K.G. and conversations had to be "redirected" during visits. Appellant's Appendix p. 7. In addition, the trial court found Mother had reported sixteen separate residences since the commencement of the CHINS case and was currently living with a friend whose child was alleged to have committed an inappropriate sexual act with K.G., resulting in Mother being ordered to immediately vacate the premises earlier in the CHINS case. The trial court also found Mother was no longer participating in therapy, that the "goals of Mother's individual and group therapies were not met," and that Mother had "tested positive for Marijuana" in March and July 2009. The court thereafter concluded:

> 3. By the clear and convincing evidence[,] the [C]ourt determines that there is a reasonable probability that [the] reasons that brought about [K.G.'s] placement outside the home will not be remedied. [Mother] has not completed her individual therapy. . . . While [K.G.] was in her care, [Mother] did not ensure that the child received counseling to address her victimization. [Mother] has idealized the man who sexually molested [K.G.] and now bears a tattoo honoring him. A fact from which the Court concludes that [Mother] does not fully appreciate the serious nature and depth of the child's trauma. Over the course of the underlying CHINS case, [Mother] has not been able to sustain housing. Prior to the child's removal from [Mother's] care [Mother] was admonished by the Court to take corrective action to prevent the child's removal from her care. [Mother] did not appropriately respond and has not complied with services since.

Id. at 8-9. A thorough review of the record reveals that these findings are supported by the evidence. Testimony from various caseworkers and service providers during the termination hearing makes clear that despite a wealth of services available to her for over two years,

Mother's circumstances remained largely unchanged, and she remained incapable of demonstrating an ability to provide K.G. with a safe and stable home environment.

During the termination hearing, Dr. Jennifer Fray ("Dr. Fray"), a psychologist with Park Center, informed the court she had conducted a psychological evaluation of Mother. Dr. Fray's diagnostic impression was that Mother suffered with major depression, post-traumatic stress disorder, and borderline personality traits. Mother also showed signs of long-term marijuana dependency. Based on her assessment, Dr. Fray made several treatment recommendations, including individual and group therapy. When asked to describe Mother's participation in recommended services, Dr. Fray testified Mother had made "minimal progress" on the treatment plan goals due to her "hit or miss" attendance and participation in therapy. Transcript p. 36. When asked her opinion as to whether reunification was a "viable option" if Mother failed to progress in treatment, Dr. Fray stated she would be "concerned" because Mother would "still suffer with the symptoms she had" which would "distract [Mother] from being able to provide care for her child." Id.

ACDCS case manager Andreya Davis ("Davis") likewise described Mother's participation in individual and group counseling services through Park Center as "sporadic" and further testified Mother had previously reported she "no longer wanted to participate in counseling and did not like having to participate in groups." Id. at 97. Davis also confirmed Mother was currently unemployed, had reported sixteen changes in residence during the underlying proceedings, had been arrested in May 2008 for theft and again in October 2008 on forgery charges, and tested positive for marijuana in July 2009.

When asked whether she believed the conditions that caused K.G.'s removal from Mother were "likely to be remedied in the near future," Davis answered in the negative and explained that although Mother had initiated certain services, she was "attending sporadically and she's not really benefitting or . . . accomplish[ing] those goals. She's hitting and missing." Id. at 110, 122. Similarly, Guardian ad Litem ("GAL") Susan Rutz ("Rutz") testified Mother had "regressed" in her understanding of the significance of what had happened to K.G. and when asked whether she believed Mother had "the ability or the parenting skills" necessary to parent K.G., Rutz replied, "Honestly[,] no." Id. at 148, 152.

As noted earlier, 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 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. Moreover, where there are only temporary improvements and 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). Here, ACDCS presented substantial evidence demonstrating Mother's refusal to successfully complete court-ordered reunification services for over two years, as well as her habitual and unresolved pattern of housing instability, drug use, and criminal activity.[3] We therefore conclude that ACDCS presented clear and convincing evidence to support the trial court's findings and ultimate determination that there is a reasonable probability the conditions resulting in K.G.'s removal and continued placement outside the

[3] We observe that at the time of the termination hearing, Mother's Probation Officer had filed a Petition for Revocation of Probation and Mother was awaiting a hearing on the matter.

family home will not be remedied. Mother's arguments to the contrary, emphasizing the services she did participate in, rather than those relied upon by the trial court, amount to an invitation to reweigh the evidence, and this we may not do. Id. at 264; See also Bergman v. Knox County Office of Family & Children, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding trial court permitted to give more weight to abundant evidence of mother's pattern of conduct in neglecting children during years prior to termination hearing than to mother's testimony of changed conditions).

2. Best Interests

We next consider Mother's assertion that ACDCS failed to prove termination of her parental rights is in K.G.'s best interests. In determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Indiana 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 and conclusions previously cited, the trial court also made

the following pertinent findings and conclusion in determining that termination of Mother's parental rights is in K.G.'s best interests:

> 18. The [GAL] reports that termination is in [K.G.'s] best interests. She has made that conclusion . . . based in part on her conclusion that [Mother] has a continuing attachment to the man (the child's deceased father) who sexually molested the child. [Mother] memorialized the perpetrator . . . with a tattoo on her arm after his death and she has shown [K.G.] pictures of the perpetrator's identical twin brother[,] who also has a criminal record.
>
> TO THE ABOVE FINDINGS OF FACT THE COURT APPLIES THE RELEVANT STATUTORY LAW AND CONCLUDES THAT:
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> * * *
>
> 4. The [GAL] has concluded that the child's best interests are served by terminating parental rights. The [C]ourt concludes that through termination of the parent[-]child relationship, the child can be placed in a safe and permanent home. Thus, the child's best interests are served by granting the petition to terminate the parent-child relationship.

Appellant's App. pp. 8-9. These findings and conclusion, too, are supported by the evidence. Both ACDCS case manager Davis and GAL Rutz recommended termination of Mother's parental rights as in K.G.'s best interests. In so doing, Rutz testified Mother had regressed to a "state of denial" pertaining to the molestation of K.G. by the child's father and still "idolizes" K.G.'s father, despite knowing what he did to K.G. Tr. at 148. Rutz further testified she had "every reason to believe" Mother would not be able to protect K.G. if the child were returned to Mother's care due to Mother's failure to "deal[] with her own issues." Id. at 150. Finally, Rutz reported that K.G. was "progressing well" in foster care. Id. at 153.

Based on the totality of the evidence, including Mother's failure to complete a majority of the trial court's dispositional orders and current inability to provide K.G. with a safe and stable home environment, coupled with the testimony from Davis and Rutz, we

conclude that clear and convincing evidence supports the trial court's determination that termination of Mother's parental rights is in K.G.'s best interests. 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 County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Affirmed.

RILEY, J., and KIRSCH, J., concur.