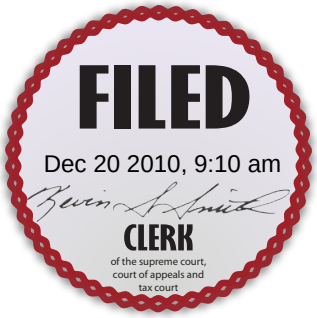

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF I.L., S.L. and E.L., Minor Children,	)	
A.L., Mother, and P.L., Father,	)	No. 02A03-1006-JT-319
Appellants-Respondents,	)	
vs.	)	
ALLEN COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT

December 20, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellants-respondents A.L. (Mother) and P.L. (Father) (collectively, Parents) appeal the trial court's judgment terminating their parental rights as to their minor children, I.L., S.L., and E.L. Mother claims that the trial court erred in admitting orders terminating her parent-child relationship with regard to two other children in a prior Child in Need of Services (CHINS) proceeding and taking judicial notice of the findings in those cases. Mother and Father also claim that the appellee-petitioner Indiana Department of Child Services (DCS) failed to present clear and convincing evidence establishing that it has a satisfactory plan for the care and treatment of the children.

Concluding that the trial court properly admitted the previous termination orders and finding no other error, we affirm the judgment of the trial court.

FACTS

Mother and Father are the parents of three children: I.L., born on March 4, 1996, S.L., born on July 2, 2000, and E.L., born on June 12, 2001. The DCS first became involved in this case sometime in 2000, when Mother and Father were accused of neglecting the children. Beginning in 2001, the children began living with Father's mother and sister (the Masons).

On September 28, 2005, the children were formally adjudicated CHINS, following substantiated reports of neglect, and the Masons were granted custody of all three children on January 22, 2007. While in the Masons' custody, the children "acted out sexually," gave each other "hickies," and grabbed each other in the crotch area. Appellants' App. p. 68.

Thereafter, the Masons sent the trial court a letter, indicating that they no longer wanted custody of the children. The Masons also testified at a CHINS hearing on January 9, 2008, that they no longer wanted to care for the children.

The trial court entered a dispositional decree and ordered the Parents to maintain clean and appropriate housing, cooperate with DCS caseworkers, attend case conferences, enroll in parenting classes, obtain psychological evaluations, and attend and participate in all in-home visits. However, as discussed in more detail below, the Parents failed to participate in most of the services and classes.

The DCS filed petitions to terminate Mother and Father's parental rights in Allen County on August 31, 2009. The petitions alleged, among other things, that the conditions that resulted in the children's removal will not be remedied, and that termination of the parent-child relationship is in the children's best interests.

The trial court conducted hearings on the petitions on February 16, 2010, and February 23, 2010. The evidence established that the parents have resided in ten different residences since 2005. Both parents are disabled and receive Social Security disability benefits. Mother is mildly mentally handicapped and receives disability benefits in the

sum of $502 per month. Father has been diagnosed with epilepsy, arthritis, and bronchitis, and also receives $502 in monthly disability benefits.

I.L. has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and bi-polar disorder. S.L. also has ADHD and fetal alcohol syndrome. E.L. has ADHD, bi-polar disorder, and suffers from seizures. As a result, E.L. requires constant monitoring and a structured environment. Moreover, E.L. must follow a specific routine because of her difficulty with change.

The Parents refused to participate in the court-ordered classes because they believed that the sessions would be of little benefit to them. A DCS representative who supervised the visits with the children from 2006 to June 2009 observed that Mother never learned to interact appropriately with the children. Moreover, the DCS caseworker had to intervene and show Mother how to engage in appropriate behavior. She also had to prompt Mother to discipline the children and instruct her how to react when the children fought and otherwise misbehaved. Quite often, Mother would simply give up. Additionally, the caseworker observed that Mother was not emotionally engaging with the children and she failed to acknowledge their birthdays. In short, the caseworker determined that most of the visits were "chaotic." Appellant's App. p. 73.

Father never attended any visits with the children and neither parent regularly provided clothing or other material or financial support for them. In fact, Father has not seen the children since 2005. The evidence also showed that the Parents' income was insufficient to provide the children with the necessities of a suitable residence for raising the children.

In addition to the parents' failure to participate in parenting classes and home-based services, they did not obtain the psychological evaluations as the trial court had ordered. The Parents were also unaware of their children's medications and did not participate in their medical treatments. The children have been in the same foster care home for approximately two years, and the evidence showed that the children progressed well in foster care and their behavior has improved.

After hearing the evidence, the trial court entered an order terminating Mother and Father's parental rights on May 24, 2010. The Parents now appeal.

DISCUSSION AND DECISION

I. Admission of Evidence

Mother claims that the trial court erred in admitting two of the DCS's exhibits, which consisted of findings of fact and a previous order terminating the parent-child relationship with the parents' two other children in a prior CHINS case.[1] Mother claims that the trial court erroneously took judicial notice of those findings and improperly relied upon them when issuing the judgment in this case.

In resolving this issue, we initially observe that we review a trial court's decision to admit or exclude evidence for an abuse of discretion. Payne v. State, 854 N.E.2d 7, 13 (Ind. Ct. App. 2006). An abuse of discretion occurs if a trial court's decision is clearly against the logic and effect of the facts and circumstances before the trial court. Id. Also, if a trial court abuses its discretion when admitting the challenged evidence, we will only

[1] Father does not raise this issue on appeal.

reverse if "the error is inconsistent with substantial justice" or if "a substantial right of the party is affected." Id.

A parent's character is at issue in proceedings to terminate parental rights. See Matter of D.G., 702 N.E.2d 777, 780 (Ind. Ct. App. 1998) (holding that specific instances of character, including evidence regarding a previous termination of parental rights, is admissible character evidence in a subsequent termination proceeding). And a parent's character is an integral factor in assessing a parent's fitness and in determining the child's best interest. Id.

In this case, the certified records of the prior orders terminating Mother's parental rights of her two younger children in 2009 established that the termination occurred during the pendency of the CHINS cases involving the children herein. Moreover, the termination order was entered just eight months prior to the filing of the petitions in this case.

The trial court was expected to evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the children. Id. at 779. And that includes a consideration 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. McBride v. Monroe Cnty. Office of Family & Children, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003).

We also note that pursuant to Indiana Evidence Rule 201(b)(5), a trial court may take "judicial notice of . . . records . . . of a court of this state. . . ." Thus, the trial court

could properly take judicial notice of the orders that were entered in the prior termination proceedings regarding the parents' other two children.

Finally, even assuming solely for the sake of argument that the trial court erred in admitting the exhibits and taking judicial notice of the prior proceedings, an error caused by the admission of evidence is harmless for which we will not reverse if the erroneously admitted evidence was cumulative of other evidence appropriately admitted. In the Matter of S.W., v. Ind. Dep't of Child Serv., 920 N.E.2d 783, 788 (Ind. Ct. App. 2010).

Various DCS representatives testified in this case about Mother's limited ability to demonstrate empathy regarding the needs of the children and her limited ability to observe appropriate parent-child boundaries despite having some parenting instruction. The visitation supervisor and home-based case manager testified that Mother encouraged the children's negative behavior, failed to set appropriate boundaries, and did not demonstrate affection toward them. Therefore, even if the trial court erred in admitting the exhibits, the same inferences could have been drawn from the testimony of the DCS representatives regarding Mother's neglect of the children, lack of employment, and her failure to provide financial support and stable housing for the children. For all these reasons, Mother's challenge to the admission of the exhibits and the taking of judicial notice of its records in the termination proceedings fails.

II. Adoption of the Children

The Parents next claim that the termination order must be set aside because the DCS failed to present sufficient evidence establishing that "adoption is a viable or satisfactory plan for the care and treatment of the children." Appellant's Br p. 6.

To effect the involuntary termination of a parent-child relationship, DCS must present clear and convincing evidence establishing the following elements:

> (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 for at least fifteen (15) months of the most recent twenty-two (22) months:
>
> (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) <u>there is a satisfactory plan for the care and treatment of the child</u>.

Ind. Code § 31-35-2-4(b)(2) (emphasis added).

Here, the Parents' only challenge to the sufficiency of the evidence is the claim that the DCS failed to establish a satisfactory plan for the care and treatment of the children in accordance with Indiana Code section 31-35-2-4(b)(2)(D). Notwithstanding these contentions, the DCS is not required "to detail completely a child's future." In the Matter of D.L.W., 485 N.E.2d 139, 143 (Ind. Ct. App. 1985). Indeed, the DCS only need point out the general direction of its plan. In the Matter of Miedl, 425 N.E.2d 137, 141 (Ind. 1981). And we have previously determined that "adoption is a satisfactory plan for the care and treatment of a child under the termination of parental rights statute." In re B.M., 913 N.E.2d 1283, 1287 (Ind. Ct. App. 2009). Finally, the DCS need not have a plan that contemplates a specific adoptive family. Lang v. Starke Cnty. Office of Family and Children, 861 N.E.2d 366, 375 (Ind. Ct. App. 2007) (observing that the attempt to find suitable parents to adopt the children is clearly a satisfactory plan).

In this case, the DCS case manager testified that the plan for the care and treatment of the children was adoption. Tr. p. 147. Although the Parents claim that a prospective adoptive parent should have testified at the termination hearing, there is no such requirement. Also, a prospective adoptive parent who is serving as a foster parent may well desire to avoid testifying in a manner that might alienate Mother and Father so the foster-biological parenting relationship can remain viable if the trial court denies the DCS's petition to terminate parental rights. Finally, we note that the Parents did not present any evidence contradicting the DCS's plan, and they did not claim that the foster parents did not intend to adopt the children. As a result, we conclude that the Parents'

claim fails and the evidence supports the trial court's determination that DCS established a satisfactory plan for the care and treatment of the children.

The judgment of the trial court is affirmed.

VAIDIK, J., and BARNES, J., concur.