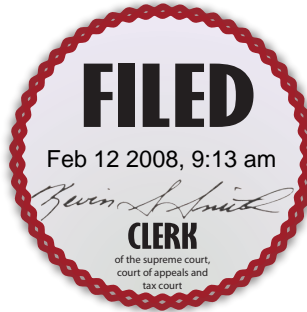


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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF PARENT/CHILD)
RELATIONSHIP OF B.P.,)
)
C.P.,)
)
Appellants-Respondents,)
)
vs.)
)
LAKE COUNTY DEPARTMENT)
OF CHILD SERVICES,)
)
and)
)
LAKE COUNTY CASA,)
)
Appellees-Petitioners.)

No. 45A03-0710-JV-478

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Judge
Cause No. 45D06-0611-JT-150

February 12, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Christine P. (“Mother”) appeals the involuntary termination of her parental rights to her daughter, B.P. On appeal, Mother contends that the trial court committed reversible error by allowing impermissible hearsay testimony to be admitted over her objections. Mother further asserts that the Lake County Department of Child Services (“LCDCS”) failed to prove by clear and convincing evidence each of the elements contained in Indiana Code § 31-35-2-4(b)(2) and that several of the trial court’s specific findings of fact were not supported by the evidence. Concluding that the alleged hearsay testimony did not affect Mother’s substantive rights, and that the juvenile court’s judgment was supported by clear and convincing evidence, we affirm.

Facts and Procedural History

The facts most favorable to the judgment indicate that on February 14, 2005, the LCDCS received a referral alleging that B.P. was observed having body odor and poor hygiene on several occasions and that her condition had not improved. The ensuing investigation revealed that B.P. was residing with her aunt, Donna Thomas. Thomas’s home was found to be in “deplorable” condition with garbage piled high throughout the home, no running water, dog feces on the floor, and junk piled around the house to such an extent that a person could barely walk through the house. Transcript at 8-9. The home was also

permeated with an unbearable stench. As a result of the investigation, and in light of B.P.'s poor personal hygiene, B.P. was immediately removed from Thomas' custody. At the time of B.P.'s removal, Mother's address and whereabouts were unknown. The name of B.P.'s father was also unknown.¹

Following B.P.'s removal, a detention hearing was held and B.P. was made a ward of the LCDCS. Despite the fact that Mother's whereabouts were unknown, services were recommended for Mother, as well as Thomas and B.P. These services included individual and family counseling for Thomas, Mother, and B.P., substance abuse and treatment for Thomas and Mother, family preservation services for the family, psychological evaluations for Thomas and Mother, and supervised visitation for the family. Referrals for services were made on February 28, 2005, to Southlake Mental Health and referrals for visitation were made on March 1, 2005, to Tree House. Caseworker Carol King ("King") testified that services are customarily ordered for parents, even when their whereabouts are unknown, "in case the parent comes back into the picture." *Id.* at 14.

Mother contacted the LCDCS on or about February 21, 2005, and was informed that B.P. was in foster care. However, Mother failed to make any further contact with the LCDCS or B.P.'s caseworkers until August 2006. Due to Mother's absence, the permanency plan for B.P. was relative placement. In addition to providing services to Thomas, the LCDCS initiated an interstate compact request with Illinois to determine whether B.P. could be placed with her maternal grandmother, who resided in Bridgeview, Illinois. In May 2006, however, the LCDCS was notified that the interstate compact request was denied. The reasons given

¹ During the CHINS proceedings, Michael N. was alleged to be B.P.'s biological father; however, he

were related to the conditions of the grandmother's trailer, which had a smell of urine, and the fact the grandmother had no income, had a history of substance abuse and depression, and had various health problems. On June 16, 2006, as a result of the denial of the interstate compact request, and the fact that both Mother and B.P.'s alleged father had still not contacted the LCDCS, the permanency plan was changed from relative placement to termination of parental rights. Due to Mother's unavailability, no services were provided to Mother.

In August 2006, Mother contacted the LCDCS and informed caseworker Sheila Walker that she was pregnant, that she was in a rehabilitation facility in Chicago, Illinois, and that she wanted to regain custody of B.P.

On November 16, 2006, the LCDCS filed its petition to terminate Mother's parental rights. Mother appeared at the initial hearing on the termination petition, held on February 1, 2007, and was appointed counsel. The termination hearing was held on April 17, 2007. The juvenile court issued its order terminating Mother's parental rights to B.P. on the same day. This appeal ensued.

Discussion and Decision

I. Admissibility of Hearsay Evidence

Mother asserts that the juvenile court committed reversible error by allowing impermissible hearsay testimony to be admitted over her objection. Assuming that the juvenile court improperly admitted hearsay statements into evidence, such evidence did not affect Mother's substantial rights.

was never located, never participated in the proceedings below, and is not a party to this appeal.

The improper admission of hearsay evidence does not warrant reversal unless it affects the parent's substantial rights. In re W.B., 772 N.E.2d 522, 533 (Ind. Ct. App. 2002). Here, Mother complains that Walker's testimony recounting certain conversations with B.P., wherein B.P. recalled living at a drug rehabilitation center in Chicago when she was approximately five years old, was inadmissible hearsay. Our review of the record, however, reveals that this information did not serve as a basis for terminating Mother's parental rights. The juvenile court's findings indicate that it based its decision to terminate Mother's parental rights on testimony from caseworkers regarding Mother's failure to maintain contact with the family caseworkers, failure to participate in court-ordered services, failure to visit or financially support B.P. for over two years, as well as Mother's own testimony concerning her three prior unsuccessful drug rehabilitation attempts. See infra, Part II.B.

Simply put, Mother has not established that the allegedly erroneous admission of certain portions of Walker's testimony affected Mother's substantial rights. We therefore find no error. See City of Indianapolis v. Taylor, 707 N.E.2d 1047, 1055 (Ind. Ct. App. 1999) (“[E]rrors in the admission of evidence, including hearsay, are to be disregarded as harmless unless they affect the substantial rights of the party.”), trans. denied.

II. Clear and Convincing Evidence

A. Standard of Review

This court has long held 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). Thus, when reviewing the termination of parental rights, we neither reweigh the evidence nor judge the credibility of the witnesses. In re Kay L., 867 N.E.2d 236, 239 (Ind. Ct. App.

2007). Instead, we consider only the evidence that supports the trial court's decision and the reasonable inferences drawn therefrom. Id.

Here, the juvenile court made specific findings and conclusions thereon in its order terminating Mother's parental rights. Where the juvenile court enters specific findings 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. 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. Thus, if the evidence and inferences support the juvenile court's decision, we must affirm. Id.

B. Conditions that Resulted in Removal Won't be Remedied

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. Bester, 839 N.E.2d at 147. A parent's interest in the care, custody, and control of his or her children is perhaps the oldest of our fundamental liberty interests. Id. However, these parental interests are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. Parental rights may therefore be terminated when the parents are unable or unwilling to meet their parental responsibilities. In re K.S., 750 N.E.2d at 836.

In order to terminate a parent-child relationship, the State is required to allege and prove that:

- (A) [o]ne (1) of the following exists:
 - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

* * *

- (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) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b). The State must establish each of these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

Mother does not challenge the juvenile court's determination that B.P. had been removed for more than six months under a dispositional decree, that termination of Mother's parental rights was in B.P.'s best interests, or that the LCDCS had a satisfactory plan for the care and treatment of B.P. Rather, Mother asserts that the LCDCS failed to prove by clear and convincing evidence that there was a reasonable probability that the conditions that resulted in B.P.'s removal from her care would not be remedied and that continuation of the parent-child relationship posed a threat to B.P.'s well-being.

At the outset, we note that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, the juvenile court was required to find only one of the two requirements of subsection (B) by clear and convincing evidence. See L.S., 717 N.E.2d at 209. We begin our review by considering whether the LCDCS provided clear and convincing evidence that

there was a reasonable probability that the conditions that resulted in B.P.'s removal from Mother's care would not be remedied.

When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the 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 evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. However, 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. The trial court may also properly consider the services offered by the office of family and children to a parent, and the parent's response to those services as evidence of whether conditions will be remedied. Id. Moreover, the LCDCS was not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability that Mother's behavior will not change. Kay L., 867 N.E.2d at 242.

The juvenile court made the following pertinent findings in its judgment to terminate Mother's parental rights to B.P.:

Mother has a history of drug use and abuse for 20 years. Mother has attempted four times to become sober and to live a straight life style, and at least three of those times has been unsuccessful. . . . Mother admits to using drugs during her last pregnancy. The Court finds that the mother had no contact with the case manager and didn't comply with the casework plan. The Court finds that

the child was removed on February 16, 2005, and [M]other's first contact with the case manager was August of 2006, after she became pregnant and gave birth to another baby. The Court finds that neither [M]other or [F]ather have ever complied with the casework plan, nor completed it, nor provided any emotional or financial support to the child. The Court finds that although [M]other is currently in drug treatment, because of her three prior attempts at sobriety and her failure to remain sober, that the likelihood of her remaining sober at this time is unlikely. The Court further finds that [M]other has not had any contact with the child in almost two years, and at this time, it would be detrimental for her to have contact with her mother.

Appellant's Appendix at 5-6. The evidence most favorable to the judgment supports these findings. Although Mother made great strides in combating her drug addiction prior to the termination hearing, at the time of the termination hearing, Mother still had failed to complete the majority of court-ordered services. Mother never underwent a psychological assessment and never participated in supervised visitation with B.P. Additionally, at the time of the termination hearing, Mother was unemployed, had failed to provide B.P. with any financial support for over two years, and was living with a family friend in Chicago, Illinois. When questioned whether she believed that she was physically, mentally, and emotionally capable of caring for B.P., who was by then a pre-teenager, Mother responded, "Yes, with, um assistance and maybe parenting classes." Tr. at 91.

As stated previously, a juvenile court must judge a parent's fitness to care for his or her children *at the time of the termination hearing*, and must also evaluate the parent's *habitual patterns of conduct* to determine the probability of future neglect or deprivation of the child. In re D.D., 804 N.E.2d 258, 266 (Ind. Ct. App. 2004), trans. denied. (Emphasis added). Thus, the juvenile court had the responsibility to judge Mother's credibility and weigh her testimony of changed conditions against the testimony demonstrating her habitual

patterns of conduct in failing to remain sober and in failing to provide a consistently safe and nurturing residence and environment for B.P. It is clear that the juvenile court considered the former, but gave more weight to evidence of the latter.

On appeal, we cannot reweigh the evidence or judge the credibility of the witnesses. Id. We 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, 592 N.E.2d at 1235). We find no such error here. See In re L.V.N., 799 N.E.2d 63, 68-71 (Ind. Ct. App. 2003) (concluding that mother’s arguments that the conditions had changed and she was now drug free constituted an invitation to reweigh the evidence); see also Bergman v. Knox County Office of Family & Children, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding that it was clear that the trial court gave more weight to the abundant evidence of mother’s pattern of conduct in neglecting her children during the several years prior to the termination hearing than mother’s evidence that she had changed her life to better accommodate the children’s needs).²

C. Juvenile Court’s Findings

Lastly, Mother alleges problems with a number of findings made by the juvenile court. Specifically, Mother challenges the juvenile court’s findings that Mother “has a history of drug usage and abuse for 20 years[,]” and that Mother left B.P. in the care of a relative who was not providing appropriate care for B.P. and whose home was “deplorable[.]”

² Having determined that the trial court’s conclusion regarding the remedy of conditions is not clearly erroneous, we need not address whether the LCDCS proved that the continuation of the parent-child relationship posed a threat to B.P.’s well-being.

Appellant's App. at 5-6. Mother also challenges the juvenile court's finding pertaining to the age of her older son. Appellant's Brief at 10. Mother concludes that because the "key finding[s]" made by the juvenile court are "clearly erroneous," the judgment should be set aside. Id. at 11. We disagree.

Contrary to Mother's assertion on appeal, we find there is sufficient evidence to support the trial court's finding pertaining to Mother's twenty-year history of drug use and abuse. At the termination hearing, Mother testified that she had an addiction problem that began when she was fourteen years old. Mother further testified that she participated in her first alcohol recovery program in 1988, and that she had participated in recovery programs for drug and alcohol abuse in 2000, and again in 2004, but that all three attempts had been unsuccessful. Mother also admitted to using drugs while she was pregnant in 2006. Thus, ample evidence supports the trial court's finding that Mother has a twenty-year history of drug use and abuse.

Mother's contention that the trial court erroneously found that she left B.P. in the care of a relative who was not providing appropriate care for B.P. and whose home was in deplorable condition is also unavailing. Although it appears that this portion of the trial court's finding is not supported by the evidence,³ the trial court's judgment is still supported by numerous other findings which substantiate the trial court's conclusion that the reasons for removal and continued placement outside Mother's care would not be remedied. Accordingly, this alleged erroneous finding cannot serve as the basis for reversible error. See

³ While the record reflects that Mother knew B.P. was living with Thomas, Mother claims, and the record confirms, that Mother initially left B.P. with Grandmother, who subsequently placed B.P. with

Lasater v. Lasater, 809 N.E.2d 380, 396 (Ind. Ct. App. 2004) (concluding that to the extent the judgment is based on erroneous findings, those findings are superfluous and are not fatal to the judgment if the remaining valid findings and conclusions support the judgment). Lastly, we note that the trial court's finding pertaining to when B.P.'s younger brother was born does not affect Mother's substantive rights because it has no bearing on whether the LCDCS proved by clear and convincing evidence that the condition leading to B.P.'s removal and continued placement outside of Mother's care would not be remedied. We need not reverse the juvenile court's judgment because it included superfluous findings. See Roydes v. Cappy, 762 N.E.2d 1268, 1276 n. 6 (Ind. Ct. App. 2002) (declining to address validity of superfluous findings).

Conclusion

In sum, Mother failed to prove that the admission of Walker's alleged hearsay testimony affected her substantial rights. Additionally, the LCDCS proved by clear and convincing evidence that the conditions resulting in B.P.'s removal and continued placement outside of Mother's care will not be remedied, and any error in the trial court's findings is harmless. The juvenile court's order terminating Mother's parental rights to B.P. is affirmed.

Affirmed.

FRIEDLANDER, J., and MATHIAS, J., concur.

Thomas.