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IN THE
COURT OF APPEALS OF INDIANA

V.H.,	)	
	)	
Appellant-Respondent,	)	
	)	No. 45A05-0910-JV-591
	)	
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Judge
Cause No. 45D06-0707-JT-128

March 19, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

V. H. ("Mother") appeals the involuntary termination of her parental rights to her child, D.H., claiming there is insufficient evidence to support the juvenile court's judgment. Concluding the Indiana Department of Child Services, Lake County ("LCDCS") presented clear and convincing evidence to support the juvenile court's judgment terminating Mother's parental rights, we affirm.

FACTS AND PROCEDURAL HISTORY

Mother is the biological mother of six children including D.H., born on July 12, 1993.[1] The facts most favorable to the juvenile court's judgment reveal that LCDCS took D.H. and two of her siblings into emergency protective custody in January 2005 after receiving a referral from the children's school alleging possible physical abuse of D.H's two siblings, A.A. and D.H.2. During the LCDCS's investigation, Mother admitted to the investigating case worker that she would whip her children with a belt as a form of punishment. The case worker also discovered the children did not have any clean clothing at the family home, and a large rodent was observed scampering across the floor of Mother's home.[2]

LCDCS filed a petition alleging D.H. was a CHINS in February 2005, and an initial hearing on the CHINS petition was held in March 2005. During the initial CHINS

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[1] The parental rights of D.H.'s biological father, C.H., were involuntarily terminated by the juvenile court in its May 2009 judgment. Father did not participate in the underlying proceedings, nor does he participate in this appeal. In addition, although all of Mother's biological children were removed from Mother's care at the time of the termination hearing, Mother's parental rights were terminated only as to D.H. in the instant case. Consequently, we limit our recitation of the facts to those facts pertinent solely to Mother's appeal of the termination of her parental rights to D.H.

[2] This incident was not Mother's first involvement with LCDCS. In 2001, LCDCS substantiated a referral for physical abuse against Mother for hurting one of D.H.'s siblings in the eye with a belt. The children in Mother's care at that time, including D.H., were taken into custody and adjudicated children in need of services ("CHINS"). The children were eventually returned to Mother in February 2002.

hearing, Mother admitted to the material allegations in the petition. The juvenile court thereafter adjudicated D.H. a CHINS and proceeded to disposition.

Following the dispositional hearing, the juvenile court issued an order formally removing D.H. from Mother's care and making the child a ward of LCDCS. The court's dispositional order also incorporated LCDCS's case plan and directed Mother to fully participate in the services, treatment, and/or supervision specified therein in order to achieve reunification with D.H. Among other things, Mother was ordered to participate in and successfully complete parenting classes, individual and family counseling, a psychological evaluation and any resulting recommendations, a substance abuse evaluation, random drug screens, and supervised visits with D.H.

Mother was initially compliant with court-ordered services. However, it appeared to service providers that Mother did not readily understand what was being taught to her. Mother's psychological evaluation later confirmed that her intellectual functions are in the "Borderline Range." Appellant's App. p. 144. In addition, it was also discovered that D.H's siblings had serious special needs requiring significant intervention.

Despite Mother's slow learning, she nevertheless remained cooperative and seemed to be benefitting from services. In January 2006, the juvenile court issued an order directing LCDCS to return D.H. to Mother's care in February 2006 "[i]f [D.H.] is ready to return home." State's Ex. 6. By March 2006, all three children had been returned to Mother's care, however, the children remained wards of the State.

Upon the children's return home, Mother's participation in services became inconsistent and her parenting skills began to decline. Specifically, Mother struggled

with maintaining good housekeeping and ensuring the children maintained good personal hygiene. Mother also had difficulties with financial matters, such as paying her rent and utility bills. After being advised by service providers to seek more affordable housing, Mother made arrangements to move to a different house, but she was unable to secure utility service at the new home and was forced to move in with a friend. This living arrangement, however, proved inadequate for the children

In June 2006, the children were again removed from Mother's care due to the lack of stable housing and poor living conditions. It was also alleged that one of D.H.'s siblings had been molested by one of the many visitors Mother allowed in her home. Following the children's removal, Mother's compliance with court-ordered services continued to decline. Additionally, Mother tested positive for marijuana, and in August 2006, she failed to appear for an initial hearing on a new CHINS petition which had been filed as to D.H.3., who had been born during the pendency of the underlying CHINS case.

In September 2006, Metropolitan Oasis discharged Mother's case as unsuccessful due to non-participation. LCDCS had little to no contact with Mother between October 2006 and March 2007. Mother also missed a court review hearing in September 2006 concerning D.H. At the conclusion of this hearing, the juvenile court issued an order granting LCDCS's request to change its permanency plan from reunification to termination of Mother's parental rights.

LCDCS filed a petition seeking the involuntary termination of Mother's parental rights to D.H. in July 2008. A three day fact-finding hearing on the termination petition

commenced on December 11, 2007, was continued on February 27, 2008, and concluded on March 13, 2008. At the conclusion of the hearing, the juvenile court took the matter under advisement. On May 28, 2009, the juvenile court entered its judgment terminating Mother's parental rights to D.H. 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.

The juvenile court's judgment in the present case contains specific findings of fact. 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. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. D.D., 804 N.E.2d at 265. A judgment is clearly erroneous only if the findings do not support the juvenile court's conclusions or the

conclusions do not support the judgment thereon. Bester, 839 N.E.2d at 147. Thus, if the evidence and inferences support the juvenile court's decision, we must affirm. L.S., 717 N.E.2d at 208.

A parent's interest in the care, custody, and control of his or her children is arguably one of the oldest of our fundamental liberty interests. Bester, 839 N.E.2d at 147. Hence, "[t]he 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. These parental interests, however, are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. Id. In addition, 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. K.S., 750 N.E.2d at 836.

Before an involuntary termination of parental rights may 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 . . . .

Ind. Code § 31-35-2-4(b)(2)(B) (2008). Moreover, "[t]he 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 (2008)).

Mother challenges the sufficiency of the evidence supporting the juvenile court's findings as to subsection 2(B) of the termination statute cited above. See Ind. Code § 31-35-2-4(b)(2)(B). In so doing, Mother claims the services offered by LCDCS to facilitate Mother's reunification with D.H. were "woefully inadequate." Appellant's Br. p. 7. Mother further asserts that her "ability to provide a stable environment [for D.H.] was also evidenced by the progress she had made by the time of the termination hearing," having obtained a job at Miller Pizza, stable housing, and a steady boyfriend. Id. at 10. Mother therefore insists the juvenile court committed reversible error.

Initially, we observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. The juvenile court therefore needed to find only one of the two requirements of subsection 2(B) had been met before issuing an order to terminate Mother's parental rights. See In re L.V.N., 799 N.E.2d 63, 69 (Ind. Ct. App. 2003). Nevertheless, the juvenile court found sufficient evidence had been presented to satisfy the evidentiary requirements as to both prongs of subsection 2(B). Because we find it to be dispositive, we need only consider whether clear and convincing evidence supports the juvenile court's finding as to subsection 2(B)(i) of Indiana's termination statute under the facts of this case. See Ind. Code § 31-35-2-4(b)(2)(B).

In determining whether there is a reasonable probability that the conditions resulting in removal of the child from the family home will 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 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 properly consider the 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. In addition, 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 that the parent's behavior will not change. In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In finding there is a reasonable probability the conditions resulting in D.H.'s removal or continued placement outside of Mother's care will not be remedied, the juvenile court made numerous detailed findings concerning Mother's history of involvement with LCDCS, inability to maintain a safe and suitable home for her children, and failure to complete court-ordered services, including the following:

> Mother attempted services but had a very hard time completing tasks or maintaining a clean home. The children were returned to [M]other for a four[-]month period of time with services in the home, but things were not going well[.] [T]he hygiene of the children was very poor. The house standards were very poor. [M]other has had several people living in and out of the home. [M]other could not keep the children safe and one of the siblings was molested by a house guest. At that time, the children were removed again and were not returned to [M]other's care. Once the children were removed, [M]other could not maintain her home and became homeless. [Mother] could not be found initially to implement services. . . .

> [O]nce [Mother] was located, [she] was given preservation services for a year and a half by Metropolitan Oasis[.] [T]hey visited twice per week. Mother had a hard time completing tasks, she never completed the case plan. . . . She couldn't budget her money. . . . [Mother] is low functioning. . . . She couldn't provide for the care and protection of her children . . . . In September of 2006, the services were stopped because [M]other could not be located . . . [M]other's housekeeping skills regressed even though there were services in the home to help [M]other. . . . [M]other tested positive for marijuana after services were being provided to her for several months. . . . [D.H.] was the primary caregiver for the siblings. . . . [Mother] is not providing any financial or emotional support for [D.H.]
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> * * *
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> Mother was offered services through a case plan for years with no progress towards reunification. Mother was sporadic with the services due to her housing situation. [D.H.] has been in the foster home for years.

Appellant's App. pp. 13-14.

A thorough review of the record leaves us satisfied that clear and convincing evidence supports the juvenile court's findings set forth above, which in turn support the court's ultimate decision to terminate Mother's parental rights to D.H. Testimony from various service providers and caseworkers makes clear that although Mother initially complied with the juvenile court's dispositional orders, she was unable to sustain her progress once the children were returned to her care in 2006. By the time of the termination hearing, Mother had failed to complete a majority of the juvenile court's dispositional goals despite having over two years and numerous services available to her.

During the termination hearing, LCDCS family case manager Lila Martinez confirmed that she was assigned to Mother's case in February 2005. Martinez testified that at that time several service providers had informed her they felt Mother "wasn't understanding what they were trying to get [Mother] to do." Tr. p. 41. Martinez further

stated that she herself would often have to "explain things to [Mother] several times to get her to understand . . . ." Id. at 42. In addition, Martinez confirmed that Mother's psychological evaluation indicated she had a "very low I.Q." Id. When asked whether she believed that Mother "could adequately parent the children" at the time she turned over the case to LCDCS case manager Laconyea Pitts-Thomas in November 2005, Martinez answered, "[W]ithout a lot of intensive services, no." Id. at 53.

Similarly, in recommending termination of Mother's parental rights, former LCDCS case manager Pitts-Thomas testified that before D.H. and her siblings were returned to Mother's care in 2006, Mother was "doing well," "maintaining her household," and "cooperat[ing] with Metropolitan Oasis[.]" Id. at 69. Pitts-Thomas indicated, however, that once the children were returned to her care, Mother's "progress as far as her home . . . and parenting began to decline." Id. Pitts-Thomas further explained that Mother was having trouble paying her utilities, rent, and phone bills stating Mother just "wasn't able to keep up." Id. at 70.

LCDCS case manager Natasha Cortez informed the court that she had been assigned to Mother's case since March 2007. Cortez confirmed that Mother had obtained housing and a job at Miller Pizza by the time of the termination hearing. Cortez further testified, however, that although Mother had been living in her current home for approximately fifteen months, the home still did not meet LCDCS's "minimum, sufficient standard." Id. at 138. Cortez went on to explain that she had visited Mother's home just several days before the hearing and felt the home "wouldn't be appropriate" for the children in its current condition because it did not have enough beds or bedrooms,

there was an exposed light socket in one of the rooms, several rooms did not have doors, and paint chips were all over the floor. Id. at 120.

When asked whether she felt Mother would "ever be able to adequately parent these children should they be returned to her care," Cortez answered in the negative and elaborated as follows:

> I don't think [Mother will] adequately be able to raise these children. It's not necessarily because she's low functioning. There's (sic) several parents that are low functioning. Many that are capable of raising their children and [Mother's] prove[n] to be . . . capable of that . . . on a temporary basis. . . . [T]he issue with [Mother is] . . . assistance in financing, in budgeting, and paying bills, and cleanliness. She's always needed this assistance[,] and when we were providing that assistance, the changes were minimal at best. They were never where they needed to be when Metropolitan Oasis was in the home . . . .

Id. at 123-34. When asked if she knew of any reason why LCDCS's petition to terminate Mother's parental rights to D.H. should not be granted, or whether there were any additional services that could be provided to Mother in the future to change her recommendation for termination, Cortez answered both questions in the negative, stating she had "actually thought about that a lot." Id. at 125. Cortez went on to say that any services she could offer Mother would be temporary because "there has to come a point where [LCDCS] is no longer involved." Id. at 126. Consequently, any additional services Cortez could offer Mother "wouldn't be long lasting enough for there to be a positive improvement and a continued improvement" due to both Mother's, as well as the children's, own special needs which require "continual supervision." Id. Cortez further informed the court that she was "real (sic) uncomfortable with [Mother's] pattern of instability." Id. at 156.

Based on the foregoing, we conclude that clear and convincing evidence supports the juvenile court's determination that there is a reasonable probability the conditions resulting in D.H.'s removal or continued placement outside Mother's care will not be remedied, which in turn supports the court's ultimate decision to terminate Mother's parental rights to D.H. Although LCDCS made multiple referrals for Mother to participate in services designed to improve her parenting ability, stabilize her housing and financial volatility, and facilitate reunification with D.H., Mother's initial successful participation in services essentially evaporated upon D.H.'s return to her care in 2006. Although we commend Mother for the progress she made in obtaining a job and stable housing, her housing situation at the time of the termination hearing nevertheless remained inappropriate for the children. Also significant, Mother acknowledged she would be unable to maintain her current housing and would have to "try to get some type of assistance" should she ever lose the financial support of her current live-in boyfriend. Tr. p. 291.

As previously explained, a juvenile court must judge a parent's fitness to care for his or her children 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 children. D.D., 804 N.E.2d at 266. Moreover, "[a] pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, support[s] a finding that there exists no reasonable probability that the conditions will change." Id. It is clear from the language of the judgment that the juvenile court gave more weight to the evidence of

Mother's habitual pattern of neglectful conduct and failure to successfully complete court-ordered services than to Mother's purported change in circumstances, which the court 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 to and in fact gave more weight to abundant evidence of mother's pattern of conduct in neglecting her children during several years before the termination hearing than to mother's testimony that she had changed her life to better accommodate the children's needs). Mother's arguments on appeal, emphasizing her self-serving testimony regarding her job at Miller's Pizza and current living arrangement with her live-in boyfriend, as opposed to the evidence cited by the juvenile court in its termination order, amount to an invitation to reweigh the evidence, which we may not do. D.D., 804 N.E.2d at 265.

Mother's additional assertion that she is entitled to reversal because LCDCS's provision of services during the underlying proceedings was woefully inadequate due to her mental disabilities is likewise unavailing. The law concerning termination of parental rights does not require LCDCS to offer services to a parent to correct deficiencies in the parent's ability to care for his or her child. In re B.D.J., 728 N.E.2d 195, 201 (Ind. Ct. App. 2000). Although a participation plan serves as a useful tool in assisting parents in meeting their obligations, and the Indiana Department of Child Services, via its local offices, routinely offers services to parents to assist them in regaining custody of their children, "termination of parental rights may occur independently of [these services], as long as the elements of Indiana Code section 31-35-2-4 are proven by clear and convincing evidence." Id. In addition, although a parent's mental disability, standing

alone, is not a proper ground for terminating parental rights, in instances where a parent is incapable of or unwilling to fulfill his or her legal obligations in caring for his or her child, the parent's mental disability may be considered. R.G. v. Marion County Dep't of Family & Children, 647 N.E.2d 326, 330 (Ind. Ct. App. 1995), trans. denied. Here, Mother was offered a variety of services for approximately one and a half years. Rather than take full advantage of those services, Mother refused to cooperate with service providers and ultimately failed to complete a majority of the juvenile court's dispositional goals.

This court will reverse a juvenile court's termination order only upon a showing of "clear error" – that which leaves us with a definite and firm conviction that a mistake has been made. A.J. v. Marion County Office of Family & Children, 881 N.E.2d 706, 716 (Ind. Ct. App. 2008), trans. denied. We find no such error here. Accordingly, the juvenile court's judgment terminating Mother's parental rights to D.H. is hereby affirmed.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.