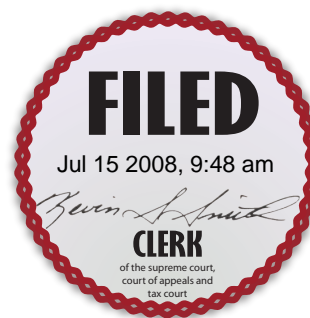


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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE MATTER OF THE TERMINATION)
OF THE PARENT CHILD RELATIONSHIP)
OF A.B.,)

CHERYL B.,)
Appellant-Respondent,)

vs.)

JENNINGS COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner.)

No. 40A01-0802-JV-66

APPEAL FROM THE JENNINGS CIRCUIT COURT
The Honorable Jon W. Webster, Judge
Cause No. 40C01-0605-JT-119

July 15, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Cheryl B. (“Mother”) appeals the involuntary termination of her parental rights, in Jennings Circuit Court, to her son, A.B. Mother challenges the sufficiency of the evidence supporting the trial court’s judgment. In so doing, Mother alleges the Jennings County Department of Child Services (“JCDCS”) failed to prove by clear and convincing evidence that there is a reasonable probability the conditions resulting in A.B.’s removal and continued placement outside Mother’s care will not be remedied, that continuation of the parent-child relationship poses a threat to A.B.’s well-being, and that termination of Mother’s parental rights is in A.B.’s best interests. We affirm.

Mother is the biological mother of four minor children including A.B., born on May 29, 2003. The evidence most favorable to the trial court’s judgment reveals that in early June 2003, the JCDCS received several referrals that, while Mother was giving birth to A.B., there had been a drug bust at her home and A.B.’s three siblings had been left with an elderly woman who was unable to properly care for the children. One of the referrals also indicated Mother had failed to obtain proper medical care for A.B.’s sibling, C.B., who has neurofibromatosis, a very serious medical condition that requires specialized training for any caregiver. These were not the first referrals the JCDCS had received pertaining to Mother. The JCDCS had also received, and had substantiated, referrals in December 2001, March 2002, and February 2003, for various reasons including neglect for endangering the life and health of the children and educational neglect. As a result of the June 2003 referrals, the JCDCS initiated an investigation and substantiated the allegation for medical neglect of C.B.

During the investigation, the JCDCS learned that Mother had been convicted for Dealing in Schedule II Narcotics and was scheduled to report to the Jennings County Jail in September 2003 to begin serving her sentence. The JCDCS encouraged Mother to make arrangements for the children. Mother attempted to do so, but Mother's attempts were ultimately unsuccessful. As a result, on September 5, 2003, the JCDCS filed a petition alleging A.B. and his siblings were children in need of services ("CHINS").

On September 8, 2003, the trial court found A.B. and his siblings to be CHINS and ordered the detention of all children to be effective on September 13, 2003, on or about the day Mother was scheduled to report to jail. On September 16, 2003, the trial court issued its Dispositional Decree formally removing all the children from Mother's care and custody. A.B. was subsequently placed in licensed foster care. The Dispositional Decree did not include any specific services for Mother due to her impending incarceration.¹ However, Mother was encouraged to participate in any available services offered through the correctional facility. During her approximately twenty-two months of incarceration, Mother participated in multiple programs, including four substance abuse programs, several parenting classes, a life skills training program, a nutrition class, and a bible study class. Mother also attended Alcoholics Anonymous ("AA") and Narcotics Anonymous ("NA") meetings.

In September 2004, the trial court issued a permanency order directing Mother to participate in services and to successfully meet all the objectives of the case plan upon

¹ Due to a continuance of her sentencing hearing, however, Mother's incarceration date had been delayed until on or about October 12, 2003.

her release from incarceration. On August 28, 2005, Mother was released from jail and placed on probation. Approximately two weeks later, the trial court modified its Dispositional Decree and ordered Mother to, among other things: (1) submit to random drug screens; (2) submit to a drug and alcohol assessment and follow all resulting recommendations of the therapist; (3) meet the medical needs of her children in a timely and appropriate manner; (4) obtain and maintain suitable housing and legal employment sufficient to support her family; (5) participate in individual mental health counseling; (6) participate in an AA/NA program; and, (7) remain free of any further convictions, in order to achieve reunification with her children.

Initially, Mother participated in services. Mother completed a drug and alcohol assessment at Quinco, after which the therapist did not recommend any additional substance abuse treatment. Mother also submitted to random drug screens and participated in Quinco's Relapse Prevention Program on the recommendation of the JCDCS family case manager. Mother also obtained employment and immediately began exercising regular, supervised visitation with A.B. and her other children. Despite her efforts, however, Mother was unable to obtain or maintain permanent housing. Additionally, Mother's lack of stable housing caused her progress with visitation to "stagnate" because, without stable housing, Mother was unable to progress to all day or overnights visits. Tr. at 16. Mother had also failed to meet the medical needs of A.B.'s sibling, C.B., during this time.

In March 2006, Mother was arrested for Operating a Vehicle While Intoxicated, and her compliance with services began to wane. After her arrest, Mother began missing

visitation with the children, and the JCDCS reduced Mother's visitation with A.B. from two times to one time per week. Mother also never secured a permanent place to live. On April 17, 2006, the JCDCS filed a petition to involuntarily terminate Mother's parental rights to A.B. and his siblings. On May 19, 2006, the trial court ordered that the Petition to Terminate Parental Rights as to each child be severed and assigned separate cause numbers. Also in May 2006, Mother was again arrested. The new arrest was for Driving While Suspended.

Mother voluntarily admitted herself to a substance abuse in-patient treatment program at Richmond State Hospital on June 13, 2006. However, approximately two weeks before completion of the program, Mother was unsuccessfully discharged for violating program rules. A probation revocation hearing was held on September 21, 2006, after which Mother was returned to the Indiana Department of Correction to serve the remainder of her sentence.

A fact-finding hearing on the JCDCS's termination petition commenced on August 27, 2007. During the hearing, Mother indicated that her projected release date from incarceration was January 19, 2009. At the conclusion of the termination hearing, the trial court took the matter under advisement, and on November 5, 2007, entered its judgment terminating Mother's parental rights to A.B.²

² A.B.'s biological father, whose parental rights to A.B. were also terminated by the trial court's judgment on November 5, 2007, filed a separate appeal challenging the trial court's ruling. Another panel of this Court recently affirmed the trial court's judgment. See In re A.B., 2008 WL 2514637, slip.op., (Ind. Ct. App. 2008).

Mother asserts on appeal that the trial court's judgment terminating her parental rights to A.B. is not supported by clear and convincing evidence. 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). Thus, when reviewing the trial court's judgment, we will not reweigh the evidence or judge the credibility of the witnesses. In re D.D., 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. Id.

Here, the trial court made specific findings in ordering the termination of Mother's parental rights. Where the court enters specific findings of fact, we apply a two-tiered standard of review. First, we must determine whether the evidence supports the findings. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). Secondly, we determine whether the findings support the judgment. Id. In deference to the trial 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; see also Bester, 839 N.E.2d at 147. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. D.D., 804 N.E.2d at 264. A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment thereon. Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996).

"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, the trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. K.S., 750 N.E.2d at 837. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id. 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)(2) (2004 & Supp. 2007); Ind. Code § 31-35-2-8 (2004). 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 trial court's determination that A.B. was removed from her care for the requisite amount of time pursuant to the statute or that the JCDCS has a satisfactory plan for A.B.'s care and treatment, namely, adoption. Mother does, however, allege the JCDCS failed to prove by clear and convincing evidence: (1) that there is a reasonable probability the conditions resulting in A.B.'s removal and continued placement outside of Mother's care would not be remedied; (2) that continuation of the parent-child relationship poses a threat to A.B.'s well-being; and, (3) that termination of Mother's parental rights is in A.B.'s best interests. We will address each argument in turn.

Initially, we note that Ind. Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, the trial court need find by clear and convincing evidence only one of the two requirements of subsection (B). See L.S., 717 N.E.2d at 209. Accordingly, we shall first determine whether clear and convincing evidence supports the trial court's conclusion that the conditions resulting in A.B.'s removal and continued placement outside Mother's care will not be remedied.

Mother argues on appeal the trial court's termination order is "void of any reference to the services which [Mother] successfully completed" and further asserts that "[t]he court's finding that [Mother] was non-compliant with treatment plans and unsuccessful in completing services is not supported by the evidence." Appellant's Br. at 10. Mother therefore concludes that the trial court "wrongfully terminated" her parental rights because the evidence shows "there is a reasonable probability that the conditions that led to A.B.'s removal [either] have been or will be remedied." Id.

When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will or 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. (Emphasis added.) Additionally, 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 to a parent, and the parent's response to those services as evidence of whether conditions will be remedied. Id. Moreover, the JCDCS is not required to rule 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 determining there is a reasonable probability that the conditions resulting in A.B.'s removal and continued placement outside Mother's care will not be remedied, the trial court made the following pertinent findings and conclusions:

7. On September 28, 2004, a Permanency Order was entered ordering Mother, upon her release from incarceration, to meet all objectives of the case plan, find housing and employment, and prove she is maintaining a substance-free lifestyle that would allow her to

provide for the emotional, physical, and medical needs of her children.

8. On August 28, 2005, Mother was released from incarceration and placed on probation.
9. On September 14, 2005, a Permanency Plan/Modification of Dispositional Decree order was entered. The modification of the Dispositional Decree required Mother to, among other things: submit to random drug screens, complete an addictions assessment and comply with recommendations of the therapist; meet the medical needs of her children in a timely and appropriate manner, specifically attending all medical appointments for her children; gain and maintain employment; obtain and maintain a permanent residence for at least six (6) months; begin and participate in individual mental health counseling; and remain free of any further convictions. Additionally, the case plan required Mother to participate in AA/NA.

* * * * *

11. On February 27, 2006, a Periodic Case Review hearing was held. At that time, Mother was working at her second place of employment since her release from incarceration. Mother had purchase[d] a car, completed her GED, and was attending the Relapse Prevention Group through Quinco. However, Mother had not produced any AA/NA verifications since December 2005, was not stable in her living situation, and had not attended a single medical appointment for [A.B.'s] sibling, [C.B.].
12. On March 10, 2006, Mother was arrested for Operating While Intoxicated. Mother testified at the termination hearing that she drank that night because she was stressed due to Family Case Manager Bolden telling her that a Petition for Termination [of] Parental Rights would be filed if Mother did not obtain stable housing or maintain sobriety.

* * * * *

14. On May 24, 2006, Mother was arrested for Driving While Suspended.

15. On June 13, 2006, Mother voluntarily admitted herself to Richmond State Hospital.
16. On August 14, 2006, a Periodic Case Review hearing was held. Prior to Mother's admission to Richmond State Hospital, Mother's visitation with her children was sporadic and Mother failed to secure stable and suitable housing.
17. On or about August 16, 2006, Mother was unsuccessfully discharged from Richmond State Hospital for violation of rules. Mother testified that she was in possession of cigarettes.
18. [On] September 21, 2006, Mother's probation revocation hearing was held. Mother was ordered to serve the remainder of her sentence and be unsuccessfully discharged from probation. Mother's projected release date is January 19, 2009.

* * * * *

21. [A.B.] was three (3) months old at the time of his removal. As of August 27, 2007, [A.B.] is four (4) years of age.

* * * * *

23. [A.B.] will be approximately four (4) months shy of his sixth (6th) birthday upon Mother[s] projected release date from incarceration.
24. The JCDCS'[s] family case managers have repeatedly apprised Mother of the expectations of the Court's Orders and case plans.
25. The JCDCS has made numerous referrals for services for Mother.
26. The JCDCS has made reasonable efforts in the underlying CHINS cause to reunify the family.

* * * * *

II. CONCLUSIONS OF LAW

1. It is established by clear and convincing evidence that the allegations of the Petition are true in that there is a reasonable probability that the conditions that resulted in the child's removal and the reasons for the placement outside the parents' home will not be remedied, and/or

that the continuation of the parent/child relationship poses a threat to the well-being of the child.

* * * * *

3. Mother has been incarcerated off and on throughout her involvement with the JCDCS. Her incarcerations have interfered with her ability to participate in and successfully complete services.

Additionally, Mother's extensive history of alcohol/drug abuse has interfered with her ability to successfully complete services during the periods between her incarcerations.

The Court also evaluates Mother's habitual patterns of criminal conduct and determines there is a substantial probability of future neglect and deprivation of her child. Mother's history of incarceration and the effects on her child is given considerable weight.

Accordingly, the Court finds that the JCDCS has proven by clear and convincing evidence that Mother, [Cheryl B.], continues to be unable, unwilling, and/or has neglected to provide stability, safety, nurturing[,] and permanence for her child.

Appellant's App. pp. 10-13. A thorough review of the record leaves us convinced that ample evidence supports the trial court's findings and conclusions set forth above. These findings and conclusions, in turn, support the trial court's ultimate decision to terminate Mother's parental rights to A.B.

Significantly, at the time of the termination hearing on August 27, 2007, Mother was incarcerated and therefore unavailable to parent A.B. Moreover, her earliest possible release date was January 19, 2009, approximately one-and-a-half years later. Thus, the condition resulting in A.B.'s initial removal and continued placement outside Mother's care, namely, Mother's unavailability due to her incarceration, still had not been remedied. As stated previously, in 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 child *at the time of the termination hearing*. D.D., 804 N.E.2d at 266.

The record further reveals Mother has a history of prior involvement with the JCDCS dating back to 2001 which includes substantiated incidents of both medical and education neglect. Additionally, Mother, who was forty-three years old at the time of the termination hearing, testified she has been using drugs since she was fifteen years old. Former JCDCS family case manager Shana Bolden testified that at no point during the CHINS proceedings while she was case manager was she ever able to recommend a trial home visit or reunification with Mother. When questioned whether she believed that there was a reasonable probability that the conditions resulting in A.B.'s removal will be remedied, Bolden answered, "Not at this time." Tr. at 24. She went on to explain:

[Mother] . . . had served a two year sentence, was released from incarceration for one year, made some progress, but did not maintain sobriety, which is the underlying need and issue that she has, which caused her to serve another prison sentence. And during [A.B.'s] . . . almost four[-]and[-]a[-]half years of life, [Mother] has only been available to him for fifteen months. . . .

Id. Bolden then stated, "It's been very apparent with [Mother] that she can't, she is having difficulty maintaining sobriety and [A.B.] needs to have caregivers who can attune to his needs." Id. at 27. These sentiments were echoed by the current family case manager, Sandy Smith, who testified that, based on her involvement with the family, she has "seen no indication that the conditions will be remedied by [Mother]." Id. at 42.

Finally, in her report to the trial court, the court-appointed special advocate (“CASA”) also recommended termination of Mother’s parental rights.

Although we acknowledge and commend Mother’s efforts to improve herself by participating in numerous classes while in prison, including drug rehabilitation classes, parenting classes, GED, and job training classes, Mother’s ability to remain sober, to obtain stable housing and employment, and to properly parent A.B. once released back into the “real world” remains unknown. Additionally, Mother still has not achieved a majority of the dispositional goals set during the underlying CHINS proceedings including: participating in a parenting assessment; demonstrating the ability to meet the medical needs of her children; participating in individual mental health counseling; and, remaining free from additional convictions.

Based on the foregoing, especially in light of Mother’s lengthy history of substance abuse, prior involvement with the JCDCS, and current incarceration, we conclude that the trial court’s findings and conclusions set forth previously indicating there is a reasonable probability the conditions resulting in A.B.’s removal from Mother’s care and custody will not be remedied are supported by clear and convincing evidence. “[A] pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change.” Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied. Since the time of A.B.’s removal, approximately 4 years have passed and Mother not only remains incarcerated, but has also not completed services. Mother

therefore remains unavailable to care for A.B. It is unfair to ask A.B. to continue to wait until Mother is willing and able to obtain, and benefit from, the help that she needs. See In re Campbell, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (stating that the court was unwilling to put the children “on a shelf” until their mother was capable of caring for them).³ We next turn our attention to Mother’s allegation the JCDCS failed to prove by clear and convincing evidence that termination of her parental rights is in A.B.’s best interests.

We are mindful that in determining what is in the best interests of the child, the court is required to look beyond the factors identified by the 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 trial court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. Id. Moreover, we have previously determined that the recommendations of the CASA that parental rights be terminated support a finding that termination is in the child’s best interest. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

In addition to the findings and conclusions set forth previously, the trial court made the following additional pertinent finding and conclusions in determining termination of Mother’s parental rights is in A.B.’s best interests:

³ Having determined the trial court’s conclusion regarding the remedy of conditions is not clearly erroneous, we need not address the issue of whether the JCDCS proved by clear and convincing evidence that the continuation of the parent-child relationship poses a threat to A.B.’s well-being. See L.S., 717 N.E.2d at 209 (explaining that Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive).

27. The Court-Appointed Special Advocate recommends that the parent-child relationship be terminated and that the same would serve in the child's best interest.

II. CONCLUSIONS OF LAW

* * * * *

2. Termination of parental rights is in the best interest of the child, [A.B.], in that Mother has shown over the course of the related CHINS cause, and in her non[-]compliance with treatment plans, and numerous specific services made available and/or provided, that she continues to be unable, unwilling, and/or has neglected to provide stability, safety, nurturing and permanence for her child.

* * * * *

5. Termination is in the best interest of the child in that the child needs stability, safety, nurturing and permanence.

Mother has not demonstrated . . . over the course and the history of the underlying CHINS cause, to have complied with or have benefited from services.

Any nominal and short[-]term compliance after almost four (4) years under the jurisdiction of this Court is not sufficient to foreclose the involuntary termination of parental rights.

Appellant's App. pp. 12-13. These findings, too, are supported by the evidence.

In addition to the fact Mother was unable to remedy the conditions necessitating A.B.'s removal from her care despite numerous services available to her both while incarcerated and later by the JCDCS, the record reveals the CASA and JCDCS family case manager Smith both recommended termination of Mother's parental rights to A.B. When asked why she believed termination of Mother's parental rights was in A.B.'s best interests, Smith replied, "In order to achieve permanency, [A.B.] needs to go on with his

life.” Tr. at 42. Smith also noted that A.B. had settled very well into his current foster family and that it would be very traumatic to remove him from the foster parents’ care and place him with either Mother or A.B.’s father.

Based on the totality of the evidence, including Mother’s continuing incarceration, Mother’s inability to benefit from extensive services available throughout the duration of the CHINS proceedings, testimony from JDCDS case manager and CASA that termination is in A.B.’s best interests, and the fact that removing A.B. from his foster family would likely have traumatic consequences, we conclude the trial court’s determination that termination of Mother’s parental rights is in A.B.’s best interests is supported by clear and convincing evidence. See In re A.I., 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding that testimony of the CASA and family case manager, coupled with evidence that conditions resulting in continued placement outside home will not be remedied, is sufficient to prove by clear and convincing evidence termination is in child’s best interests), trans. denied; see also McBride, 798 N.E.2d at 203 (stating that testimony of child’s GAL regarding child’s need for permanency supports finding that termination is in child’s best interests).

Conclusion

The trial court’s judgment terminating Mother’s parental rights to A.B. is supported by clear and convincing evidence. Accordingly, we find no error.

Affirmed.

DARDEN, J. and NAJAM, J. concur