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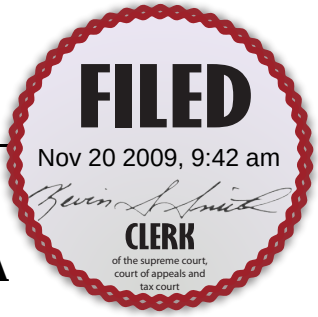

IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF D.K., A.S.K., and T.M.K.,	)	
and	)	
L.D.G.,	)	
Appellant-Respondent,	)	
vs.	)	No. 20A03-0903-JV-130
INDIANA DEPARTMENT OF CHILD SERVICES	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
The Honorable Deborah A. Domine, Magistrate
Cause Nos. 20C01-0810-JT-102
20C01-0810-JT-103
20C01-0810-JT-104

November 20, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

L.G. ("Mother") appeals the trial court's order terminating her parent-child relationship with her children D.K., A.S.K., and T.M.K. Mother raises a single issue for our review, which we restate as whether clear and convincing evidence supports the termination of her parental rights. Concluding the evidence is sufficient, we affirm.

Facts and Procedural History

Mother and E.K. have three children: A.S.K., born on February 12, 2002; T.M.K., born on September 10, 2003; and D.K., born on July 14, 2005.[1] In July 2007, E.K. had custody of A.S.K. and T.M.K., and Mother had custody of D.K. and supervised visits with A.S.K. and T.M.K. Mother and D.K. lived with D.K.'s maternal grandparents.

On July 9, 2007, E.K. allowed his girlfriend's two-year old child, J.H., to sustain a severe head injury while in the home with E.K., A.S.K., and T.M.K.; the injury later resulted in J.H.'s death. E.K. was arrested and charged with aggravated battery, a Class B felony, and subsequently convicted and incarcerated. Also on July 9, 2007, A.S.K. and T.M.K. were taken into protective custody and later placed in a foster home.

On July 10, 2007, Mother was involved in a domestic dispute with her boyfriend, W.F. Mother told police officers she had been involved in two prior violent incidents with W.F.,

including when W.F. stabbed her in the leg with a knife and an incident on July 9, 2007, when W.F. punched her in the left eye causing a bruise.

The Elkhart County Office of the Department of Child Services ("DCS") filed petitions alleging T.M.K., A.S.K., and D.K. were children in need of services ("CHINS"). DCS alleged Mother had "a history of methamphetamine use, domestic violence, and unstable housing, which preclude her from providing for the necessary care and supervision needs" of the children. Appellant's Appendix at 47. DCS further alleged housing at D.K.'s maternal grandparents was inadequate for the children because the grandparents had unresolved criminal charges and substantiated allegations of molestation and domestic violence. On July 17, 2009, D.K. was removed from Mother's custody and thereafter placed in foster care. On July 19, 2007, the trial court adjudicated all three children to be CHINS. Following a dispositional hearing on August 9, 2007, the trial court ordered Mother to: (1) pay $10.00 per week in child support; (2) participate in a Rapid Family Assessment; (3) participate in a drug and alcohol assessment; (4) follow recommendations from these assessments; (5) submit to and pass random drug screens; and (6) maintain stable and adequate housing.

On January 3, 2008, the trial court held a review hearing, at which it was shown Mother had completed her Rapid Family Assessment, parenting classes, and drug and alcohol assessment, had passed random drug screens, and was gainfully employed. The trial court

[1] E.K. voluntarily relinquished his parental rights, and thereafter, the trial court entered an order terminating E.K.'s parental rights. E.K. is not a party to this appeal.

found Mother had consistently visited the children, had cooperated with DCS, and had enhanced her ability to fulfill her parental obligations.

On July 3, 2008, the trial court held a permanency hearing, at which it was shown Mother was evicted from her apartment in May 2008 for nonpayment of rent but obtained new housing in June 2008 that was appropriate for the children. Mother had recently quit her job as a restaurant cook and was seeking new employment. She had completed a psychological evaluation and continued to pass drug screens, but had been inconsistent in attending individual therapy sessions, resulting in the service being cancelled. Mother's supervised visits with the children were "going very well," and the children wished to return to Mother's care. Transcript Vol. 1 at 85.[2] However, DCS postponed the reunification process for another six months because Mother had not established stable employment and needed DCS to advance funds to pay her rent and utilities. The court-appointed special advocate ("CASA") further stated it was "imperative" that Mother receive individual counseling. Id. at 91. Following the hearing, the trial court ordered Mother to "follow through with counseling referral and attend all counseling sessions." Appellant's App. at 161. On July 29, 2008, DCS filed reports stating Mother had failed to cooperate with DCS's referral for individual counseling and Mother had obtained employment at a Marathon gas station.

[2] The two volumes of the transcript are paginated separately, rather than consecutively in accordance with Indiana Appellate Rule 28(A)(2). As a result, we cite pages of the transcript by volume as well as page number.

On October 31, 2008, DCS filed petitions to terminate Mother's parental rights ("TPR"). On November 5, 2008, DCS filed CHINS progress reports stating Mother was not consistent with attending family therapy sessions and continued to be inconsistent in attending individual therapy. The reports further stated Mother's visits with the children "are currently stopped as DCS is unable to contact [Mother]." Id. at 180.

On December 18, 2008, the trial court held an initial hearing on the TPR petitions. A DCS representative stated DCS had not "heard from Mom since the middle of October and she hasn't seen the kids because she hasn't contacted us." Tr. Vol. 1 at 115. The CASA stated unsupervised visits were not appropriate because "the last time we quit them, she had a boyfriend beating her . . . . he was hitting and beating her and yelling at her with her children right there." Id. at 127. On February 23, 2009, the trial court held a TPR evidentiary hearing. Testimony indicated Mother had been evicted from her apartment in December for nonpayment of rent and had been unemployed since October; Mother had failed to participate in court-ordered individual counseling, having failed to show up for any appointments with her therapist between October and February; and Mother's therapist had learned from the children's therapist that "there's been a pattern of [Mother] being with abusive men." Tr. Vol. 2 at 161. The family case manager, the CASA, and the children's therapist related their opinions that termination of Mother's parental rights was in the children's best interest.

On February 26, 2009, the trial court entered its order terminating Mother's parental rights. The trial court found and concluded, in relevant part:

b. There is a reasonable probability that the conditions that resulted in the removal of the children from the home and the reasons for placement outside of the home of the parents will not be remedied . . . .

* * *

iii. The first assigned case manager . . . described the primary obstacles to placement with the mother at the time of removal . . . . The concerns included [Mother's] lack of stable housing, [Mother's] conviction for and involvement in domestic violence, and [Mother's] need for individual therapy.

iv. The present case manager Andrea Hubbard testified that the same concerns or obstacles to placement in the home of [Mother] remain today. According to Hubbard, [Mother] continues to be noncompliant in court orders to participate in individual therapy; in fact, she stopped attending therapy entirely. Despite the fact that the DCS has paid [Mother's] rent on a number of occasions . . . and paid her gas bill at least once, [Mother] still has not been able to maintain a stable home. . . . According to Hubbard, on one visit between the children and [Mother], in the mother's home, the children reported violence . . . between [Mother] and her current boyfriend. [Mother] was ordered to participate in a program to prevent domestic violence, but she has refused to follow through with the court's order to do so.

* * *

viii. CASA . . . testified that [Mother] has not made the changes necessary to provide the children with the stability they need. She described the compliance with services demonstrated by the mother . . . as analogous to a roller coaster ride. She described that [Mother] has been compliant with services for short periods of time, and then stated that she has followed periods of compliance by dropping out of services entirely.

* * *

c. Termination of the Parent Child Relationship is in the best interest of [D.K.], [A.S.K.], and [T.M.K.]. Oaklawn home-based case manager Ryan Mitchell . . . noted that the . . . children have been through a great deal of trauma, and for that reason they need stability. Yet at the time of the termination trial the mother . . . still did not have stable housing, and she did not have a job. . . . In addition, [Mother] has not visited her three children since October of 2008. Visits were suspended at that time because [Mother] had dropped out of services. She was informed if she resumed the services her children needed, visits would resume. Visits never resumed because [Mother] never complied.

* * *

d. There is a satisfactory plan for the care and treatment of the children should parental rights be terminated. The plan is for adoption.

Appellant's App. at 24-29. Mother now appeals.

Discussion and Decision

I. Standard of Review

When, as here, the trial court enters findings of fact and conclusions of law in a termination of parental rights proceeding, we apply a two-tiered standard of review. First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). On appeal, we neither reweigh the evidence nor judge witnesses' credibility. In re G.Y., 904 N.E.2d 1257, 1260 (Ind. 2009), reh'g denied. We consider only the evidence and reasonable inferences favorable to the judgment. Id. We will reverse an order terminating parental rights only if it is clearly erroneous. Bester, 839 N.E.2d at 147. A judgment is "clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment." Id. (quotation omitted).

II. Termination of Mother's Parental Rights

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 parents' interests to those of the child when evaluating the State's petition to terminate the parent-child relationship. In re K.S., 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Parental rights may be terminated when parents are unable or unwilling to meet their parental responsibilities. Id. at 836.

To terminate Mother's parent-child relationship, the State must prove by clear and convincing evidence that:

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

Ind. Code § 31-35-2-4(b)(2);[3] see Ind. Code § 31-37-14-2 (clear and convincing evidence standard applies to termination proceedings). The State is entitled to a judgment terminating parental rights only if clear and convincing evidence supports all four statutory elements outlined in Indiana Code section 31-35-2-4(b)(2). G.Y., 904 N.E.2d at 1261.

A. Conditions Resulting in Children's Removal

Mother argues the evidence was insufficient to support the trial court's findings that (1) there was a reasonable probability the conditions that resulted in the children's removal from Mother's custody would not be remedied, and (2) there was a reasonable probability continuation of the parent-child relationship posed a threat to the children's well-being.

[3] Subsection (b)(2)(A)(iii) of this statute was reworded effective July 1, 2009. See P.L. 131-2009 § 65. We quote the version in effect at the time of the proceedings in this case.

Because the State was only required to prove one of these elements, see Ind. Code § 31-35-2-4(b)(2)(B), we need only address the former.

When determining whether a reasonable probability exists that the conditions justifying a child's removal and placement outside the home will not be remedied, the trial court must judge a parent's fitness at the time of the termination hearing, taking into account evidence of changed conditions. Bester, 839 N.E.2d at 152. However, the trial court must also consider the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. Id. Factors the trial court may consider include the parent's "prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment." J.M. v. Marion County Office of Family & Children, 802 N.E.2d 40, 45 (Ind. Ct. App. 2004), trans. denied. Further, the trial court may consider "the services offered by [DCS] to the parent and the parent's response to those services." Id. (quotation omitted). A pattern of unwillingness to deal with parenting problems and to cooperate with social service providers, in conjunction with unchanged conditions, supports a finding there is no reasonable probability the conditions justifying the children's removal will change. Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied.

Here, the evidence favorable to the trial court's judgment indicated two of the three conditions justifying the children's initial placement in foster care—Mother's unstable housing and involvement in domestic violence situations—continued at the time of the TPR hearing. Specifically, in the nine months preceding the TPR hearing, Mother had lost her job

twice, twice been evicted for nonpayment of rent, and had recently been in a physically abusive situation with a new boyfriend. Further, Mother refused to cooperate with court-ordered counseling to address, among other things, the domestic violence issues. To her credit, Mother participated in and passed random drug screens, providing evidence she addressed her prior history of substance abuse. However, under our standard of review we do not reweigh the evidence, and as a result we cannot say the trial court clearly erred when it concluded there was a substantial probability the conditions justifying the children's placement outside Mother's home would not be remedied.

B. Children's Best Interests

Mother further argues the trial court erred when it determined termination of her parental rights was in the children's best interests. In making such a determination, the trial court must look beyond the factors identified by DCS and assess the totality of the circumstances. McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). Relevant circumstances include the parent's historical and current inability to provide adequate housing, stability, and supervision for the children, Castro v. State Office of Family & Children, 842 N.E.2d 367, 374 (Ind. Ct. App. 2006), trans. denied, and the opinions of the case manager and the CASA that termination is in the children's best interest, In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). Moreover, the trial court need not wait until the child is irreversibly harmed before terminating the parent-child relationship. McBride, 798 N.E.2d at 199.

Here, as discussed above, Mother showed a historical inability to maintain stable

housing and a violence-free environment for the children. The children's therapist, the case manager, and the CASA all testified termination of Mother's rights would be in the children's best interest because they needed a stable and permanent environment. Mother argues the record "does not reflect that permanency through adoption would be beneficial to the children more than their remaining in foster care until they could be reunited with their mother." Appellant's Brief at 21. However, Mother failed to take the steps, namely, maintaining stable housing and participating fully in court-ordered services, that the trial court informed her were prerequisites for reunification. As a result, the trial court properly found there was a substantial probability the conditions justifying the children's placement outside Mother's home would not be remedied. Moreover, Mother's argument that "[p]ermanency and stability could be accomplished through reuniting mother and children," id., is essentially an invitation to reweigh the evidence, which under our standard of review we will not do. See G.Y., 904 N.E.2d at 1260. Therefore, we cannot say the trial court clearly erred when it concluded termination of Mother's parental rights was in the children's best interests.

Conclusion

Clear and convincing evidence supports the trial court's findings, and the findings support the judgment terminating Mother's parental rights. Therefore, we affirm the judgment of the trial court.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.