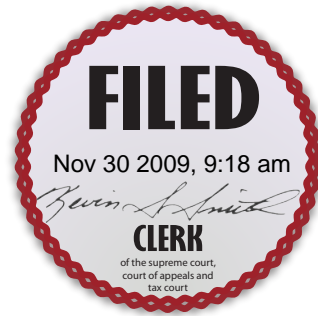


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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE MATTER OF: T.A.B. and,)
S.L.W., Minors,)
)
M.B., Mother,)
)
H.W., Father,)
)
Appellants-Defendants,)
)
vs.)
)
LAKE COUNTY OFFICE OF FAMILY AND)
CHILDREN and LAKE COUNTY COURT)
APPOINTED SPECIAL ADVOCATE,)
)
Appellee-Plaintiff.)

No. 45A04-0906-JV-318

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Senior Judge
Cause No. 45D06-0802-JT-138
45D06-0802-JT-145

November 30, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BARNES, Judge

Case Summary

M.B. (“Mother”) appeals the termination of her parental rights to T.B. and S.W., and H.W. (“Father”) appeals the termination of his parental rights to S.W. We affirm.

Issues

Mother and Father raise several issues, which we consolidate and restate as:

- I. whether the trial court’s termination of Mother’s parental rights to T.B. and S.W. is clearly erroneous; and
- II. whether the trial court’s termination of Father’s parental rights to S.W. is clearly erroneous.

Facts

Mother has two children, T.B., born July 29, 1994, and S.W., born July 31, 2000. Father is the parent of S.W., and T.B.’s father is not participating in this appeal.

In November 2005, Father was living with Mother and the children. T.B. and S.W. were removed from Mother and Father’s care by the Lake County Department of Child Services (“DCS”) after T.B. reported that Mother threatened to throw boiling water on her and that Mother regularly smoked marijuana in the home and drank alcohol. T.B. also reported that she had not eaten dinner the night before or breakfast that morning. During the interview, T.B. explained in detail to a DCS case worker how to roll a “blunt” and explained where Mother stored her marijuana. Tr. p. 57. DCS requested that Mother submit to a drug screen, which revealed the presence of alcohol and marijuana.

The children were placed in foster care, and a detention hearing was held in December 2005, where the trial court found that removal of the children was necessary. The trial court ordered Mother to participate in drug and alcohol evaluation and treatment, family counseling/therapy, parenting classes, random drug screens, and home-based services. The trial court ordered Father to participate in drug and alcohol evaluation and treatment, family counseling/therapy, parenting classes, and random drug screens. In March 2006, the children were found to be children in need of services (“CHINS”).

Mother was offered services through Metropolitan Oasis, but those services were discontinued in March 2006, after Mother tested positive for marijuana five times and alcohol one time. Supervised visitation between Mother and the children ceased at that time also. Mother relocated to Illinois and sought drug treatment services on her own. However, Mother was again noncompliant with the services, she tested positive for marijuana, and the services in Illinois were discontinued in October 2006. Mother moved back to Indiana, and in November 2006, DCS referred her to Human Beginnings for drug and alcohol treatment, random drug screens, individual counseling, and parenting classes.

Because Mother was cooperating with service providers and had clean drug screens, home visits were started again and went well. DCS attempted to return the children to Mother on July 30, 2007, but T.B. had reservations and had “a serious, serious breakdown” on the drive to Mother’s residence. *Id.* at 100. However, on July 31, 2007, the children were returned to Mother.

DCS case manager Valerie Washington counseled Mother against “reverting back to old habits, old friends, [and] old areas that would cause her to lose the children.” Id. at 102. However, on August 13, 2007, T.B. called Washington and informed her that Mother had been drinking alcohol. Washington addressed the issue with Mother, and Mother assured Washington that she would not “do it again.” Id. at 103.

On August 16, 2007, Mother left T.B. and S.W. alone at home during a severe storm while the electricity was out. Mother had left candles burning in the house and locked the children inside the house. The children were unable to unlock the doors and instead climbed out of a window. The children went to a neighbor’s house and called their foster mother. Washington received a call at 1:00 a.m. from the foster mother, and Washington contacted T.B. and S.W. at the neighbor’s house. Washington directed T.B. and S.W. to return to their home and contacted Tina Kozlowski, the on-call DCS case worker. Kozlowski contacted the police department and drove to Mother’s residence. When the police arrived at the residence, they found the house on fire due to the candles. Because the doors were locked, they had to break a window to remove the children from the house. The children were taken to the hospital because of smoke inhalation. At some point that night Mother returned to the residence, had alcohol on her breath, and was taken into custody by the police. A few days later, Mother talked to Washington, denied being arrested, and claimed to be at work during the fire. The children stated that Mother left the house with a male companion and that they did not know where she was going. The children were eventually returned to their foster mother.

After the fire, Mother “disappeared for a period of time” and “stopped all lines of communication” with DCS. Id. at 116. She contacted DCS again in December 2007, but had two positive drug screens for marijuana. In January 2008, all services for Mother were stopped.

As for Father, he was living with Mother at the time the children were removed in November 2005. Services, including random drug screens, a substance abuse evaluation, and parenting classes, were made available to Father, but he did not cooperate with the services. The services were discontinued in December 2005. At some point, Father moved to Mississippi and then to Illinois. The only address DCS had for Father was his mother’s address in Mississippi. Father attended a CHINS review hearing in January 2007, and indicated an interest in starting services again, but Father never provided DCS with his current address. Father appeared at a counseling session one time, but the therapist did not have a referral for him and could not allow him to participate. Father did not follow up with DCS to obtain a referral. According to Father, he visited with S.W. when Mother regained custody of the children in July 2007, and he was aware that the children were removed again from Mother’s custody as a result of the fire.

A petition to terminate Mother and Father’s parental rights was filed in February 2008. Father appeared at the March 2009 termination hearing and testified that he loved S.W., that he could provide for her, and that he was waiting for an opening in a parenting class. Mother admitted at the termination hearing that she still had problems with drugs and alcohol. The trial court entered findings of fact and conclusions thereon granting the DCS’s petition to terminate Mother and Father’s parental rights.

Analysis

The issue is whether the trial court's termination of Mother's parental rights to T.B. and S.W. and Father's parental rights to S.W. is clearly erroneous. The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment to the United States Constitution. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). However, these parental interests are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. Id. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id. The purpose of terminating parental rights is not to punish parents, but to protect children. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied, cert. denied.

When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. Bester, 839 N.E.2d at 147. We will consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. Id. Here, the trial court made findings in granting the termination of Mother and Father's parental rights. When reviewing findings of fact and conclusions thereon entered in a case involving a termination of parental rights, we apply a two-tiered standard of review. Id. First, we determine whether the evidence supports the findings. Id. Then, we determine whether the findings support the judgment. Id. The trial court's judgment will be set aside only if it is clearly erroneous. Id. "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. (citation and internal quotations omitted).

Indiana Code Section 31-35-2-8(a) provides that “if the court finds that the allegations in a petition described in [Indiana Code Section 31-35-2-4] are true, the court shall terminate the parent-child relationship.” Indiana Code Section 31-35-2-4(b)(2)¹ provides that a petition to terminate a parent-child relationship involving a child in need of services must allege 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, 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

¹ Indiana Code Section 31-35-2-4(b)(2)(A)(iii) was amended effective July 1, 2009, by Public Law No. 131-2009, § 65.

- (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.

The State must establish these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992); Doe v. Daviess County Div. of Children & Family Serv., 669 N.E.2d 192, 194 (Ind. Ct. App. 1996), trans. denied.

I. Mother's Arguments

Mother argues that the trial court's findings and conclusions are clearly erroneous regarding whether there was a reasonable probability that the conditions resulting in the children's removal or the reasons for placement outside Mother's home would not be remedied.² In making this determination, the trial court must judge a parent's fitness to care for her child at the time of the termination hearing and take into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. However, the trial court must also "evaluate the parent's habitual patterns

² Mother also argues the trial court erred by finding that the continuation of the parent-child relationship posed a threat to the well-being of the children. We note that Indiana Code Section 31-35-2-4(b)(2)(B) required DCS to demonstrate by clear and convincing evidence a reasonable probability that either: (1) the conditions resulting in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or (2) the continuation of the parent-child relationship poses a threat to the well-being of the child. The trial court specifically found a reasonable probability that the conditions resulting in the children's removal would not be remedied, and there is sufficient evidence in the record to support the trial court's conclusion. Thus, we need not determine whether the trial court's conclusion that there was a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the children is clearly erroneous. See, e.g., Bester, 839 N.E.2d at 148 n.5; In re T.F., 743 N.E.2d 766, 774 (Ind. Ct. App. 2001), trans. denied.

of conduct to determine the probability of future neglect or deprivation of the child.” Id. When assessing a parent’s fitness to care for a child, the trial court should view the parent as of the time of the termination hearing and take into account any evidence of changed conditions. In re C.C., 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), trans. denied. The trial court can properly consider the services that the State offered to the parent and the parent’s response to those services. Id.

The trial court found a reasonable probability that the conditions resulting in the children’s removal would not be remedied because:

The mother has a long history of substance abuse. The mother failed to comply and complete the caseplan as ordered by this court and supervised by [DCS] through Metropolitan Oasis. The mother attempted to obtain services on her own in Chicago, Illinois, but failed to complete any of those programs. The Court finds the mother, as late as December of 2007, was testing positive for marijuana. The Court will find the children were attempted to be returned on 7/30/2007, but the oldest child, [T.B.], objected to the return and return was put off until 7/31/2007. The children were returned on 7/31/2007. On 8/16/2007, the mother left the children home alone. Mother went out to drink beer, by her own admission, with some friends for two or three hours. While the mother was gone, there was a storm and the lights were out in the house. The mother left the children locked in the house from the outside with no key available to them. There were candles burning in the house. The house caught on fire and the children had to be removed from the home by ambulance and police. The children were then put into foster care once again at the Carmelite Home. Since that time, the mother has not completed a program of care, treatment or rehabilitation. The Court further finds the children’s therapist, Ms. Sanchez, testified that it would be devastating for the children to return to the mother at this time. The Court also finds during testimony in the fact finding hearing, the mother admitted in court today that she drinks beer every now and again, still smokes marijuana, and probably still needs additional help.

Mother's App. p. 2.

Mother seeks to distinguish between the circumstances resulting in the children's initial removal and the circumstances resulting in the children's removal after the fire. Mother argues that there is no evidence of "prolific drug use" and that, since the fire, she had successfully completed parenting classes and drug and alcohol treatment, obtained an adequate home, and secured gainful employment. Mother's Br. at 8. Mother contends that, at the time of the termination hearing, she had stabilized her life.

The children were initially removed from Mother's care when T.B. complained that Mother had threatened to throw boiling water on her and that Mother was drinking alcohol and smoking marijuana in front of the children. T.B. was able to demonstrate to the DCS case worker how a marijuana "blunt" is prepared. Tr. p. 57. Following the children's removal, Mother repeatedly failed drug tests and was not compliant with services. Although Mother eventually made progress and the children were returned to her, they were again removed soon thereafter when Mother left the children alone with candles lighting the house and the house caught on fire. Mother was apparently drinking alcohol with friends at the time of the fire. Even after the fire, Mother again failed drug tests, and services were discontinued.

Despite numerous treatment opportunities since November 2005, Mother continues to have substance abuse issues. Even at the termination hearing, Mother admitted that she still had problems with drugs and alcohol. Given Mother's admission,

her claim that she has stabilized her life is unpersuasive. We conclude that the trial court's finding is not clearly erroneous.

II. Father's Arguments

Father argues that the trial court's findings and conclusions are clearly erroneous regarding whether: (A) there was a reasonable probability that the conditions resulting in S.W.'s removal or the reasons for placement outside his home would not be remedied;³ (B) the termination was in S.W.'s best interests; and (C) there is a satisfactory plan for the care and treatment of S.W.

A. Remedy of Conditions Resulting in Removal

DCS was required to prove by clear and convincing evidence that there was a reasonable probability the conditions resulting in S.W.'s removal or the reasons for placement outside his home would not be remedied. As previously noted, in making this determination, the trial court must judge a parent's fitness to care for his or her children at the time of the termination hearing and take into consideration evidence of changed conditions. J.T., 742 N.E.2d at 512. However, the trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." Id. When assessing a parent's fitness to care for a child, the trial court should view the parent as of the time of the termination hearing and take into

³ Father also argues the trial court erred by finding that the continuation of the parent-child relationship posed a threat to the well-being of S.W. As with Mother, the trial court specifically found a reasonable probability that the conditions resulting in S.W.'s removal would not be remedied, and there is sufficient evidence in the record to support the trial court's conclusion. Thus, we need not determine whether the trial court's conclusion that there was a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of S.W. is clearly erroneous. See, e.g., Bester, 839 N.E.2d at 148 n.5; T.F., 743 N.E.2d at 774.

account any evidence of changed conditions. C.C., 788 N.E.2d at 854. The trial court can properly consider the services that the State offered to the parent and the parent's response to those services. Id.

The trial court found the following regarding Father:

[Father] failed to participate in the casework plan or finish any counseling, substance abuse counseling or parenting classes. The Court will find [Father] lived in Mississippi, then he moved to Chicago, and now he is living in Harvey, Illinois. [Father] has never availed himself and, in fact, hasn't visited with the child in over two-and-a-half years.

Mother's App. p. 3.

On appeal, Father argues that the children were removed from Mother's home and that he was not involved in Mother's "transgressions." Father's Br. p. 10. However, at the termination hearing, Father testified that he was "staying" with Mother when the children were removed in November 2005. Tr. p. 201. Although Father was ordered to participate in services after the children's removal, he failed to do so, and services were discontinued in December 2005. Father moved several times after S.W. was removed, and Father failed to maintain contact with S.W. or DCS, failed to provide DCS with his contact information, and failed to demonstrate a willingness or ability to parent S.W. Although Father was aware that S.W. had again been removed from Mother in August 2008, he failed to contact DCS. Given Father's lack of participation in services, his failure to stay in contact with DCS, and his lack of interest in parenting S.W., the trial court's finding is not clearly erroneous.

B. Best Interest

Although Father claims in his issue statement that the trial court's finding regarding S.W.'s best interest is clearly erroneous, Father makes no specific argument regarding S.W.'s best interest. Father has waived this issue by failing to make a cogent argument. See Ind. Appellate Rule 46(A)(8).

Waiver notwithstanding, we note that the DCS was required to prove by clear and convincing evidence that the termination was in S.W.'s best interests. In determining what is in the best interests of a child, the trial court is required to look at the totality of the evidence. A.F. v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1253 (Ind. Ct. App. 2002), trans. denied. In doing so, the trial court must subordinate the interests of the parents to those of the child involved. Id. “[T]he historic inability to provide adequate housing, stability, and supervision, coupled with the current inability to provide the same, will support a finding that continuation of the parent-child relationship is contrary to the child’s best interests.” In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005).

The current and former DCS caseworkers and the children’s therapist testified that termination of parental rights was in the children’s best interests. Given this testimony, Father’s lack of participation in services despite his knowledge that S.W. was in foster care, and the testimony that S.W. was doing well in the foster mother’s home, the evidence is sufficient to support the trial court’s finding that termination of Father’s parental rights is in S.W.’s best interest.

C. Satisfactory Plan

Finally, Father claims in his issue statement that the DCS failed to demonstrate by clear and convincing evidence that it had a satisfactory plan for the care and treatment of S.W. Specifically, Father claims that “the trial court failed to consider appropriate family placement with the paternal grandmother.” Father’s Br. p. 1. However, later in his brief, Father states: “The foster mother stated that she would like to adopt S.W. It is uncontradicted that they have a satisfactory plan for the care and treatment of the child.” Id. at 11. Father has waived this issue by failing to make a cogent argument. See Ind. Appellate Rule 46(A)(8).

Waiver notwithstanding, DCS was required to prove that it had “a satisfactory plan for the care and treatment of the child.” Ind. Code § 31-35-2-4(b)(2)(D). “This plan need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated.” In re A.J., 881 N.E.2d 706, 719 (Ind. Ct. App. 2008), trans. denied. The current DCS caseworker testified that adoption of the children by the foster mother was the current plan for the children. The foster mother also testified that she was willing to adopt the children. Given this evidence, DCS demonstrated a satisfactory plan for the care and treatment of the children by clear and convincing evidence.

Conclusion

Clear and convincing evidence supports the trial court’s judgment terminating Mother’s parental rights to the children and Father’s parental rights to S.W. Accordingly, we affirm.

Affirmed.

NAJAM, J., and KIRSCH, J., concur.