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ATTORNEYS FOR APPELLANT:

ATTORNEY FOR APPELLEE:

ANNA E. ONAITIS
Marion County Public Defender Agency
Indianapolis, Indiana

CARLA J. GINN
Indiana Department of Child Services
Jennings County Local Office
North Vernon, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF TERMINATION OF)
PARENT-CHILD RELATIONSHIP OF:)
M.L. and T.L., MINOR CHILDREN,)
)
MARY P., Mother,)
Appellant-Respondent,)
)
vs.)
)
MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)
Appellee-Plaintiff,)
and)
)
CHILD ADVOCATES, INC.,)
Co-Appellee, Guardian ad Litem.)

No. 49A02-0804-JV-339

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moore, Judge
The Honorable Danielle Gaughan, Magistrate
Cause No. 49D09-0705-JT-020904

December 12, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Mary P. (“Mother”) appeals the juvenile court’s order terminating her parental rights to her children M.L. and T.L. Mother raises two issues, which we restate as:

- I. Whether the trial court abused its discretion by admitting certain evidence regarding Mother’s past involvement with the Marion County Department of Child Services (“DCS”); and,
- II. Whether DCS introduced sufficient evidence to support the termination of Mother’s parental rights to her children M.L. and T.L.

We affirm.

Facts and Procedural History

Mother and Juan L. (“Father”) are the parents of M.L, born on November 23, 1998, and T.L., born on June 22, 2000. At the time of the termination hearing, Mother was married to Saul Palmero (“Saul”). Mother and Saul have four children, A.P., M.P., S.P., and Sh.P. Mother also has a seventh child named M. (last name unknown). Mother’s parental rights to A.P., M.P., and S.P. were involuntarily terminated on May 4, 2007. M. was adopted by his maternal grandmother, and Sh.P’s paternal grandmother has been granted guardianship over him.

On February 11, 2004, a petition was filed alleging that M.L., T.L., A.P., and M.P. were children in need of services (“CHINS”). The petition specifically alleged that T.L. reported Saul had molested her. Additional investigation by DCS revealed medical neglect of some of the children. At this time, M.L. and T.L. were placed in foster care.

In January 2006, M.L. and T.L. were placed in the custody of Father. The CHINS case was closed with regard to M.L. and T.L. but remained open as to Mother’s other children. Sometime in April 2006, Father dropped M.L. and T.L. off at Mother’s home

for a visit. Father never returned to pick up the children. Mother informed DCS of the situation and that M.L. and T.L. remained in her care.

On May 30, 2006, DCS again filed a petition alleging that M.L. and T.L. were CHINS. The petition alleged that Father's whereabouts were unknown and that there were concerns about drug use, physical abuse, and prostitution at Father's home. The petition alleged that Mother was unable to care for the children because she was involved in a pending CHINS case and that the children's stepmother could not care for them because she had been arrested. M.L. and T.L. were again placed in foster care where they remained until the termination hearing.

On November 28, 2006, the juvenile court found that M.L. and T.L. were CHINS after Mother and Father admitted to the allegations made in the CHINS petition. The juvenile court entered a participation decree in which it ordered Mother to do the following: (1) complete a parenting assessment; (2) participate in home-based counseling; (3) regularly visit with M.L. and T.L.; (4) contact her case manager each week; and (5) maintain stable housing and a source of income.

DCS filed a petition to terminate Mother's parental rights to M.L. and T.L. on May 21, 2007. The juvenile court held hearings on this petition on September 14, 2007, October 31, 2007, November 2, 2007, and November 5, 2007. The juvenile court issued a final order on February 28, 2008 in which it made the following relevant findings of fact and conclusions of law:

Findings of Fact

16. [Mother] receives SSI in the amount of \$630 dollars each month. [Saul] helps to support her by buying gas and insurance for her car, and pays for electricity and the phone. It is unlikely that without [Saul's] assistance that [Mother] could support herself.
17. [Mother] is diagnosed with numerous mental health conditions including bipolar disorder, major depressive disorder with psychotic features, paranoia, intermittent explosive disorder, and general anxiety disorder.
18. In June 2004, Dr. Stephen Harrison conducted a mental health evaluation of [Mother]. Dr. Harrison recommended that [Mother] see a psychiatrist for further evaluation, get mental health counseling and anger control counseling.
19. Within a month of receiving this recommendation, the family case manager Wendy Budwig made a referral for [Mother] to complete a psychiatric evaluation. In spite of the prompt referral, [Mother] did not complete the psychiatric evaluation until May 2005.
20. Dr. Rao from Midtown Mental Health performed [Mother's] psychiatric evaluation in May 2005 and diagnosed her with bipolar disorder and antisocial personality disorder. [Mother] told Dr. Rao about her history of mood swings, suicide attempts, self[-]mutilation and substance abuse. Dr. Rao recommended that [Mother] get mental health counseling but [Mother] denied any problems and refused counseling or medication. Dr. Rao concluded that a person with a diagnosis such as [Mother's] could be a risk to her children if she does not seek treatment and counseling.
21. Dr. Papandria evaluated [Mother] on October 23, 2007, which was the day after the first day of trial in this case. Dr. Papandria is employed at Psychological Laboratories as a clinical psychologist.
22. Dr. Papandria diagnosed [Mother] with major depressive disorder, paranoia, personality disorders, and intermittent explosive disorder. Dr. Papandria is concerned that [Mother] had several mental health evaluations over the course of the CHINS case but still [had] not become involved in treatment. Dr. Papandria believes that because of her mental health issues that have gone untreated, [Mother] is incapable of making sound decisions regarding the welfare of her children. Dr. Papandria determined that without intensive therapy and medication for her mental health conditions, [Mother] cannot safely

parent her children. Dr. Papandria was concerned that in spite of the treatment recommendations resulting from the mental health evaluations over the course of the CHINS case, and the self[-]reported three hospitalizations and one suicide attempt, [Mother] has received no consistent mental health treatment.

23. [Mother] does not acknowledge that she has any mental health problems other than depression. [Mother] does not feel she needs mental health counseling or medication in spite of the doctors who have diagnosed her mental health issues and recommended treatment and medication. [Mother] does admit she is “very depressed” but does not feel that she needs medication or that she needs to seek out strangers to talk about her problems.
24. [Mother] has mental health conditions that interfere with her ability to parent children and render her incapable of safely parenting her children, especially since she refused to acknowledge the extent of her mental health issues and refused to seek treatment of any kind. [Mother] completed parenting classes but never completed home based counseling. [Mother] has failed to consistently visit with her children. She missed a visit the week before the September 14 trial date because she had stayed up too late. Her visits were suspended by the CHINS court shortly thereafter because she was not visiting consistently. [Mother] does not stay in contact with the case manager because she does not feel she has anything nice to say to her.

26. [Father] has been deported.

28. [T.L.] and [M.L.] were never placed back in the care of [Mother] during either of the CHINS cases.

29. [T.L.] and [M.L.] have been removed from their parents for at least 6 months under a disposition decree.

30. Termination is in the best interests of the children. [T.L.] and [M.L.] need permanency and stability in a safe and loving home. [T.L.] and [M.L.] have been in the same pre-adoptive foster home since May of 2006. They are both in school, in counseling, and they are doing well. [T.L.] and [M.L.] have bonded with their foster family and their needs are being met. Their siblings are in a different pre-adoptive home and have contact with them.

31. There exists a satisfactory plan for the care and treatment of [T.L.] and [M.L.] and that plan is adoption.

CONCLUSIONS OF LAW

2. The children were removed from [Mother] and [Father] under the terms of a dispositional decree for more than six months.
3. There is a reasonable probability that the conditions that resulted in the children's removal will not be remedied. [Mother] has serious mental health issues which she fails to address in spite of the recommendations from mental health providers. She has been diagnosed with several conditions that, left untreated, impair her ability to parent her children. Dr. Harrison recommended mental health treatment in June of 2004 and Dr. Rao recommended mental health treatment in May of 2005. Most recently, Dr. Papandria evaluated [Mother] and believes that without intensive therapy and medication for her mental health conditions that [Mother] cannot safely parent her children. [Mother] has been and continues to be resistant to treatment, denying that she has any mental health issues. It is therefore unlikely that there will be any improvement in her ability to parent.

5. There is a reasonable probability that the continuation of the parent-child relationship between [T.L.] and [M.L.] and their mother . . . poses a threat to the well-being of the children. [Mother's] untreated mental illness impairs her ability to make sound decisions for her children and therefore is a threat to the physical and emotional well-being of her children.

7. Termination of the parent-child relationship between [T.L.] and [M.L.] and their parents . . . is in the best interests of the children.
8. The plan of DCS for the care and treatment of the children if the parent-child relationship is terminated is adoption and that plan is acceptable and satisfactory.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the parent-child relationship between [T.L.] and [M.L.], minor children, and their mother . . . and their father . . . is hereby terminated.

Appellant's App. pp. 14-18. Mother now appeals.

I. Admission of Evidence

During the termination hearing, DCS sought to admit into evidence the CHINS petition that was filed on February 11, 2004 and the May 4, 2007 order that terminated Mother's parental rights to A.P., M.P., and S.P. Mother's counsel objected to the admission of these exhibits arguing that they were irrelevant. The juvenile court overruled the objection and admitted the exhibits into evidence. Mother now argues that the juvenile court abused its discretion when it admitted these exhibits into evidence because the exhibits are irrelevant.

The admission of evidence is left to the sound discretion of the trial court. In re Involuntary Termination of Parent Child Relationship of A.H., 832 N.E.2d 563, 567 (Ind. Ct. App. 2005). We will not reverse the trial court's decision unless it has abused its discretion. Id. "An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before it." Id.

Although the juvenile court should assess a parent's ability to care for his or her child as of the date of the termination proceeding, the court must also examine the parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation. In re R.H., 892 N.E.2d 144, 149-50 (Ind. Ct. App. 2008). Here, the 2004 CHINS petition and the 2007 order terminating Mother's parental rights to A.P., M.P., and S.P were relevant to Mother's habitual patterns of conduct and the probability of future neglect of M.L. and T.L. Therefore, the juvenile court did not abuse its discretion by admitting these exhibits into evidence.

III. Termination of Parental Rights

Mother next argues that the juvenile court erred when it terminated her parental rights to M.L. and T.L. Under the Fourteenth Amendment to the United States Constitution, parents have the right to establish a home and raise their children. In re B.D.J., 728 N.E.2d 195, 199 (Ind. Ct. App. 2000). However, the law allows for the termination of these rights when an individual is unable or unwilling to fulfill his or her responsibilities as a parent. Id. at 199-200. This policy balances a parent's constitutional rights to the custody of their children with the State's limited authority to interfere with this right. Id. at 200. "Because the ultimate purpose of the law is to protect the child, the parent-child relationship will give way when it is no longer in the child's interest to maintain this relationship." Id.

In reviewing termination proceedings on appeal, this court will not reweigh the evidence or assess the credibility of the witnesses. In re L.B., 889 N.E.2d 326, 336 (Ind. Ct. App. 2008). We only consider the evidence that supports the juvenile court's decision and reasonable inferences drawn therefrom. Id. Where, as here, the juvenile court includes findings of fact and conclusions thereon in its order terminating parental rights, our standard of review is two-tiered. Id. First, we must determine whether the evidence supports the findings, and, second, whether the findings support the legal conclusions. Id.

In deference to the juvenile court's unique position to assess the evidence, we will not set aside the court's findings and judgment unless they are clearly erroneous. Id. A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom

to support it. In re Involuntary Termination of Parental Rights of S.P.H., 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). A judgment is clearly erroneous only if the legal conclusions made by the juvenile court are not supported by its findings of fact, or the conclusions do not support the judgment. Id.

To effect the involuntary termination of a parent-child relationship, DCS must establish 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;

- (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) (1998 & Supp. 2006). These elements must be proved by clear and convincing evidence. Ind. Code § 31-34-12-2 (1998).

A. Challenges to the Court's Findings of Fact

Mother first contends that the juvenile court's fifth, sixth, twelfth, sixteenth, twentieth, and twenty-fourth¹ findings of fact "are unsupported by or mischaracterizations of the evidence." Appellant's Br. p. 8. The juvenile court's fifth finding states that A.P., M.P., S.P., M., and Sh.P. are Mother's children. The sixth finding notes that Mother's parental rights to A.P., M.P., and S.P. were terminated on

¹ Mother also challenges the juvenile court's twenty-sixth finding of fact. That finding relates to Father's deportation and, thus, was irrelevant to the court's decision to terminate Mother's parental rights. As such, we will not address the propriety of this finding.

May 4, 2007, that M. was adopted by his maternal grandmother, and that Sh.P's paternal grandmother was granted guardianship over him. Mother argues that both of these findings are irrelevant.

As we have already noted, a court must examine the parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation. In re R.H., 892 N.E.2d at 149-50. In conducting such an examination, courts have properly considered evidence of a parent's history of neglect. A.F. v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. Evidence that Mother has five other children besides M.L. and T.L., that her paternal rights to three of these children have been terminated, and that the other two children are no longer in her care is relevant in that it is evidence of a history of neglect and of the probability of future neglect. Thus, the juvenile court's fifth and sixth findings were not improper.

In its twelfth finding, the juvenile court stated that a dispositional decree was entered on November 28, 2007 finding that M.L. and T.L. were CHINS. Mother correctly notes that the dispositional decree was entered on November 28, 2006. The juvenile court, though, in its eleventh finding noted that M.L. and T.L. were determined to be CHINS on November 28, 2006. The court's error in its twelfth finding appears to be a scrivener's error and does not indicate that the judgment was clearly erroneous.

In the sixteenth finding of fact, the juvenile court concludes, "It is unlikely that without [Saul's] assistance that [Mother] could support herself." Appellant's App. p. 14. Mother contends that the evidence does not support this finding. Mother receives \$630 in

SSI each month. Mother testified that rent for her current home was \$620 per month. Mother stated that her husband Saul assists her with her other expenses like gas for her car, electricity, and her telephone bill. Mother's relationship with Saul was unstable and at the time of the termination hearing the two were not living together. DCS case manager Wendy Budwig was concerned about Mother's ability to financially support herself because Saul "supports her and that that could stop at any time if he decided." Tr. p. 183. Based on this evidence, the juvenile court could properly find that it was unlikely Mother would be able to support herself without Saul's assistance.

Finding twenty details the results of Dr. Rao's psychiatric evaluation of Mother in May 2005. Mother contends that the 2005 psychiatric evaluation does not provide an accurate portrayal of her condition at the time of the termination hearing. She seems to argue that the juvenile court gave too much weight to this evidence. Mother, then, is asking us to reweigh the evidence, which we will not do. See In re L.B., 889 N.E.2d at 336.

Mother alleges multiple errors in the juvenile court's twenty-fourth finding. That finding states:

[Mother] has mental health conditions that interfere with her ability to parent children and render her incapable of safely parenting her children, especially since she refused to acknowledge the extent of her mental health issues and refused to seek treatment of any kind. [Mother] completed parenting classes but never completed home based counseling. [Mother] has failed to consistently visit with her children. She missed a visit the week before the September 14 trial date because she had stayed up too late. Her visits were suspended by the CHINS court shortly thereafter because she was not visiting consistently. [Mother] does not stay in contact with the case manager because she does not feel she has anything nice to say to her.

Appellant's App. pp. 15-16.

Mother first argues that "it is a mischaracterization to say that [she] is not receiving treatment of any kind." Appellant's Br. p. 11. Although she is not receiving traditional mental health treatment, Mother states that she is treating her mental illness in an alternative manner by talking with family and friends. However, Mother specifically testified that she was not taking any medication for her mental health conditions and was not participating in mental health counseling. Budwig also testified that Mother had not gotten mental health treatment. Although it would have been more accurate for the juvenile court to have stated that Mother had not gotten professional mental health treatment, the evidence supports the trial court's finding that Mother had not sought treatment for her mental health conditions.

Mother next contends that "[t]here is no evidence [her] mental health condition affected her ability to parent her children." Id. Mother testified that she was not taking medication for her mental health condition and was not participating in any mental health counseling. Dr. Rao concluded that without treatment and counseling, a person with Mother's diagnosis posed a risk to her children. Similarly, Dr. Papandria testified that without treatment and medication for her mental conditions, Mother could not safely parent her children. The evidence supports the juvenile court's finding that Mother's mental health condition affected her ability to parent.

Mother also challenges the trial court's finding that she missed a visit with her children because she "stayed up too late." Appellant's App. p. 16. Mother contends that this is an incomplete portrayal of the evidence because it neglects to mention that she was

up late taking care of her son Sh.P. Nevertheless, when Mother was asked at the termination hearing why she missed visits with M.L. and T.L. her response was, “Just probably because I stay up too late.” Tr. p. 59. Thus, the evidence supports this finding.

B. Sufficiency of the Evidence

Mother argues that DCS did not prove by clear and convincing evidence that her parental rights should be terminated. She first asserts that DCS did not prove that the conditions that resulted in the removal of M.L. and T.L. from her care would not be remedied and that the continuation of the parent-child relationship posed a threat to M.L. and T.L.’s well-being. First, we note that Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, and thus, the juvenile court only had to find one of the two requirements of subsection (B) by clear and convincing evidence. In re L.S., 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), trans. denied, cert. denied. Therefore, we begin by considering whether sufficient evidence was presented to support the trial court’s finding that the conditions that resulted in the removal of M.L. and T.L. from Mother’s care would not be remedied.

In order to determine whether there is a reasonable probability that the conditions that resulted in the removal of the children will not be remedied, the trial court should 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. A.F., 762 N.E.2d at 1251. The trial court, though, must also evaluate the parent’s habitual patterns of conduct. Id. “Such an evaluation assists in determining the probability of future neglect or deprivation of the child, as well as remedial possibilities.” 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. Id. Additionally, the juvenile court can properly consider the services offered by the office of family and children to the parent and the parent's response to those services as evidence of whether conditions will be remedied. Id. In order to carry its burden, DCS "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).

One of DCS's principal concerns with Mother's ability to parent M.L. and T.L. was her continuing mental health problems. In June 2004, Dr. Harrison conducted a mental health evaluation of Mother and recommended that she see a psychiatrist for further evaluation and get mental health and anger control counseling. Despite a prompt referral, Mother did not complete a psychiatric evaluation until May 2005 when she saw Dr. Rao. Mother told Dr. Rao she had a history of mood swings, suicide attempts, self-mutilation and substance abuse. Dr. Rao diagnosed Mother with bipolar disorder and antisocial personality disorder. When she recommended that Mother get mental health counseling, Mother denied that she had any problems and refused counseling or medication. Between 2005 and 2007, Mother did not seek professional treatment for her mental health conditions. In October 2007, Dr. Papandria diagnosed Mother with major depressive disorder, paranoia, personality disorders, and intermittent explosive disorder. She recommended that Mother pursue intensive therapy and take medication for her mental health conditions.

Despite Dr. Rao and Dr. Papandria's diagnoses that Mother suffers from serious mental health problems and their recommendations that she pursue treatment in the form of counseling and medication, at the time of the termination hearing, Mother continued to refuse to acknowledge that she had any mental health problems other than depression. Mother also testified that she was not taking any medication for her mental conditions and was not participating in mental health counseling. Based on this evidence, the juvenile court could properly conclude that Mother had not taken steps to remedy DCS's concerns about her mental health.

Additionally, at the time M.L. and T.L. were determined to be CHINS in November 2006, the trial court ordered Mother to do the following: (1) participate in home-based counseling; (2) regularly visit with M.L. and T.L.; (3) contact her case manager each week; and (4) maintain a stable source of income. DCS introduced evidence that Mother did not participate in home-based counseling and did not stay in contact with her case manager. Mother did not visit consistently with M.L. and T.L. and because of this, her visits were suspended. The juvenile court was also concerned about Mother's ability to support herself. Although Mother receives \$630 in SSI each month, she heavily relies on her estranged husband Saul for financial assistance. Given the unstable nature of Mother and Saul's relationship, DCS case manager Budwig noted that financial assistance from Saul "could stop at any time if he decided." Tr. p. 183. Based on these facts and Mother's refusal to acknowledge and seek treatment for her mental health problems, the juvenile court could properly conclude that the conditions that resulted in the removal of M.L. and T.L. from Mother's care would not be remedied.

Mother next argues that there was insufficient evidence to show that termination of the parent-child relationship was in the best interests of M.L. and T.L. In determining what is in the best interests of the child, the trial court is required to look at the totality of the evidence. A.F., 762 N.E.2d at 1253. “In doing so, the trial court must subordinate the interests of the parents to those of the children involved.” Id. A trial court need not wait until the children are irreversibly influenced such that their physical, mental and social growth is permanently impaired before terminating the parent-child relationship. Id.

Here, the evidence introduced showed that Mother did not acknowledge that she had any mental health problems other than depression and refused to obtain professional treatment for her mental health issues. Dr. Rao testified that a person with Mother’s mental health conditions who did not seek treatment and counseling posed a risk to her children. Dr. Papandria believed that because Mother had not sought treatment for her mental health issues, she was incapable of making sound decisions about the welfare of her children. She also concluded that without intensive therapy and medication, Mother could not safely parent her children. Additionally, case manager Budwig testified that termination of Mother’s parental relationship with M.L. and T.L. was in the children’s best interest because she did not believe Mother “could provide a home for them and parent them without mental health treatment.” Tr. p. 188. This evidence was sufficient to permit the trial court to conclude that termination of the parent-child relationship was in the best interests of M.L. and T.L.

Conclusion

The juvenile court did not abuse its discretion by admitting evidence of Mother's past involvement with DCS. The findings of fact challenged by Mother were not improper. Sufficient evidence was presented to support the juvenile court's termination of Mother's parental rights to M.L. and T.L.

Affirmed.

BAKER, C.J., and BROWN, J., concur.