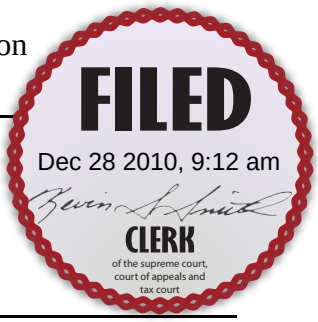
ATTORNEY FOR APPELLANTS:

JASON W. BENNETT
Bennett Boehning & Clary LLP
Lafayette, Indiana

ATTORNEYS FOR APPELLEE:

JAMES R. ROWINGS
Indiana Department of Child Services
Veedersburg, Indiana

ROBERT J. HENKE
DCS Central Administration
Indianapolis, Indiana



IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIPS OF A.P., K.P. and M.P. with K.G., Mother, and T.G., Father.	)	
K.G. and T.G., Appellants,	)	
vs.	)	No. 23A04-1004-JT-334
INDIANA DEPARTMENT OF CHILD SERVICES, FOUNTAIN COUNTY, Appellee.	)	

APPEAL FROM THE FOUNTAIN CIRCUIT COURT
The Honorable Susan Orr Henderson, Judge
Cause Numbers 23C01-0910-JT-122; -JT-123; and -JT-124

December 28, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

K.G. ("Mother") and T.G. ("Father") appeal the Fountain Circuit Court's judgment terminating their parental rights to their children. We affirm.

Issues

Mother and Father challenge the sufficiency of the evidence supporting the trial court's judgment. In so doing, Mother and Father present the following issues for review:

I. Whether clear and convincing evidence supports the trial court's determination that there is a reasonable probability the conditions resulting in the children's removal and/or continued placement outside their care will not be remedied; and

II. Whether clear and convincing evidence supports the trial court's determination that termination of the parent-child relationships is in the children's best interests.

Facts and Procedural History

Mother and Father are married and the biological parents of A.P., born in September 2004 and K.P., born in December 2002. Mother is also the biological mother of M.P., born in January 1999.[1]

In July 2008, the Indiana Department of Child Services, Fountain County ("FCDCS"),[2] received a report that Mother had dropped off all three children in a trailer park

[1] The biological father of M.P. is J.W. During the underlying proceedings, J.W. signed a consent form agreeing to voluntarily relinquish his parental rights to M.P. J.W. does not participate in this appeal.

[2] In 2005, Mother and Father entered an Informal Adjustment with FCDCS following a substantiated report of life and health endangerment and lack of supervision. While Mother was incarcerated for a probation violation, Father went to work leaving then six-year-old M.P., two-year-old K.G., and infant A.P. home alone and unsupervised. The children's maternal grandmother, who also suffers with substance abuse issues, was supposed to be assisting Father with the care of the children. Both parents participated in the Informal Adjustment. Mother's participation in these family preservation services was ultimately deemed unsuccessful,

and instructed the crying children to walk to their grandmothers' home. Mother had not asked the grandmothers to care for the children or told them she was bringing the children over for a visit. When the children arrived at the grandmothers' home, both adults had been drinking and were in no condition to care for the children, so they called local law enforcement for assistance. At the time, Father was incarcerated.

The local police notified FCDCS of the situation, and FCDCS case manager Brandy Roan ("Roan"), who had recently received a referral alleging Mother was "abusing drugs and/or alcohol," immediately went to the grandmothers' home to render assistance. (Tr. 129.) After helping police officers calm the children and transport them to the police station, Roan went to Mother's home in Attica to continue her investigation. When Mother answered Roan's knock at the door Mother "appeared kind of slurred and kind of not with it." Id. at 130. When Roan asked Mother where the children were, Mother initially stated they were taking naps but then told Roan the children were "at a friend's house or maybe with her mom or grandmother." Id. Law enforcement officers arrived shortly thereafter and arrested Mother, for violating the terms of her probation based on Mother's admission to the officers that she had consumed alcohol earlier that day.[3]

FCDCS filed petitions under separate cause numbers alleging A.P., K.P. and M.P.

---

but Father successfully completed the Informal Adjustment and the case was closed in March 2006. A program of Informal Adjustment is a negotiated agreement between a family and a local office of the Indiana Department of Child Services whereby the family agrees to participate in various services provided by the county in an effort to prevent the child/children from being formally deemed children in need of services (CHINS). See Ind. Code 31-34-8 et seq.

[3] At the time of her arrest, Mother was on probation as a result of pleading guilty to prior, unrelated charges of operating a vehicle while intoxicated and contributing to the delinquency of a minor.

were children in need of services ("CHINS") in August 2008. The parents admitted to the allegations contained in the CHINS petitions, and a dispositional hearing was held in November 2008. Following the dispositional hearing, the trial court entered orders formally removing all three children from Mother's and Father's care and ordering the children to remain wards of FCDCS. The dispositional orders also directed the parents to participate in a variety of court-ordered services in order to achieve reunification with the children, including requirements that they: (1) submit to random drug testing; (2) cooperate and participate in any services recommended by FCDCS; (3) exercise regular visitation with the children; and (4) participate in mental health services as deemed necessary.

Despite the children's removal from her care, Mother continued to struggle with substance abuse. In September 2008, Mother pleaded guilty to an amended petition to revoke her probation after testing positive for benzodiazepines, cocaine, hydrocodone, cannibinoids, and alcohol. As a result, Mother was ordered to participate in Home with Hope Residential Program, an intensive outpatient recovery program, for at least ninety days. Mother entered the treatment program on August 11, 2008, but was discharged from the program approximately nine days later after she admitted to violating program policies by using drugs, manipulating a urine drug screen, and failing to return to the residential premises for more than twenty-four hours. Mother was incarcerated for thirty days and returned to Home with Hope in late October 2008. She left the program against staff advice on January 9, 2009, to participate in an alternative out-patient relapse prevention program called Seeds of Hope.

Father, who had pleaded guilty to possession of cocaine in 2005 and to domestic

battery in February 2007, was released from incarceration shortly after the children were removed from the family home in August 2008. He then began participating in Recovery Associates, an inpatient substance abuse program located in Terre Haute. Although Father successfully completed this substance abuse program in January 2009, he failed to follow FCDCS's recommendation to participate in the relapse prevention aftercare portion of the program, despite his promises to do so and FCDCS's recent relocation of the children to a new, nearby foster home in reliance on Father's promises in order to facilitate visitation. Instead, Father joined Mother in Lafayette and enrolled in Seeds of Hope.[4]

For the ensuing months, both parents' participation in substance abuse and other court-ordered services continued to be inconsistent and ultimately unsuccessful. Mother and Father regularly participated in weekly visits with the children and eventually progressed from fully supervised visits to semi-supervised overnight visits in preparation for an upcoming trial in-home visit scheduled to begin in August 2009. The parents' visitation privileges quickly reverted to fully supervised visits by July 2009, however, due to their failure to follow through with a number of court-ordered services. These included Mother's refusal to submit to FCDCS' request for a drug screen for six days in May 2009 and to participate in individual counseling, as well as Father's positive drug screen for the prescription drug oxazepam in June 2009 and a "suspicious" drug screen in July 2009. (Tr. 257.) Thus, the trial home visit never occurred. In addition, neither Mother nor Father

[4] Seeds of Hope provides apartments for program participants, who are required to pay rent and maintain suitable employment. Mother and Father struggled in this program and were eventually released unsuccessfully due in part to their inability to maintain suitable employment and pay rent.

completed the Seeds of Hope program, and both parents continued to struggle with maintaining stable housing and employment.

FCDCS filed petitions seeking the involuntary termination of both parents' parental rights to all three children in October 2009. A consolidated three-day evidentiary hearing in the matter was held on March 8, 9, and 12, 2010. The trial court took the matter under advisement, and on March 19, 2010, the court entered a judgment terminating Mother's and Father's parental rights to all three children. This appeal ensued.

Discussion and Decision

A. Standard of Review

We begin our review by acknowledging that this court has long had a highly deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). When reviewing the termination of parental rights, we will neither reweigh the evidence nor judge witness credibility. In re D.D., 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. Id. Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside a 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.

Here, in terminating Mother's and Father's parental rights, the trial court entered specific findings and conclusions. When a trial court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. Bester v. Lake

County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. Id. "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court's decision, we must affirm. L.S., 717 N.E.2d at 208.

B. Analysis

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, a trial court must subordinate the interests of the parent to those of the child when evaluating the circumstances surrounding a termination. K.S., 750 N.E.2d at 837. Termination of a parent-child relationship is proper where a child's emotional and physical development is threatened. Id. Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. Id. at 836.

Before an involuntary termination of parental rights can occur, the State is required to allege and prove, among other things:

> (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; [and]

(C) termination is in the best interests of the child[.]

Ind. Code § 31-35-2-4(b)(2)(B) and (C) (2008).[5] "The State's burden of proof in termination of parental rights cases is one of 'clear and convincing evidence.'" In re G.Y., 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code § 31-37-14-2). If the court finds the allegations in a petition described in section 4 of this chapter are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a). Mother and Father challenge the sufficiency of the evidence supporting the trial court's findings as to subsections 2(B) and (C) of the termination statute cited above. See Ind. Code § 31-35-2-4(b)(2).

1. Conditions Not Remedied

Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, the trial court need only find that one of the two requirements of subsection 2(B) has been established by clear and convincing evidence. See L.S., 717 N.E.2d at 209. Because we find it to be dispositive under the facts of this case, we need only consider whether FCDCS established, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in the children's removal or continued placement outside Mother's and Father's care will not be remedied. See Ind. Code § 31-35-2-4(b)(2)(B)(i).

A trial court must judge a parent's fitness to care for his or her child at the time of the

[5] Indiana Code section 31-35-2-4 was amended by Pub. L. No. 21-2010, § 8 (eff. March 12, 2010). The changes to the statute became effective after the filing of the termination petition involved herein and are not applicable to this case.

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. 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. 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 consider any services offered to the parent by the county department of child services, and the parent's response to those services, as evidence of whether conditions will be remedied. Id. at 1252. Moreover, a county department of child services is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

Mother and Father contend that they are entitled to reversal because, though they fell "a bit short of what [FCDCS] demanded," by the time of the termination hearing they had made "impressive" and "substantial strides on their own" regarding their drug addictions. Appellants' Br. p. 15. This, they claim, foreclosed "any 'clear and convincing' determination that they . . . would not continue to be successful in their recovery." Appellants' Br. 15.

In determining there is a reasonable probability the conditions leading to the children's removal and continued placement outside the parents' care will not be remedied, the trial court made extensive findings, including:

> b. Mother is currently living with friends in Williamsport and Father . . . is currently incarcerated as a result of a pending probation violation. Parents have acknowledged a long history of substance abuse and relapse commencing during their teen years.
>
> * * *
>
> d. [Father] is incarcerated and Mother is dependent on the generosity of friends to providing her with housing. The court has no doubt as to the love the parents have for their children, but neither parent has improved their ability to care for the children while the case has been pending and seem barely able to care for themselves. Both have had the services offered not only by [FCDCS] but also by the probation offices of both Fountain and Warren County. Neither has a job or has demonstrated an ability to provide for the financial needs of the children. They have demonstrated an ongoing inability to maintain suitable and stable housing. [The] [c]ourt gives weight to the parents' habitual patterns of conduct in failing to remain drug[-]free.

Appellants' App. p. 24. A thorough review of the record reveals that these findings are supported by the evidence.

Testimony from various caseworkers and service providers during the termination hearing makes clear that despite a wealth of services available to both parents for approximately two years, Mother's and Father's circumstances remained largely unchanged. Family preservation worker Trisha Switzer confirmed that while working with the parents, they continued to have ongoing legal troubles,[6] struggled with supervising the children during visits, and Mother continued to "not be able to handle the stress" of parenting. (Tr. 200.) James Rowling, former Director of the Women's Program at Home with Hope, confirmed that Mother failed to successfully complete the program and "left against staff advice" in

[6] We note that in addition to Father's incarceration, at the time of the termination hearing, Mother had pending charges for criminal conversion in Tippecanoe County.

January 2009. (Tr. 213.) Family case manager Amie Cooper testified that FCDCS eventually sought termination of parental rights because Father had refused to re-engage in any drug relapse program, Mother had stopped attending individual counseling, and neither parent was visiting with the children due to the parents' refusal to submit to drug screens. We therefore conclude that FCDCS presented clear and convincing evidence to support the trial court's findings and ultimate determination that there is a reasonable probability the conditions resulting in the children's removal and continued placement outside the family home will not be remedied. Mother's and Father's arguments to the contrary, emphasizing Mother's recent sobriety rather than the evidence relied upon by the trial court, amount to an invitation to reweigh the evidence, which we may not do. D.D., 804 N.E.2d at 264.

2. Best Interests

We next consider Mother's and Father's assertions that FCDCS failed to prove termination of their respective parental rights is in all three children's best interests. In determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Indiana 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 court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. Id. Moreover, we have previously held that the recommendations of both the case manager and child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is

sufficient to show by clear and convincing evidence that termination is in the child's best interests. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

Beyond the matters discussed above, the trial court made several pertinent findings when it determined that termination of Mother's and Father's rights is in the children's best interests. Specifically, the trial court acknowledged that since their removal, the children's aggressive behaviors had lessened, they were performing well in school, and had developed anger management coping skills. The court further noted in its findings that the children were "bonded together and need to remain a family unit," and that "[a]ll the service providers have indicated that despite the level of home[-]base[d] services throughout the CHINS [case] . . . insufficient progress was made to ensure the safety and well-being of the children." (Appellants' App. p. 24.) Finally, the trial court found that all case workers, services providers, and Guardian ad Litem Sue White ("White") recommended termination of parental rights as in the children's best interests. These findings, too, are supported by the evidence.

The record reveals that Switzer, Johnson, Cooper and White all recommended termination of Mother's and Father's parental rights as in the children's best interests. In so doing, Johnson explained that she was "very concern[ed]" that the parents would not be able to care for the children on their own, especially in light of their "drug history." (Tr. 278-79.) Similarly, GAL White testified:

> I believe that the . . . drug addictions that the parents both struggle with as well as their lack of stability in terms of housing, employment, their continued legal issues which result in jail time for one or another of them, make them unable to provide for the children, and I don't believe it's in the children's best

interest[s] to continue to be exposed to that lifestyle.

(Tr. 346-47.)

Based on the totality of the evidence, including both parents' failure to complete a majority of the trial court's dispositional orders and current inability to provide the children with a safe and stable home environment, coupled with the testimony from Switzer, Johnson, Cooper and White, we conclude that clear and convincing evidence supports the trial court's determination that termination of Mother's and Father's parental rights is in A.P.'s, K.P.'s and M.P.'s best interests. This court will reverse a termination of parental rights '"only upon a showing of "clear error" – that which leaves us with a definite and firm conviction that a mistake has been made.'" Matter of A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Affirmed.

NAJAM, J., and DARDEN, J., concur.