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IN THE
COURT OF APPEALS OF INDIANA

IN RE: THE MATTER OF THE TERMINATION OF THE PARENT/CHILD RELATIONSHIP OF R.B.,	)	
BRANDI and RAYMON BROWNING,	)	
Appellants-Respondents,	)	
vs.	)	No. 18A02-0704-JV-345
DELAWARE COUNTY DIVISION OF FAMILY AND CHILDREN,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Richard A. Dailey, Judge
Cause No. 18C02-0611-JT-70

December 17, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Raymon Browning ("Father") and Brandi Browning ("Mother") appeal the involuntary termination of their parental rights to their child, R.B. Father and Mother raise one issue for our review, which we restate as whether the Delaware County Division of Family and Children ("DCDFC") presented sufficient evidence to support the involuntary termination of Mother and Father's parental rights. Concluding that there was sufficient evidence to support termination, we affirm.

Facts and Procedural History

R.B. was born on February 11, 2005. Shortly thereafter, Amy Ballard, a clinical social worker employed by Open Door BMH Health Center, visited Mother's and Father's home. Ballard had previously met Mother at Open Door BMH Health Center when Mother was receiving prenatal care. Upon entering the home, Ballard noted that it was in an unsafe and unsanitary condition. She saw piles of dirty clothes, dirty dishes, and spoiled food. She also saw dog feces on the floor and noted it appeared that the floor in the front room had never been swept. Ballard told Mother and Father that they needed to clean up the home in order for it to be safe for R.B. Ballard returned to the home two times after her initial visit. Both times she returned, Ballard noted that Mother and Father had not taken any steps to clean up the home. Ballard also learned that Mother and Father were not regularly taking R.B. to checkups with her physician, and Ballard told them that they needed to do this. Because of these circumstances, Ballard reported the situation to DCDFC.

After conducting an investigation, DCDFC determined there was probable cause to believe that R.B. was a child in need of services ("CHINS"). On April 18, 2005, Mother and

Father agreed to a program of Informal Adjustment that included the following pertinent terms: (1) R.B. would continue to live with Mother and Father; (2) Mother and Father were required to maintain adequate housing for R.B., including necessary utilities, food, clean clothing, and an adequately clean home; (3) the DCDFC case manager was to visit R.B. at the home of Mother and Father at least six times in order to monitor the home situation and offer suggestions for appropriate parenting; (4) Mother and Father were to work with a homemaker and follow recommendations on home maintenance and parenting; (5) Mother and Father were to provide adequate supervision for R.B. at all times; and (6) Mother and Father were to obtain prompt and appropriate medical care for R.B.

In May of 2005, Becky Brandon, a family development specialist employed by Open Door Community Services, began working with Mother and Father on the condition of the home and their parenting skills. Brandon found the home to be cluttered, dirty, and unsafe for a toddler. She saw piles of clothing, food, dishes, soiled diapers, and dirty bottles lying on the floor. Brandon gave Mother and Father cleaning assignments, but the assignments were never completed.

On August 19, 2005, DCDFC filed a petition alleging that R.B. was a CHINS. In the petition, DCDFC alleged that on August 9, 2005, Brandon contacted DCDFC and informed it that Mother and Father's home was not clean. The next day, case managers visited the home where they found R.B. asleep with a bottle in her hand that contained curdled formula. The home was littered with dirty diapers, dirty clothes, spoiled food, dog urine on the floor, and trash. DCDFC asserted that Mother and Father had violated the terms of the Informal Adjustment by not keeping an adequately clean home and by not cooperating with Brandon.

DCDFC asked the trial court to find R.B. to be a CHINS and order that she be placed in foster care. On October 17, 2005, the trial court issued an order finding R.B. to be a CHINS after Mother and Father admitted the allegations at an Initial Hearing.

On November 21, 2005, the trial court held a dispositional hearing. Thereafter, the trial court issued a dispositional and parental participation order. The order included the following relevant terms: (1) Mother and Father would be allowed to have supervised visitation with R.B.; (2) Mother and Father were to continue to participate in counseling services at Associates in Mental Health; (3) within thirty days of the dispositional hearing, Mother and Father were to seek and maintain stable living conditions; (4) within ninety days of the dispositional hearing, Mother and Father were to enroll and participate in the parent nurturing program at Comprehensive Mental Health Services Parent Support Group to increase their parenting skills; (5) Mother and Father were to work with the assigned homemaker and follow recommendations on home maintenance and parenting; and (6) within sixty days of the dispositional hearing, Mother and Father were to participate in psychological testing with Dr. Paul Spengler. The order further provided that R.B. was to be made a ward of the state and would remain in foster care.

Dr. Spengler performed a psychological evaluation on Mother and Father on January 24, 2006. With respect to Father, Dr. Spengler found there were barriers that inhibited Father's ability to parent effectively. He noted that based on his profile, Father was likely to act out in irrational ways. He also stated that Father had problems with anger, poor judgment, and impulse control. He concluded that Father had qualities far less than optimal for parenting.

Dr. Spengler found that Mother would have problems recognizing a child's needs because "she is likely to be impaired by her own anxiety and her own feelings of threat which are likely to be her primary focus . . . ." Transcript at 39. As a result, he concluded that Mother "would have distinct challenges parenting effectively." Id. at 52.

In March of 2006, Mother and Father were referred to Meridian Social Services ("Meridian"). Mother and Father initially refused services. Father, however, began attending therapy sessions at Meridian in June of 2006, and Mother began attending in July of 2006. Mother and Father both received individual and couples therapy. Father attended a therapy group designed especially for men, while Mother attended a similar group for women. Both attended a parenting group.

Barbara Hisel, a therapist at Meridian, conducted individual therapy sessions with Mother and Father. Hisel stated that through her therapy Mother was working on her depression, decision-making, and relationship and trust issues. Father was working on his past criminal behavior, decision-making, anger management, and impulse control. Hisel testified that Father had a history of substance abuse with alcohol and marijuana, but that the only current concern was with alcohol. Hisel related that she gave Mother and Father various tasks geared toward helping them become effective and responsible parents. She stated that often Mother and Father did not perform the assigned tasks.

On November 2, 2006, DCDFC filed a petition to terminate Mother and Father's parental rights to R.B. The trial court held a hearing on the petition on January 30, 2007. At the hearing, Dr. Bonnie Huxford, a bonding and attachment therapist, testified. She stated that on January 5, 2007, she performed a bonding assessment on R.B. and her foster family.

She found that R.B. had a secure attachment with her foster family, was well adjusted, content, and developing socially.

Dr. Huxford performed a bonding assessment with R.B., Mother, and Father on January 16, 2007. She found that R.B. had an insecure avoidant attachment with Mother. She explained that insecure avoidant attachments are when a child avoids interacting with the parent. The child does not greet, seek out, or show affection to the parent. Dr. Huxford determined that R.B. had an insecure disorganized attachment to Father. She indicated that this is the most damaging type of insecure attachment because the child does not "have a schematic for what they need to do." Id. at 114. Dr. Huxford concluded that R.B. had a damaging attachment with Mother and Father and a nurturing attachment with her foster family.

Hisel testified that despite the services Mother and Father received from Meridian, she had not noticed a significant change in their behavior. She specifically stated that, in her opinion, Mother's and Father's ability to parent and to address the safety needs of R.B. had not improved.

Brandon testified that she had visited Mother's and Father's home the week before the hearing. She stated that the kitchen and bathroom were dirty and unsanitary. Brandon pointed out that the bedroom was so full of clothing and clutter that Mother and Father were sleeping on the floor in another room. Brandon also noted that the carpet and surfaces were dirty, and that there was a strong odor of cat feces upon entering the home. She did not believe that Mother understood that there was a need to keep the house clean and safe for R.B. Brandon stated that since she began working with Mother and Father in 2005, she had

not seen significant progress made by them toward cleaning their house, becoming more effective parents, or addressing the safety concerns within their home.

Brandon also testified that Mother's best friend, a man named John Lee, was a convicted child molester. She noted that in March of 2006, she saw Lee visit Mother and Father's home while R.B. was present. During her testimony, Mother admitted that Lee had been around R.B. Additionally, Mother and Father told Brandon that three or four of Father's relatives were child molesters, including Father's brother.

Toni Drewry, the court appointed special advocate, indicated that she believed it was in R.B.'s best interests to terminate Mother's and Father's parental rights. Based on her experiences with Mother and Father, Drewry testified that she did not think Mother and Father understood "the importance of . . . some of the basic parenting issues. The nurturing things, the safety, the stability necessary for raising the child in a healthy, happy way." Id. at 176.

Mary Johnson testified that she was employed by DCDFC and that she was the case manager assigned to this case. She stated that Father had been convicted of two counts of child molesting in 2000 and that he was currently on Indiana's sex offender registry. Johnson stated that during the time she had been assigned to the case, Mother and Father had not made significant progress toward remedying the conditions that warranted the removal of R.B. Johnson testified that, in her opinion, Father could not be an effective parent to R.B. With respect to Mother, Johnson said, "She has not shown the progress she needs to make in order for the child to be returned to the home." Id. at 169. Johnson believed that termination of Mother's and Father's parental rights was warranted at that time, and that the plan for the

future care of R.B. was to pursue adoption with the foster family.

Father and Mother both testified to the current conditions of their home. Father said that the couple was in the process of moving because the home was "unfit to live in right now." Id. at 221. He alluded to the county having recently inspected the home for housing code violations and to problems with the home's foundation. Mother noted a number of other problems with the home including the toilet, various windows, and holes in the walls. She stated that an individual from the county housing code enforcement division told her the home might be condemned. Mother agreed that the home was not very safe.

On April 13, 2007, the trial court entered an order that contained the following relevant findings of fact and conclusions of law:

> 2. That the child has been removed from parents and has been under the supervision of the Indiana Department of Child Services for at least 15 months of the most recent 22 months. In fact, [R.B.] has been removed from the parents . . . since 8-10-05.
> 3. That [F]ather has a history of criminal activity, and frequent inappropriate sexual behavior, including a conviction for child molestation.
> 4. Any form of psychological intervention is likely to be of limited benefit to [Father].
> 5. That [Father] is at high risk for continued psychopathic recklessness and poor judgment.
> 6. Mother's behavior is highlighted by poor insight and judgment and often she resorts to dysfunctional negative emotions rather than problem solving.
> ***
> 8. The Browning's [sic] have shown little progress in recognizing and improving their parenting skills or in addressing issues which negatively impact their ability to become adequate parents.
> ***
> 10. Despite the services provided to the Browning's [sic], the home conditions which were inadequate, never improved. Further, the condition of the home has remained consistently poor and remains unsafe for [R.B.] to return.
> 11. The Brownings have failed to keep scheduled medical appointments for their child.

12. The child demonstrates an insecure avoidant attachment to [Mother], and an insecure, disorganized attachment to [Father]. Both of these conditions are significantly detrimental to the child's development.
13. The Brownings have friends and relatives who are convicted child molesters and have on more than one occasion allowed these persons inappropriate access to their child. The parents do not indicate an understanding of the safety concerns for their child that this creates. As such, the child would face significant risk of harm should she be returned to the care of her natural parents.
14. Further[,] the parents have failed to show any real progress in maintaining a safe environment [for] their child.
15. That based on the foregoing, there is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside of the home of the parents will not be remedied.
16. Termination of the parent/child relationship is in the best interest of the child.
17. The Indiana DCS has a satisfactory plan for the care and treatment of the child, which includes adoptive placement.

Defendant-Appellant's Appendix at 22-24. The trial court ordered the termination of Mother and Father's parental rights to R.B., and this appeal ensued.

Discussion and Decision

Mother and Father argue that DCDFC did not present sufficient evidence to support the involuntary termination of their parental rights. We disagree.

I. Standard of Review[1]

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.

[1] Because of certain procedural defects, the DCDFC's brief and appendix were marked received and not filed. The defects were not cured in a timely fashion. The DCDFC filed a motion to file its belated brief and appendix approximately two months after its brief was due. We hereby deny the DCDFC's motion. When the appellee has failed to submit an answer brief we need not undertake the burden of developing an argument on the appellee's behalf. Trinity Homes, LLC v. Fang, 848 N.E.2d 1065, 1068 (Ind. 2006). Rather, we will reverse the trial court's judgment if the appellant's brief presents a case of prima facie error. Id. Prima facie error in this context is defined as, "at first sight, on first appearance, or on the face of it." Id. Where an appellant is unable to meet this burden, we will affirm. Id.

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 his or her child 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.

When reviewing the termination of parental rights, we neither reweigh the evidence nor judge witness credibility. In re Kay. L., 867 N.E.2d 236, 239 (Ind. Ct. App. 2007). We will consider only the evidence that supports the trial court's decision and the reasonable inferences drawn therefrom. Id. We will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. Id. A judgment is clearly erroneous when the findings do not support the trial court's conclusions or the conclusions do not support the judgment. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005).

Indiana Code section 31-35-2-4(b) provides that in order to terminate a parent-child relationship, the State must prove:

> (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;
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> ***
>
> (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.

The State must establish the elements of Indiana Code section 31-35-2-4 by clear and convincing evidence. Ind. Code § 31-34-12-2.

Mother and Father concede that R.B. has been removed from their care pursuant to a dispositional decree for at least six months and that there is a satisfactory plan for the care and treatment of R.B. However, they argue that DCDFC did not present sufficient evidence to show a reasonable probability that (1) the conditions that resulted in the removal of R.B. would not be remedied; or (2) the continuation of the parent-child relationship would pose a threat to the well-being of R.B. Because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, the trial court had to find only 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, 534 U.S. 1161 (2002). Therefore, we begin by considering whether DCDFC presented sufficient evidence to support the trial court's finding that the conditions that resulted in R.B.'s removal would not be remedied.

II. Conditions that Resulted in Removal Will Not Be Remedied

In determining whether there is a reasonable probability that the conditions that resulted in the removal of the child 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. v. Marion County Office of Family and Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. 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 this case, R.B. was removed from Mother's and Father's care because they were unable to provide her with a safe and clean home and because they lacked necessary parenting skills. The evidence introduced at the hearing shows that in 2005, both Ballard and Brandon found Mother's and Father's home in an unsafe and unsanitary condition. The floor of the home was littered with piles of dirty clothes, spoiled food, dirty dishes, and soiled diapers. Ballard found dog feces on the floor, and DCDFC case managers found dog urine on the floor in August of 2005. At one point, R.B. was found asleep in the home holding a bottle that contained curdled formula. Mother and Father were told that they needed to clean up the home in order to regain custody of R.B.

Despite knowing this, between 2005 and the hearing in January of 2007, Mother and Father did not take the necessary steps to improve the condition of the home. Brandon attempted to get Mother and Father to clean the home by giving them cleaning assignments, but the assignments were not completed. When Brandon returned to Mother's and Father's home a week before the hearing, she found the kitchen and bathroom dirty and unsanitary. The bedroom was so full of clothing and clutter that Mother and Father were sleeping on the floor of another room. The carpet remained dirty, and the odor of cat feces permeated the

home. Brandon felt Mother did not understand that there was a need to keep the home clean and safe for R.B. She stated that since 2005, Mother and Father had not made significant progress toward cleaning their house or addressing the safety concerns within their home.

Mother's and Father's testimony supports the conclusion that the home was unsafe and unsanitary. Father testified that he and Mother were in the process of moving because the home was "unfit to live in right now." Tr. at 221. He indicated that the county had recently inspected the home for housing code violations. Mother noted that there were problems with the home's foundation, the toilet, various windows, and that there were a number of holes in the walls. Mother conceded that the home was not very safe.

The trial court also found that the home was unsafe for R.B. because Mother and Father "have friends and relatives who are convicted child molesters and have on more than one occasion allowed these persons inappropriate access to their child." Defendant-Appellant's App. at 23. At the hearing, Brandon testified that Mother's best friend, John Lee, was a convicted child molester and that she had seen him at Mother's and Father's home in March of 2006, while R.B. was present. Mother confirmed that Lee had been around R.B. Additionally, Brandon stated that Mother and Father had told her that three or four of Father's relatives were child molesters.

After R.B. was adjudicated a CHINS, Mother and Father were ordered to improve their parenting skills. Mother and Father began receiving services from Meridian in 2006. Hisel conducted individual therapy sessions with Mother and Father. She assigned various tasks to Mother and Father that were geared toward helping them become more effective parents, but these tasks were often not performed. Despite her work with Mother and Father

and the services they received from Meridian, Hisel testified that Mother's and Father's ability to parent had not improved.

Brandon and Johnson shared Hisel's view of Mother's and Father's parenting skills. Brandon had worked with Mother and Father since 2005, and during that time she stated they had not made significant progress toward becoming more effective parents. Johnson testified that Father could not be an effective parent to R.B. and that Mother had not "shown the progress she needs to make in order for the child to be returned to the home." Tr. at 169.

Dr. Spengler's testimony suggested that Mother's and Father's ability to parent was not likely to improve in the future. He noted that based on his profile, Father was likely to act out in irrational ways and had problems with anger, poor judgment, and impulse control. He believed that Father had qualities far less than optimal for parenting. Dr. Spengler found that Mother was likely to be impaired by her own anxiety to such an extent that she would have problems recognizing a child's needs. He concluded that Mother "would have distinct challenges parenting effectively." Id. at 52.

Sufficient evidence was presented to permit the trial court to conclude that the condition of the home remained unsafe and unsanitary and that Mother's and Father's parenting skills had not improved. Therefore, the trial court properly concluded there was a reasonable probability that the conditions that led to the removal of R.B. would not be remedied.[2]

III. Termination is in the Best Interests of the Child

[2] Having determined the trial court properly concluded that the conditions that led to R.B.'s removal will not be remedied, we need not also consider whether the trial court properly concluded that the continuation of the parent-child relationship poses a threat to R.B.'s well-being. See In re L.S., 717 N.E.2d at

Mother and Father next argue that DCDFC did not present sufficient evidence to show that termination of the parent-child relationship was in the best interests of R.B. 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, DCDFC introduced evidence showing that Mother and Father had not taken the necessary steps to make their home sanitary and safe for R.B. A week before the hearing, the kitchen, bathroom, and carpet were dirty and unsanitary. The home was cluttered with dirty clothing and smelled of cat feces. Father testified that he and Mother were moving out of the home because it was "unfit to live in right now." Tr. at 221. Mother conceded that the home was not very safe and that there were problems with the home's foundation, the toilet, and various windows, and that there were a number of holes in the walls. Testimony at the hearing also indicated that while R.B. was in Mother's and Father's home she was exposed to unsafe individuals who had either been convicted or accused of child molesting.

Hisel, Brandon, and Johnson agreed that despite receiving counseling and services, Mother's and Father's parenting skills had not improved, and Dr. Spengler's testimony suggested that they were not likely to improve in the future. Drewry specifically testified that she believed it was in R.B.'s best interest to terminate Mother's and Father's parental

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rights because they did not understand the importance of "some of the basic parenting issues." Id. at 176.

The bonding assessment performed by Dr. Huxford indicated that R.B. had a secure attachment with her foster family, was well-adjusted, content, and developing socially. R.B., though, had an insecure avoidant attachment with Mother and an insecure disorganized attachment to Father. Dr. Huxford characterized R.B.'s attachment to Mother and Father as damaging, while her attachment with her foster family was nurturing.

Based on the foregoing, we conclude that DCDFC presented sufficient evidence to permit the trial court to conclude that the termination of Mother's and Father's parental rights was in R.B.'s best interest.

Conclusion

DCDFC presented sufficient evidence to support the involuntary termination of Mother's and Father's parental rights. The trial court's order terminating Mother's and Father's parental rights to R.B. is therefore affirmed.

Affirmed.

KIRSCH, J., and BARNES, J., concur.