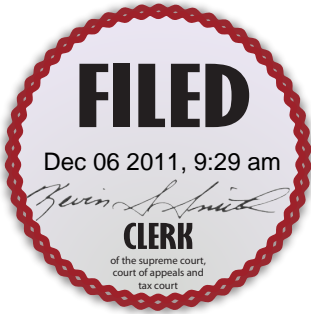


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF:)
H.B., B.B., AND J.M., Minor Children,)
)
C.M., Mother,)
)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
and)
)
LAKE COUNTY COURT APPOINTED)
SPECIAL ADVOCATE,)
)

No. 45A03-1104-JT-144

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Judge
Cause Nos. 45D06-1003-JT-56, 45D06-1003-JT-59, 45D06-1003-JT-60

December 6, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

C.M. (“Mother”) appeals the involuntary termination of her parental rights to her children, H.B., B.B., and J.M. Concluding that there is sufficient evidence to support the juvenile court’s judgment, we affirm.

Facts and Procedural History

Mother is the biological mother of H.B., born in August 2005, B.B., born in August 2006, and J.M., born in July 2007.¹ The evidence most favorable to the juvenile court’s judgment reveals that in March 2006, the local Lake County office of the Indiana Department of Child Services (“LCDCS”) substantiated a referral of educational neglect involving Mother and two of her eight children.² All of Mother’s children, including

¹ The parental rights of all three children’s biological father, M.B. (“Father”), were terminated by the juvenile court in its February 2011 judgment. Father does not participate in this appeal.

² This was not LCDCS’s first contact with this family. In 1998, Mother participated in a CHINS case involving her two oldest children, B.M. and N.S., based on substantiated reports of failure to thrive and lack of supervision in the home. By the time of the termination hearing in the present case, Mother had given birth to a total of thirteen children, two of whom had achieved adulthood. None of the remaining eleven children, including H.B., B.B., and J.M., were living with Mother at the time of the termination hearing but were all involved in various stages of CHINS and/or termination proceedings and living in foster care. This case pertains solely to Mother’s appeal of the termination of her parental rights to H.B., B.B., and J.M. We therefore limit our recitation of the facts to those pertinent solely to Mother’s appeal of the juvenile court’s judgment terminating her parental rights to these three children only.

H.B.,³ were allowed to remain in the home, and Mother was offered family preservation services including parenting classes, individual counseling, drug and alcohol evaluations, and home-based services.

In late November 2006, LCDCS received a referral indicating Mother was facing imminent eviction from her home. During its investigation of the matter, LCDCS learned Mother was being evicted because she had failed to transfer the utilities into her name and had not been truthful with her landlord as to how many children would be residing with her in the home. In addition, the children were allegedly destroying the rental property. Mother confirmed her lack of housing, and LCDCS took all the children into emergency protective custody. Following a detention hearing in December 2006, H.B., B.B., and their siblings were made temporary wards of LCDCS and placed in foster care.⁴ LCDCS thereafter filed petitions alleging H.B. and B.B. were children in need of services (“CHINS”).

Mother admitted to the allegations in the CHINS petitions during a hearing in January 2007, and H.B. and B.B. were so adjudicated. The juvenile court proceeded to disposition the same day and thereafter issued an order formally removing H.B. and B.B. from Mother’s custody.⁵ The court’s dispositional order also directed Mother to participate in a variety of services designed to enhance her parenting abilities and to

³ At this time, B.B. and J.M. had not been born yet.

⁴ At the time of H.B. and B.B.’s removal from Mother, J.M. had not yet been born.

⁵ The dispositional order directed that the children’s removal date be made retroactive to November 30, 2006, the date the children were physically removed from Mother’s care.

facilitate reunification with her children. These services were similar to the previously-ordered family preservation services and included parenting classes, individual counseling, drug and alcohol evaluations, a psychological evaluation, and home based services.

Mother initially participated in some services, and all the children who had been removed were returned to her care in June 2007. The CHINS case remained open, however, and Mother continued to have services available to her. Mother's participation in the on-going court-ordered services, however, became sporadic. By April and May 2008, LCDCS began receiving referrals involving Mother for educational neglect and life and health endangerment. Investigations into these new referrals revealed that the family home was filthy and that there was no gas, electricity, or food in the home. Additionally, the children appeared dirty and several of the children tested positive for MRSA.⁶ Thus, in June 2008, despite having received family preservation services for over two years, all the children living in the family home were removed from Mother's care due to her neglectful parenting. J.M., who was less than one year old, was also removed from Mother at this time and later adjudicated a CHINS.

By late 2009, five of the children, including H.B., B.B., and J.M., had been returned to Mother's care on a trial in-home visit, and plans had been made to return two more children in January 2010. Two days before the two children were to be returned to Mother's care, LCDCS case manager Samantha Ilic ("Ilic") made an unannounced visit

⁶ MRSA (Methicillin-Resistant Staphylococcus Aureus) is a contagious staph bacteria that infects the skin but can also invade other parts of the body. Because MRSA is particularly resistant to several antibiotics that are commonly prescribed for staph infections, it can be difficult to treat.

to the family home because Mother had failed to return her telephone calls. When Ilic arrived at the home, she found the house to be in disarray, J.M. was digging in the garbage, and there was little to no food for the children. Additionally, there were no clean clothes in the bedrooms, the beds were “bare,” there was standing water in the basement, and the house had a strong odor of mold. Transcript at 83.

During this visit, Ilic also observed that the children were not being properly supervised. When Ilic inquired as to why the children were playing “in” the oven and microwave, Mother stated that her back hurt and further explained that she could not control the children so she just unplugged the appliances instead. *Id.* at 94. Mother also informed Ilic that she felt “overwhelmed” and that she was “having trouble doing things, like[] going grocery shopping because she didn’t have transportation.” *Id.* at 81. In addition, Mother confided that she was taking Vicodin without a prescription. Based on these circumstances, the children were once again removed from Mother and placed in foster care. Soon thereafter, Mother tested positive for opiates.

LCDCS eventually filed petitions under separate cause numbers seeking the involuntary termination of Mother’s parental rights to a majority of the children in March 2010. In June 2010, Mother gave birth to K.B., who was born testing positive for opiates. A consolidated evidentiary hearing on the termination petitions pertaining to H.B., B.B., and J.M. was held in January 2011. During the termination hearing, LCDCS presented evidence that Mother had been only marginally compliant with participating in reunification services and that she had failed to successfully complete a majority of the juvenile court’s dispositional goals despite having had a wealth of services available to

her for more than four years. In addition, it was the general consensus of all service providers and case workers that Mother remained incapable of providing the children with a safe, stable, and drug-free home environment and that she was unlikely to ever remedy the conditions that resulted in the children's removal. As for the children, LCDCS presented evidence showing that H.B., B.B., and J.M. were happy, thriving, and living together in a pre-adoptive foster home.

At the conclusion of the termination hearing, the juvenile court took the matter under advisement. In February 2011, the court entered its judgment terminating Mother's parental rights to H.B., B.B., and J.M. Mother now appeals.

Discussion and Decision

When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. Bester v. Lake Cnty. Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. Id. When, as here, the juvenile court makes specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. Id. In deference to the juvenile court's unique position to assess the evidence, we will set aside the court's 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; see also Bester, 839 N.E.2d at 147. Thus, if the evidence and inferences support the juvenile court's decision, we must affirm. Id.

“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. Although parental rights are of a constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. In re R.H., 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). Moreover, a juvenile court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. McBride v. Monroe Cnty. Office of Family & Children, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003).

Before parental rights may be involuntarily terminated in Indiana, the State is required to allege and prove, among other things:

- (B) that one (1) of the following is true:
 - (i) There is a reasonable probability that the conditions that resulted in the child’s removal or the reasons for placement outside the home of the parents will not be remedied.
 - (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.
 - (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services.

- (C) that termination is in the best interests of the child

Ind. Code § 31-35-2-4(b)(2). The State’s burden of proof for establishing these allegations in termination cases “is one of ‘clear and convincing evidence.’” In re G.Y., 904 N.E.2d 1257, 1260-1261 (Ind. 2009) (quoting Ind. Code § 31-37-14-2 (2008)). “[I]f the court finds that 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) (emphasis added). Mother challenges the sufficiency of the evidence supporting the juvenile court’s findings as to subsection (b)(2)(B) and (C) of the termination statute cited above.

I. Conditions Remedied/Threat to Children’s Well-Being

Ind. Code § 31-35-2-4(b)(2)(B) requires the State to establish, by clear and convincing evidence, only one of the three requirements of subsection (b)(2)(B). Because we find it to be dispositive, we limit our review to Mother’s allegations of error pertaining to subsection (b)(2)(B)(i) of Indiana’s termination statute.

Here, Mother does not challenge any of the juvenile court’s specific findings as unsupported by the evidence. Rather, Mother claims that in finding there is a reasonable probability the conditions that resulted in the children’s removal and continued placement outside the family home will not be remedied the juvenile court “failed to recognize that [Mother] had nine children . . . in her custody and [that] when they were removed she was devastated . . .” Appellant’s Brief at 10. Mother further asserts that she has done “everything requested of her by [LCDCS]” and that the juvenile court “failed to recognize that [Mother] was overwhelmed[,] and it took time to get her life together.” *Id.* at 5, 10.

In terminating Mother’s parental rights to H.B., B.B., and J.M., the juvenile court made numerous detailed findings regarding the myriad reunification services provided to Mother for many years, as well as Mother’s failure to benefit from these services. Specifically, the juvenile court acknowledged Mother’s extensive history of involvement

with LCDCS, dating back to 1998 when two of her older children were adjudicated CHINS for “failure to thrive and educational neglect for the children.” Appellant’s Appendix at 2. The juvenile court also noted that Mother was only “marginally compliant with the services offered to her” during the underlying CHINS and termination. Id. In so doing, the juvenile court noted that Mother “was offered transportation for appointments and such for the children, but . . . failed to follow through with the appointments” and that she would “schedule appointments and then not answer the door.” Id. In addition to not being home for scheduled services “at least every other time,” the court further found Mother was “not compliant with the home[-]based counseling,” refused to “make herself available or keep contact with service providers,” and tested positive for “prescription opiates” when not under a doctor’s care. Id. The juvenile court also found:

Services were stopped in May of 2010 including visitations for the parents and [H.B., B.B., and J.M.], however, the parents are still receiving services pursuant to the youngest child, [K.B.], that is also a Ward of [LCDCS] after being born testing positive for opiates and codeine at birth. The parents were ordered to complete psychological evaluations pursuant to [K.B.’s] matter[,] which they failed to complete. A parenting assessment was ordered and the parents were not compliant with finishing the assessment . . .

Neither parent is providing any emotional or financial support for the children.

The children were removed three times from [Mother’s] care due to neglect. Reunification was attempted on numerous occasions, but eventually the children all had to be removed again. All the services that were offered over the years did not improve the situation with the parents. [Mother was] receiving services for over four years and things have not improved. The children . . . were always at risk when . . . in the parents’

care. Mother gave birth to another child that was drug positive after four years of services.

* * * * *

Mother has had numerous services over the years including homemaker services, drug screens, transportation services, and intensive family preservation services. [LCDCS] has also provided Mother with furniture which included bunk[]beds, single bed, refrigerator[,] and stove and clothing vouchers for all the children.

All the services have been ineffective.

Id. at 2-3. A thorough review of the record reveals that abundant evidence supports the juvenile court's findings detailed above.

The record makes clear that although Mother completed parenting classes twice and eventually participated in substance abuse counseling, she failed to benefit from these services and/or incorporate what she had been taught into her daily life. Additionally, LCDCS case manager Ilic testified that Mother had been "only mildly compliant" with the court's orders during the underlying CHINS and termination cases. Transcript at 86. Ilic further explained that Mother "wouldn't answer the door on a lot of occasions when the providers would come to the house" and that she "miss[ed] at least every other appointment without calling or reschedule[ing]." Id. Ilic also informed the court that it was "only at times when something big would happen -- a change of placement or something, that [Mother] would call her providers and meet with them to try to get them as a support." Id.

When asked why the permanency plan was eventually changed from reunification to termination of parental rights and adoption, Ilic explained that the decision was "based

on the parents' non-compliance" and the fact LCDCS was dealing with "the same issues that [we had been] dealing with since the beginning of the case, and things didn't seem to be improving for [Mother]" Id. at 90. LCDCS case manager Jamie Rosko ("Rosko") likewise recommended termination of Mother's parental rights. In so doing, Rosko acknowledged that "all the services" offered to Mother "have been ineffective up to this point." Id. at 122.

Mother's own testimony also lends support to the juvenile court's findings. During cross-examination, Mother acknowledged that the children had been removed multiple times from her care despite having received intensive homemaker services "pretty much every day" during the first two years of the CHINS case, in addition to having been provided "financial assistance" and "furniture" including a "bed, kitchen table, all the stuff like that, and the clothes for the kids." Id. at 232. Mother also confirmed that she had used cocaine during the underlying proceedings and that she also used some of her own mother's prescription drugs "here and there." Id. at 233. Finally, Mother acknowledged that she had been ordered to participate in a psychological examination and parenting assessment in the CHINS case related to K.B. approximately six months earlier, but that she still had not yet "completed anything" as of the time of the termination hearing. Id. at 231.

"A pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, supports a finding that there exists no reasonable probability that the conditions will change." Lang v. Starke Cnty. Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007),

trans. denied. Moreover, we have previously explained that “simply going through the motions of receiving services alone is not sufficient if the services do not result in the needed change.” In re J.S., 906 N.E.2d 226, 234 (Ind. Ct. App. 2009). After reviewing the record in its entirety, we conclude that ample evidence supports the juvenile court’s specific findings set forth above. These findings, in turn, clearly support the court’s ultimate decision to terminate Mother’s parental rights to H.B., B.B., and J.M. Mother’s arguments to the contrary, emphasizing her self-serving testimony about changed conditions rather than the evidence cited by the juvenile court in its termination order, amount to an invitation to reweigh the evidence, which we may not do. See D.D., 804 N.E.2d at 265.

II. Children’s Best Interests

Next, we consider Mother’s contention that LCDCS failed to present clear and convincing evidence that termination of her parental rights is in the children’s best interests. In making this assertion, Mother contends that although the children’s pre-adoptive foster parents “are a nice couple, they apparently have no interest in these children bonding with their [other] siblings” Appellant’s Brief at 11. Mother further asserts, without citation to authority or the record on appeal, that H.B., B.B., and J.M. will “obviously” experience “severe mental anguish when they are told that they will not see [Mother] again,” and that “[c]ertainly, mental abuse is not in the best interest[s] of the children” Id.

We are mindful that, in determining what is in the best interests of a child, the juvenile court is required to look beyond the factors identified by the Department of

Child Services and look to the totality of the evidence. McBride, 798 N.E.2d at 203. In so doing, the juvenile 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).

Here, in addition to the findings previously cited, the juvenile court found that “[a]ll the services have been ineffective,” and that “[r]elative placement was investigated and placement was not an option.” Appellant’s Appendix at 3. The court also found:

The children are placed together in the foster home and are happy and secure. The children have bonded with the foster parents and are thriving.

* * * * *

[T]he children deserve a loving, safe, secure, stable[,] and drug[-]free home.

It is in the best interest[s] of the child[ren] and their health, welfare[,] and future that the parent-child relationship[s] . . . be forever and absolutely terminated.

Id. at 4. These findings, too, are supported by the evidence.

During the termination hearing, case manager Ilic testified that she did not think Mother should get “another chance” at reunification because Mother had not been compliant with services over the years and did not seem to understand what she “needed to do for these children. How to supervise them, how to appropriately care for them, how

to . . . supply all the essential basic needs for them.” Transcript at 95-96. Similarly, in recommending termination of Mother’s parental rights, Rosko testified that she was “concerned” with the length of time the children had been wards of LCDCS, stating that the children “need permanency and stability and they have not received that being in the home of [Mother].” Id. at 129. Rosko further testified that she believed termination of Mother’s parental rights was in the children’s best interests because H.B., B.B., and J.M. were “placed in a pre-adoptive foster home and they have completely flourished in that foster home.” Id. at 131. Rosko also reported that the children “are provided permanency” and “stability” in their current placement, that they “seem to be much more trusting,” and appear to be “very, very happy” and “bonded” with their foster parents. Id. at 132, 137.

Finally, when asked whether she was “afraid” for the children should they be returned to Mother’s care, the children’s foster mother answered in the affirmative and explained:

Well, it would scare me that they would continue down the road they were on of not being taught, not being given the love and the comfort that they need. They very obviously did not have that comfort before they came into our home. They were very scared. They were very uneasy, very worried about people, you know, breaking in and hurting them[,] and now . . . I can tell that they are comfortable, and they are able to go to sleep, and they don’t have nightmares, and I can see that they feel safe in our home.

Id. at 169.

Based on the totality of the evidence, including Mother’s significant history of neglectful conduct and inability to provide the children with a safe, stable, drug-free home environment, in addition to the recommendations of Ilic and Rosko, we conclude

that there is sufficient evidence to support the juvenile court's determination that termination of Mother's parental rights is in the children's best interests. We have previously stated that "[t]he time for parents to rehabilitate themselves is during the CHINS process, prior to the filing of the termination petition." Prince v. Dep't of Child Servs., 861 N.E.2d 1223, 1230 (Ind. Ct. App. 2007). Although Mother may have expressed a sincere desire to be reunited with her children during the termination hearing, she has been afforded multiple opportunities to do so in the past, but to no avail. Instead, Mother has repeatedly and knowingly refused to fully engage in services designed to improve her parenting abilities and facilitate reunification. Consequently, at the time of the termination hearing, Mother had failed to successfully complete a majority of the court's dispositional goals and remained unable to demonstrate she could provide the children with a safe and stable home environment, free from neglect and substance abuse.

Keeping in mind that the purpose of terminating parental rights is not to punish parents but to protect children, several other factors weigh in favor of the juvenile court's conclusion that termination of Mother's parental rights is in the children's best interests in this case, including: (1) the children are of a tender age and need stability and permanency now; (2) H.B., B.B., and J.M. are all living together and thriving in a pre-adoptive foster home; and (3) the children are extremely happy and bonded to their foster parents.

For all these reasons, we conclude that the juvenile court's judgment terminating Mother's parental rights to H.B., B.B., and J.M. is in the children's best interests, and thus is not clearly erroneous.

Judgment Affirmed.

BAKER, J., and KIRSCH, J., concur.