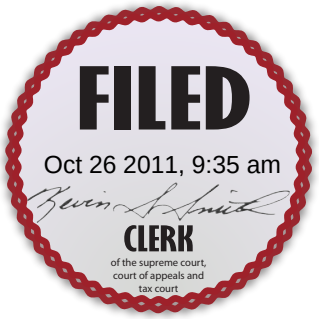

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF: A.J.H. (Minor Child) and M.D. (Mother),	)	
Appellant,	)	
vs.	)	No. 45A03-1104-JT-155
THE INDIANA DEPARTMENT OF CHILD SERVICES and LAKE COUNTY CASA,	)	
Appellees.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Senior Judge
Cause No. 45D06-0904-JT-116

October 26, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

M.D. ("Mother") appeals the involuntary termination of the parent-child relationship with her daughter, A.H.

We affirm.[1]

ISSUE

Whether there is clear and convincing evidence to support the termination of Mother's parental rights to A.H.

FACTS

Mother had two children: A.H., born on March 1, 2007; and her sister, J.Z., born on August 9, 1999. On December 10, 2007, the Lake County Department of Child Services ("DCS") received a report that Mother, while holding a knife, had threatened J.Z. and told her to leave Mother's home because J.Z. had tracked snow into the house. J.Z. and A.H. were living with Mother at the time, and during an investigation by DCS case manager Kandra Norris, Mother admitted both the confrontation with J.Z. and her need for a "break" from A.H. (Tr. 94). She also admitted to having mental and physical health issues. Because of concerns for J.Z.'s and A.H.'s safety, the children were removed from Mother's home.

DCS filed a child in need of services ("CHINS") petition, which the juvenile court set for initial hearing. After the initial detention and CHINS hearing on January 3,

[1] Neither J.Z. nor the children's father is a party to this appeal.

2008, the trial court appointed a Court Appointed Special Advocate ("CASA"), approved DCS's previous placement of A.H. in foster care at the home of C.F. and G.F., ordered DCS to provide various services to Mother, and appointed counsel for Mother. The juvenile court ordered a permanency plan of reunification.

On February 13, 2008, the juvenile court held a factfinding hearing and adjudicated A.H. a child in need of services after Mother admitted to the allegations made in the CHINS petition. The juvenile court made A.H. a ward of DCS retroactive to December 31, 2007. Mother was ordered to participate in psychological and psychiatric evaluations along with any recommended treatment, attend anger management classes, submit to random drug tests, participate in a parenting program, and participate in weekly supervised visitations. The permanency plan remained reunification.

In 2008, an initial psychological evaluation was conducted by clinical psychologist Kalyani Gopal. The evaluation is not in evidence and Gopal did not testify at the termination hearing; however, Norris testified at the termination hearing that the evaluation recommended that "a guardian [be appointed] over [Mother] and her children due to the severity [of Mother's mental illness]." (Tr. 101). Accordingly, Norris included as part of the DCS case plan that Mother "needs to have a guardian appointed over herself in order to successfully have achieved reunification." *Id.*

On April 24, 2009, DCS filed a petition asking the juvenile court to terminate Mother's parental rights because Mother (1) failed to complete her parenting classes; (2) attempted to discuss inappropriate subjects with J.Z. during supervised visitations; and (3) failed to bond with A.H. A termination hearing was scheduled for January 26, 2011.

At the termination hearing, a September 2010 psychological evaluation conducted by clinical psychologist Martha O'Danovich was entered into evidence. The evaluation revealed that Mother had been diagnosed with bi-polar disorder in January of 2008. The evaluation further indicated that the disorder was exacerbated by a closed head injury suffered in a 2004 automobile accident. O'Danovich reported in the evaluation that Mother's "interactions with her children need to be monitored, as she is adept at saying all the right things but the stress of these interactions can erupt into negative situations." (DCS's Ex. 1).

O'Danovich testified that she was concerned that Mother's ability to parent was affected by her bi-polar disorder. O'Danovich also testified that the safety of A.H. depended on "a lot of monitoring of [Mother's] interactions with [A.H.]." (Tr. 69). O'Danovich further testified that interaction must be "ongoing [and] long term" and that Mother would need to be observed "under a lot of different kinds of pressures or stresses, to be able to not have those [narcissistic] symptoms of her personality come back and interfere with how she is treating the children." (Tr. 69-70).

Norris testified that Mother failed to interact with A.H. during weekly supervised visitations. Norris also testified that Mother's visitation with A.H. had been discontinued after Mother passed notes to J.Z.; therefore, Mother had not visited with A.H. for over a year prior to the termination hearing. Norris further testified that the reunification plan had remained in place for fifteen months and that the plan changed because of lack of progress by Mother. Norris was concerned that A.H., who had not bonded with her

Mother, would be harmed if she was torn from her foster family after living with them over three years while Mother was attempting to become capable of parenting.

Social worker Patricia Lawson, who had administered the December 1, 2010 parenting/family function assessment for Mother, testified that Mother needed long-term supervision before being able to appropriately interact with A.H. Lawson also testified that Mother would very likely require years of supervision by either a guardian or DCS before Mother could be trusted to remain medication compliant and to interact appropriately with A.H. Lawson further testified that testing indicated that Mother had inappropriate expectations which "exceed [the] developmental capabilities of the children," and a "low level of empathy" which means that "it is difficult for her to put herself in the place of her child, to connect with her child emotionally." (Tr. 189-90).

Mother's psychiatrist, Dr. Farid Karimi, testified that she was medically compliant and was working toward getting better. Karimi also testified that Mother "is going to be a good Mother and she has a lot of feelings for those children. She really loves her children." (Tr. 172). However, Karimi further testified that Mother was not capable of parenting at the time the termination hearing was held. When asked when Mother would be capable of parenting, Karimi responded, "I would say six months to a year . . . ." (Tr. 172).

The juvenile court found, in pertinent part, that (1) although Mother had completed a number of services and evaluations offered to her, "[e]ach evaluation stated that [Mother] could not parent her children. The children would be parenting the parent"; (2) "[M]other needed a guardian appointed for herself for [M]other was incapable of

handling her own life, much less her children's lives"; and (3) Mother has not bonded with A.H. (Mother's App. 2). The juvenile court further found that "after three years of services, [Mother] is not capable of taking care of her children at this time . . . It is unlikely that Mother will ever be in a position to parent these children without assistance and supervision." *Id.*

The juvenile court concluded that there is "a reasonable possibility that the conditions resulting in the removal of the child from [Mother's] home will not be remedied . . . ." (Mother's App. 1).[2] After noting that "[s]ervices were offered to [Mother] for over three years and the children are no closer to be[ing] reunified with [Mother] than they were three years ago," the juvenile court concluded that "there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of [A.H.]" and that it is "in the best interest of [A.H.] and her health, welfare and future that the parent-child relationship between the child and [Mother] be forever fully and absolutely terminated." *Id*. At 3.

DECISION

The traditional right of parents to establish a home and raise their child is protected by the Fourteenth Amendment of the United States Constitution. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). Parental rights may be terminated when parents are unable or unwilling to meet their parental responsibilities. *Id.* The purpose of terminating parental rights is not to punish a parent

[2] It is clear from the juvenile court's findings that it also concluded that the reasons for placement outside Mother's home will not be remedied.

but to protect the child. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. Denied*, *cert. denied*, 534 U.S. 1161(2002).

When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *Bester*, 839 N.E.2d at 147. We will only consider the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.* When reviewing findings of fact and conclusions thereon entered in a case involving a termination of parental rights, we apply a two-tiered standard of review. *Id.* First, we determine whether the evidence supports the findings. *Id.* Then, we determine whether the findings support the judgment. *Id.* The trial court's judgment will be set aside only if it is clearly erroneous. *Id.* "A judgment is clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment." *Id*. (quoting *In re R.J.*, 829 N.E.2d 1032, 1034 (Ind. Ct. App. 2005)).

When DCS seeks to terminate parental rights, it must plead and prove in relevant part:

(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;

I termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.[3]

[3] There is no dispute about this subsection of the statute. The trial court found that DCS "has a satisfactory plan for the care and treatment of the child, which is Adoption by [C.F. and G.F.]." (Mother's App. 3).

Ind. Code § 31-35-2-4(b)(2).[4] These allegations must be established by clear and convincing evidence. *In re I.A.*, 934 N.E.2d 1127, 1133 (Ind. 2010).

Because subsection (b)(2)(B) is written in the disjunctive, DCS need prove only one of the two elements by clear and convincing evidence. *See I.A.*, 934 N.E.2d at 1133. Thus, if we hold that the evidence sufficiently shows that the conditions resulting in removal will not be remedied, we need not address whether the continuation of the parent-child relationship poses a threat to the well-being of the child. *See* I.C. § 31-35-2-4(b)(2)(B); *In re A.N.J.*, 690 N.E.2d 716, 721 n.2. (Ind. Ct. App. 1997).

2. Conditions Remedied

Mother argues that the DCS failed to prove that there was a reasonable probability that the conditions that resulted in A.H.'s removal or the reasons for placement outside the home will not be remedied.

To determine whether the conditions are likely to be remedied, the trial court must examine the parent's fitness to care for the child "as of the time of the termination hearing and take into account any evidence of changed conditions." *In re S.P.H.*, 806 N.E.2d 874, 881 (Ind. Ct. App. 2004). The trial court also must determine whether there is a substantial probability of future neglect or deprivation. *Id.*

The crux of Mother's argument is that the juvenile court abused its discretion by not waiting another six months to a year to determine whether Mother would be capable

[4] Indiana Code section 31–35–2–4 was amended by Public Law Number 21–2010, Section 8 (effective March 12, 2010). We have quoted the version of the statute in effect at the time that the petition was filed. *See In re A.B.*, 924 N.E.2d 666, 670 n.2 (Ind. Ct. App. 2010) (applying the version of the statute in effect at the time the petition was filed).

of resuming her parental duties. As we outline in the above statement of facts, this case has been ongoing for over three years, and Mother is no closer to remedying the problems that resulted in removal and continued placement than she was at the beginning. Indeed, the evidence most favorable to the judgment shows that the remedy may never occur. The juvenile court was not required to give greater credit to Dr. Farimi's prediction, and we will not reweigh the evidence. We cannot say that the trial court abused its discretion in concluding that there is a reasonable possibility that Mother will never remedy the problems that render reunification impossible.

2. Best Interests

Mother contends that DCS failed to prove that termination of parental rights was in A.H.'s best interests. Mother posits that A.H. will suffer when she matures and realizes that she "will no longer be [part of] a family" with Mother, her sister, J.Z., and any future children that Mother might bear.

We are mindful that, in determining what is in the best interests of the child, the juvenile court is required to look beyond the factors identified by DCS and to consider the totality of the evidence. *In re B.J.*, 879 N.E.2d 7, 22 (Ind. Ct. App. 2008), *trans. Denied.* However, the court need not wait until the child is irreversibly harmed before terminating the parent-child relationship. *In re J.S.*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009). Moreover, we have previously held that "the recommendations of the case manager and the court-appointed advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal and placement will not be remedied, is

sufficient to show by clear and convincing evidence that termination is in the child's best interests." *Id.*

Both Norris and the CASA recommended that Mother's parental rights to A.H. be terminated because there is a reasonable probability that Mother will never be able to provide a safe, stable home for A.H. A.H. was an infant when removed from Mother's care and was nearly four years old at the time of the termination hearing. Thus, she has spent the majority of her life outside Mother's care. We agree that after more than three years, A.H.'s best interests are served by the stability of adoption.

CONCLUSION

The evidence supports the trial court's findings, and the findings support the conclusions. Clear and convincing evidence supports the trial court's determination that Mother's parental rights should be terminated.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.