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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP)
OF K.E., a child, and JESSICA ELLIOTT,)
the child’s mother, and NICK IRVIN, the)
child’s (alleged) father.)

JESSICA ELLIOTT)
Appellant-Plaintiff,)

vs.)

No. 46A03-0605-JV-219

LAPORTE COUNTY DEPARTMENT)
OF CHILD SERVICES,)
Appellee-Defendant.)

APPEAL FROM THE LAPORTE SUPERIOR COURT
The Honorable Steven E. King, Judge
Cause No. 46D02-0506-JT-94

November 9, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Jessica Elliott appeals the trial court's decision terminating her parental rights to her five-year-old daughter, K.E. Elliott argues that the evidence is insufficient to support the trial court's findings that the conditions leading to K.E.'s detention by the LaPorte County Department of Child Services are unlikely to be remedied and that the continuation of the parent-child relationship poses a threat to K.E. Noting that a finding on either of these issues is sufficient to support termination, we find that the evidence was sufficient to support the trial court's determination that the conditions leading to removal are unlikely to be remedied. We therefore affirm the trial court.

Facts and Procedural History

K.E., who was born on February 12, 2001, is the biological child of Jessica Elliott. Elliott named Nick Irvin as the putative father of K.E.¹ On the evening of November 12, 2002, Elliott left then twenty-one-month old K.E. in the care of a babysitter, Amber Heider, a high school student. Later that evening, Elliott became distraught over her relationship with her on-again-off-again boyfriend, Kurtis Ingram, and either attempted or pretended to attempt suicide by ingesting a large amount of over-the-counter medication.² Consequently, Elliott left K.E. with Heider overnight, without notice and

¹ At the time of these proceedings, Mr. Irvin was incarcerated with the Indiana Department of Correction. Mr. Irvin was served with notice of all proceedings in this case but never responded or sought an appearance with the trial court. He never established paternity of K.E., and he does not contest the termination of any parental rights he might have had to the child.

In addition, Elliott named another man, Robert Stodden, as a putative father of K.E. This was done comparatively late in the proceedings of this case and despite Elliott's long-standing claim that Mr. Irvin was K.E.'s biological father. To this Court's knowledge, Mr. Stodden has not been notified of any of these proceedings. The trial court's findings do note that "Paternity of [K.E.] has not been established and the identity of her biological father is uncertain. . . ." Appellant's App. p. 12 (Judgment of Mar. 13, 2006).

without checking in. Having no other way to care for the child, Heider was forced to take K.E. to school with her the next morning. School authorities contacted the LaPorte County Department of Child Services (“DCS”), and Donna Brown, an investigator for the DCS, responded. Elliott was contacted and came to the school.

After meeting at the school, Brown and Elliott agreed that the matter would be handled informally, and K.E. would be immediately returned to Elliott’s care. Elliott, however, suddenly left the school without K.E., providing no explanation to Brown. Brown was left with no option but to immediately take custody of K.E., who was soon placed in foster care. The DCS filed a petition to have K.E. declared a Child in Need of Services (“CHINS”). This petition was granted on April 3, 2003.

Following the removal of K.E. from Elliott’s custody, Elliott was offered and engaged in numerous services aimed at reunification with her daughter. A psychological evaluation conducted by Clifton Titus, Ph.D., revealed that Elliott had an intellectual function in the low-average range and a good capacity to learn skills. She was found to suffer from prolonged severe depression and borderline personality disorder. Significantly, a Child Abuse Potential Inventory indicated that Elliott fell within a “significantly elevated range” of persons with a potential to engage in child abuse or neglect. She was determined to suffer from the effects of her own childhood sexual abuse at the hands of her step-father, for which she never received adequate therapy or support, and she was found to have poor anger-management skills, an overly-sensitive and emotionally childlike nature with a tendency to engage in histrionics, impulse control

² At the time, all involved persons characterized this as a suicide attempt. Elliott now claims it was only an attempt to get Ingram’s attention and that she lacked any intent to kill herself.

issues, and low self-esteem. Dr. Titus recommended that Elliott begin receiving treatment for major depression, including individual therapy and psychiatrist-monitored medication treatment, possibly on an ongoing, lifelong basis.

Elliott received counseling from different therapists after K.E. was removed, and she began seeing Robin Miller for counseling in April 2003. They met on an approximately weekly basis through July 2005. Elliott and K.E. were enrolled in the DCS's Intensive Case Management program, and Elliott attended weekly parenting classes from January or February through May 2003. K.E. also received therapy appropriate to her problems, including services aimed at helping her to control tantrums, aiding her care providers—including Elliott—to work with her emotional issues, speech therapy, and play therapy.

K.E. was briefly returned to Elliott's custody on November 3, 2003. However, K.E. was again removed from Elliott's custody just ten days later, on November 13, 2003, when Elliott was detained by police following a vehicular pursuit of her boyfriend, Ingram, and subsequent vandalism of Ingram's property.³ K.E. was returned to foster care, and Elliott continued receiving services. Thereafter, an attempt to reunify K.E. and Elliott failed in June 2004 because Elliott "afforded a higher priority to her social life at the expense and neglect of the child, including but not limited to the failure to secure needed medications that are required to assist the natural mother in the stabilization and

³ Though not arrested at that time, Elliott was taken to the police station and released. One to two weeks later, an officer came to her residence, informed her that a warrant had been issued for her stemming from the incident, and she was placed under arrest and charged with criminal mischief and invasion of privacy.

consistency of her behavior.” Appellant’s App. p. 12 (Petition for Involuntary Termination).

Reunification was once again attempted beginning on December 31, 2004. K.E. remained with Elliott until June 6, 2005, when the trial court discovered that Elliott had perjured herself during a court proceeding by testifying that she was employed when she, in fact, was not, and it was discovered that Elliott had failed to comply with the trial court’s order that she enroll herself and K.E. in certain services, and that Elliott had again been harassing Ingram, resulting in a warning from local police. K.E. was again placed in foster care, and the DCS eventually filed a petition for the involuntary termination of Elliott’s parental rights to the child.

In its petition, the DCS alleged that during her last period of reunification with K.E., Elliott “engaged in a pattern of decreased compliance and/or adherence to the case plan and orders pursuant to the CHINS cause.” *Id.* It further alleged that Elliott had been observed increasingly resorting to capital punishment of K.E.; that she failed to take K.E. to four “play therapy” appointments over the course of one month; that Elliott was driving her car even though her license had been suspended and that she was not properly securing K.E. in the car with the use of a child seat; that K.E. had observed Elliott engaged in a sex act with a boyfriend; that Elliott engaged in a telephone dating service in the presence of the child; that Elliott had failed to maintain her residence in a clean, healthy, and appropriate condition; that Elliott had been careless or neglectful in her selection and use of various childcare providers; that she failed to properly treat two separate incidences of head lice afflicting K.E.; and that K.E.’s behavior deteriorates

when she is in Elliott's care as evidenced by increased tantrums, oppositional-defiant behaviors and violence toward other children and care providers. *Id.* at 12-15.

At the hearing to terminate Elliott's parental rights, numerous witnesses testified in favor of the DCS's allegations. Dr. Titus testified as an expert in clinical psychology and verified the results of the testing he conducted with Elliott. Tr. p. 17-32. Amber Heider and DCS Investigator Donna Brown recalled, in detail, the events leading to K.E.'s initial removal from Elliott's home. *Id.* at 54-60, 73-77. Gina Venable, a former therapist who treated K.E., testified that K.E. was at times subject to fits of rage lasting up to two hours. *Id.* at 216. She testified that while these behaviors improved once K.E. started receiving therapy, K.E. regressed in these behaviors as her visitation time with Elliott increased because Elliott ignored advice to consistently reinforce exercises learned during therapy sessions. *Id.* at 216-17. Linda Behage, a social worker who has worked with K.E. and has provided parenting training to Elliott, testified that Elliott was not responsive to her suggestions regarding parenting and that Elliott failed to schedule recommended individual parenting sessions. *Id.* at 238. Behage also testified that she had recommended no further visitation between K.E. and Elliott after K.E. was last removed from Elliott's care, and that she recommends termination of Elliott's parental rights to the child and considers it very disruptive to K.E. that she has been in and out of her mother's home so many times without gaining any stability. *Id.* at 239-40. K.E.'s foster mother, Debra Scalf, testified that K.E. was thriving in her home, but that when she had been reunified with Elliott in the past, her behavior and speech had deteriorated. *Id.*

at 352. She also testified that she believed adoption was in K.E.'s best interests. *Id.* at 355-56.

DCS Case Manager Carol Hagerman testified regarding each of the incidents leading to removal of K.E. from Elliott's care, and regarding the two reunification attempts, along with other planned reunification attempts that were aborted or suspended due to Elliott's behavior and failed cooperation. *Id.* at 111-14, 128, 134, 147-48. She also detailed the services offered to Elliott and K.E. throughout the pendency of the CHINS and termination proceedings. *Id.* at 117-18, 128, 130. She testified regarding problems with some early visitation attempts, including an incident when Elliott had K.E. for a weekend visitation during which Elliott told her boyfriend that she would not feed K.E. if he did not visit her and that she would kill herself and "take [K.E.] with her." *Id.* at 126. She noted that K.E. had experienced an increase in the frequency and severity of tantrums, which she described also as "rages," following attempts to increase her visitation with Elliott. *Id.* at 128. She expressed an ongoing concern on behalf of the DCS that Elliott seemed unwilling to consistently take her medication and that she was unable to maintain stable behavior over a period of time, instead experiencing unpredictable periods of "ups and downs." *Id.* at 150.

Kurtis Ingram, Elliott's boyfriend, testified regarding the couple's tumultuous relationship and various incidents stemming from their involvement that contributed to K.E.'s removal from Elliott's care, including one incident when Elliott threatened to run her car into a tree with K.E. inside the vehicle. *Id.* at 82-85. He testified that Elliott currently lives with him in his parents' home, but that she does not pay rent or utilities

and that this is a temporary living arrangement. *Id.* at 80. He also testified that if Elliott regains custody of K.E., he does not intend to allow the child to live in his home. *Id.* at 91. Ingram testified that he has tried to assist Elliott by transporting her to medical and counseling appointments, encouraging her to seek employment, and generally to work toward regaining custody but that he does not feel she has made progress in these areas. *Id.* at 93. He testified that Elliott had not been compliant with her medication for “quite a long time” and that she only began taking it again the day before the termination hearing. *Id.* at 103. Further, he stated, “I’ve never known her to be on her medicine . . . consistently.” *Id.* at 105.

Allison Dent, the Court Appointed Special Advocate (“CASA”) in this case, testified that while she had initially supported reunification, she eventually determined that adoption was a better course of action. She testified that Elliott was unwilling and unable to follow through on the tasks she was given to work toward reunification, and she indicated that she was concerned by this and by Elliott’s history of medication noncompliance. *Id.* at 254, 256. She further testified that despite the bond between K.E. and Elliott, she believed it was in K.E.’s best interests to be adopted and have no contact with her birth mother. *Id.* at 259.

Elliott’s therapist, Robin Miller, testified regarding her work with Elliott. She testified that although Elliott had stopped coming to therapy as of July of 2005, she had not attained any of the goals of her therapy and still needed ongoing sessions. *Id.* at 267-68. She testified that despite repeated attempts to convince Elliott to take her medication consistently and ongoing education regarding her medication, Elliott was always

inconsistent with her medication and frequently missed appointments with her psychiatrist. *Id.* at 270-72. She also testified that Elliott had failed to make progress toward her specific treatment goals of making K.E. a priority, “accepting authority and learning to live within parameters and rules” of society, application of parenting skills, budgeting, impulse control, and “family of origin” issues. *Id.* at 272-81. Miller further testified that she does not believe Elliott can safely parent K.E., and she cites Elliott’s overall instability both emotionally and with regard to housing and financial issues, the multiple removals of K.E. from Elliott’s care, Elliott’s lack of motivation or genuine caring for K.E., her refusal or inability to manage her mental illness, and her focus on “her personal and social life rather than on [K.E.’s] needs” to support her belief that Elliott’s parental rights should be terminated. *Id.* at 282-83. Miller also stated, “[Elliott] refuses to accept responsibility for [K.E.’s] removal from her care, and that is important because without that understanding and acceptance, there is not really any hope that we have to look for any change in her behavior over time.” *Id.* at 283.

Much of Elliott’s own testimony corroborates the allegations of the DCS and other evidence supporting termination. She testified regarding the events that led to the DCS’s repeated decisions to remove K.E. from Elliott’s care, and although her version of those events does not vary significantly from the DCS’s and other witnesses’ versions, she insists with regard to each incident that removal of K.E. was not warranted. *Id.* at 431-34, 447-50, 481. She admitted that she had threatened to drive her car into a tree with K.E. inside the vehicle because she was angry that her boyfriend wanted to stay in for her birthday instead of take her out. *Id.* at 440. She admitted that she sometimes did not

have adequate food in the home to feed her daughter, and that she had lied about that fact during one of K.E.'s home visits because she knew that admitting to it would result in the visit's termination. *Id.* at 442. Elliott also testified that she held at least five jobs between February of 2005, when she was fired from Blue Chip Casino, and the date of the termination hearing in March of 2006; she had been fired from at least two of those jobs as well, and she was unemployed since November of 2005. *Id.* at 460-62. Elliott also admitted that she perjured herself before the trial court once before, during a period when she had physical custody of K.E., because she knew that if she testified truthfully, K.E. would have been removed from her custody. *Id.* at 477. She also admitted that she had not been medication compliant for approximately one year before the termination hearing, despite court orders and the recommendations of the DCS and all of her service providers. *Id.* at 491.

Following the termination hearing, the trial court issued its judgment terminating Elliott's parental rights to K.E. Elliott now appeals from this determination.

Discussion and Decision

We rephrase Elliott's argument on appeal as follows: Whether the trial court erred when it found, under Indiana Code § 31-35-2-4(b)(2), that:

- (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^[4]

⁴ Elliott contends, more generally, that the trial court's termination order is not supported by clear and convincing evidence, and she refers in passing to other portions of the termination statute in her briefs. However, she has only developed her argument with regard to this particular section of the statute, and so it does not appear that she directly contests the findings as to any other elements. We do remark,

This statute is written in the disjunctive and so requires a finding as to only one of the two factors listed. The DCS must prove this element by clear and convincing evidence. Ind. Code § 31-37-14-2; *In re Termination of Parent-Child Relationship of L.S.M.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *reh'g denied, trans. denied*. Because the trial court's decision must be upheld if its determination as to either of these two issues was correct, we find we need only address the first issue—whether there is a reasonable probability that the conditions that led to K.E.'s removal are unlikely to be remedied.

We will not set aside a trial court's judgment terminating a parent-child relationship unless we determine that it is clearly erroneous. *M.H.C. v. Hill*, 750 N.E.2d 872, 875 (Ind. Ct. App. 2001). Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences to support them. *Id.* In determining whether the evidence is sufficient to support the judgment terminating parental rights, this Court neither reweighs the evidence nor judges the credibility of witnesses. *Id.*

To determine whether the conditions that resulted in K.E.'s removal will be remedied, the trial court must look to the parent's fitness at the time of the termination proceeding. *In re Termination of Parent-Child Relationship of D.L. & C.L.*, 814 N.E.2d 1022, 1027-28 (Ind. Ct. App. 2004), *trans. denied*. In addition, the court must look at the patterns of conduct in which the parent has engaged to determine if future changes are likely to occur. *Id.* at 1028. When making its determination, the trial court can reasonably consider the services offered to the parent and the parent's response to those services. *Id.*

however, that the other elements of the termination statute were sufficiently proved by the DCS at the termination hearing.

Counsel for Elliott spends most of her brief and reply brief recalling the events of Elliott's childhood, including Elliott's sexual abuse, and arguing that the trial court's decision was based on little more than a finding that Elliott's parental rights should be terminated because she suffered mental illness as a result of her abuse. While we sympathize with Elliott—and we do not doubt that the trial court does, as well—we cannot help but find that this argument altogether ignores the trial court's actual findings and the plethora of evidence presented at the termination hearing.

The DCS presented numerous witnesses, both from Elliott's personal life and from the service providers who worked on this case, to support its allegation that the conditions leading to K.E.'s removal were unlikely to be remedied. Elliott's boyfriend, Kurtis Ingram, testified that Elliott had made little progress toward her goals for reunification with K.E., that she remained in a tumultuous relationship with him, that he had never known her to be medication compliant, and that Elliott had not established a permanent living situation. Each of the therapists and social services workers in this case testified that Elliott has not made progress toward remedying the conditions that led to K.E.'s removal and that Elliott is medication noncompliant. Elliott's therapist, Robin Miller, testified that Elliott has failed to make progress on any of the goals of her therapy sessions, all of which were aimed at remedying the conditions that led to K.E.'s removal from Elliott's home. Several witnesses testified that K.E. showed significant improvement in her behavior while in foster care, but that she routinely regressed when she was visiting or reunified with Elliott.

Elliott's own testimony reinforces each of these points. Elliott admitted that she has never been compliant with her medication, even under court order. She acknowledged the circumstances leading, time and again, to the removal of her daughter; sadly, she lacks the insight to recognize that these circumstances endanger her child in a manner that requires DCS intervention. She testified that she has been noncompliant with court orders and with the services provided for her, that her relationship with Kurtis Ingram—which is ongoing—is disruptive and has taken priority over her care for her daughter, and that she has lied to service providers and the trial court in order to keep K.E. with her.

Finally, and perhaps even more representative of the probability that the conditions leading to K.E.'s removal are unlikely to be remedied, is the fact that this child has been removed from her mother's care *three times* over less than a three-year period. DCS Case Worker Hagerman testified regarding each of these detentions, and she detailed the numerous, ongoing services made available to Elliott to help her bring safety and stability to her relationship with her daughter. Elliott, sadly, has proved unable to maintain such stability for more than a very short period of time. That this situation continues to repeat itself in a manner so disruptive to this small child's upbringing leaves little question that the situation cannot be remedied long-term. The trial court's determination was based on sufficient evidence to prove this element.

Affirmed.

BAKER, J., and CRONE, J., concur.