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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF W.A., minor child,	)	
and	)	
SARAH ANDERS,	)	
Appellant-Respondent,	)	
vs.	)	No. 71A04-0703-JV-163
ST. JOSEPH COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Harold E. Brueseke, Special Judge
Cause No. 71J01-0509-JT-94

November 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Sarah Anders ("Mother") appeals the involuntary termination of her parental rights to her son, W.A.[1] Concluding that the St. Joseph County Department of Child Services ("DCS") proved by clear and convincing evidence that the continuation of the parent-child relationship poses a threat to W.A.'s well-being, that termination of Mother's parental rights is in the best interests of W.A., and that the DCS has a satisfactory plan for the care and treatment of W.A., we affirm the termination of Mother's parental rights.

Facts and Procedural History

In April 2005, while pregnant, seventeen-year-old Mother was adjudicated a Child in Need of Services ("CHINS"), removed from her parents' home, and placed at the Morningstar Girls Home ("Morningstar") in Logansport, Indiana. In that same month, Mother, who is mildly mentally impaired with an IQ score of sixty-four, *see* Petitioner's Ex. 6, p. 4,[2] and has been enrolled in special education classes throughout her life, underwent a psychosexual assessment. The assessment concluded:

> [T]here is significant concern regarding her ability to parent a child, as she has demonstrated great difficulty in her own judgment and ability to care for her own needs and behaviors. Should [Mother] keep this child, very close monitoring of this situation will be necessary to ensure the safety of the child. This is especially noted as Mrs. Anders stated she was unwilling to raise another child and that she does not believe [Mother] can parent a child.

[1] On October 22, 2007, pursuant to Indiana Appellate Rule 47, Mother filed a Motion to Amend Brief to correct case citations and include citation to Indiana Code § 31-35-2-4(b)(2), which we hereby deny. Nevertheless, we conduct our analysis under the auspices of the termination statute.

[2] All of Petitioner's exhibits are located at the end of the transcript.

Petitioner's Ex. 8, p. 7.

On June 23, 2005, Mother gave birth to W.A. On June 27, 2005, the St. Joseph Probate Court ("trial court") granted the DCS an order of detention, removed W.A. from the care of Mother, and placed W.A. in a foster home, where he remains. On July 28, 2005, the DCS filed a petition alleging W.A. to be a CHINS. On September 28, 2005, a CHINS initial hearing was held and Mother admitted to the allegations. On that same day, the trial court entered a dispositional order requiring Mother to: 1) participate in individual counseling; 2) visit with W.A. on a regular basis; 3) complete parenting classes; 4) maintain consistent contact with the DCS; 5) complete high school or obtain a GED; 6) follow the rules of the group home so that she could continue visitation with W.A.; and 7) refrain from stealing.

On August 30, 2006, the DCS filed a petition to terminate Mother's parental rights to W.A., and the trial court held a hearing on March 12, 2007. At the hearing, reports from Dr. Anthony L. Berardi ("Dr. Berardi") and Dr. Alan Wax ("Dr. Wax"), as well as W.A.'s Court Appointed Special Advocate ("CASA"), were admitted into evidence. Dr. Berardi's written assessment, completed on May 13, 2006, concluded that "if [Mother] were expected to assume complete responsibility and full-time management of her son at this point, the risks associated with same would be too great that she would not provide adequately for the child's basic needs for sustained, consistent order, supervision, nurturing, and monitoring, and she would not likely be capable of carrying out a consistent and safe parenting plan." Petitioner's Ex. 7, p. 8. Dr. Wax's July 17, 2006, parenting assessment of Mother reached the following conclusions:

> [Mother] cannot and should not independently parent [W.A.], and that she will need "considerable" assistance for "many years to come" if there is to be any hope of her parenting her son.
>
> * * * * *
>
> [W]hat will happen to [W.A.] should he be placed with [Mother] and her parents and things not work out after a year or two (and he would have to be removed). At that point [W.A.] will have become strongly bonded with [Mother] and her parents, and to then remove him creates the possibility of [W.A.] suffering long-term psychological damage (such as Reactive Attachment Disorder). It should be noted, therefore, that there is (potentially) "a lot to lose" by attempting to do this and having it not work out.

Petitioner's Ex. 5, p. 3, 4. Further, two CASA reports filed with the court made a number of observations. First, although recognizing that Mother's therapist believed that Mother should be given "a chance to parent [W.A.]," Appellant's App. p. 48, the CASA observed that the therapist had met Mother only nine times. These reports also made several observations regarding Mother's ability to parent:

> The program at Morningstar consists of five (5) levels. Level five (5) being the highest. During the fourteen (14) months [Mother] resided there, she occasionally reached level three (3). [Mother] could not remain at this level consistently due to "not following rules". [Mother] was unable to sustain or progress beyond brief advancement to level three (3) in fourteen (14) months and the placement could not be considered successful . . . .
>
> * * * * *
>
> [Mother] has had weekly three (3) hour visits with [W.A.] since July of 2006. Shelly Ambroziak from LifeLine supervises these visits. [Mother] has cancelled over 20% of these visits citing reasons such as "not feeling well,[") "the day being too hot" or "being too stressed out." On occasions when court and visitation fall on the same day, [Mother] frequently requests that "court time count towards the visitation time" so that her free time is not compromised.

Petitioner"s Ex. 9. Ultimately, the CASA concluded that "[Mother] has had extensive opportunities to exhibit and learn appropriate parenting skills and has by all accounts failed to do so. . . . It is my recommendation that in order for both [Mother] and [W.A.] to flourish, [Mother] needs to work on achieving self-sufficiency and [W.A.] should be able to continue to safely thrive in his current placement, as he has since birth." Petitioner's Ex. 9. Additionally, Lifeline supervisor Shelly Ambroziak expressed concern over "the lack of bond between [Mother] and [W.A.]," Tr. p. 56, and concern that during her visitation time with [W.A] "she talks more to me or whoever else is in the room," *id*. at 61, rather than W.A..

The trial court issued the following findings:

> With regard to the provisions of IC 31-35-2-4 and IC 31-35-2-4.5, the following is true:
>
> > 1. [W.A.] has been removed from the custody of [Mother] for at least six (6) months under the dispositional order entered in Cause No. 71J01-0506-JC-000240. . . .
> >
> > 2. That removal has continued for at least fifteen (15) of the most recent twenty-two (22) months.
> >
> > 3. None of the factors found at IC 31-35-2-4.5(d) require the court to dismiss the *VERIFIED PETITION FOR INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP*.
> >
> > 4. There is more than a reasonable probability that the conditions resulting in [W.A.'s] removal from [Mother] will not be remedied.
> >
> > 5. The continuation of the parent-child relationship between [Mother] and [W.A.] poses a threat to his well-being.
> >
> > 6. Termination is in [W.A.'s] best interests.
> >
> > 7. The Department of Child Services has a satisfactory plan for [W.A.'s] care and treatment, namely his adoption.

Appellant's App. p. 5. The trial court then concluded that:

> A. The Department of Child Services has produced clear and convincing evidence to show that its *VERIFIED PETITION FOR INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP* filed in this case on August 24, 2006 should be granted.
>
> B. The parent-child relationship between [W.A.] and [Mother] is therefore hereby terminated and all rights, powers, privileges, immunities, duties and obligations (including the right to consent to adoption) pertaining to that relationship are hereby permanently terminated.

Id. Mother now appeals.

Discussion and Decision

On appeal, Mother contends that the trial court erred in terminating her parental rights.[3] "When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility." *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). "We consider only the evidence and reasonable inferences that are most favorable to the judgment." *Id*. Here, the trial court entered findings of fact and conclusions of law in granting the DCS' petition to terminate Mother's parental rights. When reviewing findings of fact and conclusions of law entered in a case involving a termination of parental rights, we implement 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*. We set aside the trial court's judgment only if it is clearly erroneous. *Id*. A judgment is "clearly

[3] We remind counsel that an appellant's appendix must contain "pleadings and other documents from the Clerk's Record . . . that are necessary for resolution of the issues raised on appeal[.]" Ind. Appellate Rule 50(A)(2)(f). Mother failed to include the Petition for Termination of Parental Rights in her appendix.

erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment." *In re R.J.*, 829 N.E.2d 1032, 1035 (Ind. Ct. App. 2005).

We begin by emphasizing that a trial court need not wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. *Castro v. State Office of Family & Children*, 842 N.E.2d 367, 372 (Ind. Ct. App. 2006), *trans. denied*. Rather, when the evidence shows that the emotional and physical development of a child in need of services is threatened, termination of the parent-child relationship is appropriate. *Id*. This Court has stated:

> The involuntary termination of parental rights is an extreme measure that terminates all rights of the parent to his or her child and is designed to be used only as a last resort when all other reasonable efforts have failed. The Fourteenth Amendment to the United States Constitution provides parents with the rights to establish a home and raise their children. However, the law allows for termination of those rights when the parties are unable or unwilling to meet their responsibility as parents. This policy balances the constitutional rights of the parents to the care and custody of their children with the State's limited authority to interfere with these rights. Because the ultimate purpose of the law is to protect the child, the parent-child relationship must give way when it is no longer in the child's best interest to maintain the relationship.

Id. at 372-73 (quoting *M.H.C. v. Hill*, 750 N.E.2d 872, 875 (Ind. Ct. App. 2001)) (citations omitted). In sum, the purpose of terminating parental rights is not to punish parents but to protect children. *Id*. at 373.

Indiana Code § 31-35-2-4(b) provides that a petition to terminate parental rights must allege, in pertinent part, that:

> (A) one (1) of the following exists:

(i) the child has been removed from the parent for at least (6) months under a dispositional decree;

(ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or

(iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(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 DCS must prove each of these elements by clear and convincing evidence. Ind. Code § 31-37-14-2; *In re D.L.*, 814 N.E.2d 1022, 1026 (Ind. Ct. App. 2004), *trans. denied*.

As to the first element, there is no dispute that W.A. was removed from Mother's custody under a dispositional decree well over six months before the termination. As for the second element, because it is written in the disjunctive, the trial court needs only find either that the conditions will not be remedied or that the continuation of the parent-child relationship poses a threat to the child. *In re L.S.*, 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), *reh'g denied, trans. denied*. Here, there is ample evidence to demonstrate a reasonable probability that the continuation of the parent-child relationship poses a threat

to the well-being of W.A. In particular, Dr. Berardi assessed Mother's ability to parent and her capacity to care for W.A. and concluded, "if [Mother] were expected to assume complete responsibility and full-time management of her son at this point, the risks associated with same would be too great that she would not provide adequately for the child's basic needs for sustained, consistent order, supervision, nurturing, and monitoring, and she would not likely be capable of carrying out a consistent and safe parenting plan." Petitioner's Ex. 7, p. 8. Additionally, Dr. Wax assessed Mother's parenting capabilities and concluded, "[Mother] cannot and should not independently parent [W.A.], and . . . she will need 'considerable assistance' for 'many years to come' if there is to be any hope of her parenting her son." Petitioner's Ex. 5, p. 3. Finally, an assessment of Mother's parenting abilities, included in a CASA report, concluded, "[Mother] cannot be relied upon to safely and consistently provide full time parenting for her son now or in the immediate future." Petitioner's Ex. 9. This evidence is sufficient to demonstrate that the continuation of the parent-child relationship poses a threat to W.A.'s well-being.

As to the third element, there is also sufficient evidence to show that termination of Mother's parental rights is in W.A.'s best interests. In determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the DCS and to the totality of the evidence. *In re D.L.*, 814 N.E.2d at 1030. In doing so, the trial court must subordinate the interests of the parent to those of the child involved. *Id.*

Here, the totality of the evidence shows that termination is in W.A.'s best interests. As earlier stated, Dr. Berardi, Dr. Wax, and a CASA report deemed Mother unable to support and care for W.A. independently. Additionally, W.A. has been adequately cared

for and is developing well in his foster home, where he has lived since he was four days old. In contrast, Mother argues that "[i]n looking at the totality of the circumstances . . . the trial court heard evidence from health care professionals in favor of [Mother] and family members who believed that [Mother] was competent to look after young children." Appellant's Br. p. 7. While we certainly acknowledge the favorable testimony from various health care professionals and family members, we note that the trial court weighed this evidence against the testimony of two doctors and a CASA report that deemed her unfit to independently care for W.A. Therefore, Mother's argument is merely a request for us to reweigh the evidence, which we will not do. Sufficient evidence exists to support the trial court's finding that termination was in W.A.'s best interests.

Finally, sufficient evidence exists to show that there is a satisfactory plan for the care and treatment of the child. The plan for a child following termination "need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated." *In re B.D.J.*, 728 N.E.2d 195, 204 (Ind. Ct. App. 2000). Here, the DCS has a satisfactory plan in place for the care and treatment of W.A., namely, his adoption. *See In re C.C.*, 788 N.E.2d 847, 856 (Ind. Ct. App. 2003), *trans. denied* ("Because 'adoption is a satisfactory plan,' we conclude that there was sufficient evidence to support the trial court's finding that a satisfactory plan for the care and treatment of C.C. existed following the termination of Cobb's parental rights."). The trial court did not err in reaching this finding.

The trial court's judgment terminating Mother's parental rights to W.A. is not clearly erroneous.

Affirmed.

BAKER, C.J., and BAILEY, J., concur.