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**IN THE
COURT OF APPEALS OF INDIANA**

S.M.K.,)
)
Appellant-Respondent,)
)
vs.) No. 48A05-0902-JV-113
)
INDIANA DEPARTMENT OF CHILD SERVICES,)
)
Appellee-Petitioner.)

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Jack L. Brinkman, Judge
Cause Nos. 48D02-0802-JT-80 and 48D02-0802-JT-81

June 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

S.M.K. (“Mother”) appeals from the trial court’s order terminating her parental rights to her two minor children, T.M. and D.G. Mother raises a single issue for our review, namely, whether the trial court erred when it terminated her parental rights.

We affirm.

FACTS AND PROCEDURAL HISTORY

Mother is the biological mother of T.M. and D.G. On May 25, 2007, the Madison County Department of Child Services (“DCS”) filed a petition with the trial court alleging T.M. and D.G. to be children in need of services (“CHINS”) and seeking their removal from Mother’s care. The DCS’s petition alleged Mother was purchasing, selling, and using cocaine in her home and in front of T.M. and D.G. Additionally, T.M. had missed thirty days of school and, on one day, D.G., who was three-years old at the time, was found nearly a half-mile away from the family home without explanation. The court granted the DCS’s petition on May 29.

After being removed from Mother’s care, T.M. and D.G. were placed with a foster parent, A.H.. A.H. met with officials at T.M.’s school to discuss a student-achievement plan for T.M., who was struggling academically. Mother did not attend that meeting. T.M. also began working with a psychiatric social worker, Jeff Valero. Mother did not participate in Valero’s treatment of T.M. Valero diagnosed T.M. with an adjustment disorder and, later, with attention deficit hyper-activity disorder. Since being placed with A.H., Valero saw improvement in T.M.’s conditions, T.M.’s ability to express his emotions, and D.G.’s speech and ability to follow directions.

The DCS also assigned Lisa Rinard, a family consultant with Kid's Peace, to work with T.M. and D.G. after their removal from Mother's care. Rinard met with the children and A.H. at A.H.'s home at least twice per month. Rinard also supervised Mother's visitation with the children. Rinard noticed that D.G.'s behavior and T.M.'s school attendance and performance improved significantly after their placement with A.H..

In the meantime, the DCS referred Mother to the Children's Bureau for home-based casework. Case Manager Amy Johnson was assigned to Mother's case and set up various goals for Mother, namely, "to get the children home, to be drug free, [to obtain] housing, [to establish a] budget," and to work on parenting skills. Appellee's App. at 61. But Mother failed to complete those goals and failed to show up for appointments with Johnson at Mother's own residence. Accordingly, Mother was discharged from the program for noncompliance in November of 2007.

The DCS also referred Mother to Crestview Center and, later, the Center for Mental Health and St. Joseph's Trinity House for substance abuse evaluations. Mother completed her evaluation with Crestview Center and was referred to an intensive outpatient program. Mother failed to adequately attend the outpatient sessions and was discharged therefrom sometime after July 5, 2007. Mother likewise failed to follow through with her referral to the Center for Mental Health. In May and June of 2008, Mother attended twelve substance abuse sessions at the St. Joseph's Trinity House, but she was dismissed from that program after testing positive for cocaine and admitting to drinking at work.

On August 9, 2007, the trial court entered a dispositional order continuing the placement of the children with A.H. The dispositional order also required the following of Mother: to maintain a legal source of income and suitable housing with food, clothing, and functional utilities to support all persons residing therein; to inform Amanda Capes, the DCS's Family Case Manager ("FCM"), of any change in address, phone number, or employment within forty-eight hours of said change; to attend all court hearings in the matter; to visit the children on a consistent and regular basis; to contact the FCM every week to facilitate compliance with the court's orders; to reenroll in an intensive outpatient program and receive positive recommendations; to work with Amy Johnson and receive positive recommendations; to submit to random drug screens and test negative for substances; to take an active role in the children's medical, dental, and mental health, and in their school appointments; and to pay \$22.50 per week in child support. See id. at 108-09.

On February 29, 2008, DCS filed its petition for the involuntary termination of the parent-child relationship. On October 21, the court held an evidentiary hearing on the DCS's petition. The DCS presented several witnesses in support of its petition. FCM Capes testified that Mother had failed to comply with virtually all of the trial court's dispositional requirements. Specifically, FCM Capes testified that: Mother had been discharged from the Children's Bureau for noncompliance; Mother had not paid any child support; Mother had only complied with five of eleven drug screens, one of which she failed; Mother failed a separate drug test that was required by the terms of her probation; Mother was currently unemployed and had on-and-off employment since June of 2007;

and Mother had not taken an active role in the children's medical, dental, or mental health or their schooling. The two failed drug tests occurred on June 25, 2008, and September 17, 2008, more than a year after the DCS first became involved. FCM Capes' testimony was corroborated by Valero, Johnson, Rinard, A.H., and representatives of the various substance-abuse centers to which Mother had been referred. Mother's defense consisted solely of her own testimony, in which she stated that she had obtained an apartment in Kokomo, had a job that paid her \$400 per week, had enrolled in a substance abuse program, and had consistently visited the children once a week for two hours.

On November 19, 2008, the court entered its order terminating Mother's parental rights over T.M. and D.G. This appeal ensued.

DISCUSSION AND DECISION

Standard of Review

Initially, we observe that this court has long had a highly deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). When reviewing the trial court's judgment, we will not reweigh the evidence or judge the credibility of the witnesses. In re D.D., 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. 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. However, the trial court must subordinate the interests of the parents to those of the child when evaluating the

circumstances surrounding the termination. K.S., 750 N.E.2d at 837. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id. at 836. In order to terminate a parent-child relationship, the State is required to allege, among other things, 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;

(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.

Ind. Code § 31-35-2-4(b)(2) (2007). The State must establish each of these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

Discussion

Mother challenges the sufficiency of the evidence supporting the trial court's order terminating her parental rights. Specifically, she argues that the DCS failed to establish by clear and convincing evidence each of the following: (1) "that the conditions that resulted in T.M. and D.G.'s removal would not be remedied," Appellant's Brief at 8, and (2) that "continuation of the parent-child relationship was detrimental" to the well being of the children, id. Mother does not contest the trial court's assessment that termination of the parental relationship was in the children's best interests.

At the outset, we observe that Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. A trial court must therefore find that only one of the two requirements of subsection (B) have been established by clear and convincing evidence in order to satisfy this portion of the statute. See L.S., 717 N.E.2d at 209. Here, the trial court determined that the DCS presented sufficient evidence to satisfy both requirements of subsection (B). Specifically, the trial court found that the DCS established a reasonable probability both that the conditions resulting in removal of the children from Mother's care will not be remedied and that continuation of the parent-child relationship poses a threat to the children's well-being. As discussed below, we need only consider whether sufficient evidence supports the trial court's former finding.

When determining whether a reasonable probability exists that the conditions justifying a child's removal or continued placement outside the home will not be remedied, the trial court must 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. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. The trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." 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. A.F. v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. The trial court may also properly consider the

services offered to the parent by a county Department of Child Services, and the parent's response to those services, as evidence of whether conditions will be remedied. Id.

A county Department of Child Services is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). "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 County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied. In addition, the failure to exercise the right to visit one's child demonstrates a "lack of commitment to complete the actions necessary to preserve the parent-child relationship." Id.

Here, the evidence and reasonable inferences therefrom demonstrate a reasonable probability that the conditions that resulted in the children's removal from Mother would not be remedied. As testified to by FCM Capes and other witnesses, Mother repeatedly failed to adequately participate in DCS-related services. Mother did not participate in the medical, dental, or mental health appointments for the children. Mother did not participate in school conferences for the children. Mother was discharged from the Children's Bureau's program for home-based services due to her failure to participate. Mother did not pay child support. And, most significantly, Mother repeatedly refused or failed drug tests over the course of seventeen months of DCS involvement, and Mother's participation in substance-abuse programs was inconsistent at best. Indeed, when FCM

Capes was asked whether she believed the conditions that resulted in the children's removal from Mother's care could reasonably be remedied, FCM Capes testified that she did not believe so.

On appeal, Mother emphasizes her own testimony. But that argument amounts to an invitation for this court to reweigh the evidence, which we will not do. D.D., 804 N.E.2d at 264. Again, a trial court must determine a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the children. And here, the DCS presented clear and convincing evidence to establish at least a reasonable probability that the conditions resulting in the children's removal from Mother's care would not be remedied. As such, we need not address the trial court's additional conclusion that continuation of the parent-child relationship poses a threat to the children's well-being. See I.C. § 31-35-2-4(b)(2)(B).

Affirmed.

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