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**IN THE  
COURT OF APPEALS OF INDIANA**

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L.B., )  
 )  
Appellant-Respondent, )  
 )  
vs. )  
 )  
INDIANA DEPARTMENT OF CHILD SERVICES, )  
 )  
Appellee-Petitioner. )

No. 79A02-1012-JT-1372

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APPEAL FROM THE TIPPECANOE SUPERIOR COURT  
The Honorable Diana J. LaViolette, Senior Judge  
Cause Nos. 79D03-1008-JT-100 and 79D03-1008-JT-101

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**July 29, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

L.B. (“Mother”) appeals the involuntary termination of her parental rights to her minor child B.B. In particular, Mother contends that the trial court’s conclusions that the termination of her parental rights is in B.B.’s best interests and that there is a satisfactory plan for the care and treatment of B.B. are clearly erroneous. Concluding that the Indiana Department of Child Services (“DCS”) presented clear and convincing evidence to support the trial court’s judgment, we affirm.

## **FACTS AND PROCEDURAL HISTORY**

The trial court issued the following findings and conclusions setting out the facts and procedural history of this case:

1. [B.B.] was born to [L.B.] (“Mother”) and [D.W.] (“Father”) on September 20, 2008.
2. As detailed in DCS Exhibit 4, on or about October 1, 2009, the Department of Child Services (“DCS”) received a report alleging that Mother had the physical care of [B.B.] [and] had recently used methamphetamine.
3. As detailed in DCS Exhibit 4, on or about October 14, 2009, DCS made contact with Mother who denied using methamphetamine. Mother acknowledged that she had recently used marijuana and had a history of abusing other controlled substances as well.
4. As detailed in DCS Exhibit 4, on or about October 1, 2009, Mother tested positive for marijuana and on or about October 14, 2009, Mother tested positive for methamphetamine.
5. As detailed in DCS Exhibit 4 and in Mother’s testimony, on October 21, 2009[,] the Lafayette Police Department executed an arrest warrant for Mother. She was found with [B.B.] in her care, under the influence of, in possession of, and in the act of injecting or attempting to inject methamphetamine.
6. As detailed by Mother in her testimony, she had begun or resumed using methamphetamine in late spring or early summer of 2009.
7. As detailed in DCS Exhibit 4, Mother became addicted to methamphetamine, injecting it regularly. As Mother stated, “If it is in front of me, I will use it.”

8. Two different men were identified as possible fathers of [B.B.], [D.W.] and [A.H.]. DNA test results filed with the Court on November 13, 2009[,] confirmed that [D.W.] is [B.B.]'s Father.
9. As detailed in DCS exhibit 4, when interviewed in October 2009, Mother identified Father as a past source of illegal drugs and Father admitted recent use of marijuana.
10. As detailed in DCS Exhibit 9, in a hair drug screen taken October 22, 2009, [B.B.] tested positive for methamphetamine at a level more than 65 times the confirmation cutoff level.
11. On October 21, 2009, [B.B.] was removed from the care of his parents and placed in foster care.
12. For a very brief period following her October 21, 2009[,] arrest, Mother was in work release and therefore able to participate in some services and visits.
13. However, on or about November 16, 2009, Mother was charged with A felony dealing in methamphetamine, removed from work release, and she has been continuously incarcerated since.
14. On December 1, 2009, [B.B.] was adjudicated a child in need of services and a dispositional decree was entered wherein he was placed outside of either parent's care.
15. As detailed in DCS Exhibit 3, Mother first became involved with the juvenile justice system in June 2007 for truancy.
16. Mother almost immediately had violations of her probation, being placed on home detention in November 2007 because of a new allegation of theft, and then in secure detention in December 2007 because of a new allegation of possession of marijuana.
17. Mother admitted the violations of probation, and in December 2007 was ordered inter alia to participate in individual counseling. As detailed in Mother's testimony, her counseling included work to address her emerging substance abuse issues.
18. In February 2008, because she failed a drug screen and had just learned she was pregnant with [B.B.], Mother's disposition in her juvenile cases was modified to include participation in I.O.P.
19. At the Court's suggestions, Mother began to voluntarily participate in the Vision of Hope program, a faith-based comprehensive program to assist young pregnant women and new mothers. Mother remained in the program as a resident through the later portion of her pregnancy.
20. After [B.B.]'s birth, Mother never returned to live at Vision of Hope. She continued to participate in counseling services for a few more months. As detailed in DCS Exhibit 12, Mother was discharged from counseling services with Vision of Hope in December 2008 for a variety of different program violations. At about the same time, Mother entered into a romantic relationship with a man she knew was using illegal drugs.

21. In March 2009, having again been found in violation of probation for using controlled substances, Mother's disposition was modified to include an obligation to participate in day reporting with Home with Hope and to participate in the Matrix drug treatment program with Wabash Valley Hospital.

22. In October 2009, after failing another drug screen, Mother was unsuccessfully discharged from probation.

23. On December 1, 2009, [B.B.] was adjudicated a child in need of services and dispositional and participation decrees were entered.

24. Mother was ordered, inter alia, to participate in a substance abuse evaluation and to complete the Matrix substance abuse treatment program.

\* \* \*

26. Because she remained continuously incarcerated from November 2009 forward, Mother was unable to make any progress in services.

\* \* \*

32. On August 9, 2010, Mother was sentenced to a total of eight (8) years in the Department of Correction[] for Dealing in Methamphetamine and Neglect of a Dependent. She also received two (2) years in community corrections and two (2) years of probation.

33. Although Mother is hopeful to receive time cuts and/or a sentence modification, her current projected outdate from the Department of Correction[] is November 17, 2013.

34. Based on common practices at Tippecanoe County Community Corrections, Mother expects the first portion of her community corrections to be served in work release followed by a period of electronic monitored home detention.

35. Even by her most hopeful of timelines, given her D.O.C. time, community corrections time, and the need to find stable employment and housing, Mother estimated and the court finds that there is no reasonable probability that Mother could be in a position to have the care of [B.B.] any sooner than approximately three years from today. Based upon her current earliest possible release date from D.O.C., it will likely be four or more years.

36. [B.B.] has been diagnosed with an assortment of medical problems, which although thankfully not severe, require greater than average attention and effort. At least some of these medical problems are attributable to Mother's use of controlled substances during her pregnancy.

37. DCS filed its Petition to Terminate Parental Rights on August 26, 2010.

38. When these proceedings began, all parties were residents of Tippecanoe County.

39. The CASA and DCS Family Case Manager have had a broad opportunity to assess all of the facts and circumstances relevant to these proceedings. Both testified that termination of parental rights is in [B.B.]’s best interest.

40. DCS’s plan for the care and treatment of [B.B.] should the court grant a termination is adoption.

41. Given [B.B.]’s age and health he is readily adoptable.

42. Mother has struggled for several years with profound substance abuse problems which have persistently endangered herself and her child.

\* \* \*

44. Through the course of the CHINS proceeding and Mother’s delinquency proceeding, both parents have been afforded the appropriate set of services to give them the best opportunity to resolve the problems which led to [B.B.]’s removal and the inability to return him to their care.

45. Neither Parent has made progress toward resolving the problems that resulted in removal and/or the inability to place [B.B.] back into either parent’s care.

Based upon these findings, the Court now concludes:

1. [B.B.] has been removed from the parents’ care for at least six months under a dispositional decree in a CHINS proceeding, cause number 79D03-0910-JC-321, more than six months before the filing of the termination proceeding.

2. There is a reasonable probability that the problems that resulted in removal of [B.B.] from Mother’s care and placement outside of her home will not be remedied.

\* \* \*

4. There is also a reasonable probability that continuation of the parent-child relationship poses a threat to [B.B.]’s well-being.

5. Termination is in [B.B.]’s best interest.

6. Adoption is a satisfactory plan for [B.B.]’s care and treatment.

Appellant’s App. at 179-82. This appeal ensued.

## DISCUSSION AND DECISION

We begin our review by acknowledging 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 a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. In re D.D., 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. Id. Moreover, in deference to the trial 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. A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment thereon. Bester, 839 N.E.2d at 147. Thus, if the evidence and inferences support the trial court's decision, we must affirm. L.S., 717 N.E.2d at 208.

A parent's interest in the care, custody, and control of his or her children is arguably one of the oldest of our fundamental liberty interests. Bester, 839 N.E.2d at 147. Hence, "[t]he 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. These parental interests, however, are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. Id. In addition, although the right to raise one's own child should not be terminated solely

because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. K.S., 750 N.E.2d at 836.

Before an involuntary termination of parental rights may occur, 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.

\* \* \*

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

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

Ind. Code § 31-35-2-4(b)(2)(B) - (D) (2010). Moreover, “[t]he State’s burden of proof in termination of parental rights cases is one of ‘clear and convincing evidence.’ ” In re G.Y., 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code § 31-37-14-2 (2008)).

Our Supreme Court has recently reiterated that “on appeal, it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by the appellant before there is a basis for reversal.” Best v. Best, 941 N.E.2d 499, 503 (Ind. 2011). Moreover, Indiana Code Section 31-35-2-8(a) states that if the trial court finds that the allegations of the termination petition are true, the court shall terminate the parent-child relationship. See id.

Here, in its judgment terminating Mother's parental rights to B.B., the trial court made multiple findings and conclusions regarding Mother's history of drug abuse, criminal conduct, probation violations, and failure to successfully participate in either counseling or drug abuse treatment programs. And the trial court found that termination is in the best interests of B.B. Based on these and other findings, the trial court ordered that the parent-child relationship between Mother and B.B. be terminated, and the evidence supports those findings. Still, Mother contends as grounds for her appeal that the evidence is insufficient (1) to support the trial court's conclusions that termination is in B.B.'s best interests and (2) that there is a satisfactory plan for the care and treatment of the child. We address each contention in turn. Mother does not challenge any of the other findings and conclusions on appeal.

Mother maintains that the trial court's finding that termination of her parental rights is in B.B.'s best interests is "clearly erroneous." Brief of Appellant at 20. In support of that contention, in essence, Mother asserts that the evidence is uncontroverted that termination is not in B.B.'s best interests because "it may cost [him] his sense of his family, and deny him the security of knowing there are blood relatives who love him." Id. In short, Mother argues that B.B.'s best interests can only be served if his maternal grandparents are granted guardianship over him in lieu of the termination of Mother's parental rights. We cannot agree.

The CASA testified that she believed that termination of Mother's parental rights is in B.B.'s best interests. And Kathleen Carmosin, the DCS caseworker assigned to this case, testified as follows:

It is in [B.B.]’s best interest that [Father and Mother’s parental] rights be terminated. They cannot provide a safe environment for him at this time or in the future, in the near future. His well being as far as his meth exposure has damaged him for the rest of his life. He’s going to need services for this.

Transcript at 66. And Carmosin testified further that “an adoption and not a guardianship or some alternate proceeding” is in B.B.’s best interests. Id. at 68. Mother’s contentions on appeal amount to a request that we reweigh the evidence, which we will not do. Mother has not demonstrated that the trial court’s finding that termination of her parental rights is in B.B.’s best interests is clearly erroneous.

Next, Mother appears to contend that the trial court erred when it “ignore[d] the practical result of the termination on the child” in considering whether there is a satisfactory plan for the care and treatment of the child. Brief of Appellant at 16. In essence, Mother maintains that the trial court is required by statute to “examine both the placement possibilities and their ramifications” in determining whether to terminate parental rights. Id. at 16-17. And Mother asserts that the trial court erred when it declined to consider the evidence that B.B. was “extremely bonded” with his maternal grandparents in making the best interests of the child determination.<sup>1</sup> Id. at 18. Mother does not direct us to any citation to authority in support of her contentions on this issue. And to the extent that Mother contends that the trial court erred when it terminated her parental rights without guaranteeing placement of B.B. with his maternal grandparents, Mother cannot prevail.

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<sup>1</sup> Mother’s contentions on appeal are somewhat difficult to discern. As far as we can tell, she argues that the best interests of the child and satisfactory plan elements of the statute are intertwined. We endeavor to address the issues raised by Mother, but we admit we find her arguments not well-reasoned.

For a plan to be “satisfactory,” for purposes of the statute, it “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.” Lang v. Starke County Office of Family and Children, 861 N.E.2d 366, 374 (Ind. Ct. App. 2007), trans. denied. The fact that there is not a specific family in place to adopt the children does not make the plan unsatisfactory. In re B.D.J., 728 N.E.2d 195, 204 (Ind. Ct. App. 2000). Here, the State presented evidence that DCS’s plan for B.B. was adoption. Again, Mother asks that we reweigh the evidence, which we will not do. The trial court did not err when it found that the evidence is sufficient to show that there is a satisfactory plan for the care and treatment of the child.

This court will reverse a trial court’s termination order only upon a showing of “clear error”—that which leaves us with a definite and firm conviction that a mistake has been made. A.J. v. Marion County Office of Family & Children, 881 N.E.2d 706, 716 (Ind. Ct. App. 2008), trans. denied. Here, the trial court made ample findings to support its ultimate decision to terminate Mother’s parental rights to B.B., and Mother has failed to establish that the court’s findings are not supported by the evidence. We therefore find no error. See e.g., Kirk v. Kirk, 770 N.E.2d 304, 307 (Ind. 2002) (explaining that, on appeal, it is not enough to show the evidence might support some other conclusion, rather, the evidence must positively require the conclusion contended for by the appellant before there is a basis for reversal).

Affirmed.

RILEY, J., and MAY, J., concur.