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ATTORNEY FOR APPELLANT:

STEPHEN P. MURPHY, JR.
Murphy & Murphy, LLC
Vincennes, Indiana

ATTORNEY FOR APPELLEE:

JILL DEWIG WESCH
Indiana Department of Child Services
Evansville, Indiana

ROBERT J. HENKE
DCS Central Administration
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF	)	
L.B.,	)	
Appellant-Respondent,	)	
vs.	)	No. 42A01-0906-JV-267
THE INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE KNOX SUPERIOR COURT
The Honorable Timothy J. Crowley, Judge
Cause No. 42D01-0801-JT-002

November 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

L.B. (Mother) appeals the termination of her parental rights with respect to her child, L.J. Mother presents the following restated issue for review: Did the Department of Child Services (the DCS) prove by clear and convincing evidence that the conditions leading to L.J.'s placement outside Mother's home would not be remedied?

We affirm.

L.J. was born to Mother and C.J. (Father) on March 14, 2003. In early 2007, L.J. lived with Father. On January 6, 2007, the DCS received a report that people were cooking methamphetamine in Father's home. The Knox County Sheriff's Office (the Sheriff's Office) was notified and deputies went to the home to perform a welfare check. They found nothing to substantiate the report. The next day, the DCS received a report that a registered sex offender was present in Father's home. Therefore, on January 8, 2007, the DCS, accompanied by members of the Sheriff's Office, visited Father's home. Father permitted them to enter. Once inside, the deputies noted a pipe sitting in plain view. Father admitted that he had used the pipe to smoke marijuana in L.J.'s presence, although L.J. was asleep on the couch at the time. Father also admitted there was more marijuana present in the home. After obtaining a search warrant, deputies searched the house and discovered syringes and items used in the manufacture of methamphetamine. Father was placed under arrest and L.J. was removed from his home. At the time these events were occurring, Mother was in the hospital being treated for burns received as the result of an unexplained fire.[1] Therefore, L.J.

[1] Jonathan Kreuger, a DCS case manager, was asked how the fire occurred. He responded:

was removed from the home and placed in foster care.

On January 17, 2007, the DCS filed a petition alleging L.J. was a child in need of services (CHINS). On January 18, 2007, Mother, by her legal guardian,[2] admitted L.J. was a CHINS. After a dispositional hearing, the court ordered that, while Mother was hospitalized, visitation between Mother and L.J. would occur at the discretion of the DCS. Following a review hearing, on June 25, 2007, the court issued an order directing Mother to (1) continue working with a therapist concerning her mental health issues, (2) undergo evaluation for drug and alcohol abuse and follow any recommendations made by the appropriate therapeutic personnel with respect to the results of those evaluations, (3) maintain monthly contact with her family case manager, (4) inform the family case manager within three days of any changes in her address, phone number, employment, legal charges, and medical condition, (5) submit to three drug screens per week, (6) participate in supervised visits with L.J., and (7) participate in parenting classes.

Mother's supervised visitation with L.J. commenced in March 2007 and lasted through August 2007. Things did not go particularly well. Mother missed several of the

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> There's been so many stories. She's said that she was cleaning up the bathtub and she went to take a bath, lit a cigarette, it blew up. She was cleaning out the gas can. She just got finished mowing the yard, was cleaning out the gas can, sat the gas can next to the hot water heater, hot water heater pilot light blew it up. I mean, there's just so many stories I don't even know how the incident happened.
>
> *Transcript* at 210.

[2] D.B., Mother's mother, was appointed L.B.'s legal guardian in August 2006.

scheduled visits and was quite late for others. She abruptly left in the middle of other visits. Although the visitation supervisors attempted to assist Mother in developing a mother-child bond with L.J., the effort was largely unsuccessful. L.J. was reluctant to go to visit Mother and often would hide under furniture in an attempt to avoid seeing her. During the visits, Mother was often inattentive and would leave L.J. unsupervised until prompted by the supervisor to do otherwise. If things were not going particularly well, which was not uncommon, Mother would cry and sing to herself. According to a November 8, 2007 evaluation, "Most of the visits [did] not go very well." *Appellant's Appendix* at 91.

Mother was diagnosed with schizoaffective disorder, depressive type. As a result of this illness, Mother experienced hallucinations and delusions and engaged in erratic behavior. For instance, at various times in the recent past, she: (1) reported seeing neighbors in her trees, (2) removed ceiling tiles in her home because she believed there were demons up there, (3) climbed on the roof of her home and remained there, although L.J., approximately two years old at the time, was visiting at the time and playing outside, (4) complained to Father that when L.J. was returned to her house, he had "cat eyes and elf ears", *Transcript* at 44, and (5) "charged [Father's] entire family of butt probing[.]" *Id*. at 45. A regimen of mental health counseling and medication was prescribed. Mother's symptoms were controlled to a great extent while she took her medication, but she did not reliably do so. According to an evaluation report, Mother was not honest with her mental health therapist, which effectively thwarted therapy. After participating in parenting classes, Mother received poor evaluations,

e.g., "[L.J.] did complete her parenting class; however, she did not get good remarks about her participation and grasping concepts." *Appellant's Appendix* at 91.

In the end, after two years of services, little or no improvement was observed. Thereafter, the DCS filed a petition seeking to terminate Mother's parental rights. The court granted the petition, entering the following relevant findings and conclusions:

> 4. That it has been established by clear and convincing evidence that there is a reasonable probability that the reasons that resulted in the child's removal or the reasons for the child's placement outside the home of the parents will not be remedied.
>
> * * * * *
>
> [Mother] suffers from schizoaffective disorder, depressive type, and is presently under a mental health commitment with the Samaritan Center, a local comprehensive community mental health center in Knox County. [Mother] is presently receiving monthly injections of Halidol to control her mental health problems. [Mother] suffered life-threatening injuries in a fire at her home on June 10, 2006. [Mother] has suffered through a long and difficult period of recuperation.
>
> The child, [L.J.], has been in counseling during the pendency of the CHINS case and [L.J.'s] counselor has testified that continued visits with [Mother] are adversely affecting the child and that [Mother's] visits should be terminated.
>
> [Mother] loves [L.J.] dearly, but her continuing physical and psychological issues prevent her from providing a stable and permanent home for [L.J.] and put [L.J.] at risk.
>
> 5. That it has been established by clear and convincing evidence that termination of the parental rights of … [Mother] is in the best interest of [L.J.].
>
> … That while [Mother] loves [L.J.] and desperately wants to maintain her parent-child relationship, [Mother's] physical and mental health issues prevent her from effectively parenting her child. Further, it is not likely that there will be any significant improvements in [Mother's] physical or mental health issues in the future.
>
> [L.J.'s] therapists have testified that continued contact with [Mother] is

> having a negative impact on the child. While maintaining the parent-child relationship would be beneficial to [Mother], the weight of the evidence presented in the termination hearing was that maintaining the parent-child relationship was not in [L.J.'s] best interest. [L.J.] needs a stable and permanent home and neither parent can provide a stable and permanent home for this child.

Id. at 137-038. Mother appeals the decision to terminate her parental rights.

We apply a highly deferential standard of review in cases concerning the termination of parental rights. *R.W., Sr. v. Marion County Dep't of Child Servs.,* 892 N.E.2d 239 (Ind. Ct. App. 2008). When conducting this review, we will not reweigh the evidence nor judge the credibility of the witnesses. *Id*. Rather, in deference to the juvenile court's unique position to assess the evidence, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id*. We will set aside the juvenile court's judgment terminating a parent-child relationship only if it is clearly erroneous. *Id*. If the evidence and inferences support the juvenile court's decision, we must affirm. *Id*.

In this case, the juvenile court made specific findings and conclusions thereon in its order terminating Mother's parental rights. In such cases, we apply a two-tiered standard of review. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143 (Ind. 2005). We determine whether the evidence supports the findings, and second, whether the findings support the judgment. *Id*. "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

The traditional right of parents to "'establish a home and raise their children is

protected by the Fourteenth Amendment of the United States Constitution.'" *R.W., Sr. v. Marion County Dep't of Child Servs.*, 892 N.E.2d at 245 (quoting *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*). The juvenile court, however, must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *R.W., Sr. v. Marion County Dep't of Child Servs.,* 892 N.E.2d 239. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id*.

Relevant to the issue presented in this appeal, in order to terminate a parent-child relationship, the State is required to allege that:

> (A) one (1) of the following exists:
>
> > (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
>
> * * * * *
>
> (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 Ann. § 31-35-2-4(b)(2) (West, PREMISE through 2009 1st Regular Sess.). 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 (Ind. 1992). Mother does not contest the fact that L.J. had been removed from her care, pursuant to a dispositional decree, for at least six months. She asserts, however, that the DCS failed to establish by clear and convincing evidence that the conditions resulting in the L.J.'s removal would not be remedied. Mother specifically asserts that "the reasons for continued placement outside the mother's home will be remedied, albeit slowly." *Appellant's Brief* at 9. Focusing on her burn injuries, Mother contends the DCS did not "fashion reunification plans around the unique and severe burn injuries mother suffered." *Id.*

When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the juvenile court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. *R.W., Sr. v. Marion County Dep't of Child Servs.,* 892 N.E.2d 239. "The court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the children." *Id.* at 246.

Reviewing the juvenile court's findings and conclusions, and indeed considering the overwhelming majority of the evidence presented at the hearing, it is apparent to us that the termination was not based solely, or even largely, upon the difficulties posed by Mother's burn injuries. Rather, termination was based in large part upon the problems posed by her lack of parenting skills and also those posed by her mental condition. With respect to the

former, the evidence showed that, for two years, Mother was provided with services aimed at improving her parenting skills. Yet, at the end of that time, she had shown little improvement. Every parent aide or visitation supervisor who worked with Mother indicated concern for L.J.'s safety while in Mother's care. Robert Green, a parenting aide who had been working most recently with Mother during visitation, testified that Mother was not accomplishing her goals and that "we have quite a ways to go." *Transcript* at 186. The record reflects that any progress Mother made during the time she received services was ultimately lost during a period of regression. Moreover, at the time of the termination hearing, she lived with her brother, in whose home marijuana was discovered during a supervised visit. This means that after two years, she still was not able to provide L.J. with a stable home.

With respect to Mother's mental health, the record reflects that Mother has a mental condition that is likely to be present for the remainder of her life. According to Julia Treadway, a psychiatric social worker who was working with Mother, the symptoms of Mother's condition include "fairly disorganized behavior [and a] very poor thought process." *Transcript* at 141. Although those symptoms are to some extent controllable through medications, Mother has demonstrated that she does not reliably self-medicate. Moreover, even on her current medication, Mother continued to exhibit "poor insight, judgment and some difficulty with attention [and] concentration." *Id*. at 145.

In summary, the evidence supports the conclusion that Mother availed herself of the

services offered to her for more than two years, but did not improve appreciably in her ability to parent effectively. Any improvements she made were soon reversed by reverting to the same dysfunctional parenting style and behaviors that were noted at the outset of the CHINS proceeding. This problem was no doubt exacerbated by her mental health condition, but Mother's parental rights were not terminated *because* of that condition. Although we have no doubt that persons suffering from schizoaffective disorder, depressive type may in some cases successfully deal with that condition such that they are able to effectively parent their children, the evidence reveals that Mother has not done that. She does not consistently and reliably take the medications necessary to control the symptoms of her condition. And even when she is on her medication, her parenting skills are far below the level necessary even to allow unsupervised visitation, much less full custody. The DCS presented clear and convincing evidence that, with respect to Mother, there is a reasonable probability that the reasons that resulted in the L.J.'s placement outside the home of his parents will not be remedied. We do not question the juvenile court's observation that Mother loves L.J. very much, but it is L.J.'s best interest, not Mother's, that must guide us. "The purpose of terminating parental rights is not to punish the parents but to protect the children involved. The juvenile court must therefore subordinate the interests of the parents to those of the children[.]" *R.W., Sr. v. Marion County Dep't of Child Servs.,* 892 N.E.2d at 249.

We note finally Mother's argument that the DCS failed to prove by clear and convincing evidence that continuation of the parent-child relationship poses a threat to L.J.

I.C. § 31-35-2-4(b)(2)(B) provides that in order to support termination, the State must establish there is a reasonable probability that the conditions that resulted in the child's removal will not be remedied *or* that the continuation of the parent-child relationship poses a threat to the well-being of the child. Because it is written in the disjunctive, a juvenile court need find by clear and convincing evidence that only one of the two requirements of subsection (B) have been met. Here, the juvenile court found that both requirements of subsection (B) were met. Having affirmed the finding with respect to I.C. § 31-35-2-4(b)(2)(B)(i), we need not address the alternate basis under I.C. § 31-35-2-4(b)(2)(B)(ii). *See R.W., Sr. v. Marion County Dep't of Child Servs.,* 892 N.E.2d 239.

Judgment affirmed.

NAJAM, J., and BRADFORD, J., concur.