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ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

DIANNA L. COLE
Cole Law Firm, LLC
South Bend, Indiana

JUSTIN J. STAUBLIN
DCS, St. Joseph County
South Bend, 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)
T.S. (Minor Child), and A.R. (Mother),)
Appellant,)

vs.)

No. 71A03-1104-JT-210)

THE INDIANA DEPARTMENT OF CHILD)
SERVICES,)
Appellee.)

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
The Honorable Barbara J. Johnston, Magistrate
Cause No. 71J01-0909-JT-187

October 5, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

A.R. (“Mother”) appeals the involuntary termination of the parent-child relationship with her son, T.S.¹

We affirm.

ISSUE

Whether there was clear and convincing evidence to support the termination of Mother’s parental rights to T.S.

FACTS

T.S. was born in October 2003. In the summer of 2008, Mother and T.S. moved into the house of Mother’s mother (“Grandmother”).² In September 2008, St. Joseph County Department of Child Services (“DCS”) received a report that Mother had choked then-four-year-old T.S. after he let the dogs out of Grandmother’s house. Grandmother, who reported Mother to DCS, also told DCS that Mother had an extensive history of drug abuse and unstable housing.

DCS detained T.S., placed him with Grandmother, and filed a petition alleging that he was a child in need of services (“CHINS”).³ Following the filing of an amended CHINS petition, Mother admitted that T.S. was a CHINS and that she had a drug problem. In November 2008, the trial court determined T.S. to be a CHINS and ordered

¹ A.S. (“Father”) voluntarily terminated his parental rights as to T.S. and is not involved in this appeal.

² Mother’s other child and T.S.’s half-sister, A.Z., who was born in 2006, also moved in with Grandmother.

³ DCS also detained and filed a CHINS petition for A.Z., but she is not part of this appeal.

Mother to, among other things, participate in individual counseling, submit to random drug screens, maintain consistent contact with DCS, participate in a parenting group, and attend supervised visits with T.S.

At the beginning of the CHINS proceeding, T.S. was referred to individual counseling to address issues with “hyperactivity, anger, acting out, violent behavior toward animals and his sister, anxiety, nightmares, bedwetting, eating with his hands, the inability to drink from a glass, speech development concerns and stuttering.” (App. 39). He was later diagnosed with post traumatic stress disorder (“PTSD”) and attended individual therapy throughout the proceedings.

DCS initially referred Mother to Oaklawn for substance abuse treatment and monitoring, but Mother opted to go to Addictions Recovery Center (“ARC”), where they recommended an intensive outpatient program. Mother attended ARC’s outpatient program from April 2009 to November 2009, attending thirty out of forty sessions. She did not successfully complete the program.

Mother’s initial family case manager, Jackie Brown, also referred Mother to anger management. Although this class was not part of her disposition order, Mother attended some anger management group therapy classes.

DCS also referred Mother to supervised visitation with T.S. at Families First. Mother attended the supervised visits with T.S., but the visitation was suspended because Mother failed to remain drug free. Specifically, Mother tested positive for marijuana in February 2009 and then again in April 2009. Thereafter, in May 2009, the trial court ordered that Mother’s visitation with T.S. be suspended.

In June 2009, a new family case manager, Amanda Harris, was assigned to Mother's case, but she was initially unable to reach Mother because Mother had not been in contact with DCS and had failed to provide current contact information. DCS filed a petition to terminate Mother's parental rights to T.S. on September 29, 2009, and the trial court later appointed a court appointed special advocate ("CASA").

Once Harris was able to establish contact with Mother at a November 2009 permanency hearing, she noticed that Mother seemed to be missing some service referrals, specifically a referral for a parenting assessment and class. Harris determined that DCS needed to reevaluate Mother's case for new service recommendations. At that permanency hearing, the CHINS court approved DCS's permanency plan of reunification with the concurrent plan of adoption.

Mother, however, again tested positive for marijuana in November 2009. Also, sometime in 2009, she was arrested and convicted for operating while intoxicated ("OWI") and placed on probation.

In March 2010, following some clean drug screens from Mother, DCS filed a motion to modify the dispositional decree and requested that the trial court reinstate Mother's visitation. However, that same month, Mother tested positive for marijuana.

On April 27, 2010, the trial court ordered that Mother needed to have four clean random drug screens before visitation would be reinstated. The trial court also ordered Mother to complete a substance abuse treatment program and individual counseling.

At that time, Mother was already participating in substance abuse treatment at ARC as part of her probation for her OWI conviction. The therapist at ARC

recommended that Mother participate in sixteen sessions. From April 2010 to June 2010, Mother attended eleven of the sixteen treatment sessions at ARC.

DCS continued to work with Mother toward reunification. DCS referred Mother to a psychologist for a parenting and family functioning assessment. Mother attended the beginning of the assessment but did not complete it.

In May 2010, Mother again had a positive drug screen for marijuana. Thereafter, Mother was able to get four clean drug screens between June 7, 2010 and August 3, 2010. Her progress, however, was short-lived because she again tested positive for marijuana on August 9, 2010. Mother's visitation was not reinstated prior to the termination hearing.

During the Summer of 2010, DCS assigned a third family case manager to Mother's case. On August 11, 2010, DCS filed a motion to dismiss the termination petition against Mother, noting that "DCS hasn't provided services to the child, parent, family and those services not provided are substantial and material to the safe return of the child." (App. 23). However, DCS then requested to withdraw the motion to dismiss. Following a status hearing, the trial court granted DCS's request to withdraw the motion to dismiss.

In August 2010, DCS referred Mother to Oaklawn for an intake assessment and therapy. Mother attended the initial assessment, and the therapist recommended that Mother have individual therapy and a substance addiction assessment. Mother attended one therapy session in September 2010 but failed to return for any further sessions. She did not complete an addiction assessment.

A new family case manager, Janella Hutchinson, was assigned in December 2010. She also had difficulty getting in touch with Mother because of a lack of current contact information. At that time, Hutchinson, noting that Mother had started but had not completed any services, spoke with Mother and referred her to Oaklawn for a substance abuse assessment and individual counseling. Mother told the family case manager that she would complete it, but she did not.

The trial court held a termination hearing on March 22, 2011. During the termination hearing, Grandmother testified that she reported Mother to DCS because she “just had enough” and was “worried that [Mother was] gonna end up killing the kids.” (Tr. 108). Grandmother also testified that there had been a “history of turmoil and trauma with . . . [Mother.]” (Tr. 120). Grandmother testified that Mother had been molested as a child and went to therapy, had a history of running away, had been “in and out of trouble with drugs and alcohol,” had accidentally shot and killed someone and went to Girls’ School, and had given up a child for adoption. (Tr. 109). Grandmother also indicated that she was skeptical that Mother was going to straighten out her life and that “[n]o matter what happens with [Mother] it doesn’t seem to be bad enough to change her.” (Tr. 122).

The CASA filed two reports with the trial court, and these two reports were admitted without objection during the termination hearing. In those reports, the CASA noted that Mother had “a very troubling background.” (App. 30, 40). The CASA noted that when Mother was fifteen or sixteen years old, she went to Girls’ School and was placed in the Department of Correction for two years “after accidentally shooting and

killing someone with a shot gun[.]” (App. 30). The CASA report also reviewed Mother’s initial assessment report from ARC in which Mother admitted to starting to use marijuana at the age of fourteen; admitted to using marijuana daily in 2008 when T.S. was removed from her; and admitted to trying and using methamphetamine, cocaine, and LSD. The CASA report also noted that in March 2005, the St. Joseph Medical Center filed a report of alleged child abuse, which alleged that Mother had delivered a baby that was born positive for THC and that the baby was adopted. Finally, the CASA report discussed Mother’s arrest record, which included arrests for leaving the scene of an accident in 2003, battery in 2004, violation of probation in 2004, deception in 2005, OWI in 2009, and possessing paraphernalia in 2009.

During the termination hearing, Mother acknowledged that when the CHINS proceeding started, she had a drug problem with marijuana and smoked it a couple of times per week. She also admitted that she had tested positive for marijuana multiple times and was put on probation for OWI during the CHINS proceeding. Mother also testified that she understood that she needed to participate in services to resolve the CHINS case but admitted that she had not completed the referred services.

Mother testified that she did not complete individual therapy because it was “just hard” to “constantly talk[] about all the problems with [her] and her mom or how [she] fe[lt] about the kids.” (Tr. 33) She stated that therapy was difficult to deal with because she had been “forced to go to counseling all of [her] life” and she did not want to be

“forced again[.]” (Tr. 33).⁴ When asked if she still had a substance abuse problem, she stated, “I don’t think I do” but then stated that it was something that she would “have to work with forever.” (Tr. 27). She indicated that would work on any substance abuse issue by limiting “the crowd [she’s] around” and only “hang[ing] out” with co-workers and her boyfriend. (Tr. 27).

Two of Mother’s four family case managers testified at the termination hearing, and they acknowledged that there were some problems with the initial referrals in Mother’s case. Family case manager Harris testified that during the time she was assigned to Mother’s case, Mother made no progress. Family case manager Hutchinson testified that the only progress Mother had made in services was that she had apparently scheduled a drug assessment at Oaklawn for the week after the termination hearing.

The CASA also testified that she had not seen “any real changes.” (Tr. 99). The CASA testified that despite the multiple changes in family case managers, Mother had been given a chance to remedy the problems and comply with services. The CASA also testified that Mother never finished the services she was supposed to be doing each time a new family case manager was assigned.

Following the termination hearing, the trial court issued an order terminating Mother’s parental rights to T.S. Mother now appeals.

DECISION

Although parental rights are of a constitutional dimension, the law allows for termination of these rights when parties are unable or unwilling to meet their

⁴ Mother testified that she was molested when she was nine or ten years old and that her mother put her in therapy.

responsibility. *In re A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). The purpose of termination of parental rights is not to punish parents but to protect children. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied*, 534 U.S. 1161 (2002).

In reviewing the termination of parental rights, we will neither reweigh the evidence nor judge the credibility of witnesses. *In re I.A.*, 934 N.E.2d 1127, 1132 (Ind. 2010). We consider only the evidence most favorable to the judgment. *Id.* Where the trial court has entered findings of fact and conclusions of law, we apply a two-tiered standard of review. *Id.* We must determine whether the evidence supports the findings and then whether the findings support the judgment. *Id.* We will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.* A judgment is clearly erroneous if the findings do not support the conclusions or the conclusions do not support the judgment. *Id.*

At the time DCS sought to terminate Mother's parental rights, it was required to plead and prove, in relevant part, 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) that 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).⁵ These allegations must be established by clear and convincing evidence. *I.A.*, 934 N.E.2d at 1133. If the trial court finds the allegations in a petition described in section 4 of this chapter are true, the court shall terminate the parent-child relationship. I.C. § 31–35–2–8(a).

1. Conditions Remedied

Mother argues that the DCS failed to prove that there was a reasonable probability that the conditions that resulted in T.S.’s removal or the reasons for placement outside the home will not be remedied.⁶

To determine whether a reasonable probability exists that the conditions justifying a child’s continued placement outside the home will not be remedied, the trial court must judge a parent’s fitness to care for the child at the time of the termination hearing, taking into consideration any evidence of changed conditions. *In re A.N.J.*, 690 N.E.2d at 721. The trial court must also evaluate the parent’s habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* A trial court may properly consider evidence of a parent’s prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate

⁵ Indiana Code section 31–35–2–4 was amended by Public Law No. 21–2010, § 8 (effective Mar. 12, 2010). The changes became effective after the filing of the termination petition involved herein and are not applicable to this case. See *In re D.B.*, 942 N.E.2d 867, 872 n.4 (Ind. Ct. App. 2011).

⁶ Mother also argues that the trial court erred by finding that the continuation of the parent-child relationship would pose a threat to the well-being of T.S. As noted above, IC 31-35-2-4(b)(2)(B) required DCS to demonstrate by clear and convincing evidence a reasonable probability that *either*: (1) 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* (2) the continuation of the parent-child relationship poses a threat to the well-being of the child. Because we conclude that clear and convincing evidence supports the trial court’s conclusion that a reasonable probability exists that the conditions that led to T.S.’s removal and reasons for placement outside the home will not be remedied, we need not review whether the evidence supports the trial court’s conclusion that a reasonable probability exists that the continuation of the parent-child relationship poses a threat to T.S.’s well-being. See *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 148 n.5 (Ind. 2005).

employment and housing. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). Additionally, the trial court can properly consider the services offered by DCS to the parent and the parent's response to those services as evidence of whether conditions will be remedied. *Id.* "A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change." *In re L.S.*, 717 N.E.2d at 210.

Mother argues that termination was not appropriate because at the time of the hearing she had been drug free for seven months, was employed, had housing, and had tested positive for marijuana on only six occasions during the course of the proceedings.

Here, T.S. was removed from Mother's home after she choked him for letting the dogs out of the house. As part of the amended CHINS petition, Mother admitted that she had a problem with drugs. T.S. was not reunified with Mother because of her continued drug use and general failure to complete required services.

Mother initially participated in services, but she ultimately failed to fully comply with all services referred by her various family case managers, failed to maintain consistent contact with DCS, and failed to remain drug free throughout the CHINS and termination proceedings.

Two of Mother's four family case managers testified at the termination hearing, and they acknowledged that there were some problems with the initial referrals in Mother's case. Indeed, when terminating Mother's parental rights, the trial court acknowledged the initial family case manager's failure to properly manage Mother's case

but indicated that the initial problem with referrals did not remove Mother's responsibility of taking the necessary actions to achieve reunification with T.S. Both family case managers and the CASA testified that Mother had not made any tangible progress during the proceedings.

When concluding that there was a reasonable probability that the reasons for placement outside the home would not be remedied, the trial court stated in part:

Mother has had ample time to enter into recovery, complete individual counseling, maintain sobriety, and be reunified with her child. Instead, she has portrayed herself as someone who could not access the correct information, could not attend individual counseling due to past failed efforts and could not stop using illegal drugs until very recently.

Mother views herself as a victim of her mother's poor parenting. This young woman has experienced difficult, even traumatic times. Once she herself chose to become a mother, however, [Mother] owed [T.S.] what she claims she did not receive as a child: permanency, stability and a full life. Instead, [Mother] became an addict, resulting in neglect of her son.

(App. 8).

We acknowledge that Mother had made some progress in that she had been drug free for several months prior to the termination hearing and has indicated that she was employed at the time of the hearing, but we cannot overlook her pattern of conduct and failure to do what was necessary to be reunified with T.S. Accordingly, we find that the trial court did not err in determining that there is a reasonable probability that the conditions that resulted in T.S.'s removal or the reasons for placement outside the home will not be remedied.

2. Best Interests

Mother also suggests that DCS failed to prove that termination of her parental rights was in the best interests of T.S. However, she provides no cogent argument or citation to authority in support of a challenge to the best interest element and has, therefore, waived the argument on appeal. *See* Ind. Appellate Rule 46(A)(8)(a) (explaining that an appellant’s contentions on the issues presented must be “supported by cogent reasoning” and “must be supported by citations to authorities, statutes, and the Appendix or parts of the Record on appeal relied on”).

Waiver notwithstanding, for the “best interests of the child” statutory element, the trial court is required to consider the totality of the evidence and determine whether the custody by the parent is wholly inadequate for the child’s future physical, mental, and social growth. *In re A.K.*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010), *trans. dismissed*. In making this determination, the trial court must subordinate the interest of the parent to that of the child involved. *Id.* The recommendations of the CASA and child’s caseworker that parental rights be terminated support a finding that termination is in the child’s best interests. *See A.J. v. Marion County Office of Family and Children*, 881 N.E.2d 706, 718 (Ind. Ct. App. 2008), *trans. denied*.

Here, the totality of the evidence demonstrated that the termination of Mother’s parental rights was in T.S.’s best interests. T.S. was diagnosed with PTSD and attended individual therapy throughout the proceedings. Furthermore, the CASA testified that T.S. needed “permanency” and “stability” and indicated that it was in T.S.’s best interests to terminate Mother’s parental rights. (Tr. 101). This recommendation, in addition to the

evidence previously reviewed in this opinion, support the trial court's finding that termination of Mother's parental rights is in T.S.'s best interests. *See In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005), *trans. denied*.

3. Satisfactory Plan

Mother implies that there was not a satisfactory plan in place for the care and treatment of T.S., but she cites no cases or authority in support of her argument. Notwithstanding her lack of cogent argument, we conclude that there was a satisfactory plan for T.S. For a plan to be satisfactory, it "does not need to be detailed as long as it offers a general sense of the direction in which the children will be going after the termination." *In re A.K.*, 755 N.E.2d 1090, 1098 (Ind. Ct. App. 2001). DCS presented evidence that the permanency plan was for adoption by Grandmother and that T.S. was "happy" and "content" in her home. (Tr. 102). Because "adoption is a satisfactory plan," *see In re A.K.*, 755 N.E.2d at 1098, we conclude that there was sufficient evidence to support the trial court's finding that a satisfactory plan was in place for the care and treatment of T.S. following the termination of parental rights.

CONCLUSION

We conclude there was clear and convincing evidence to support the trial court's decision to terminate Mother's parental rights to T.S. We reverse a termination of parental rights "only upon a showing of 'clear error' — that which leaves us with a definite and firm conviction that a mistake has been made." *Egley v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992). We find no such error here and, therefore, affirm the trial court.

Affirmed.

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