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FILED
Dec 29 2011, 9:17 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIPS OF K.N., B.N., R.N. and G.N., minor children, and their Mother, C.N.	)	
C.N. (MOTHER), Appellant-Respondent,	)	
vs.	)	No. 49A02-1106-JT-000530
INDIANA DEPARTMENT OF CHILD SERVICES, Appellee-Petitioner,	)	
CHILD ADVOCATES, INC., Co-Appellee (Guardian ad Litem).	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary K. Chavers, Judge Pro Tempore
The Honorable Larry E. Bradley, Magistrate
Cause Nos. 49D09-1012-JT-052698; 49D09-1012-JT-052699
Cause Nos. 49D09-1012-JT-052700; 49D09-1012-JT-052701

December 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

C.N. ("Mother") appeals an order terminating her parental rights to K.N., B.N., R.N., and G.N. (collectively, "the Children") upon the petition of the Marion County Department of Child Services ("DCS").[1] We affirm.

Issue

Mother presents a single, restated, issue for appeal: Whether DCS established, by clear and convincing evidence, the requisite statutory elements to support the termination of parental rights.[2]

Facts and Procedural History

On February 4, 2008, DCS alleged that the Children were Children in Need of Services ("CHINS") based on allegations that Mother's boyfriend had sexually abused one of

[1] The putative fathers, named as respondents in the termination proceedings, are not active parties to this appeal.

[2] Mother framed the issue for appeal as "Whether a mother's parental rights should be terminated because she was inconsistent in her parenting." Appellant's Brief at 1. We perceive this to be a challenge to the sufficiency of the evidence.

the Children but Mother had allowed further contact between the victim and the boyfriend and had urged the victim to recant her allegations of abuse. Mother admitted the allegations, and the Children were determined to be CHINS and removed from Mother's care.

Mother participated in various services directed toward reunification, including parenting classes and in-home counseling. Because Mother would often appear depressed, defensive, overwhelmed, or subject to angry outbursts, the initial goal of service providers was that Mother would exhibit emotional stability for a ninety-day period.

Despite that goal not having been met, in April of 2009, the Children were returned to Mother's care on a temporary trial basis. At a CHINS review hearing in July of 2009, the DCS alleged that Mother was non-compliant with home-based services and failed to provide the Children with a safe and structured environment. DCS case manager Stephanie Neal ("Neal") was concerned that the Children had persistent lice and school attendance problems. The Children were again removed from Mother's care.

Mother continued to receive home-based services and in-home visitation was arranged for a weekend in September of 2010. According to home-based counselor Laura Guise ("Guise"), the visit was chaotic and Mother was "emotionally overwhelmed" and "verbally aggressive." (Tr. 87.) The overnight visits were discontinued but Mother had unsupervised visitation in the fall of 2010. However, in December of 2010, Mother's mental health appeared to deteriorate. After Mother threatened to flee to Michigan with the Children, Neal recommended a change to supervised visitation, which was implemented.

On December 7, 2010, DCS petitioned to terminate Mother's parental rights. The

Marion County Superior Court, Juvenile Division, conducted an evidentiary hearing on April 11, 2011. At the conclusion of the hearing, the court stated that DCS had met its burden of proof, but the court also observed that there had been evidence presented that post-adoption contact with Mother was in the Children's best interests. The court took the matter under advisement to provide the parties with an opportunity to reach a resolution. On May 6, 2011, the Children's Guardian ad Litem filed notice of non-resolution. Also on that date, the court issued an order terminating Mother's parental rights. She now appeals.

Discussion and Decision

A. Standard of Review

Our standard of review is highly deferential in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). This Court will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, we neither reweigh the evidence nor judge the credibility of the witnesses. Id. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id.

B. Requirements for Involuntary Termination of Parental Rights

Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147

(Ind. 2005). The purpose of terminating parental rights is not to punish the parents, but to protect their children. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied.

Indiana Code Section 31-35-2-4(b)(2) sets out the elements that DCS must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

> (A) That one (1) of the following is true:
>
> (i) The child has been removed from the parent for at least six (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.
> (iii) 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, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;
>
> (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.
> (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services;
>
> (C) that termination is in the best interests of the child; and
>
> (D) that there is a satisfactory plan for the care and treatment of the child.

If the court finds that the allegations in a petition described in Section 4 of this chapter are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a). A

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.

C. Analysis

Mother asserts that she has not personally abused her children and that her conduct was not egregious enough to support termination. She does not challenge the juvenile court's determination pursuant to Indiana Code Section 31-35-2-4(b)(2)(A) (removal from parent), (C) (best interests of the children) or (D) (satisfactory plan). As best we can discern Mother's argument, she implicitly challenges the determination relating to Indiana Code Section 31-35-2-4(b)(2)(B) (conditions will not be remedied or relationship poses a threat to child's well-being).

Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, and therefore the court needed to find that only one of the three requirements of subsection (b)(2)(B) had been established by clear and convincing evidence. See L.S., 717 N.E.2d at 209. Because we find it to be dispositive under the facts of this case, we only consider whether DCS established, by clear and convincing evidence, that there is a reasonable probability that the conditions resulting in the removal or reasons for placement outside the home will not be remedied. See Ind. Code § 31-35-2-4(b)(2)(B)(i). The relevant statute does not simply focus on the initial basis for removal for purpose of determining whether a parent's rights should

be terminated, "but also those bases resulting in the continued placement outside the home." In re A.I., 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), trans. denied.

Initially, the Children were removed because Mother failed to provide a safe and stable environment for them. Mother has chronically suffered from depression and anxiety, and thus the primary goal to support reunification was achievement of Mother's mental stability such that she could effectively parent the Children. Mother was provided intensive in-home services over a significant period of time but, according to multiple DCS witnesses, Mother did not appear to genuinely benefit from those services. She was defensive and at times refused entry to or "fired" her service providers. (Tr. 44.) She would at times take prescribed medication; other times, she would not.

Lora Patterson ("Patterson") was Mother's home-based therapist from April of 2009 to October of 2009. She first provided services for ten hours weekly for six weeks, and then met with Mother on two or three days per week. Patterson testified that Mother was defensive and believed that her goals had been accomplished and she no longer needed Patterson. Toward the end, Mother had many cancellations and "no-shows." (Tr. 104.) Patterson asked to be discharged from service due to Mother's perceived "lack of engagement." (Tr. 106.)

Guise worked as Mother's home-based counselor from December of 2009 through December of 2010. Guise testified that there were "ups and downs" and that sometimes Mother would "kick her out of the house." (Tr. 44-45.) Mother would sometimes report taking medication as prescribed and at other times report discontinuance. Mother's behavior

was sometimes characterized by outbursts (screaming and ranting) and at times she made suicide threats. At one point, Mother reported to Guise that she had attempted a suicidal overdose of medication. In Guise's opinion, the longest period of time in which Mother had appeared stable was two months, yet Mother had "limited insight" into her mental health issues. (Tr. 96.) Guise was present for a portion of Mother's last weekend visitation with the Children, and observed the Children to be fearful and emotionally overwrought. She considered the visit to be "traumatic" to them. (Tr. 96.)

Social worker Phil Cramer ("Cramer"), who provided family therapy as well as individual therapy for B.N., testified that Mother exhibited extreme ranges of emotionality and unpredictable behavior. He did not believe she was mentally stable enough to care for the Children. In Cramer's opinion, Mother had a "clear pattern" that "seemed permanent," which he described as "doing better" and then engaging in destructive behavior. (Tr. 124.) He explained that, in a one-hour family therapy session, Mother might move from agonizing sadness to extreme anger to calm. In one session, Mother told the Children she was signing away her parental rights, but in the next session she informed them that she had decided not to do so. Mother appeared to be inconsolable and the Children were attempting to comfort her and were upset and confused. Cramer discontinued family therapy because he believed it to be harmful to the Children.

Neal testified that her "main concern" as the DCS case manager was Mother's mental health and her ability "to manage all four [children]." (Tr. 150.) Neal believed that "something had happened with Mother's mental health" before the September 2010 weekend

visit, because Mother had appeared unstable and hostile in team meetings. (Tr. 157.) Neal described her observations from her last visit to Mother's home during visitation. Some of the Children were in bed crying, while some were "crawling on the floor" because they wanted to get drinks and snacks but avoid detection by Mother and her ensuing anger. (Tr. 158.)

Neal described Mother as historically being angry and aggressive toward service providers. According to Neal, Mother was discharged unsuccessfully from services with Patterson and Guise, and would need at least six to twelve more months of services. Mother had reported self enrollment in classes at Families First, but later reported discontinuing those classes.

Guardian ad Litem Andrea Manning-Dudley ("Manning-Dudley") testified that she had continued to support a reunification plan for Mother and the Children up until her recent receipt of several messages from Mother indicating that Mother was "not going to be able to do this." (Tr. 209.) Manning-Dudley had come to agree that Mother was not stable, and she recommended termination of Mother's parental rights.

Mother maintains that she has always been a loving parent and her anger was directed at service providers rather than her children. She admits to being "moody" and at times overwhelmed. Appellant's Brief at 7. She further concedes that her behavior likely upset her children or made them anxious at times. However, in Mother's opinion, this is typical for a parent of four children and "the caseworkers pushed for termination merely because the case had been open for three years." Appellant's Brief at 7. According to Mother, she presented

no threat to her children and the caseworkers were simply frustrated with her slow progress. In essence, Mother asks that we reweigh the evidence and accord greater weight to the testimony that Mother and the Children were bonded and that Mother had not physically harmed her children. We will not do so. See In re A.A.C., 682 N.E.2d at 544.

DCS presented clear and convincing evidence from which the trial court could conclude that there is a reasonable probability that the conditions resulting in the removal or reasons for placement outside the home will not be remedied.

Conclusion

DCS established by clear and convincing evidence the requisite elements to support the termination of parental rights.

Affirmed.

BAKER, J., and DARDEN, J., concur.