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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF PARENT-CHILD)
RELATIONSHIP OF A.P., M.P., and S.P., and)
Their Mother,)

MARY PALMERO,)
)
Appellant-Respondent,)

vs.)

No. 49A02-0706-JV-470

MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner,)

CHILD ADVOCATES, INC.,)
)
Co-Appellee-Guardian ad Litem.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn Moores, Judge
The Honorable Danielle Gaughan, Magistrate
Cause No. 49D09-0503-JT-10043

February 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Mary Palmero (“Mother”) appeals the trial court’s involuntary termination of her parental rights. Mother raises one issue, which we revise and restate as whether the trial court’s order terminating her parental rights to A.P., M.P., and S.P. (collectively, the “Children”) is clearly erroneous. We affirm.

The relevant facts follow. Mother is the parent of A.P., born August 22, 2001, M.P., born January 14, 2003, and S.P., born June 6, 2004. Mother is the parent of M.L., T.L., and S.L., none of whom was subject to the termination proceedings, and also has two deceased children. Saul Palmero (“Father”) is the father of A.P., M.P., and S.P. In October 2003, T.L. informed Mother that Father had molested her. In February 2004, Mother reported the accusation to the Marion County Department of Child Services (“MCDCS”). On February 11, 2004, the MCDCS filed a petition alleging that A.P. and M.P. were children in need of services (“CHINS”). The petition alleged that Mother had failed to provide A.P. and M.P. with a safe environment, noting that “[d]espite having knowledge of [a] molest allegation and believing that the molest occurred, [Mother] chose to reside with [Father] with . . . [A.P.] and [M.P.]” Exhibit 1. The petition also alleged that A.P. and M.P. “have not received medical attention for immunizations, dental care, or follow-up on possible developmental delays.” Id.

Mother admitted the allegations of the CHINS petition, and the trial court found A.P. and M.P. to be in need of services. After a dispositional hearing, the trial court ordered removal of A.P. and M.P. from Mother and made them wards of the MCDCS. The court ordered Mother to: (1) complete parenting and drug and alcohol assessments; (2) complete parenting classes; (3) complete a mental health evaluation and sex offender assessment; (4) visit the children; and (5) contact the MCDCS caseworker regularly.

On June 19, 2004, after the birth of S.P., the MCDCS filed a petition alleging that S.P. was a child in need of services. The petition noted that A.P. and M.P. had been made wards of the State and alleged that S.P. was “endangered in the care of his parents due to their non-completion of rehabilitative services that would allow the return of the older children to their care and custody.” Exhibit 7. After a dispositional hearing, the trial court found S.P. to be in need of services, ordered the removal of S.P. from Mother, and made S.P. a ward of the State. On March 16, 2005, the MCDCS filed a petition to terminate Mother’s parental rights to the Children.

In March 2007, the trial court held a hearing on the MCDCS’s petition to terminate Mother’s parental rights, after which it issued the following findings of fact and conclusions thereon:

11. The CHINS case as to [M.P.] and [A.P.] was filed because [Mother] alleged that [Father] had molested her child [T.L.]. Further investigation also supported allegations of medical neglect.
12. The CHINS case as to [S.P.] was filed because he was born after the petition as to [M.P.] and [A.P.] was filed, and parents had not complied with services or remedied the reasons for removal in the siblings case.

13. On February 11, 2004, [Mother] admitted the allegations in the CHINS petition as to [M.P.] and [A.P.]. On March 19, 2004, the Court proceeded to disposition as to [Mother] in [M.P.] and [A.P.'s] case. Pursuant to that dispositional order, the children were ordered removed from [Mother's] care and custody and placed with DCS.

* * * * *

15. Also on August 3, 2004, [Mother] and [Father] appeared for a fact finding hearing in [S.P.'s] CHINS case and the Court entered a true finding. The court also conducted the dispositional hearing as to both parents in [S.P.'s] case. [S.P.] was ordered removed from his parent's [sic] care and custody and placed with DCS.

16. The Court ordered the parents to participate in services to enhance their ability to appropriately parent the children.

17. [Mother] completed a parenting assessment. She also participated in drug screens but was not always consistent.

* * * * *

19. [Father] completed a sex offender assessment, which revealed that he most likely did not molest [T.L.].

20. [Mother] and [Father] completed a parenting class for 7 to 11 year olds.

21. [Mother] and [Father] failed to successfully complete home based counseling and they failed to maintain weekly contact with the family case manager.

22. [Mother] and [Father] failed to visit their children consistently, and their visitation was suspended by the Court in January 2007. [Mother] did not attend one particular scheduled visit because [Father] had been arrested and she felt she needed to find out about him. Sometimes, either [Mother] or [Father] would call to say they could not make the visit, but sometimes they would not. Once they missed a visit at a park to celebrate one of the children's birthday. They called and said they were running late but neither [Mother] nor [Father] ever showed up.

23. A mental health evaluation of [Mother] was conducted by Dr. Stephen Harrison, the director of Broadripple Counseling. Dr. Harrison recommended that [Mother] see a psychiatrist, get mental health counseling and anger control counseling.
24. Within a month after receiving Dr. Harrison's recommendation, Wendy Budwig made a referral for [Mother] to complete psychiatric evaluation. This referral was made in July 2004.
25. It was not until May 2005 that [Mother] went to see Dr. Madhu Rao for a psychiatric evaluation. Dr. Rao diagnosed [Mother] with bipolar disorder and antisocial personality disorder. Dr. Rao felt that [Mother] had been dysfunction [sic] from a very young age. [Mother] told Dr. Rao about her mood swings, prior suicide attempts, self mutilation, past drug and alcohol issues and racing thoughts.
26. When Dr. Rao advised [Mother] that she needed counseling, [Mother] denied problems and refused counseling and medication.
27. [Mother] has always denied that she has mental health problems and has refused to seek any counseling or mental health treatment. On the day of trial, [Mother] finally acknowledged that she needs counseling.
28. The parents are currently married to one another although they do not presently live together. Their relationship has been very unstable during the three years of DCS involvement. [Mother] frequently accuses [Father] of dealing meth, molesting the children, abusing her, and using a dead man's social security number. [Mother] has twice filed for protective orders against [Father] though she continued to live with [Father] when these protective orders were issued. She also continued to live with him after accusing him of molesting one of her children.
29. Although they have lived separately for approximately a year, [Father] still financially supports [Mother]. [Mother] has not had a job for many years and is unable to support herself. [Father] currently pays for [Mother's] car, insurance, food and utilities.
30. Continuation of the parent-child relationship poses a threat to the well being of [A.P.], [M.P.], and [S.P.]. [Mother's] untreated mental illness debilitates her to the point that she cannot take care of herself;

she is therefore unable to take care of three children. The instability and [sic] chaos in the relationship between [Mother] and [Father] is also a threat to the well being of the children.

31. It is in the best interest of the children that the parent child relationship be terminated because the children need permanency and stability that [Mother] and [Father] are unable to provide.
32. DCS has a satisfactory plan for the care and treatment of the children and that plan is adoption.
33. The children are currently placed together in a pre-adoptive therapeutic foster home that specializes in caring for children with special needs. [A.P.] has behavior problems, possibly caused by neurological problems. He also has vision problems. [M.P.] has some mild behavior problems. [S.P.] was born with a cleft palate and has feeding issues. The therapeutic foster mother is able to care for the children and manage these problems.
34. The Guardian ad Litem, Tina Oliver, feels that termination of the parent child relationship is in the best interest of the children and that adoption is the appropriate plan.

CONCLUSIONS OF LAW

1. [M.P.], [A.P.], and [S.P.] are the minor children born to [Mother] and [Father].
2. The children have been removed from their parents for at least six months
3. There is a reasonable probability that the conditions that resulted in the children's removal and placement outside the home will not be remedied. The parents have not completed services. Visits with the children were inconsistent and terminated by the Court. [Mother] has serious mental health issues which she has not addressed. Both [Mother] and [Father] were inconsistent with their drug testing and failed to stay in contact with their case manager. Although the children's need for medical attention has been resolved, it has not been resolved by [Mother] and [Father]. Their inability to consistently visit with their children, and stay in contact with their case manager and [Mother's] inability to address her mental health

issues, make it unlikely that they could address the medical needs of their children.

4. Continuation of the parent-child relationship poses a threat to the well being of the children. Untreated, [Mother] is unable to take care of herself and unable to take care of her children. The instability of the relationship between [Mother] and [Father] is a threat to the well-being of the children as well.
5. Termination is in the best interests of the children. The children are in need of permanency and stability that their parents are unable to provide.
6. There is a satisfactory plan for the care and treatment of the children, that being adoption.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the parent-child relationship of [M.P.], [A.P.], and [S.P.] with their parents . . . is hereby terminated.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED all rights, privileges, immunities, duties and obligations, including any rights to custody, control, visitation or support pertaining to the relationship are permanently terminated. [Mother's] and [Father's] consents to the adoption of the children are not required.

Appellant's Appendix at 21-25.

The sole issue is whether the trial court's termination of Mother's parental rights is clearly erroneous. The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). However, these parental interests are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. Id. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id. The purpose of terminating 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), reh'g denied, trans. denied.

When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. Bester, 839 N.E.2d at 147. We will consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. Id. Here, the trial court made findings in granting the termination of Mother's parental rights. When reviewing findings of fact and conclusions thereon entered in a case involving a termination of parental rights, we apply a two-tiered standard of review. Id. First, we determine whether the evidence supports the findings. Id. Then, we determine whether the findings support the judgment. Id. The trial court's judgment will be set aside only if it is clearly erroneous. Id. "A judgment is clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment." Id. (citation and internal quotations omitted).

Ind. Code § 31-35-2-8(a) (2004) provides that "if the court finds that the allegations in a petition described in [Ind. Code § 31-35-2-4] are true, the court shall terminate the parent-child relationship." Ind. Code § 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must 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;
 - (ii) a court has entered a finding under Ind. Code § 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; or

(iii) after July 1, 1999, 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;

(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.

The State must establish these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992); Doe v. Daviess County Div. of Children & Family Services, 669 N.E.2d 192, 194 (Ind. Ct. App. 1996), trans. denied. Mother challenges the trial court's determination that: (A) the conditions resulting in the Children's removal and placement outside the home would not be remedied; (B) the continuation of the parent-child relationship poses a threat to the Children's well-being; (C) termination is in the best interests of the Children; and (D) there is a satisfactory plan for the care and treatment of the Children.

A. Conditions Remedied

The MCDCS was required to prove by clear and convincing evidence that there was a reasonable probability that the conditions that resulted in the Children's removal or

the reasons for placement outside Mother's home would not be remedied. 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 his children at the time of the termination hearing and take into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. However, 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. When assessing a parent's fitness to care for a child, the trial court should view the parent as of the time of the termination hearing and take into account any evidence of changed conditions. In re C.C., 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), trans. denied. The trial court can properly consider the services that the State offered to the parent and the parent's response to those services. Id.

The trial court's initial plan for reuniting Mother with the Children was contingent upon Mother's completion of services offered by MCDACS, including: (1) parenting and drug and alcohol assessments; (2) parenting classes; (3) a mental health evaluation and sex offender assessment; (4) visitation with the Children; and (5) contacting the MCDACS caseworker regularly. Later, after Father was arrested, Mother and Father were to complete random drug screens. In terminating Mother's rights to the Children, the trial court concluded that:

There is a reasonable probability that the conditions that resulted in the children's removal and placement outside the home will not be remedied. The parents have not completed services. Visits with the children were inconsistent and terminated by the Court. [Mother] has serious mental health issues which she has not addressed. Both [Mother] and [Father]

were inconsistent with their drug testing and failed to stay in contact with their case manager. Although the children's need for medical attention has been resolved, it has not been resolved by [Mother] and [Father]. Their inability to consistently visit with their children, and stay in contact with their case manager and [Mother's] inability to address her mental health issues, make it unlikely that they could address the medical needs of their children.

Appellant's Appendix at 24. Mother argues that the trial court's conclusion that she has not completed services is clearly erroneous because her "completion of the numerous services demanded by the [MCDCS] was admirable." Appellant's Brief at 11.

Our review of the record reveals that Mother completed a parenting assessment. She completed a parenting class for seven to eleven year olds, although, at the time she took this class, none of the Children were within that range in age, and she took no further parenting classes. Mother's MCDCS case manager, along with several other witnesses, described Mother's visitation with the Children as "inconsistent" and noted that she missed several visits without calling, including a birthday party for A.P.¹ Transcript at 132. Because of her inconsistent visitation, the trial court formally suspended her visits with the Children. Furthermore, MCDCS unsuccessfully attempted home-based counseling with Mother. Mother failed to maintain weekly contact with the MCDCS. Mother also missed several drug screens, which she claimed to have "ma[d]e up" at a "24-hour clinic," but she and Father never provided the results of these screens to the MCDCS. Id. at 41.

¹ We note that, at the hearing, Mother was unable to remember the Children's dates of birth.

Mother received two referrals for a mental health evaluation, one of which she left without finishing. At a psychiatric evaluation in May 2005, Mother informed Dr. Madhu Rao, a psychiatrist, that she had “severe mood swings, had been hospitalized in the past for suicide attempts . . . had a lot of anxiety . . . was unable to tolerate stressful situations, unable to leave the house, would isolate herself, be extremely irritable and angry, have crying spells,” and reported having “sleeping problems.” Id. at 151. Mother had “a lot of charges of Battery,” a “history of runaways,” and shoplifting charges and arrests when she was a teenager. Id. at 152. Dr. Rao testified that Mother was “tearful, agitated, initially hostile, guarded, suspicious, uncooperative, not wanting to give information, and would only talk selectively” Id. at 154. He noted that she was pregnant at the time and “admitted to smoking two packs of cigarettes a day.” Id. at 155. He diagnosed Mother as bipolar and recommended medication and counseling, but Mother disagreed with the diagnosis and subsequently failed to obtain treatment. At the hearing, Mother agreed that she was “just now” starting to realize that she needed counseling. Id. at 52.

The evidence in this case supports the finding that Mother has not completed the services required of her for reunification with the Children. The Children were removed because of Mother’s failure to provide a safe environment for them and, in the case of S.P., because Mother had not completed services required of her,² and we cannot say the

² Mother argues that “the removal was based on the false allegations of abuse” and that the MCDCS “cannot claim that the conditions which led to removal have not been remedied.” Appellant’s Brief at 5. Although Father later passed a polygraph test showing that “he was not lying when he said he did not molest anyone,” the truth or falsehood of the accusation was not the basis of the petition. Rather, the petition alleged that Mother had failed to provide A.P. and M.P. with a safe environment because she chose that they reside with Father despite believing allegations that Father had molested T.L. The petition

trial court's conclusion that the conditions that resulted in the Children's removal and placement outside the home will not be remedied is clearly erroneous. See In re L.S., 717 N.E.2d at 210 ("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.").

B. Threat to Well-Being

Mother also argues that there was not clear and convincing evidence that the continuation of the parent-child relationship poses a threat to the Children's well-being. Ind. Code § 31-35-2-4(B) is written in the disjunctive; it requires the trial court to find only one of the two requirements of subsection (B) by clear and convincing evidence. See In re V.A., 632 N.E.2d 752, 756 (Ind. Ct. App. 1994). The trial court found that there was a reasonable probability that Mother would not be able to remedy the conditions that warranted the Children's removal from their home.

Because there is sufficient evidence to support the trial court's conclusion that there is a reasonable probability the conditions which warranted removal would not be remedied, we need not address whether the decision that the continuation of the parent-child relationship poses a threat to the well-being of the children is clearly erroneous. See, e.g., In re L.S., 717 N.E.2d at 209 (holding that because the statute was written in the

also alleged that Mother had neglected A.P. and M.P.'s medical needs. Furthermore, the petition for removal of S.P. alleged that he was "endangered in the care of his parents due to their non-completion of rehabilitative services that would allow the return of the older children to their care and custody." Exhibit 7.

disjunctive the trial court's finding that parent-child relationship posed a threat to the well-being of the children was enough to satisfy the requirement under Ind. Code § 31-35-2-4(B)), reh'g denied.

C. Best Interests

The MCDCS was required to prove by clear and convincing evidence that the termination was in the Children's best interests. In determining what is in the best interests of the Children, the trial court is required to look at the totality of the evidence. A.F. v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1253 (Ind. Ct. App. 2002), trans. denied. In doing so, the trial court must subordinate the interests of the parents to those of the children involved. Id. "[T]he historic inability to provide adequate housing, stability, and supervision, coupled with the current inability to provide the same, will support a finding that continuation of the parent-child relationship is contrary to the child[ren]'s best interests." In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005).

At the hearing, the MCDCS case manager assigned to Mother's case testified that termination would be in the best interests of the Children. Mother cites In re R.J., 829 N.E.2d 1032, 1039 (Ind. Ct. App. 2005), for the proposition that the recommendation of witnesses that termination is in a child's best interests, alone, is an insufficient basis for terminating parental rights. In that case, we held that:

[T]here is not clear and convincing evidence to support the trial court's findings that [Father] failed to provide safe and adequate housing or that he has failed to provide a safe plan for R.J.'s care while he is at work. Without such findings, the trial court's conclusions that the conditions that resulted in R.J.'s placement outside the home will not be remedied or that there is a

reasonable probability that the continuation of the parent-child relationship poses a threat to R.J.'s well-being are clearly erroneous.

Id. Here, however, there is sufficient evidence to support the trial court's conclusion that there is a reasonable probability that the conditions which warranted removal would not be remedied. Accordingly, the termination of Mother's parental rights was not based solely on the recommendation of witnesses that termination would be in the best interests of the Children. Given Mother's failure to use the services recommended to her for the proper care of her children, as previously discussed in Part A, supra, we cannot say that the trial court's conclusion that termination is in the Children's best interests is clearly erroneous. See In re T.F., 743 N.E.2d 766, 773 (Ind. Ct. App. 2001) (holding that termination of parents' parental rights was in the children's best interests where the parents had not demonstrated an ability to effectively use the services recommended to them to care properly for their children), trans. denied.

D. Satisfactory Plan

Mother challenges the trial court's conclusion that "there is a satisfactory plan for the care and treatment of the children, that being adoption." Appellant's Appendix at 24. The plan 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 B.D.J., 728 N.E.2d 195, 204 (Ind. Ct. App. 2000). Adoption is a satisfactory plan. In re A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997). Mother argues that the MCDCS placed the Children for adoption "with a 60 year old, unemployed, single woman who has five other children and no apparent means of financial support The [MCDCS] would find this living

situation intolerable and unfit in a biological parent but argues that this placement is perfectly appropriate in an adoptive parent.” Appellant’s Brief at 9. We find no support in the record for this characterization.

The MCDCS has placed the Children in a preadoptive therapeutic foster care home with a retired nurse who specializes in taking care of children with special needs. She has family members who “are professionals who help with . . . the children.” Transcript at 255. The record shows that A.P. and M.P. both have “vision problems” and are developmentally delayed in their education. Id. at 253. S.P. has a cleft palate and has had several surgeries and will require several more. Id. M.P. has had extensive dental work because “his teeth had been ignored for a long time.” Id. at 215. The children are thriving in the care of their foster parent, and the plan is for her to adopt them. We cannot say that the trial court’s conclusion that there is a satisfactory plan for the care and treatment of the children is clearly erroneous. See In re A.K., 755 N.E.2d 1090, 1095 (Ind. Ct. App. 2001) (holding that evidence that mother’s children were thriving under care of their foster mother and that foster mother wanted to adopt the children after termination of mother’s parental rights was sufficient to support finding that termination of mother’s parental rights and placement of children with foster mother was satisfactory plan for children’s care and treatment).

Lastly, we note that we decide this case on its merits following a remand to determine whether the Judge of the Marion County Superior Court, Juvenile Division, had, in fact, approved the magistrate’s proposed disposition as required for there to be an order terminating the parental relationship. See Palmero v. MCDCS, No. 49A02-0706-

JV-470, slip op. at 2 (Ind. Ct. App. December 27, 2007). As the response of the trial court, which we appreciate, made clear, the trial court judge did approve the magistrate's proposed order.

The response also showed that the approval occurred on May 22, 2007, some eighteen days after May 4, 2007, the date the Magistrate's proposed order was filed. The parties apparently accepted the document filed on May 4 as the order from which an appeal could be taken. However, the order approved by the trial court judge on May 22 is the order from which an appeal can be taken. See Ind. Code § 33-23-5-9(a) (“[A] magistrate shall report findings in an evidentiary hearing, a trial, or a jury’s verdict to the court. The court shall enter the final order.”).

We understand that the Marion County Superior Court, Juvenile Division, is addressing the problem posed by the current system. Again, we appreciate its efforts.

It will be in the best interest of both courts and the parties if it is clear on the record that the magistrate's proposed disposition is just that until such time as it is approved by the trial court judge and that it is the approved order that effects the termination and is appealable.

For the foregoing reasons, we affirm the trial court's involuntary termination of Mother's parental rights to A.P., M.P., and S.P.

Affirmed.

BARNES, J. and VAIDIK, J. concur