

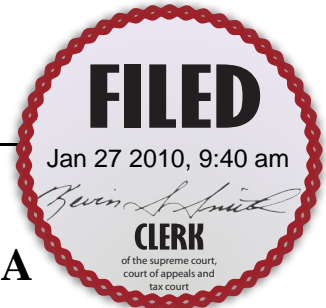
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ATTORNEY FOR APPELLANT:

JILL M. ACKLIN
Westfield, Indiana

ATTORNEYS FOR APPELLEE:

ROBERT M. YOKE
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF C.L., V.L.
and C.L.,

Y.L., Mother

Appellant-Respondent,

VS.

No. 49A02-0907-JV-639

MARION COUNTY DEPARTMENT
OF CHILD SERVICES,

Appellee–Petitioner

and

CHILD ADVOCATES, INC.,

Co-Appellee.

APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Gary Chavers, Judge Pro-Tem

The Honorable Larry Bradley, Magistrate

Cause No. 49D09-0901-JT-3771

49D09-0901-JT-3773

49D09-0901-JT-3774

January 27, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Y.L. (“Mother”) appeals the juvenile court’s order terminating her parental rights to her children, Chr.L., V.L., and Cho.L.. For our review, Mother raises a single issue, which we restate as whether she received ineffective assistance of counsel from her court appointed attorney. Concluding Mother’s counsel was not ineffective and Mother received a fundamentally fair trial, we affirm.

Facts and Procedural History

On February 26, 2008, the Marion County Department of Child Services (“DCS”) filed a petition alleging Chr.L., V.L., and Cho.L. to be children in need of services (“CHINS”) based on Mother’s insufficient income and inability to provide stable housing. On June 11, 2008, Mother admitted the allegations in the CHINS petition. The juvenile court ordered Mother to work with a home-based counselor, complete a parenting assessment, follow the recommendations of her service providers, obtain suitable housing, and obtain a legal source of income. A review hearing was scheduled for October 1, 2008, which Mother failed to attend.

On January 20, 2009, DCS filed a petition to terminate Mother's parental rights ("TPR"). The juvenile court held a trial on June 22, 2009. At the beginning of the trial, Mother's counsel requested permission to withdraw her appearance on behalf of Mother. Mother's counsel informed the juvenile court:

My last contact with my client was on the pre-trial in this matter [February 9, 2009]. I have since sent her correspondence on three different occasions. She has had my telephone number. She tells me she has called me[,] but I have never received a message from her. ... I cannot possibly try this case having no more contact with my client than I have. Our attorney/client relationship has completely broken down. I've spoken with her this morning. She is present[,] but she and I disagree on how this matter should go forward, in fact we disagree greatly. I cannot possibly represent her interests. I have not heard from her, I haven't been able to subpoena witnesses. I've not been able to interview her.

Transcript at 27. The juvenile court denied counsel's motion to withdraw stating: "I think it would probably be best to have [counsel] here at least to cross examine witnesses I feel better that [Mother] would have some representation I think it's best [Mother] have some representation than not at all." *Id.* at 29, 31. Mother's counsel then requested a five minute recess to inform her office because she had not planned to remain at the trial that day.

The trial proceeded, with counsel representing Mother. Mother's counsel reviewed and objected to DCS's exhibits, in some cases successfully, cross-examined witnesses, and conducted an extensive direct examination of Mother. At the conclusion of the trial, the juvenile court issued its order terminating Mother's parental rights to all three children. Mother now appeals.

Discussion and Decision

I. Standard of Review

Our supreme court set forth the standard of review for an ineffective assistance of counsel claim in the context of a TPR trial.

Where parents whose rights were terminated upon trial claim on appeal that their lawyer underperformed, we deem the focus of the inquiry to be whether it appears that the parents received a fundamentally fair trial whose facts demonstrate an accurate determination. The question is not whether the lawyer might have objected to this or that, but whether the lawyer's overall performance was so defective that the appellate court cannot say with confidence that the conditions leading to the removal of the children from parental care are unlikely to be remedied and that termination is in the child's best interest.

Baker v. Marion County Office of Family & Children, 810 N.E.2d 1035, 1041 (Ind. 2004).

II. Assistance of Counsel

Mother claims her counsel was ineffective for three reasons: 1) counsel asked the juvenile court to permit her to withdraw her appearance on three occasions during the trial; 2) counsel told the juvenile court she did not expect to stay for the trial; 3) counsel had not reviewed DCS's exhibits prior to trial. None of the reasons put forth by Mother, with the possible exception of counsel's failure to review DCS's exhibits prior to trial, bear on her effectiveness in representing Mother. Despite her multiple requests to withdraw from the case, Mother's counsel accepted the ruling of the juvenile court and conducted herself in a capable and professional manner throughout the trial. Mother's counsel extensively cross-examined DCS's witnesses and conducted a thorough direct examination of Mother. In addition, although Mother's counsel did not review DCS's exhibits prior to trial, she

reviewed each of the exhibits individually prior to their admission and successfully objected to the admission of three of the exhibits, resulting in two of the exhibits being admitted for a limited purpose only, and one exhibit being refused admission by the juvenile court. At one point in the trial, the juvenile court responded to Mother's concerns about her counsel by stating: "[Counsel] seems to be representing you very well." Tr. at 113. Therefore, we cannot say Mother's counsel's representation was defective.

III. Fundamental Fairness

In addition, there was substantial evidence before the juvenile court to indicate the conditions leading to the removal of the children from Mother's care were unlikely to be remedied and termination of parental rights was in the best interests of the children. Mother failed to follow the advice of her mental health counselors and had minimal contact with DCS. In the year, since the filing of the CHINS petition, Mother has lived at five different addresses and had plans to move into a sixth residence in July of 2009. Mother has had several jobs since the CHINS petition was filed, none of which provided an adequate income to maintain housing and necessities for the children. Mother's visitation with the children was suspended after three consecutive missed visits; Mother never explained the missed visits or requested to restart visitation after the suspension. Further, the children have been placed together and are thriving in a pre-adoptive foster home.

Based on this evidence, we agree with the juvenile court's decision that the conditions leading to the children's removal from Mother's care are unlikely to be remedied and

termination of Mother's parental rights is in the best interests of the children. As a result, Mother received a fundamentally fair trial.

Conclusion

Mother did not receive ineffective assistance of counsel and she received a fundamentally fair trial. Therefore, the order of the juvenile court is affirmed.

Affirmed.

BAKER, C.J., and BAILEY, J., concur.