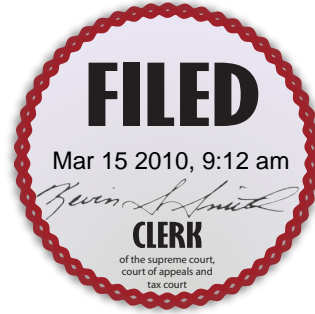


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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF PARENT-CHILD RELATIONSHIP)
OF C.R. AND E.R., MINOR CHILDREN)

L.R.,)

Appellant/Respondent,)

vs.)

CASS COUNTY OFFICE of INDIANA)
DEPARTMENT OF CHILD SERVICES,)

Appellee/Petitioner.)

No. 09A02-0908-JV-801

APPEAL FROM THE CASS CIRCUIT COURT
The Honorable Leo T. Burns, Judge
Cause Nos. 09C01-0907-JT-4 and 09C01-0907-JT-5

March 15, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Respondent L.R. appeals from the termination of her parental rights with respect to her biological children C.R. and E.R. L.R. challenges the trial court's finding that she relinquished her parental rights freely and voluntarily without duress. We affirm.

FACTS AND PROCEDURAL HISTORY

L.R. ("Mother") is the biological mother of C.R. and E.R. ("the Children"), currently ages seven and three, respectively. Between March and May of 2008, the Indiana Department of Child Services ("DCS") investigated reports that E.R. had fallen down some stairs and that Mother was generally unable to adequately supervise the Children due to apparent abuse of prescription medication. On May 27, 2008, the DCS filed petitions alleging that the Children were children in need of services ("CHINS"). On August 13, 2008, the Children were found to be CHINS.

On June 30, 2009, Mother signed forms indicating her voluntary relinquishment of parental rights to the Children. On July 1, 2009, the DCS filed petitions for the involuntary termination of Mother's parental rights with respect to the Children. On July 15, 2009, the juvenile court held a hearing on the DCS's petitions, which proceeded, in relevant part, as follows:

THE COURT: ... [Mother], have you received a copy of the petition filed by the Department?

[Mother]: Yes.

THE COURT: All right. And that -- you understand the gist of the petition is to terminate your parental rights to these children.

[Mother]: I understand that, Judge.

THE COURT: All right. Ma'am, this is going to be somewhat redundant today. It's going to seem to you that I'm going to ask you the same types of questions from a number of different directions. I don't need to tell you why we do that. We want to be very careful. You know that this, the finality of the decision that you have made in this case.

[Mother]: Yes.

THE COURT: All right, the Voluntary -- I have been presented, file-marked today, a Voluntary Relinquishment of Parental Rights that was signed by you some time ago. And I think that's good, the fact that you executed these documents on June 30th of 2009. So you recall signing the Voluntary Relinquishment of Parental Rights at that time?

[Mother]: Yes, in [my attorney's] office.

THE COURT: All right. The petition states generally that you desire to voluntarily and permanently terminate your relationship with your child, or your children[.] Is that correct?

[Mother]: Judge, in order to not go to prison I have to give my rights away, so yes.

THE COURT: All right. Would you please state your age for the record?

[Mother]: I am almost 27 years old[.]

THE COURT: Thank you. Are you under the influence of alcohol or other drugs at this time?

[Mother]: No, sir.

THE COURT: Do you read, write and understand the English language?

[Mother]: Yes.

THE COURT: Are you now suffering from any mental illness or disease that affects your understanding of these proceedings?

[Mother]: No.

[Mother's Attorney]: Judge, I would for the record -- the only thing that [Mother] has, and this is documented in the file, she has short-term memory issues.

THE COURT: All right.

[Mother's Attorney]: Actually, it's not short-term, it's long-term, isn't it?

[Mother]: It's short-term.

[Mother's Attorney]: It's short -- one of us is right. Probably [Mother].

THE COURT: And I recall that from prior hearings, [Mother]. Do you believe that that affects your understanding of these proceedings?

[Mother]: No, I don't.

THE COURT: I'm required by law to advise you of the following things. As much as this seems to belabor the point, I need to do this. Your

consent to the termination of the parent-child relationship is permanent and cannot be revoked or set aside unless it was obtained by fraud, duress, or unless the Court finds that you were not competent at the time you gave your consent. When a juvenile court terminates a parent-child relationship, all rights, powers, privileges, immunities, duties and obligations, including any rights to custody, control, visitation or support pertaining to that relationship, are permanently terminated and your consent to the child's adoption is not required. You have the right to the care, custody and control of your child as long as you fulfill your parental obligations. You have the right to a judicial determination of any alleged failure to fulfill your parental obligations in a proceeding to adjudicate your child a delinquent child or a child in need of services. You have the right to assistance in fulfilling your parental obligation after a court has determined that you are not doing so. The parent-child relationship with your child may only be terminated if the following are proven by clear and convincing evidence: That the child has been removed from the parent for at least six months under a dispositional decree, or a court has entered a finding under Indiana law that reasonable efforts for family preservation or reunification are not required, or the child has been removed from the parent and has been under the supervision of the county office of Family and Children for at least fifteen months of the most recent 22 months, or the parent has been convicted of an offense listed in Indiana Code 31-35-3-4, and the victim was less than 16 years of age and was your child or your spouse's child, and the child has been removed under a dispositional decree for at least six months. That provision clearly does not apply in this case. The court would also have to find by clear and convincing evidence that there is a reasonable probability that the conditions that resulted in the child's removal, of the reasons for placement outside the home, will not be remedied, or that continuation of the parent-child relationship poses a threat to the well-being of the child, and there is a satisfactory plan for the care and treatment of the child, and termination is in the best interests of the child. You are entitled to representation of counsel provided by the court if necessary throughout proceedings to terminate the parent-child relationship. You are also entitled to notice of all termination hearings unless you effectively waive notice. At a termination hearing you may allege that your consent was not voluntarily given. Do you understand all those rights?

[Mother]: Yeah, I do.

THE COURT: Do you understand that now is the time to ask any questions about any of those rights?

[Mother]: Yes.

THE COURT: Do you understand that by giving your consent to termination you give up the rights of which you have just been advised?

[Mother]: Yes.

THE COURT: Do you understand the permanent nature and effect of termination of your parental rights?

[Mother]: I think so.

THE COURT: Do you understand and appreciate the finality of this act?

[Mother]: I do.

THE COURT: Has the county office of Family and Children or any other person or agency promised you anything, including visitation, or coerced you, threatened you, or tricked you into consenting to the termination of your parent-child relationship?

[Mother]: No.

THE COURT: Do you consent to the termination of your parent-child relationship?

[Mother]: Yes.

THE COURT: I referred to these forms earlier that are dated June 30, 2009. They have your signature that appears at the bottom of the form captioned Voluntary Relinquishment of Parental Rights. It was notarized on June 30th in front of a notary public[.] Is this, in fact, your signature on the two forms that I have, ma'am?

[Mother]: Yes.

THE COURT: [Mother], I have delayed as I looked through the forms. I want to be sure I haven't overlooked anything. I also think that the delay is appropriate because of the finality of what we're doing here. Do you understand that I'm at the point where you can tell me that you want this to be over and your rights to your children will be terminated? Your other option at this point is to hit the brakes and to say, no, I don't [want] to do it this way, I want the [DCS] to prove by clear and convincing evidence that your rights to [the Children] should be terminated. Do you understand that, ma'am?

[Mother]: Yes.

THE COURT: Do you want me to enter an order terminating your rights to [the Children]?

[Mother]: Yes.

THE COURT: All right. [DCS's attorney], is there anything else or have I overlooked anything as far as the record in this proceeding?

[DCS's attorney]: Judge, I did want to ask one question, or maybe more than one. Ma'am, you understand this isn't one of those kinds of things that you can get a redo on? You know, this is -- there are no redos. You can't come back in tomorrow or next week or next month or next year and say, gee, I changed my mind. Do you understand that?

[Mother]: Yeah. I understand.

[DCS's attorney]: I imagine that you have some thoughts as to the future of the children. Do you understand that when you terminate your

parental rights and the Judge enters an order terminating your parental rights that those future plans could change and you would have no right to have input into any future plans for the children?

[Mother]: I understand that.

Tr. pp. 5-13.

On July 22, 2009, the juvenile court issued orders terminating Mother's parental rights to the Children. The orders provide in part as follows:

4. Termination of the parent-child relationship has been requested by [Mother].

5. The Court now finds that [Mother's] consent is freely and voluntarily made and that there was no ... fraud or duress. There is no evidence that [M]other is incompetent.

6. The consent of [Mother] to termination of the parent-child relationship is valid.

Appellant's App. pp. 6, 9.

DISCUSSION

This court has long had a highly deferential standard of review in cases concerning the 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. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. The purpose of terminating parental rights is not to punish the parents, but to protect their children. *Id.* We will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. *Egly v. Blackford Cnty. DPW*, 592 N.E.2d 1232, 1234-35 (Ind. 1992). In determining whether the evidence is sufficient to support the judgment terminating parental rights, this court neither reweighs the evidence nor judges the credibility of witnesses. *Id.* at 1235. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn there from. *Id.* Findings of fact are clearly erroneous only when the record lacks any evidence or reasonable inferences to support them. *Crowley v. Crowley*, 708 N.E.2d 42, 54 (Ind. Ct. App. 1999).

In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001).

Here, the only question is whether the juvenile court's finding that Mother's relinquishment of her parental rights to the Children was voluntary was clearly erroneous. A parent who executes a voluntary relinquishment of parental rights is bound by the consequences of such action, unless the relinquishment was procured by fraud, undue influence, duress, or other consent-vitiating factors. *Snyder v. Shelby County Dep't of Pub. Welfare*, 418 N.E.2d 1171, 1180 (Ind. Ct. App. 1981). Indiana Code section 31-35-1-7 (2008) provides in relevant part as follows:

- (a) Before the court may enter a termination order, the court:
 -
 - (2) may require an investigation by a probation officer to:
 - (A) determine whether there is any evidence of fraud or duress; and
 - (B) establish that the parents were competent to give their consent.
 - (c) If there is any competent evidence of probative value that:
 - (1) fraud or duress was present when written consent was given; or
 - (2) a parent was incompetent;
- a trial court shall dismiss a petition or continue the proceeding.

Mother has failed to establish that the juvenile court's determination regarding the voluntariness of her relinquishment of parental rights was clearly erroneous. Mother points to her statement at the hearing that she was relinquishing her rights to the Children so as not to go to prison as evidence that she consented only under duress. The juvenile court, however, was not required to credit this statement, and apparently did not. Moreover, the juvenile court also asked Mother if the DCS "or any other person or agency promised you anything, including visitation, or coerced you, threatened you, or tricked you into consenting to the termination of your parent-child relationship[.]" a question she answered in the negative. Tr. p. 11. It was the juvenile court's province to resolve any conflict inherent in this evidence, and we will not invade it.

Moreover, to the extent that Mother argues that she might have been incompetent to relinquish her parental rights, we likewise conclude that the juvenile court's finding to the contrary was not clearly erroneous. Mother specifically denied that she was "suffering from any mental illness or disease that affect[ed her] understanding of [the] proceedings" or that her undisputed short-term memory issues affected her understanding either. Tr. p. 7. The record before us indicates that the juvenile court went to great lengths to ensure that Mother's consent to the termination was voluntary and that she clearly understood the rights that she was relinquishing. Mother, however, chose not to avail herself of any of the many opportunities she was given to withdraw that consent. Mother has failed to establish that the juvenile's court's finding that her consent was voluntarily given was clearly erroneous.

The judgment of the juvenile court is affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.