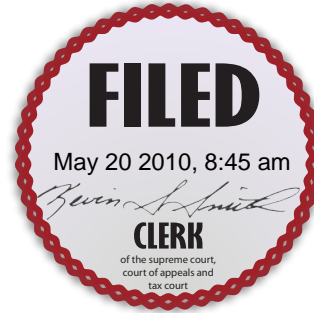


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP)
OF N.L. AND J.A.)

J.A.,)

Appellant,)

vs.)

TIPPECANOE COUNTY DIVISION, INDIANA)
DEPARTMENT OF CHILD SERVICES,)

Appellee.)

No. 79A05-0911-JV-653

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta H. Rush, Judge
The Honorable Faith Graham, Magistrate
Cause No. 79D03-0904-JT-37

May 20, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Respondent J.A. (“Father”) appeals an order terminating his parental rights to N.L., upon the petition of the Appellee-Petitioner Tippecanoe County Department of Child Services (“the DCS”). We affirm.

Issue

Father presents a sole issue for review: Whether the DCS established, by clear and convincing evidence, termination of the parent/child relationship is in the best interests of N.L.

Facts and Procedural History

On April 18, 2007, B.L. (“Mother”) gave birth to N.L., who has cerebral palsy. At the time of N.L.’s birth, Father was incarcerated on a theft charge. N.L. remained in the sole custody of Mother until February 19, 2008, when Mother contacted the DCS for assistance. The DCS alleged that N.L. was a child in need of services (“CHINS”) because Mother was unable to adequately care for N.L. The petition also alleged that Mother suffered from severe anxiety and self-medicated by using marijuana.

Both Father and Mother admitted that N.L. was a CHINS. They agreed to his placement with his maternal grandmother. The CHINS court ordered Father to participate in

assessments and parenting services, and he was ordered to notify the DCS within 24 hours of his release from incarceration. On April 18, 2008, Father was released from incarceration. Father submitted to paternity testing; however, he did not participate in any parenting services.

Father lost contact with the DCS and moved to New York for several months. In April of 2009, Father returned to Indiana and was incarcerated due to a probation violation related to a conviction for non-support of a dependent.¹ In June of 2009, Father was transferred to the Indiana Department of Correction.

On April 15, 2009, the DCS petitioned to terminate Father's and Mother's parental rights. Mother consented to the termination of her parental rights and to N.L.'s adoption.² On October 1, 2009, the juvenile court conducted a contested hearing as to Father's parental rights. At the conclusion of the hearing, the court issued an order granting the DCS petition for termination of Father's parental rights. He now appeals.

Discussion and Decision

A. Standard of Review

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, this Court neither reweighs the evidence nor

¹ Father has six children in addition to N.L.

² She is not an active party to this appeal.

judges 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.

At the time of the termination decision at issue, Indiana Code Section 31-35-2-4(b)³ set out the elements that the DCS must have alleged and proven by clear and convincing evidence in order to terminate a parent-child relationship as follows:

(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 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 or probation department 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) there is a reasonable probability that:

³ The statute has since been amended, effective March 12, 2010.

- (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 trial court must subordinate the interests of a parent to those of the child when evaluating the circumstances surrounding the termination. In re A.A.C., 682 N.E.2d at 544. Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. Id. The trial court need not wait to terminate the parent-child relationship until the child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired. Id.

C. Analysis

Father challenges the trial court's determinations relating to Indiana Code Section 31-35-2-4(b)(2)(C) (best interests of the child). In determining what is in the best interests of the child, the trial court is required to look beyond the factors identified by the DCS and look to the totality of the evidence. In re A.B., 887 N.E.2d 158, 167 (Ind. Ct. App. 2008).

Father concedes that he has had very little contact with N.L. and has not completed parenting services, circumstances that he attributes to his intermittent incarceration. He directs our attention to a recent case in which our Indiana Supreme Court held that the involuntary termination of the parental rights of an incarcerated parent was not warranted. See In re G.Y., 904 N.E.2d 1257 (Ind. 2009), reh'g denied. He argues that "the rationale employed by the Indiana Supreme Court in G.Y. supports a decision here that terminating

Father's parental rights was not in the child's best interest." Appellant's Brief at 12.

In G.Y., the mother, who was incarcerated due to offenses committed before the child's conception, appealed the termination of her parental rights, arguing that the State did not present clear and convincing evidence that termination of her parent-child relationship with G.Y. was in the child's best interests. See In re G.Y., 904 N.E.2d at 1261. Our Supreme Court agreed, observing that G.Y.'s mother had taken numerous steps to secure an earlier release date and provide for G.Y.'s care. Id. at 1263. She had completed a drug rehabilitation program and a parenting class, engaged in individualized drug counseling, was actively participating in an "inmate to work mate program," was pursuing an associate's degree, had secured a full-time job, and had arranged alternative sources of post-release housing, either through family members or a specific program. Id.

Here, in contrast, Father has not asserted that he has taken steps to provide for N.L.'s care. At the time of the termination hearing, Father was incarcerated on a probation violation related to a 2004 conviction for non-support of a dependent.⁴ Unlike the parent in G.Y., there is no evidence of record that Father was attempting during his incarceration to further his education or acquire job skills. He expected to be released on parole in April of 2010 but had not arranged housing or secured employment to commence after his release.

Father has not participated in any services; nor has he provided any child support for N.L. Father has had no formal visitation with N.L. and has seen him only twice in passing. Mother testified that Father historically had difficulty obtaining employment, and was

⁴ Father's criminal history included two felony convictions for check fraud and one misdemeanor conviction for check deception.

homeless when she met him. Mother and N.L.'s case manager each testified that the termination of Father's parental rights was in the best interests of N.L. The Court Appointed Special Advocate prepared a report likewise recommending termination of parental rights.

Accordingly, the DCS presented clear and convincing evidence from which the juvenile court could conclude that termination of Father's parental rights was in the best interests of N.L.

Affirmed.

MAY, J., and BARNES, J., concur.