

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.

ATTORNEY FOR APPELLANT:

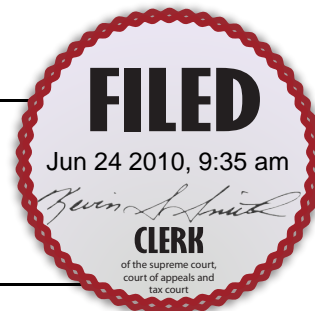
BRIAN J. MAY
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

PAMELA SUE SWIDERSKI
Indiana Department of Child Services
South Bend, Indiana

ROBERT J. HENKE
Indiana Department of Child Services
Central Administration
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**



IN RE: THE MATTER OF THE)
TERMINATION OF THE PARENT-)
CHILD RELATIONSHIP OF J.A.K., J.O.K.,)
AND S.K.,)

S.T.K.,)

Appellant-Respondent,)

vs.)

INDIANA DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner.)

No. 71A03-1002-JT-94

APPEAL FROM THE ST. JOSEPH PROBATE COURT

The Honorable Barbara J. Johnston, Magistrate

The Honorable Peter J. Nemeth, Judge

Cause No. 71J01-0907-JT-121

71J01-0907-JT-122

71J01-0907-JT-123

June 24, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

S.T.K. (“Mother”) appeals the trial court’s termination of the parent-child relationship with her three children, J.A.K., J.O.K., and S.K., upon the petition of the St. Joseph County Department of Child Services (“DCS”). She argues the evidence is insufficient to support the termination. Concluding DCS proved there is a reasonable probability that the conditions that resulted in the children’s removal will not be remedied, we affirm.

Facts and Procedural History

The facts most favorable to the judgment reveal that DCS received a report in February 2008 that eight-year-old J.A.K. was not attending school. DCS learned that J.A.K. was staying home from school to take care of his siblings, three-year-old brother J.O.K. and infant sister S.K. During the investigation, DCS learned there was no electricity or running water in the home. The family got its water from a nearby gas station. There was also no food in the home. All three children were removed from the home. The two youngest children were placed together in foster care, and the oldest child was placed in an in-patient treatment facility because he was suicidal.

The following month, all of the children were adjudicated to be children in need of services (“CHINS”). Mother was ordered to 1) visit regularly with the children, 2) complete

home-based services, 3) attend parenting classes, 4) maintain stable employment, 5) maintain stable and adequate housing, 6) maintain consistent contact with DCS, and 7) establish the paternity of her children. After Mother failed to comply with the court's order, DCS filed a petition to terminate Mother's parental relationships with the three children in July 2009.

Testimony at the termination hearing revealed that when the children were initially detained, eight-year-old J.A.K. suffered from post-traumatic stress disorder, depression, and aggression. He tried to push his brother out of the car and abused his foster mother's dog. Three-year-old J.O.K. was diagnosed with aggression. He smeared his feces and hoarded food. Both boys currently attend therapy and trauma groups. They also both receive speech therapy. J.O.K. no longer smears his feces but still hoards food.

DCS Case Manager Yolanda Young testified Mother has never been able to maintain consistent employment or housing and has not been able to support herself. Mother had two positive drug screens in December 2009, just two months before the February 2010 termination hearing, and there were two open warrants pending because she did not attend paternity hearings. In addition, although she lived with an abusive boyfriend, she refused to attend a non-offending domestic violence group, and she did not maintain regular contact with DCS. Young recommended termination of the parent-child relationships because the conditions that led to the children's removal had not been remedied.

Mother's therapist Dennis Copeland testified that for one year, from July 2008 until July 2009, he tried to help Mother find a job and housing and to get her GED. Copeland was not successful with any of these goals. Copeland terminated services with Mother in July

2009 because no progress was being made. Copeland's recommendation was to terminate Mother's parental rights.

As the last witness at the hearing, twenty-four-year-old Mother testified she had signed a lease for a four-bedroom home the previous day and was working for herself preparing tax returns. When defense counsel brought up the trauma her boys had suffered and J.O.K.'s issues, including smearing feces, Mother responded, "when you potty train a child, you know, they gonna do that."¹ Transcript at 69.

Following the hearing, the trial court issued an order terminating the parental relationships between Mother and her three children. Mother appeals.

Discussion and Decision

The purpose of terminating parental rights is not to punish parents but to protect their children. In re Termination of the Parent-Child Relationship of D.D., 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), trans. denied. Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parties are unable or unwilling to meet their responsibility as parents. Id.

The trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. In re R.S., 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), trans. denied. Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. Id. The trial court need

¹ Defense counsel was apparently hoping Mother would acknowledge her understanding of the severity of her sons' trauma.

not wait until the child is irreversibly harmed before terminating the parent-child relationship.

Id.

Mother's sole argument is that there is insufficient evidence to support the termination of her parental relationship with J.A.K., J.O.K., and S.K. This court will not set aside the trial court's judgment terminating a parent-child relationship unless the judgment is clearly erroneous. Id. at 929-30. 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. at 930. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id.

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

- (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.

Here, Mother specifically contends that DCS failed to prove that there is a reasonable probability that the conditions that resulted in her children's removal will not be remedied. According to Mother, these conditions have been remedied because she now has a home and a job.

To determine whether the conditions are likely to be remedied, the trial court must judge a parent's fitness to care for her children at the time of the termination hearing and take into consideration any evidence of changed conditions. D.D., 804 N.E.2d at 266. The court must also evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. Id.

Our review of the evidence reveals Mother's two sons, now ten-year-old J.A.K. and five-year-old J.O.K., were severely traumatized while living with Mother. Both boys have been diagnosed with aggression, and the older boy also suffers from post-traumatic stress disorder and depression. They both attend therapy and trauma groups and receive speech therapy. J.O.K. still hoards food. Mother demonstrated her lack of understanding of her sons' conditions when she implied children who are being potty trained routinely smear feces. In addition, Mother had two positive drug tests just two months before the termination hearing. She has been the victim of domestic abuse but refused to attend a non-offending domestic violence group.

Mother has never been able to maintain consistent employment or housing and has not been able to support herself. Mother's reliance on the facts she leased a home the day before the termination hearing and was working for herself preparing tax returns is misplaced. The

day before the hearing is simply too late. The time for parents to reform themselves is during the CHINS process, prior to the filing of the petition for termination. Prince v. Department of Child Services, 861 N.E.2d 1223, 1230 (Ind. Ct. App. 2007) (emphasis in the original). If its schedule permits, the trial court could hold a termination hearing within two weeks of the petition being filed. See Ind. Code Sec. 31-35-2-6.5 (requiring interested parties be given ten days notice of a termination hearing).

We reverse a termination of parental rights “only upon a showing of ‘clear error’ – that which leaves us with a definite and firm conviction that a mistake has been made.” Egley v. Blackford County Dep’t of Pub. Welfare, 592 N.E.2d 1232, 1235 (Ind. 1992). We find no such error here and therefore affirm the trial court.

Conclusion

There is sufficient evidence to support the termination of Mother’s parental relationship with her three children, J.A.K, J.O.K, and S.K.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.