

FILED

Jul 13 2010, 9:06 am

Kevin L. Smith

CLERK

of the supreme court,
court of appeals and
tax court

ATTORNEY FOR APPELLEE:

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

))))))))))

No. 20A03-0912-JV-562

BAILEY, Judge

Case Summary

Appellants-Respondents K.K. (“Mother”) and C.I. (“Father”) appeal an order terminating their parental rights to K.I. and R.I. (“the Children”), upon the petition of the Appellee-Petitioner Elkhart County Department of Child Services (“the DCS”). We affirm.

Issues

Mother and Father present two issues for review:

- I. Whether the trial court’s evidentiary rulings regarding polygraph examinations prejudiced Mother’s and Father’s substantial rights; and
- II. Whether the DCS established, by clear and convincing evidence, termination of the parent/child relationships is in the best interests of the Children.

Facts and Procedural History

Father and Mother had two children together, K.I. (born December 29, 2001) and R.I. (born August 23, 2004).¹ The DCS first became involved with the family in 2006, when a report that Father had sexually abused K.I. was substantiated. At that time, Mother agreed to a safety plan whereby Father would not have access to the Children. However, Mother and Father resumed cohabitating in 2007.

In December of 2007, the DCS received a report that R.I. was exhibiting sexualized behavior at his daycare facility. Also, R.I. had bruising on his inner thighs and scratches on his back. The DCS requested removal of the Children from their parents. On January 10, 2008, Mother and Father entered a general admission that the Children were Children in Need of Services (“CHINS”).

¹ Father has a total of five children.

Mother and Father began to receive services to work toward the goal of family reunification. Initially, both parents were granted supervised visitation. However, Father's visitation was suspended in May of 2008 upon the recommendation of the Children's therapist. Subsequently, visitation workers complained of Mother's emotional outbursts during visits and her visitation time was reduced to one hour per week. On March 11, 2009, the DCS requested that the permanency plan be changed from reunification to termination of the parent/child relationships. On June 11, 2009, K.I.'s therapist recommended that all visits with Mother be terminated and the juvenile court approved the change in the permanency plan.

Hearings on the petition for termination of parental rights were conducted on August 31 and October 28, 2009. On November 2, 2009, the juvenile court issued an order granting the DCS petition for termination of Mother's and Father's parental rights. They now appeal.

Discussion and Decision

I. Evidence of Polygraphs

Mother and Father argue that the selective admission of evidence relative to polygraphs unduly prejudiced them. Father was given two polygraphs during therapy, and ostensibly participated in a third at his own expense.² At the outset of the hearing, the juvenile court ruled that polygraph results would not be considered. However, there were subsequent references during the hearing testimony to the administration of the first two polygraphs and certain question responses. Some of this testimony was elicited by the DCS,

² Father's therapist testified that Father chose not to take a third polygraph.

without objection, and some was elicited by Mother and Father.

According to Mother and Father, they should have been allowed to introduce evidence arising from the third polygraph, presumably because it yielded revelations more favorable to Father than did the first and second polygraphs. Nonetheless, there is no record in this regard. In order to preserve the exclusion of evidence for appellate review, a party must make an offer of proof. See Ind. Evidence Rule 103(a)(2), providing that “[e]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected” and “[i]n case the ruling is one excluding evidence, the substance of the evidence was made known to the court by a proper offer of proof, or was apparent from the context within which questions were asked.” As such, Mother and Father have demonstrated no reversible error.

II. Evidence to Support Termination of Parental Rights

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 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:
 - (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.

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

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

Mother and Father challenge 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). Here, the evidence most favorable to the judgment indicates that the Children have significant physical, psychological, and behavioral issues, yet Mother and Father were in denial of the extent of the Children's special needs.⁴ The DCS also presented testimony from several witnesses demonstrating that the parents did not benefit from the provision of services such that they could address the Children's needs and keep them safe from abuse.

With regard to Father, he had a history of child abuse and domestic battery. Father's sexual abuse of K.I. had been substantiated. Also, Father admitted that he had showered with R.I. and gotten an erection, then R.I. had touched Father's erect penis. Father had physically abused his former stepchild when the child was thirteen months of age by "smacking" her on the face. (Tr. 343.) He had also "smacked" his ex-wife. (Tr. 347.) He had reportedly

⁴ K.I. has a seizure disorder and learning disability; R.I. has been diagnosed with autism and ADHD. The Children have frequently struck out in anger, thrown objects, exhibited sexualized behaviors, and engaged in age-inappropriate tantrums.

abused Mother as well. A month before the termination hearing commenced, Father had attacked Mother when she refused his sexual advances, “head-butting” her and tearing at her underclothing. (Tr. 422.) He claimed to have no memory of the incident because he was drunk on “a half pint of rum and an eight pack.” (Tr. 345.) He admitted that he had a substance abuse history and was still drinking “usually on the weekends.” (Tr. 344.)

Father’s therapist opined that Father did not “take ownership” of behaviors to which he had admitted, and instead blamed others for his problems. (Tr. 445.) This is consistent with Father’s testimony that there was not much he could have done to resume visitation because there were “20 or 25 people against him.” (Tr. 349.) When asked to assess his progress in therapy, Father explained his feelings of futility by saying, “there’s nothing to gain.” (Tr. 351.) Father’s therapist concurred, saying that “no real progress could be made.” (Tr. 444.)

Mother’s therapist had requested discontinuation of therapy sessions because Mother was unable to achieve any progress and blamed her extended family members for the Children’s removal. Mother’s therapist testified that Mother had “never been willing to accept what her children have told her.” (Tr. 419.) Mother had also advised the therapist of her belief that her children had no disabilities apart from “everything brought on by this case.” (Tr. 421.) Mother had evicted Father from her residence after the latest incidence of domestic battery. Nonetheless, Father testified that he and Mother were “boyfriend and girlfriend currently.” (Tr. 338.)

The foster mother (who is also the Children’s biological aunt) testified that the

Children had significant needs that, in her opinion, Mother was unable to deal with. Father's therapist, the family case managers, and the Court Appointed Special Advocate each testified that termination of parental rights was in the best interests of the Children.

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 the Children.

Affirmed.

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