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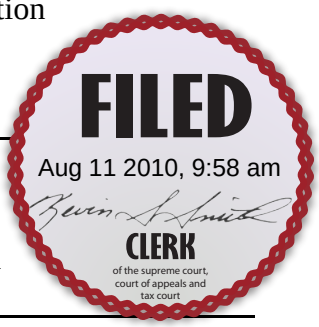

IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF: J. (minor child) and J.L. (mother),	)	
Appellant,	)	
vs.	)	No. 34A02-1001-JT-209
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee.	)	

APPEAL FROM THE HOWARD CIRCUIT COURT
The Honorable Lynn Murray, Judge
Cause No. 34C01-0907-JT-16

August 11, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

J.L. ("Mother") appeals the trial court's order terminating her parental rights to her son J.

We affirm.

ISSUE

Whether clear and convincing evidence supports the trial court's judgment terminating the parental rights of Mother.

FACTS

On May 5, 2008, officers of the Kokomo Police Department found two four-year old children -- J.,[1] and his cousin, M.D. -- with extensive physical injuries that appeared to be the result of abuse and neglect. A case manager from the local office of the Department of Child Services ("DCS") went to the home and "found that both [J. and M.D.] were severely abused," and requested an order of immediate removal. (Tr. 27). The trial court issued the order. J. and M.D. were transported by ambulance to the hospital, where J. was admitted and treated for bruising (in various stages of healing) on his head, chest, buttocks, leg, arm, and feet; an open sore on his forehead; and

[1] J.'s date of birth is October 1, 2003.

"a MERSA infection of . . . sores on his head."[2] (Tr. 31). The adult residents of the home, including Mother were arrested. Thereafter, throughout the proceedings that resulted in the order appealed, Mother remained incarcerated.

On May 7, 2008, the trial court held a detention hearing. It found that DCS had "substantiated" that J. was "the victim of abuse and neglect at the hands of" Mother and others; that J. had suffered "severe physical injuries and emotional abuse, including being tied up and restrained by [his] wrists to various objects within the house and being deprived of nutrition"; and that Mother "failed to protect said child and did not provide the child any medical care." (Ex. 7, order May 7, 2008 p.1). The trial court authorized J.'s placement in a therapeutic foster home upon his release from the hospital. Thereafter, throughout the proceedings that resulted in the order appealed, J. remained in that foster home (with M.D., his cousin).

Also on May 7, 2008, DCS filed a petition alleging that J. was a Child in Need of Services ("CHINS"). At the initial hearing on that date, Mother denied the allegations; and the trial court appointed counsel for Mother and a Court Appointed Special Advocate ("CASA") for J. On June 30, 2008, a fact-finding hearing was held, and the trial court found J. to be a CHINS.

On July 21, 2008, the trial court held a dispositional hearing. It noted Mother's eight pending criminal charges for alleged felony offenses committed against J. and M.D.

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[2] The transcript refers to a "MERSA infection." (Tr. 31). We assume this reference is to the "MRSA infection," wherein skin is infected by a type of staph bacteria resistant to many antibiotics. *See* http://www.cdc.gov/ncidod/dhqpr/ar_mrsa_ca_public.html (last visited July __, 2010).

The trial court ordered J. to remain in foster care and receive medical and therapeutic services for his special needs. It ordered that services be provided to Mother upon release from incarceration. After a review hearing on October 27, 2008, the trial court's order stated that no family services had been provided to Mother "because she has been continually incarcerated." (Ex. 7, Oct. 27, 2008 order). After the January 26, 2009 review hearing, the order noted that Mother had not been provided services by DCS because she had "been incarcerated and therefore unable to participate," and that Mother "did not present any evidence that she had been participating in services on her own through her incarceration or otherwise." (Ex. 7, Jan. 26, 2009 order).

On April 2, 2009, the trial court in the criminal matter accepted Mother's plea of guilty to two counts of neglect of a child resulting in bodily injury, as class C felonies (pursuant to a plea agreement, whereby the State agreed to dismiss the other four class B felony and two class C felony charges). The court sentenced Mother to serve the maximum eight-year sentence for each conviction, concurrently.

After the permanency hearing on April 6, 2009, the trial court noted J.'s "special medical and therapeutic needs," and found that he continued to be a CHINS. (Ex. 7, April 6, 2009 order). It further found that no services had been provided to Mother "because she ha[d] been continually incarcerated"; and that Mother had been sentenced to serve two concurrent eight-year sentences on "two counts of neglect." *Id.*

On July 10, 2009, DCS filed a petition seeking to terminate Mother's parental rights to J. At the initial hearing, on July 20, 2009, Mother denied the allegations, and the

trial court appointed a CASA to represent J. Also on July 20, 2009, the trial court conducted a review hearing on the CHINS matter. Its order thereon noted that J. had "not recovered from [the] injuries suffered before removal," but found that his "medical and therapeutic needs" were "being met" in foster care and should be continued. (Ex. 7, July 20, 2009 order). It further found that no family services had been provided to Mother "because she ha[d] been continually incarcerated"; and that the permanency plan for J. was "adoption." *Id.*

On November 9, 2009, the trial court held the fact-finding hearing and received evidence as to the above. The trial court also admitted photographs of J. (and of M.D.) taken at the hospital on May 5, 2008; J.'s hospital records; records of the CHINS proceedings; and the CCS, guilty plea order, plea agreement, and sentencing order as to Mother's criminal charges.

The Kokomo Police Department officer who interviewed Mother on May 5, 2008, testified that Mother had initially said that J.'s injuries were from his having "fallen." (Tr. 22). However, he testified, she then admitted that (1) "she was present" while another adult in the household had hit J.; (2) she "assisted in locking [J.] in the closet at least once"; (3) she "assisted . . . in tying [J. and M.D.] to different pieces of furniture"; and (4) she "personally tied him the night before to a laundry basket." (Tr. 22, 23). The officer testified that there were zip ties "attached to the laundry basket that she was referring to." (Tr. 24).

DCS family case manager Laura Redding testified that since J.'s removal in May of 2008, Mother had had no contact with him. Redding further testified that although J. had "recovered from" his physical injuries," he still suffered from "developmental delays" and "emotional injuries." (Tr. 32). Redding testified that J. was "blocking the trauma," in that he was "not willing to discuss anything about his biological mother" or "even acknowledge that he ha[d] a biological mother." (Tr. 33, 40). Redding opined that there was no reasonable probability that the conditions resulting in J.'s removal were "going to get better," because Mother had not received any family services and thus DCS had no evidence that she "understands how to keep [J.] safe." (Tr. 37). She further opined that termination was in J.'s best interest because he "deserve[d] permanency" and "safety," and Mother was "unable to insure that [J.] would be safe." (Tr. 38). Redding noted that J.'s "needs were not being met while he was in the care and custody of his mother," and that DCS had not been "able to see any sort of improvement" in that regard "since she has been incarcerated and will still continue to be for at least a year and a half." (Tr. 38-39).[3] Redding testified that the permanency plan for J. was adoption.

Joyce Dahlhauser, J.'s appointed CASA since the initiation of CHINS proceedings, testified that she was "concern[ed]" about whether J. would be able "to get over this, . . . to have a chance at having a normal child's life without having to worry about what's going to happen to him," and to overcome "his developmental delays." (Tr. 46). Dahlhauser testified that she questioned Mother's ability to parent, given "the fact

[3] The trial court had received evidence that the Department of Correction showed Mother's "earliest possible release date" to be May 5, 2012.

that the abuse had [gone] on for so long" and she had "allow[ed] her child to be abused like that." *Id.* Dahlhauser opined that termination would be in J.'s best interest because "he deserve[d] to have some type of permanency," to be in "a home that would be a permanent place for him to feel safe." (Tr. 48, 49). Dahlhauser "questioned" whether if Mother were released in 2012, "she would even be able to care for him." (Tr. 48). Based on the same reasoning, Dahlhauser opined that the continuation of Mother's parental relationship with J. posed a threat to his well-being.

Mother testified that she was currently taking classes at the Department of Correction that could "possibly" allow her release before May of 2012. (Tr. 52). She testified that she was enrolled in a class that could lead to her receipt of a GED and a parenting class, and that she had completed an anger management class.

On January 10, 2010, the trial court issued its eleven-page findings of fact and conclusions of law. It found "by clear and convincing evidence" that it was

> reasonably probable that the conditions that led to the removal and that led to the placement outside the home, namely [Mother]'s inability to be a consistent appropriate caregiver and provide an abuse and neglect free environment for [J.] will not be remedied to the degree that [M]other will be able to provide [J.] with the nurturing, stable, and appropriate care and environment that the child requires on a long term basis.

(App. 17). It further found

> by clear and convincing evidence that the continuation of the parent-child relationship between [J.] and [Mother] pose[d] a threat to the well being of the child.

Id. The trial court found the statutory requirements had been met and ordered that Mother's parental rights to J. be terminated.

DECISION

The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution. *In re G.Y.*, 904 N.E.2d 1257, 1259 (Ind. 2009). A parent's interest in the care, custody and control of his or her children is a fundamental liberty interest, and the parent-child relationship is one of the most valued relationships in our culture. *Id.* Nevertheless, we have recognized that parental interests are not absolute and must be subordinated to the child's best interests in determining the proper disposition of a petition to terminate parental rights. *Id.* Accordingly, parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.* at 1259-60.

The purpose of terminating parental rights is not to punish parents but to protect children. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002) (citing *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*, *cert. denied*), *trans. denied*. The trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *R.S.*, 774 N.E.2d at 930. Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. *Id.* Moreover, the trial court need not wait until the child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* The parent's

habitual pattern of conduct is relevant to determine whether there is a substantial probability of future neglect or deprivation of the child. *Id.*

When we review the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *G.Y.*, 904 N.E.2d at 1060. We consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* When we review the trial court's findings of fact and conclusions thereon, we determine first whether the evidence supports the findings, and second we determine whether the findings support the judgment. *Id.* We will set aside the trial court's judgment only if it is clearly erroneous. *Id.* A judgment is clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment. *Id.*

Indiana law requires that when the State seeks to terminate parental rights, it must plead and prove in relevant part that:

> (A) the child has been removed from the parent for at least six (6) months under a dispositional decree; . . .
> (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 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.

Ind. Code §§ 31-35-2-4(b)(2), 31-35-2-8(a).

The State's burden of proof in termination of parental rights is one of "clear and convincing evidence." *G.Y.*, 904 N.E.2d at 1060 (citing I.C. § 31-37-14-2). Such clear and convincing evidence need not reveal that the continued custody of the parents is

wholly inadequate for the child's very survival, but rather it is sufficient that clear and convincing evidence show that the child's emotional and physical development are threatened by the respondent parent's custody. *Id.* at 1061.

Mother argues that DCS failed to prove by clear and convincing evidence that the conditions which resulted in J.'s "removal or the reasons for placement outside the home would not be remedied, or that the continuation of the parent-child relationship posed a threat to the well-being of" J. (Mother's Br. at 7) (emphasis added). We disagree.

As to the trial court's conclusion that there was a reasonable probability that the conditions which led to J.'s removal were not likely to be remedied, Mother appears to argue that the trial court erroneously failed to recognize that she was "engaging in several programs to better herself that may result in" an earlier release date, as well as programs to "improve her parenting skills . . . and anger management." *Id.* at 9. The trial court's order, however, acknowledged Mother's testimony and evidence in this regard, but expressly found

> that these efforts come too late. [Mother]'s participation in such programs, while in the controlled setting of the DOC, does not convince the court that upon her release, she will have the ability and willingness to provide [J.] with a safe environment or provide proper parenting to address his special need.

(App. 15-16).

Further, Redding, the case manager, testified that given the circumstances, DCS was "unable to see any sort of improvement" in Mother's ability to be able to meet J.'s needs, *i.e.*, any evidence that she had developed "better . . . parenting skills" than at the

time of J.'s removal. (Tr. 38, 41). She further testified that "the services that are offered at the Department of Correction[] are not the services that we would offer," inasmuch as there were "not face-to-face, hand-to-hand services between herself and her child to determine if [Mother] has in fact enhanced her parental abilities." (Tr. 42).

Mother also appears to argue that the trial court's conclusion about the unlikely remedy of conditions cannot stand because DCS "failed to provide Mother with any services and failed to maintain contact between [her] and [J.]." Mother's Br. at 9. As DCS properly responds, proof that services were offered to a parent is not an element that must be proven in termination proceedings. *See In re E.E.*, 736 N.E.2d 791, 796 (Ind. Ct. App. 2000 (provision of services "not a requisite element of our parental rights termination statute"); *see also In re B.D.J.*, 728 N.E.2d 195, 201 (Ind. Ct. App. 2000) ("the law concerning termination of parental rights does not require [DCS] to offer services to the parent to correct the deficiencies in childcare"). Moreover, DCS is not required to provide a parent with services directed at reunification with her child while she is incarcerated. *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615, 622 (Ind. Ct. App. 2006).

Mother asserts that the facts here "are very similar" to those in *Rowlett*. Mother's Br. at 10. In *Rowlett*, we found that the evidence did not establish that "as of the time of the termination hearing," it was in the best interest of the children that the father's parental rights be terminated. 841 N.E.2d at 621. There, conditions led to the children's removal from the mother's custody, while the father was incarcerated. In *Rowlett*,

however, not only had the father "participated in nearly 1,100 hours of individual and group services, including services in encounters, anger management and impulse control, parenting skills, domestic violence, self-esteem, self-help, and substance abuse" before the termination hearing, but he had also "maintained a relationship with his children while incarcerated, sending them letters." *Id.* at 622. Here, evidence of Mother's asserted efforts at self betterment are much less impressive, and there is no evidence of any efforts on Mother's part to maintain a relationship with J. Further, in *Rowlett*, the appealing father had "secured employment" for himself after his release, which was scheduled six weeks after the hearing. *Id.* Here, there was only evidence of Mother's aspiration to attain a GED, but no evidence of a future employment prospect; and it is undisputed that at the time of the hearing, her earliest possible release date was eighteen months in the future.

Finally, Mother argues that she should "be given a chance at reunification" because J. is "just seven years old" now, and is "thriving in his foster placement and receiving much needed services." Mother's Br. at 11. However, in making the termination decision, the interests of the parent must be subordinated to those of the child. *R.S.*, 774 N.E.2d at 930. The trial court found that the evidence established that J. "require[d] the security of a safe, nurturing environment and routine providing him with stability," as well as "permanency in his life." (App. 14). We agree. Therefore, this argument must fail.

Having found that the trial court did not err in its conclusion that the conditions that resulted in J.'s removal would not be remedied, we need not reach her argument that it erred in concluding that the continuation of her parental relationship posed a threat to J.'s well-being. *See L.S.* 717 N.E.2d at 209 (statute written in disjunctive, requiring a finding by clear and convincing evidence of only one of the two requirements in I.C. § 31-35-2-4(b)(2)(B)).

Affirmed.

BRADFORD, J., and BROWN, J., concur.