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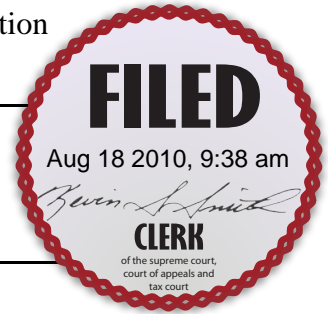
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**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF:)
T.H.C.)

T.C. and C.P.,)
)
Appellants-Defendants,)

vs.)

INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
Appellee-Plaintiff.)

No. 71A04-1001-JT-104

APPEAL FROM THE SAINT JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
Cause No. 71J01-0906-JT-94

August 18, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

T.C. (Father) and C.P. (Mother) appeal the involuntary termination of their parental rights with respect to their minor child, T.H.C., presenting the following restated issue for review: Was the evidence sufficient to support termination?

We affirm.

The facts favorable to termination are that T.H.C. was born to Father and Mother on August 3, 2006. Almost two weeks later, a meconium screen revealed that T.H.C. had been exposed to cocaine during pregnancy. The St. Joseph County Department of Child Services (DCS) was notified. The DCS filed a CHINS action on August 28, 2006, but because T.H.C. was already living in the parents' home, the DCS recommended that he remain there. The matter was set for initial hearing on October 4, 2006. On October 2, Mother and Father argued, after which Father went to a local bar. Mother followed and confronted him, telling Father that he should go home because she had left two-month-old T.H.C. there alone. Father returned home and called police. Mother arrived home at 3 a.m. with another man. Father and the man argued, after which the police arrived. Father and Mother were arrested and T.H.C. was placed in foster care. Following the initial hearing, Father and Mother admitted T.H.C. was a CHINS. The juvenile court determined that T.H.C. should remain in foster care for the time being.

Both parents attended a November 16, 2006 dispositional hearing. Mother and Father were given dispositional orders requiring, among other things, that they participate in individual counseling, complete a drug or alcohol rehabilitation program and follow care recommendations, submit to random drug screens upon request, complete a parenting assessment and follow all recommendations, maintain stable housing, remain drug-free, and

participate in home-based services.

On December 20, 2006, the DCS asked the court to place T.H.C. in the parents' home for what was to be the first of three trial home visits. He remained there until August 3, 2007. On or about that time, Mother tested positive for cocaine. As a result, T.H.C. was placed in Father's care. On October 23, 2007, the DCS filed a Verified Motion for Emergency Modification of Dispositional Decree asking that T.H.C. be returned to foster care because of Father's incarceration due to a DUI arrest. The motion was granted. The parents were ordered to continue services and visitation was suspended with respect to each parent until they could produce eight clean random drug screens. According to a status report filed on May 27, 2008, both parents were under house arrest but indicated they were "ready to fully participate in services and express[ed] an eagerness to pursue unification." *Exhibits* at Exhibit V. The report also indicated that the parents had cooperated with the DCS, but "continued to struggle with their domestic and substance abuse issues." *Id.* As of November 18, 2008, the parents had been successful enough in their services that visits with T.H.C. resumed. On April 15, 2009, the court granted a request submitted by the DCS to permit the parents another trial home visit with T.H.C. By May 27, 2009, the parents' volatile relationship had reached the point where they were no longer living together. This reflected an ongoing pattern in which Mother and Father would fight, split up, and reconcile. Mother was living in a house with friends and the DCS was concerned about the safety of that environment. Also, Father tested positive for cocaine. T.H.C. was again removed from Father's home and placed back in foster care.

On June 4, 2009, the DCS filed a petition to terminate the parental rights of both

Mother and Father. A termination hearing was conducted on December 10, 2009. Amy Corbin, the family case manager in charge of the case for the DCS, described Father's efforts to comply with the dispositional order as follows:

[Father] did complete individual counseling, as well as, substance abuse treatment, parenting classes and the couples' counseling between him and [Mother]. The first time he did complete homebased [sic] services with the first referral, but the second time we referred him to homebased [sic] services he was only compliant for a few months. But after him and [Mother] split up this last time he refused all involvement and refused drug screens.

Transcript at 20. Corbin testified that Father had tested positive for cocaine twice in 2007 and most recently in May 2009. She testified that he had tested positive for marijuana in November 2009. Corbin also testified that Father and Mother's relationship problems were significant and posed a threat to T.H.C.:

Their relationship just could not, could not be maintained when they were together. I know myself, as well as other people in the case, had suggested that they just try to successfully co-parent the child from separate households. That they just can't stay apart, unfortunately [sic]. And when they can't stay apart that their relationship issues become a problem and put the child at risk.

Id. at 25.

With respect to Mother, Corbin was asked in what manner she was unable to meet her responsibilities as a parent. Corbin responded: "Well, she parents fairly well, but she continues to let her substance abuse and her instability and her unstable relationship to interfere with the safety and stability and permanency of the child." *Id.* at 27. Corbin testified that she "has been testing positive for opiates." *Id.* at 25. The juvenile court granted the DCS's petition and terminated both parents' parental rights. Mother and Father appeal those determinations.

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 (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 (Ind. Ct. App. 2002), *trans. denied*. We will not set aside the trial court's judgment terminating a parent-child relationship unless the judgment is clearly erroneous. *In re A.D.W.*, 907 N.E.2d 533 (Ind. Ct. App. 2008). 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. *In re H.L.*, 915 N.E.2d 145 (Ind. Ct. App. 2009). We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.*

In order to terminate a parent-child relationship, the State is required to allege that:

(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;

* * *

(B) there is a reasonable probability that:

(i) the conditions that resulted in the child's removal or the reason 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.

Ind. Code Ann. § 31-35-2-4(b)(2) (West, Westlaw through 2010 2nd Regular Sess.). The State must establish each of these allegations by clear and convincing evidence. *A.J. v. Marion County Office of Family & Children*, 881 N.E.2d 706 (Ind. Ct. App. 2008), *trans. denied*.

Neither Father nor Mother challenges the fact that T.H.C. had been removed from the parents for the requisite period of time. Beginning first with the decision to terminate Father's parental rights, we note that he does not challenge any particular element of the State's case. Rather, his primary argument upon appeal is best reflected by the concluding sentence of his appellate brief, which states: "As a parent who provided a safe clean home for his child and loving care, his parental rights should not bet [sic] terminated by his minor drug use." *Appellant's Brief* at 9. With this in mind, we examine the proof supporting each element of the State's case for termination of Father's rights.

The first element is that there exists a reasonable probability that the conditions justifying a child's removal and continued placement outside the home will not be remedied. When examining this element, "the juvenile court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions." *A.J. v. Marion County Office of Family & Children*, 881 N.E.2d at 713. Courts must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the children. *A.J. v. Marion County Office of Family & Children*, 881 N.E.2d 706.

T.H.C. was initially removed from Father's home because of his and Mother's drug

use and the danger their unstable and at times volatile relationship posed to T.H.C. According to Corbin's testimony, which is supported elsewhere in the record, Father had not made sustained progress in terms of effecting positive changes in dealing with those issues. In this case, the court was entitled to, and did, consider Father's pattern of conduct in assessing the prospect of improvement in those areas. The trial court determined that those issues would not be remedied. For the reasons set out above, we conclude there was clear and convincing evidence supporting this determination.

Because of this determination (i.e., the issues prompting removal of T.H.C. from Father's home will not be remedied), we need not reach the issue of whether the evidence supports the trial court's finding that a continuation of the parent-child relationship poses a threat to T.H.C.'s well-being. *See In re Termination of Parent-Child Relationship of L.V.N.*, 799 N.E.2d 63 (Ind. Ct. App. 2003) (noting that I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive and, therefore, only one of the two requirements of subparagraph (B) needs to be established by clear and convincing evidence).

The second element the State was required to prove was that termination was in T.H.C.'s best interests. In fact, the best interests of the child are the ultimate concern in termination proceedings. *Castro v. State Office of Family & Children*, 842 N.E.2d 367 (Ind. Ct. App. 2006), *trans. denied*. We agree with the State's assertion that Father waived this issue by not offering specific argument in support of a claim that the evidence does not prove termination was in T.H.C.'s best interests. *See* Ind. Appellate Rule 46(A)(8)(a) (the contentions of the appellant on the issues presented "must be supported by citations to authorities, statutes, and the Appendix or parts of the Record on appeal relied on"). Waiver

notwithstanding, we note Corbin's testimony that in her opinion, termination was in T.H.C.'s best interests because "it will allow [him] to finally have some stability in his life, a permanent plan and a safe home to remain in." *Transcript* at 30. This, in addition to the evidence reviewed previously in this opinion, was sufficient to support the finding that termination was in T.H.C.'s best interests. *See McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185 (Ind. Ct. App. 2003) (the testimony of the guardian ad litem and caseworker that reunification was not in the child's best interests was sufficient to support the court's conclusion that termination was in the child's best interests).

Finally, the State was required to prove that there is a satisfactory plan for the care and treatment of T.H.C. Again, Father fails to offer argument specific to this element and therefore waives it. *See App. R. 46(A)(8)(a)*. Waiver notwithstanding, we note that the State presented evidence that the permanency plan was adoption by the family with whom T.H.C. has spent his time in foster care. We cannot say that the juvenile court's termination of Father's parental rights to T.H.C. was clearly erroneous.

We turn now to the decision to terminate Mother's parental rights. Mother contends that the issues that resulted in T.H.C.'s removal have been remedied with respect to her. She acknowledges that the two primary reasons for removal from her care were her drug use and the instability in her life, especially with respect to her volatile relationship with Father. She claims, however, that by the time of the final hearing, both of those issues had been "successfully addressed." *Mother's Appellant Brief* at 6. Regarding her relationship with Father, she claims, "by the time of trial, it was clear, and uncontradicted, that the parties had come to the realization that they could not live together." *Id.* In fact, the trial court was ill-

equipped to make a determination regarding the parties' capacities to change based upon what the parties had "come to realize." Instead, its determinations on those matters were based upon the relevant patterns of conduct. Corbin described a tumultuous relationship between Mother and Father over the three-plus years of the DCS's involvement with this case. This continued as late as May 2009, when Mother and Father again split up and Father "took the child with him." *Transcript* at 11. Approximately one week later, on June 4, the DCS filed a petition to terminate Mother's and Father's parental rights.

During the pendency of the CHINS proceeding, Corbin testified that Mother had "12, if not now 13, different residences[.]" *Id.* at 36. Corbin also testified that Mother had not been able to maintain steady employment. Her longest period of employment during that time was six to nine months. Mother quit that job "because her and the owner of the business had a personal conflict." *Id.* at 19. When Corbin was asked whether Mother was working at the time of the termination hearing, Corbin responded that Mother "stated she is working, but I have not received proof of that." *Id.*

Mother contends the issue of her drug use has been successfully resolved. Corbin's testimony on that subject contradicts Mother's claim. Corbin acknowledged that Mother had not tested positive for cocaine for two years. Corbin testified, however, that Mother had consistently tested positive for hydrocodone, an opiate. Mother sought to explain this as the result of her legal use of the prescription drug Vicodin. Corbin explained that although Mother had provided prescriptions for Vicodin, she had done so on only three occasions, each for only twenty tablets and none permitting refills. According to Corbin, "[Mother] has tested positive for Opiates since August of 2008 to August of 2009. Her prescriptions would

not justify for why she would be testing positive for that long.” *Id.* at 32. The reasons Mother gave to Corbin for taking the drug varied. According to Corbin, “[t]he first time was for a boil she had removed from her arm. The ... second reason would have been a toothache. And the most recent reason that she gave for using it was for an injury she sustained to her head.” *Id.* at 31. Corbin asked Mother to sign releases that would permit Corbin to review Mother’s records with respect to the physician, the hospital, and the pharmacy that Mother claimed issued and filled the prescriptions.

I asked for three releases to be signed. She stated that she had gotten the prescriptions for the Hydrocodone from St. Joseph Regional Medical Center through the ER. Also, through Dr. Lawrence Curry, and she stated that she had the prescriptions filled at a local CVS pharmacy. ... At the initial TPR hearing of August of 2009, mom stated on the record that she would sign the releases for our Department to get this information from the medical providers and the pharmacy. At the last termination trial that we had scheduled about a month ago, she was Court ordered, and agreed to sign these releases. I called her a few days later, she did not show up. I waited over 45 minutes for her to show and she never showed. Like I said, at the preliminary hearing for the child last week, she finally did sign them [after being ordered to do so by the court].

Id. at 15-16. Corbin explained why those records had not yet been obtained as of the time of the termination hearing, which was conducted just one week later: “[B]ecause she was not cooperative in signing the releases until like I said, last Wednesday. So we had about a week to get that. And those parties would have not received adequate service, which, I believe, the law requires ten days for them to be present.” *Id.* at 32.

The foregoing reflects that, with respect to Mother, the issues that caused T.H.C.’s removal from her home have not been reliably resolved. It appears that as of the time of the termination hearing, she continued to struggle with substance abuse, notwithstanding the fact

that it appears she had not used cocaine for a significant period of time. She also continued to lack the requisite stability in her life with respect to both her living quarters and employment, and the trial court was entitled to conclude that she and Father have not entirely detached from each other.

As indicated above in our discussion of the termination of Father's parental rights, because we affirm the trial court's conclusion that the issues prompting removal of T.H.C. from Mother's home will not be remedied, we need not reach the issue of whether the evidence supports the trial court's finding that a continuation of the parent-child relationship with Mother poses a threat to T.H.C.'s well-being. *See In re Termination of Parent-Child Relationship of L.V.N.*, 799 N.E.2d 63. Also, for the same reasons expressed with respect to Father's appeal, we conclude that Mother waived this issue by not offering specific argument in support of a claim that the evidence does not prove termination of her parental rights was in T.H.C.'s best interests.

As indicated, we reverse a termination of parental rights only upon a showing of clear error. *In re A.D.W.*, 907 N.E.2d 533. Based upon the record before us, we cannot say that the juvenile court's termination of Mother's parental rights to T.H.C. was clearly erroneous. We therefore affirm the juvenile court's judgment.

Judgment affirmed.

BARNES, J., and CRONE, J., concur.