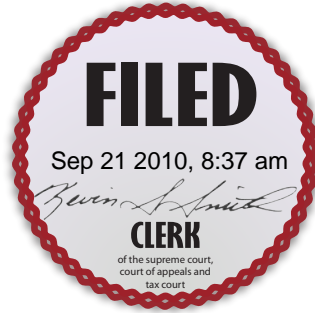


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

JULIANNE L. FOX
Evansville, Indiana

ATTORNEYS FOR APPELLEE:

MARY JANE HUMPHREY
Vanderburgh County Office
Indiana Department of Child Services
Evansville, Indiana

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

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIPS OF J.W.)
and S.W., Minor Children, and L.W., their Parent.)

L.W.,)
Appellant-Respondent,)

vs.)

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

No. 82A01-1002-JT-124

APPEAL FROM THE VANDERBURGH SUPERIOR COURT

The Honorable Brett J. Niemeier, Judge

The Honorable Renee A. Ferguson, Magistrate

Cause No. 82D01-0712-JT-110 and Cause No. 82D01-0712-JT-111

September 21, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Respondent L.W. (“Mother”) appeals an order terminating her parental rights to J.W. and S.W. (“the Children”), upon the petition of the Appellee-Petitioner Vanderburgh County Department of Child Services (“the DCS”). We affirm.

Issue

Mother presents a single issue for review: Whether the DCS established, by clear and convincing evidence, the requisite statutory elements to support the termination of her parental rights.

Facts and Procedural History

Mother gave birth to J.W. on June 13, 1997 and S.W. on July 27, 2000. On January 2, 2007, the DCS petitioned to have the Children declared CHINS because of truancy issues. At the dispositional hearing, Mother tested positive for both cocaine and THC; the Children were removed from her care.

Mother failed to complete drug abuse treatment and, on December 4, 2007, the DCS petitioned to terminate the parental rights of Mother and the putative fathers.¹ A hearing was conducted on October 26, 2009. On January 12, 2010, the juvenile court issued an order granting the DCS petition for termination of Mother’s parental rights. She now appeals.

Discussion and Decision

A. Standard of Review

This court will not set aside the trial court’s judgment terminating a parent-child

¹ The parental rights of the putative fathers were also terminated; neither is an active party to this appeal.

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)² 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; or
 - (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

² The statute has since been amended, effective March 12, 2010.

- 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. 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 contends that the DCS presented insufficient evidence to establish a reasonable probability that the conditions that resulted in the Children's removal will not be remedied or that the continuation of the parent-child relationships would pose a threat to the Children. She also challenges the trial court's conclusion that termination of parental rights was in the best interests of the Children.

To determine whether conditions are likely to be remedied, the trial court must judge a parent's fitness to care for her children as of the time of the termination hearing and take into account any evidence of changed conditions. Matter of A.N.J., 690 N.E.2d 716, 721 (Ind. Ct. App. 1997). The trial court must also examine a parent's habitual pattern of conduct in order

to determine whether there is a substantial probability of future neglect or deprivation. Id. Among the circumstances that a trial court may properly consider are a parent's criminal history, drug and alcohol abuse, failure to provide support, history of neglect, and lack of adequate housing and employment. In re D.G., 702 N.E.2d 777, 779 (Ind. 1998).

Evidence was adduced that Mother was referred to drug treatment at Stepping Stone. After three attempts, she did not complete her treatment and was discharged as an unsuccessful drug court participant. She also failed to report for drug screens.

Mother was assigned a parenting aide with Ireland Home Based Services. The parent aide estimated that "ninety percent of the time" she was unable to locate Mother. (Tr. 88.) At times, Mother agreed to meet with the parenting aide; however, Mother missed the majority of her appointments. The services were suspended on several occasions due to Mother's lack of cooperation. She also missed multiple visitation sessions.

Mother has had only sporadic employment and has been unable to maintain a reliable source of income. Mother received assistance in locating employment but consistently failed to follow through interviewing with potential employers. Mother moved to various places, "usually staying with someone else." (Tr. 87.) Most recently, she had been living with her father and extended family members in a Habitat for Humanity-built house.

Mother failed to maintain regular contact with her caseworker. In May of 2007, Mother called to say that she was in Texas. When she returned to Indiana, she was arrested. At the time of the termination hearing, Mother was scheduled to begin serving a two-year

sentence for a felony conviction.³

As such, the DCS presented clear and convincing evidence that the reasons for the Children's placement outside the home would not, in reasonable probability, be remedied. As Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, the DCS need not have established both a reasonable probability that the conditions would not be remedied and that continuation of the parent-child relationships posed a threat to the Children's well-being. Thus, we need not address Mother's assertion that her own mother had harmed the Children and Mother personally posed no threat to them.

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 Mother lacks the ability to provide housing and supervision for the Children due to her incarceration. She testified that she had no specific plan for the Children during her impending stay in Safe House. Moreover, Mother has historically been unable to provide for either the Children's routine needs or their special needs.⁴ In contrast, the Children had thrived in foster care placement. There is sufficient evidence from which the juvenile court could conclude that termination of Mother's parental rights was in the best interests of the Children.

³ Mother testified that she was scheduled to "sign a plea for two do one in the Safe House" because of a "possession" charge. (Tr. 25.)

⁴ J.W. is mildly mentally handicapped and S.W. has borderline intellectual functioning. S.W. exhibited behavioral problems at school and was prescribed a drug for attention deficit disorder. S.W. has drawn pictures suggesting that he has been exposed to violence, and his therapist opined that "he's suffering from severe posttraumatic stress syndrome." (Tr. 48.)

Affirmed.

RILEY, J., and KIRSCH, J., concur.