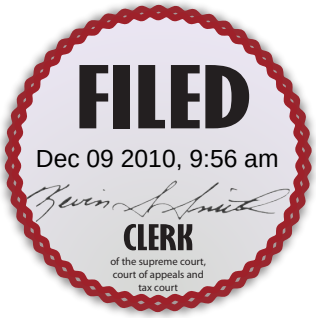

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF: V.V., A.P., K.C., A.C., AND J.C. (Minor Children), And T.C. (Mother) and J.C. (Father),	)	
Appellants,	)	
vs.	)	No. 45A04-1004-JT-283
THE INDIANA DEPARTMENT OF CHILD SERVICES,	)	

Appellee,	)
	)
And LAKE COUNTY COURT APPOINTED SPECIAL ADVOCATE,	)
	)
Co-Appellee.	)

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Judge
Cause Nos. 45D06-0906-JT-155, 234, 156, 152, and 153

December 9, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

T.C. ("Mother") and J.C. ("Father") appeal the order terminating their parental rights as to their three daughters – K.C., A.C., and J.C.; and Mother also appeals the termination of her rights as to her daughters V.V. and Az. P.

We affirm.

ISSUE

Whether clear and convincing evidence supports the termination of the parental rights.

FACTS

Mother gave birth to five daughters: V.V., born January 4, 2000; Az. P., born July 28, 2003; K.C., born September 7, 2005; A.C., born August 22, 2006; and J.C., born July

16, 2007 (collectively, "the children"). The latter three, K.C., A.C., and J.C., are Father's children.

When A.C. was born on August 22, 2006, both she and Mother tested positive for cocaine. A.C. was removed and made a ward of DCS. Mother and Father admitted that A.C. was a CHINS, and they were ordered to undergo drug and alcohol evaluations and random drugs screens, and to participate in parenting classes and counseling. Mother and Father completed the ordered services, and on February 14, 2007, the CHINS matter was closed.

Fourteen months later, on April 28, 2008, police responded to a report and found four of the children – 9-month old J.C., 20-month old A.C., 3½-year old K.C.; and 4½-year old Az.P. – home alone. DCS found the children had been left in the parties' residence alone for longer than an hour, and the only food in the residence was a package of hot dogs. Father reported to the DCS investigator that several days earlier,[1] Mother had left him "in charge of the kids." (Tr. 27). Father advised the DCS investigator that he had gone to make a phone call; Father subsequently testified that he had gone to buy food. After his errand, Father saw police at the residence, and did not immediately return there because he had outstanding arrest warrants. DCS removed the children "because of . . . neglect, . . . little food in the home, lack of supervision." *Id.* at 34. On April 29th, Mother returned – with V.V., and DCS also removed her. All five children were placed in foster care, in the same home.

[1] The investigator ultimately learned that Mother had left on April 23rd.

On June 9, 2008, the five children were adjudicated CHINS and made wards of DCS retroactive to April 29, 2008, as to Mother. On November 5, 2008, the same action as to Father ensued as to his three children.[2] Both Mother and Father were ordered to complete psychological evaluations; drug and alcohol evaluations; substance abuse counseling; random drug screens; parenting classes; home-based therapy; and supervised visitation.

Initially, Mother participated in some services. After initiating the parenting classes, however, she did not attend any; and reminder letters produced no response from Mother. At her substance abuse evaluation, Mother minimized her use of drugs; but a test that same day was positive for cocaine, and the evaluator determined that Mother "ha[d] significant issues with cocaine and marijuana." (Tr. 98). The evaluator recommended Mother attend three-hour substance abuse counseling sessions twice a week, but it was four months before Mother began them, and then, during the next three months, she only attended seven of the recommended twenty-four sessions. The few random drug screens that Mother complied with from June through December of 2008 were all positive for cocaine or marijuana except one. Once-weekly supervised visitation with her children was scheduled for Mother, but from May through December of 2008, she attended visitation only three (or possibly five) times.

When the family's DCS caseworker contacted Father "for his services to start," he "told [her] that he was going to North Carolina" because "he wanted to move on with his life." (Tr. 46). When the case manager for the parenting class provider contacted Father

[2] On November 15, 2008, Az.P. was adjudicated a CHINS with respect to her father retroactive to April 28, 2008.

to schedule services, Father also advised him "that he was moving to North Carolina" and "wouldn't be available to do services." (Tr. 131, 132). Father subsequently admitted that he had moved despite knowing "that [he] had responsibilities to this case that [he] [was] ignoring." *Id.* at 204. Father further admitted that after living and working in North Carolina for six or seven months, he moved back to the area but never sought to initiate the services ordered nor attempted to visit with his children.

On June 5, 2009, DCS filed its petition to terminate the parental rights of Mother and Father as to the children. Fact-finding hearings were held on December 4, 2009; January 27, 2010; and March 3, 2010. Evidence as to the above facts was heard.[3] In addition, the children's foster mother, who had cared for the children for nearly two years, testified that all the children had special needs and were receiving services -- with A.C. and J.C. having been diagnosed as "developmentally delayed . . . when they first came" (tr. 143), and requiring continued services in that regard; A.C. requiring speech therapy; K.C. requiring therapy for emotional growth; V.V. being treated for depression, OCD, and sleep disorder problems; and Az. P. suffering a fear of being hurt by men, and seeing a neuropsychiatrist for possible child schizophrenia. The foster mother described her and her family's love for the children and their desire to adopt all five.

The family's DCS caseworker testified that she had repeatedly advised Mother of the need for her to complete services, but Mother failed to do so or to maintain contact with DCS. The DCS caseworker opined that termination was in the best interest of the

[3] Also, it was established that the father of V.V. was deceased, and that the alleged father of Az.P. was G.P. The appeal before us presents no challenge to the termination of G.P.'s parental rights.

children because they "need[ed] permanency," which they had experienced in their foster home for almost two years, and that they had developed a strong bond with the foster family. (Tr. 60). She further testified that the children "want[ed] to be adopted" by the foster family. *Id.* at 63.

Mother admitted that she "chose not to go to visitation" with her children more than a few times; and that she "didn't comply" with the services provided through DCS, for which she was "very sorry." (Tr. 305, 153). According to Mother, her failures were "[b]ecause [she] had a substance abuse problem." *Id.* at 555. At the January 27, 2010 hearing, however, Mother testified that she had "last used . . . drugs" in August of 2009, *id.* at 151, and since then she had been drug-free and was in substance abuse counseling and parenting classes, as well as attending Kaplan College to earn certification as a registered medical assistant. She asked for "a second chance." *Id.* at 298. Father testified that he had been attending substance abuse sessions, but he also admitted that his attendance was pursuant to probation terms in another matter. He admitted that he had not seen the children since the night he left them alone, nearly two years earlier.

On April 9, 2010, the trial court issued its order. It found, *inter alia*, that there was a reasonable probability that the continuation of the parent-child relationships posed a threat to the well-being of the children. It concluded that the statutory requirements had been met and ordered that the parent-child relationships as to the children 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 1260. 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 shows that the child's emotional and physical development are threatened by the respondent parent's custody. *Id.* at 1061.

Father argues that the trial court erred when it found a reasonable probability that the continuation of his parent-child relationship posed a threat to the well-being of his children. Specifically, he argues that the trial court erroneously "discounted the change" in his circumstances "that significantly reduced if not eliminated the chance that he

would ever knowingly put them on the path or abuse of neglect." Father's Br. at 10. Apparently, these changed circumstances are the "support of his immediate family" – "his sister, his [older] daughter, and his mother" – and that Father now has "(along with Mother) established stable housing." *Id.* at 10, 4, 5.

Father's arguments are essentially a request that we reweigh the evidence, which we do not do. *See G.Y.*, 904 N.E.2d at 1060. Father does not challenge the trial court's findings that he "never participated in the casework plan," but "in fact, . . . moved"; had "never seen the children since" their removal nearly two years earlier; and "never complied with the casework plan" or "successfully completed any of the services ordered by the Court." Order, p. 2. Father admitted that he understood his "responsibilities" with respect to achieving reunification with his children but "ignor[ed]" them. (Tr. 204). Father has had no contact whatsoever with J.C. since she was 9 months old, with A.C. since she was 20 months old, and with K.C. since she was 3½ years old; with the intervening 22 months constituting a vast period of time to these young children, who have in the interim formed a close bond with the foster family that has raised them as part of the family. Moreover, Father chose to not exert the effort to comply with court-ordered services. Therefore, there is absolutely no evidence that Father is able to properly care for his three children. Accordingly, the trial court did not err in concluding that the evidence established that their return to Father's care and custody posed a threat to their well-being.

Mother argues that the trial court's conclusion "that there was a reasonable probability that the continuation of the parent-child relationship posed a threat to the

well-being" of the children "failed to mention or give credit to" her more recent "suitable housing, college attendance, parenting classes attendance, substance abuse and psychiatric counseling." Mother's Br. at 9. Again, this is essentially a request to reweigh the evidence.

Mother does not contest the trial court's findings with respect to her positive drug screens and her failure to complete parenting classes. Further, as noted by the trial court, after having A.C. removed from her care based upon her drug use, Mother had complied with court-ordered services to have the matter closed; but little more than a year later, all her children were removed. Mother claims no responsibility for the circumstances that led to removal of all of her children, yet for more than a year she declined to exert the effort necessary to achieve reunification. Offered the opportunity to visit with her children once a week, she did so only three to five times over the ensuing seven month period. For fifteen months, including two months after the filing of the petition for termination, she failed to comply with court-ordered services. We acknowledge that the evidence revealed that after these services were no longer offered to her through DCS, she eventually did make an effort to seek services and demonstrate her desire for reunification. However, in the interim (which, as noted above, constituted a vast period of time for her youngest three children), the children had formed strong bonds with the foster family who had cared for them; all her children had special needs which were being addressed in the foster family setting; and the children had scarcely seen Mother for nearly two years. We find that the evidence presented supports the trial court's

conclusion that there was a reasonable probability that the continuation of the parent-child relationship posed a threat to the well-being of the children.

Mother argues that "DCS did not prove that the children would be harmed in any way if the parent-child relationship continued." Mother's Br. at 10. However, the DCS caseworker testified to the children's "need" for "permanency." (Tr. 60, 61). Thus, by failing to address this need, the continuation of their foster children status may reasonably be inferred to constitute a harm to the children.

Mother also challenges the trial court's conclusion that termination was in the best interest of the children, arguing that it "failed to address the pain and suffering" that the children endured when "visitation with their mother [wa]s stopped." Mother's Br. at 10. Visitation was terminated when Mother repeatedly missed the appointments. There is no evidence of any efforts by Mother to reinitiate visitation thereafter. Further, the DCS caseworker's testimony that the children "ha[d] a bond with their foster family and . . . are thriving," as well as her testimony that they "want[ed] to be adopted," (tr. 60, 63), support the trial court's conclusion.

Affirmed.[4]

NAJAM, J., and BAILEY, J., concur.

[4] Our review of this appeal was impeded by the fact that when initially considered to have been fully briefed, the material submitted for review did not include a final order as to Az.P. This required our November 12, 2010, issuance of an order to the trial court in that regard.