

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.

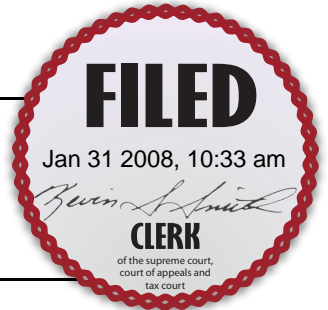
ATTORNEY FOR APPELLANTS:

ATTORNEYS FOR APPELLEE:

STEVEN KNECHT
VONDERHEIDE & KNECHT, P.C.
Lafayette, Indiana

CRAIG JONES
Lafayette, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**



In the Matter of the Termination of the)
Parent-Child Relationship of)
C.M.H, J.D.H., N.W.H., and S.M.H. and)
DAVY M. HUNLEY, Father, and)
LISA M. HUNLEY, Mother,)
)
DAVY M. HUNLEY and LISA M. HUNLEY,)

Appellants-Respondents,)

vs.)

No. 79A04-0706-JV-303

TIPPECANOE COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner.)

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta H. Rush, Judge
Cause Nos. 79D03-0702-JT-50, 51, 52, 53, 54, 55, 56, and 57

January 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

David Hunley (“Father”) and Lisa Hunley (“Mother”) (collectively, “Parents”) appeal

the involuntary termination of their parental rights to their children N.H., J.H., S.H., and C.H. Parents raise one issue for our review, which we restate as whether sufficient evidence was presented to support the termination of Parents' parental rights. We affirm.

FACTS AND PROCEDURAL HISTORY

Mother and Father are the parents of N.H., born November 15, 2001, J.H., born April 6, 2003, S.H., born October 17, 2004, and C.H., born November 19, 2005. Mother has mild mental retardation and Father has a mental disability. N.H., J.H., S.H., and C.H. all have special needs. N.H., J.H., and S.H. are all developmentally delayed and have speech problems. J.H. was underweight, weighing only thirty pounds even though he was three years old. He has been prescribed Pediasure for failure to thrive. C.H. was diagnosed with a brain cyst. Parents did not schedule a follow-up appointment with a neurologist to assess this condition until almost a year after the initial diagnosis.

C.H. has extensive medical needs. C.H. was born prematurely at twenty-five weeks. Thereafter, she remained in the hospital on a ventilator for two months. As a result, C.H. has bronchopulmonary dysplasia and, for a time, required a home apnea monitor. She is required to take medication for severe gastro-esophageal reflux. Her ability to tolerate sensory stimulation is impaired requiring occupational therapy, and her mobility is limited necessitating physical therapy. C.H.'s cognitive processing was impaired, and her intelligence level cannot yet be determined. She will likely have problems with speech and oral and gross motor skills. In the near future, she may require ankle bracelets for walking. At one point, C.H.'s pituitary gland was enlarged causing menstruation. C.H. has exhibited leukomalacia, soft spots on the brain, and hydrocephaly, fluid outside the brain. She is

required to take a variety of medications, has appointments with numerous doctors, and requires ongoing therapy.

Tippecanoe County Department of Child Services' ("DCS") first contact with Parents was on October 13, 2005. At that time, there were concerns about a lack of income, housing instability, inappropriate discipline, lack of supervision, and medical neglect. On December 13, 2005, DCS received a report that Parents had left N.H., J.H., and S.H. at home alone in the care of the family dog. DCS went to the home to investigate this allegation. It was determined that the allegation was not true, but that N.H., J.H., and S.H. had developmental delays and speech problems. To address these issues, Parents were referred to First Steps, Healthy Families, and G.L.A.S.S.

On February 14, 2006, DCS received a report alleging that C.H. would be released from the hospital on February 20, 2006, and that there were concerns about Parents' ability to provide for C.H.'s special medical needs. DCS investigated and found that

[a]fter more then [sic] ninety days in the hospital since [C.H.'s] birth, constant supervision and frequent intervention and education are provided to the parents as to what actions are necessary when the oxygen and heart monitor alarms go off. The parents continue to fail to respond to the alarms to the point that the child has turned blue and the parents require staff intervention because they do not understand what needs to be done for the child.

Appendix to Appellants' Brief Volume III at 572. On February 28, 2006, DCS visited Parents' home and noted that although C.H. required a non-smoking living environment, one of Parents' roommates smoked. Based on these conditions, C.H. was taken into protective custody and placed in foster care on March 2, 2006. That same day, DCS filed a petition

with the trial court alleging that N.H., J.H., S.H, and C.H. were children in need of services (“CHINS”).

N.H., J.H., and S.H. remained in Parents care until April 17, 2006, when they were placed in foster care. At the time N.H., J.H., and S.H. were removed from Parents’ custody, Parents were living with a man named Jimmy Gaw. Gaw was a convicted sex offender, smoked, drank alcohol, and had threatened to physically harm Mother. Parents’ home was also dirty with old food and dog feces on the floor.

On April 19, 2006, the trial court issued an order finding N.H., J.H., S.H., and C.H. to be CHINS after Parents admitted to this. On June 1, 2006, the trial court entered a parental participation decree that required Parents to do the following: (1) participate in individual and family counseling; (2) visit with the children on a regular basis; (3) participate in home based services; (4) complete a parenting class; (5) complete a parenting assessment and follow all recommendations; (6) cooperate fully with the children’s doctors and provide needed medical information; (7) obtain and maintain safe housing; and (8) cooperate fully with service providers and follow their recommendations.

The trial court held review hearings on August 11, 2006, October 26, 2006, and December 15, 2006. At each of these hearings, the trial court noted that Parents, at best, only marginally complied with services. During this period, Parents participated in supervised visits with their children. At no point were Parents able to progress to unsupervised or even semi-supervised visits. The trial court found that Parents struggled during visitations to “maintain consistent care and manage specialized diets and medications for the children.” App. to Appellants’ Br. Vol. I at 3. It was necessary for service providers to repeatedly

intervene during visitations to ensure the children's safety and proper medication and nutrition.

On February 2, 2007, DCS filed petitions to terminate Parents' parental rights to N.H., J.H., S.H., and C.H. A hearing was held on DCS' petition on March 26, 2007. At the hearing, Father testified that his work history has not been steady, that he and Mother were \$1,310 behind in their rent, that he did not have a driver's license, and that the family did not own a car. Mother testified that she also did not have a driver's license. Mother also testified that she believed that her children were better off before DCS got involved.

DCS family case manager Randall Collins testified that Mother has previously indicated that she does not believe in doctors' opinions and does not always follow their instructions. Based on his observation of Parents and the services provided to them, Collins believed there was a reasonable probability that the circumstances that resulted in the removal of the children would not be remedied. He stated that the continuation of the parent-child relationship would pose a threat to the well being of the children because Parents lacked the skills and abilities "to effectively parent these children safely in their own home." Transcript at 140-41. He worried that if the children were returned to Parents' custody, they would negligently harm the children. Collins was also concerned about Mother's lack of willingness to reach out for help outside of the home. He noted that the plan for the future care of the children was adoption.

A report by clinical psychologist Dr. Judith Anderson was entered into evidence. After working with Parents and the children, she found that

there is no evidence that the parents will be able to safely care for the children within the next year. In fact, there is no evidence to suggest any significant improvement in parenting skills or life skills, and children would not be safe in the care of these limited adults.

App. to Appellants' Br. Vol. III at 582. She also noted that "[a]fter almost a year, [Mother] and [Father] are not able to recognize and respond to the needs of the children during a four hour supervised visit without staff intervention." *Id.* at 583.

Jen Li, a family preservation counselor employed by Home-Based/Goal-focused Services for Children and Families, testified that despite accommodations and assistance from service providers, Mother was still unable to administer medications properly without supervision. She specifically noted that "[Parents] have a hard time understanding what the children understand based on their age. So when a child is placed in an adverse situation they wouldn't anticipate danger and they wouldn't know how to respond appropriately to prevent harm." Tr. at 83. She stated that Parents were not capable of remedying the conditions that led to the removal of the children.

C.H.'s foster mother testified as to C.H.'s current condition. She stated that whomever cares for C.H. would be required to assist with her weekly therapy sessions. She indicated that although she and service providers had made efforts to assist Parents with their care of C.H., Parents still had difficulty preparing formulas and medications. She concluded that Parents had not demonstrated the ability to effectively manage C.H.'s day-to-day medical care.

Stephanie Chambers, the court appointed special advocate, testified that she believed it was in the children's best interest to terminate Parents' parental rights. She did not feel

that Parents were capable of providing the children with any more care than what they were currently providing and that this would prevent the children from progressing. She noted that N.H., J.H., and S.H. had made great strides while in foster care, and she believed that if they were returned to Parents' custody they would lose ground. She stated that C.H. was also doing well in foster care and that Parents would have difficulty caring for her.

On April 23, 2007, the trial court issued an order terminating Parents' parental rights. Parents now appeal.

DISCUSSION AND DECISION

Parents argue that insufficient evidence was presented to support the involuntary termination of their parental rights. We disagree.

I. Standard of Review

Under the Fourteenth Amendment to the United States Constitution, parents have the right to establish a home and raise their children. *In re B.D.J.*, 728 N.E.2d 195, 199 (Ind. Ct. App. 2000). However, the law allows for the termination of these rights when an individual is unable or unwilling to fulfill his or her responsibilities as a parent. *Id.* at 199-200. This policy balances a parent's constitutional rights to the custody of their children with the State's limited authority to interfere with this right. *Id.* at 200. "Because the ultimate purpose of the law is to protect the child, the parent-child relationship will give way when it is no longer in the child's interest to maintain this relationship." *Id.*

When reviewing the termination of parental rights, we neither reweigh the evidence nor judge witness credibility. *In re Involuntary Termination of Parent-Child Relationship of Kay. L.*, 867 N.E.2d 236, 239 (Ind. Ct. App. 2007). We will consider only the evidence that

supports the trial court's decision and the reasonable inferences drawn therefrom. *Id.* We will only set aside a judgment terminating a parent-child relationship if it is clearly erroneous. *Id.* A judgment is clearly erroneous when the findings do not support the trial court's conclusions or the conclusions do not support the judgment. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005).

Indiana Code section 31-35-2-4(b) provides that in order to terminate a parent-child relationship, the State must prove:

- (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 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.

Indiana Code section 31-34-12-2 further provides that the State must establish the elements of Indiana Code section 31-35-2-4 by clear and convincing evidence.

Parents concede that N.H., J.H., S.H., and C.H. have been removed from their care pursuant to a dispositional decree for at least six months and that there is a satisfactory plan for the care and treatment of each of the four children. However, they argue that insufficient evidence was presented to show that there was a reasonable probability that (1) the conditions that resulted in the removal of N.H., J.H., S.H., and C.H. would not be remedied; or (2) the continuation of the parent-child relationship would pose a threat to the well-being of N.H., J.H., S.H., and C.H. Because Indiana Code section 31-35-2-4(b)(2)(B) is written in

the disjunctive, the trial court only had to find one of the two requirements of subsection (B) by clear and convincing evidence. *In re L.S.*, 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), *trans. denied*. Therefore, we begin by considering whether sufficient evidence was presented to support the trial court's finding that the conditions that resulted in the removal of N.H., J.H, S.H. and C.H. would not be remedied.

II. Conditions that Resulted in Removal Will Not Be Remedied

In order to determine whether there is a reasonable probability that the conditions that resulted in the removal of the children will not be remedied, the trial court should judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *A.F. v. Marion County Office of Family and Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. The trial court, though, must also evaluate the parent's habitual patterns of conduct. *Id.* "Such an evaluation assists in determining the probability of future neglect or deprivation of the child, as well as remedial possibilities." *Id.* Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *Id.* Additionally, the juvenile court can properly consider the services offered by the office of family and children to the parent and the parent's response to those services as evidence of whether conditions will be remedied. *Id.*

In this case, the children were removed from Parents' custody because Parents were unable to provide the care that special needs children like N.H., J.H., S.H., and C.H. required.

Specifically, Parents were unable to provide sufficient supervision to ensure the safety of the children, and they were not able to manage their children's medical needs.

The evidence introduced at trial reveals that after the children were removed from Parents' custody, Parents participated in supervised visitations with the children. At no point did Parents exert sufficient control over the children that service providers felt comfortable allowing parents to have unsupervised or even semi-supervised visitations with the children. During visitations, Parents struggled to maintain consistent care and to manage the children's specialized diets and medications. Service providers had to repeatedly intervene during visitations to ensure the children's safety. Dr. Anderson noted that despite almost a year's worth of services geared towards improving their parenting skills, Parents were still "not able to recognize and respond to the needs of the children during a four hour supervised visit without staff intervention." App. to Appellants' Br. Vol. III at 583. Li testified that Parents still do not recognize when a child is placed in an adverse situation and do not know how to respond appropriately to prevent harm. Collins believed that Parents lacked the skills and abilities to ensure the children's safety if they were returned to Parents' home. He feared that Parents would negligently harm the children.

C.H.'s foster mother testified that C.H. has extensive medical needs. She and various service providers made efforts to instruct Parents on how to care for C.H. Despite this, Parents still had difficulty preparing C.H.'s formulas and medications. C.H.'s foster mother believed that Parents had not demonstrated the ability to manage C.H.'s medical care. Li testified that in general Mother was not able to administer medications to the children properly without supervision.

Sufficient evidence was presented to permit the trial court to conclude that Parents could not ensure the safety of the children and were unable to manage the children's medical needs. Therefore, the trial court properly concluded that there was a reasonable probability that the conditions that led to the removal of N.H., J.H., S.H., and C.H. would not be remedied.¹

III. Termination is in the Best Interests of the Children

Parents next argue that there was insufficient evidence to show that termination of the parent-child relationship was in the best interests of N.H., J.H., S.H., and C.H. In determining what is in the best interests of the child, the trial court is required to look at the totality of the evidence. *A.F.*, 762 N.E.2d at 1253. "In doing so, the trial court must subordinate the interests of the parents to those of the children involved." *Id.* A trial court need not wait until the children are irreversibly influenced such that their physical, mental and social growth is permanently impaired before terminating the parent-child relationship. *Id.*

N.H., J.H., S.H., and C.H. are special needs children who will need extensive supervision to ensure their safety. The evidence introduced at trial indicated that Parents are not able to provide the children with the supervision they require. Parents were unable to exert sufficient control over the children to permit them to have unsupervised visitations. Parents struggled during visitations to provide consistent care and could not manage the

¹ Having determined that the trial court properly concluded that the conditions that led to N.H.'s, J.H.'s, S.H.'s, and C.H.'s removal would not be remedied, we need not consider whether the trial court properly concluded that the continuation of the parent-child relationship poses a threat to N.H.'s, J.H.'s, S.H.'s, and C.H.'s well being. *See In re L.S.*, 717 N.E.2d at 209.

children's diets and medications. Service providers had to intervene numerous times during visitations to keep the children safe. Despite the services they received, Parents did not recognize their children's needs and did not respond appropriately to adverse situations to prevent the children from coming to harm.

N.H., J.H., S.H., and C.H. have medical needs. C.H.'s medical needs are extensive. Parents will need to work closely with their children's doctors to maintain their children's health. Mother, though, has stated that she does not trust doctors' opinions and does not always follow their instructions. Parents also do not have their own means of transporting their children to their various doctor's appointments and therapy sessions, as neither has a driver's license or a car. Mother is not able to administer the children's medications properly without supervision. Parents still have difficulty preparing C.H.'s formulas and medications. C.H.'s foster mother believed that Parents did not have the ability to manage C.H.'s medical care.

Additionally, Chambers testified that it was in the children's best interests to terminate Parents' parental rights. She noted that N.H., J.H., S.H., and C.H. had made great strides while in foster care. She believed that if N.H., J.H., S.H., and C.H. were returned to Parents' custody, the gains they had made while in foster care would be lost.

Based on the foregoing, we conclude that sufficient evidence was presented to permit the trial court to conclude that the termination of Parents' parental rights was in N.H.'s, J.H.'s, S.H.'s, and C.H.'s best interest. Therefore, the trial court's order terminating Parents' parental rights is affirmed.

Affirmed.

RILEY, J., and MAY, J., concur.