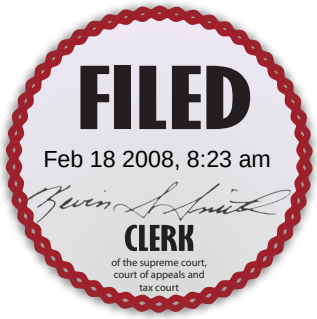

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF S.M. and C.S., Children, and DEBRA MURR, Mother,	)	
DEBRA MURR,	)	
Appellant-Respondent,	)	No. 84A01-0706-JV-284
vs.	)	
VIGO COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE VIGO CIRCUIT COURT
The Honorable David R. Bolk, Judge
The Honorable R. Paulette Stagg, Magistrate
Cause No. 84C01-0611-JT-1216
Cause No. 84C01-0611-JT-1218

February 18, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Debra Murr appeals the involuntary termination of her parental rights as to her minor children, S.M. and C.S., in an action initiated by the Vigo County Department of Child Services (DCS).[1] Specifically, Murr argues that the trial court erred by finding that the involuntary termination was supported by clear and convincing evidence. Because the evidence and the inferences that can be drawn therefrom support the trial court's decision to terminate Murr's parental rights, we affirm the judgment of the trial court.

FACTS

Murr gave birth to C.S. on December 22, 1997, and S.M. on September 14, 2001. Ralph Smith is the biological father of C.S. and Mark Hill is the biological father of S.M. One of Smith's friends molested C.S. when she was approximately three years old. Tr. p. 39; Ex. A.

DCS received a complaint on April 13, 2005, and conducted an unannounced home investigation of Murr's residence the same day. After concluding that Murr's residence was "filthy," C.S. and S.M. were removed from the home and placed in DCS's care pursuant to a trial court order. Ex. F p. 5. DCS filed a CHINS petition on April 25, 2005, alleging that the physical and mental condition of C.S. and S.M. were "seriously endangered and impaired as a result of the neglect of [Murr] to supply [the children] with necessary food, clothing,

[1] DCS did not file an appellee's brief in this matter. The power to terminate the relationship between parent and child is one of the State's most devastating and vital responsibilities. In the future, we ask DCS to seriously consider whether it has an obligation to participate in appeals taken from termination proceedings that it initiated.

shelter, education, medical care, [and] supervision." Ex. F, G. Specifically, DCS alleged that

> [t]he kitchen counters were full of food, dirty dishes, and trash. The refrigerator and freezer were full of food that was improperly stored. The bathroom sink and bathtub appeared to be stopped up. The floor in the bathroom was rotting and dirty. [DCS] was not allowed access to the two bedrooms. [C.S.] had missed 24 days of school, has been tardy 24 times this school year, and has attended 5 difference schools this year. Both girls have chronic head lice and [S.M.'s] head has been shaved due to head lice.

Id.

C.S. and S.M. were adjudged to be CHINS on May 10, 2005, and a case plan for reunification was created. C.S. and S.M. were placed in foster care, but C.S. had to be relocated to a different foster home because she was "being physically and sexually inappropriate with [S.M.]" Tr. p. 26. Murr began taking classes through the Hamilton Center in May 2005 to improve her parenting skills.

After little improvement, DCS filed a petition to involuntarily terminate Murr's parental rights on November 20, 2006. A hearing was held on April 30, 2007, and the trial court granted DCS's petition on April 30, 2007. Murr now appeals.

DISCUSSION AND DECISION

I. Standard of Review

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to raise their children. But parental interests are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. In re D.D., 804 N.E.2d 258, 265 (Ind. Ct. App. 2004). Thus,

parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id.

When reviewing the termination of parental rights, we neither reweigh the evidence nor judge witness credibility, considering, instead, only the evidence and reasonable inferences that are most favorable to the judgment. We will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). If the evidence and the inferences support the trial court's decision, we must affirm. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

II. Evidence

Murr argues that DCS failed to present clear and convincing evidence that terminating her parental rights was in the best interests of C.S. and S.M. Specifically, Murr argues that she "testified that she is willing to do anything she can to avoid the termination of her parental rights" and "she is sure that she can straighten up and make better life choices." Appellant's Br. p. 5.

To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing the elements of Indiana Code section 31-35-2-4(b)(2):

> (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) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(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.

Ind. Code § 31-35-2-4(b)(2).

In construing this statute, this court has held that when determining whether certain conditions that led to the removal of the children will be remedied, the trial court must judge the parent's fitness to care for the children at the time of the termination hearing, taking into consideration evidence of changed conditions. In re D.J., 755 N.E.2d 679, 684 (Ind. Ct. App. 2001). A parent's habitual pattern of conduct must also be evaluated to determine the probability of future negative behavior. Id. The trial court need not wait until a child is irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship. Id. Thus, parental rights will be terminated when it is no longer in the child's best interests to maintain the relationship. In re B.D.J., 728 N.E.2d 195, 200 (Ind. Ct. App. 2000).

Denise Hardin, a therapist at the Hamilton Center, testified at the termination hearing that she conducted a psychological evaluation of Murr in July 2005. After the evaluation, Hardin concluded that Murr had an overall intelligence quotient of 51, was "functioning in the lower extreme[,]" and was "mildly mentally retarded." Tr. p. 7. Hardin also watched Murr interact with C.S. and S.M. and testified that the children "acted out[,]" "maybe were aggressive towards [Murr]," and "[d]idn't follow rules that [Murr] set forth." Id. at 10. Based on her evaluation and experience, Hardin concluded that it would be in C.S. and S.M.'s best interests for the trial court to terminate Murr's parental rights.

Glenna Bragg, a case manager with Hamilton Center, began meeting with Murr in May 2005 to "work on parenting issues." Id. at 68. Specifically, Bragg tried to teach Murr how to redirect her children's negative behaviors when they acted out sexually or threw temper tantrums. While Murr learned how to "put them in a time out," Bragg testified that after almost two years, any improvement in Murr's parenting skills had been "[v]ery minimal." Id. Bragg also testified that during one instance of in-home visitation, Murr permitted Smith—C.S.'s father—to visit his daughter in violation of the terms of the arrangement. Id. at 71-74. Bragg ultimately concluded that it would be in C.S. and S.M.'s best interests for the trial court to terminate Murr's parental rights because "I don't believe [Murr] can keep them safe." Id. at 75.

Dr. Suellyn Mahan testified that she began working with C.S. through Foster Care Plus after C.S. was removed from Murr's care. Dr. Mahan noted that C.S. had difficulties with boundaries, was very domineering, and inappropriately touched other children on

multiple occasions. Id. at 24-26. Dr. Mahan testified that C.S. was ultimately removed from the original foster home where the girls had been placed because she was "being physically and sexually inappropriate with [S.M.]" Id. at 26. However, after working with Dr. Mahern, C.S.'s behavior had "significantly improved"—she repeated first grade, her grades improved, she participated in Girl Scouts, and her incidents of behavior problems subsided. Id. at 29. Dr. Mahern observed Murr's parenting skills on numerous occasions and would "sometimes" see improvement but "then the next [] month it was the same behaviors being seen again." Id. at 36. While Dr. Mahern opined that Murr "is a kind hearted, wonderful person," she ultimately concluded, "with regards to parenting, I'm afraid that she can't keep [C.S. and S.M.] safe." Id. at 38.

Melissa Grinslade, a therapist at Hamilton Center, observed multiple visits between Murr, C.S., and S.M. from July 2005—shortly after the children were removed from Murr's care—until March 2007—one month before the termination hearing. Grinslade testified that during the initial observations she witnessed inappropriate touching between C.S. and S.M. and Murr "[did] not interact in a parent role with redirection or consequences." Id. at 49. After working with Murr for almost two years and observing the interactions with her children, Grinslade concluded that Murr's parenting skills had not progressed. Id. at 50. Based on these observations, Grinslade testified that it would be in C.S. and S.M.'s best interests for the trial court to terminate Murr's parental rights. Id. at 52.

The evidence in the record shows that Murr is unable to keep C.S. and S.M. safe from each other and sexual predators. After observing C.S. sexually touch S.M. multiple times,

Murr "didn't say anything" to stop the inappropriate conduct. Tr. p. 29, 34, 36-37. Even assuming Murr was able to protect her daughters from each other, she would not be able to protect them "from who she allowed in the house. . . . The problem that I have is that the people that are coming into the home, I'm more concerned with that they are going to perp[etrate a crime] again on these two children [because Murr] is easily manipulated." Id. at 41. In fact, Murr "can't keep the kids safe based on the past. They weren't safe. . . . [C.S.] says she was sexually assaulted by three of the [men Murr was involved with]." Id. And even though Smith—C.S.'s father—was not allowed to visit the girls because he "has a history of being a sexual perpetrator on children," Murr allowed him to visit C.S. "all the time." Id. at 73. Ultimately, Murr told the caseworkers that she and Smith were "back together," showing her disregard for C.S. and S.M.'s best interests. Id.

In sum, the evidence in the record establishes that although Murr loves her children, she is unable to provide them with a safe environment. After interacting with Murr, C.S., and S.M. for two years, all of the professionals involved with this family concluded that it would be in the best interests of C.S. and S.M. for the trial court to terminate Murr's parental rights. While Murr argues that she will eventually be able to learn how to be a better parent, a parent's habitual pattern of conduct must be evaluated and the trial court does not need to wait until C.S. and S.M. are irreversibly harmed before terminating the parent-child relationship. Because the evidence in the record supports the trial court's decision to terminate Murr's parental rights, we affirm the judgment of the trial court.

The judgment of the trial court is affirmed.

DARDEN, J., and BRADFORD, J., concur.