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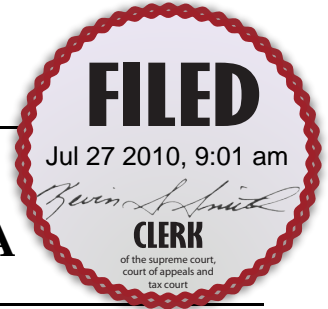
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**IN THE
COURT OF APPEALS OF INDIANA**



IN RE THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF M.D., a child, and)
M.C., her mother,)
)
M.C.,)
)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner.)
)

No. 34A02-1001-JT-156

APPEAL FROM THE HOWARD CIRCUIT COURT
The Honorable Lynn Murray, Judge
Cause No. 34C01-0906-JT-17

July 27, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent M.C. (Mother) appeals the termination of her parental relationship with her minor daughter, M.D. (Daughter). Mother argues that the trial court erred by concluding that the conditions that resulted in the removal of Daughter from her care will not be remedied and that termination is in Daughter's best interests. Finding no error, we affirm.

FACTS

In May 2008, Mother and four-year-old Daughter lived in Kokomo with three other adults, including Mother's sister. Another four-year-old child, Daughter's cousin (Cousin), also lived in the home.

On May 5, 2008, Mother reported to the Kokomo Police Department that she was being kept from Daughter. Police officers went to the residence to investigate, and found Daughter and Cousin, who had extensive physical injuries that appeared to be caused by prolonged abuse and neglect. The children were transported by ambulance to the emergency room and were subsequently hospitalized for several days. At the time Daughter was admitted to the hospital, she had extensive bruising covering most of her body, broken bones in both hands, a healing fracture in one of her arms, open wounds on her head and buttocks, a MRSA infection, and she was malnourished. Doctors performed surgery to drain the abscess on Daughter's buttocks. During her time in the hospital, she

became septic and developed high fevers. At the time of the termination hearing, Daughter had also had multiple oral surgeries to remove scar tissue from her upper lip that had grown as a result of extensive physical trauma. Upon being evaluated by multiple professionals, Daughter was diagnosed as having global developmental delays, a mild mental handicap, a communication disorder, and post-traumatic stress disorder.

During police interviews, Mother

admitted to knowing her daughter had been struck repeatedly with a paddle and wooden spoons in the face and on other areas of the body. She also admitted to personally “popping” [Daughter] in the mouth on more than one occasion, pushing her to the floor, and “whipping her too hard” with a metal spoon. [Mother] also admitted to knowing [Daughter] had red bumps on her head, open sores on her chin and behind her ears, a split lip, large open bleeding sores on her buttocks, injury to her vaginal area, bruising to both of her hands, and abrasions to her knees. She declared to detectives she had not sought medical treatment over the past several months for her daughter’s injuries, even though she believed the injuries were serious enough to require medical care. During the interview, [Mother] shared with detectives [that Daughter] and her cousin had been tied up with plastic flex cuffs overnight to door knobs, fans, and laundry baskets to prevent them from moving around and eating at night. [Daughter] was also beaten with a wooden spoon by another adult in the home for having accidents related to potty training and was deprived of food for short and long periods of time. [Mother] reported [Daughter] and her cousin had been locked in the closet in the bedroom and she claimed [that] she personally kept [Daughter] there for three continuous weeks in April of 2008. . . .

Tr. Ex. 6. At some point, the State charged Mother with eight crimes for offenses against Daughter and Cousin, including neglect of a dependent resulting in bodily injury. Mother was incarcerated on those charges during the subsequent juvenile proceedings and was transported to the hearings by the Howard County Sheriff.

On May 7, 2008, the juvenile court held an emergency hearing and ordered that upon Daughter's release from the hospital, she be removed from Mother's care and placed into therapeutic foster care. Among other things, the juvenile court found that the abuse and neglect had been ongoing since at least February 2008. The same day, the Indiana Department of Child Services (DCS) filed a petition alleging Daughter to be a Child in Need of Services (CHINS). On June 30, 2008, the juvenile court held a hearing on the petition and found Daughter to be a CHINS.

At a July 21, 2008, dispositional hearing, the juvenile court made Daughter a ward of DCS and ordered that she remain in licensed foster care and continue to receive medical and therapeutic services to address her special needs. The court further ordered that family services would be offered to Mother upon her release from incarceration, but that no such services had been or would be provided while she was incarcerated.

On March 9, 2009, Mother pleaded guilty to two counts of class C felony neglect of a dependent resulting in bodily injury. She was subsequently sentenced to two eight-year terms, to be served concurrently.¹

On April 6, 2009, Mother filed a petition for DCS to provide services to her during her incarceration. After hearing arguments, the juvenile court denied the petition, finding that DCS is not required to provide services to an incarcerated parent and that visitation with Mother, given her role in Daughter's abuse and neglect, was not in Daughter's best interests.

¹ Eight years is the maximum possible sentence for a class C felony. Ind. Code § 35-50-2-6.

On July 10, 2009, DCS filed a petition to terminate Mother's parental relationship with Daughter.² The juvenile court held a factfinding hearing on the termination petition on November 23, 2009. On January 11, 2010, the juvenile court granted the petition, finding, among other things, as follows:

22. . . . [Daughter and Cousin] were locked in closets, starved and beaten over an extended period of time. [Mother] admitted to abusing [Daughter] by hitting her in the mouth. [Mother] admits to watching [another adult] hit [Daughter] repeatedly with two wooden spoons tied together, and knowing that [Daughter] was locked in [Mother's] closet or tied to door handles for long periods of time without food or water. At [another adult's] direction, [Mother] withdrew all affection for [Daughter].
23. [Mother] attributes most of the abuse and neglect inflicted upon [Daughter and Cousin] as having been committed by [another adult,] who with her husband owned the home; however, [Mother] participated in abusing and neglecting [Daughter]. [Mother] failed to protect her daughter or to provide her with a safe environment, and she failed to obtain medical treatment for her. [Mother] claims that [the other adult] prevented her from seeking help for [Daughter], yet during the time four (4) year old [Daughter and Cousin] were being systematically tortured, [Mother] would regularly contact or visit her therapist to meet her own needs.
24. . . . [Daughter] has thrived in foster care. Although many of her physical injuries resulting from abuse and neglect have healed, [Daughter] requires long term psychological and emotional treatment to deal with the effects [of the abuse and neglect].

29. In the judgment of the court, [Mother] is likely to never adequately care and provide for [Daughter] as a custodial parent.

Appellant's App. p. 15-16. Mother now appeals.

² The petition also sought to terminate Daughter's relationship with her biological father. He eventually consented to termination of the relationship and is not part of this appeal.

DISCUSSION AND DECISION

I. Standard of Review

We will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. Bester v. Lake County Office of Family and Children, 839 N.E.2d 143, 147 (Ind. 2005). We neither reweigh the evidence nor judge the credibility of witnesses, and we will consider only the evidence that supports the trial court's decision and the reasonable inferences that may be drawn therefrom. Id.

When we review findings of fact and conclusions thereof entered in a case involving a termination of parental rights, we apply a two-tiered standard of review. First, we must determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. Id. If the findings support the trial court's conclusions and the conclusions support the judgment, we must affirm.

II. Mother's Arguments

A. Termination: General Rules

We acknowledge that the involuntary termination of parental rights is the most extreme sanction a court can impose on a parent because termination severs all rights of a parent to his or her children. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. Id. The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Id. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities. Id.

To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing the following elements:

- (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).³

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

³ This statute has been amended, effective March 2010. The amended statute does not apply in this case, however, because the termination hearing herein predated the amendment.

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 patterns 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. It is sufficient to show by clear and convincing evidence that "the child's emotional and physical development are threatened" by the respondent parent's custody. Bester, 839 N.E.2d at 148 (quoting Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1233 (Ind. 1992)).

When determining what is in the best interests of the children, the interests of the parents are subordinate to those of the child. Ferbert v. Marion County OFC, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001). 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).

B. Conditions Resulting in Daughter's Removal

First, Mother argues that the juvenile court erred by concluding that there is a reasonable likelihood that the conditions that resulted in Daughter's removal will not be remedied. Initially, we note that Section (b)(2)(B) is written in the disjunctive, requiring that only one of the two prongs be proved true by clear and convincing evidence. In re L.S., 717 N.E.2d 204, 209 (Ind. Ct. App. 1999). Here, the juvenile court found both that there is a reasonable likelihood that the conditions that resulted in Daughter's removal will not be remedied and that the continuation of the parent-child relationship poses a

threat to Daughter's well-being. Inasmuch as Mother does not challenge the latter conclusion and that conclusion, alone, is sufficient to meet DCS's statutory burden, we need not consider her argument regarding the first prong of Section (b)(2)(B).

That conclusion notwithstanding, we will respond to Mother's argument. Mother argues, essentially, that the juvenile court erred in concluding that the conditions resulting in Daughter's removal will not be remedied because she was not provided with DCS services, such as parenting classes, despite two requests for such services. Proof of services offered to parents, however, is not an element of termination proceedings. In re E.E., 736 N.E.2d 791, 796 (Ind. Ct. App. 2000). Moreover, DCS is not required to provide parents with services directed at reunification while a parent is incarcerated. Rowlett v. Vanderburgh County Office of Family & Children, 841 N.E.2d 615, 622 (Ind. Ct. App. 2006).

Mother was incarcerated during the entirety of the CHINS and termination proceedings. It was her own actions of physically abusing and neglecting her child that caused her to end up in prison, and she has no one to blame but herself. See Castro v. Office of Family and Children, 842 N.E.2d 367, 370 (Ind. Ct. App. 2007) (holding that individuals who engage in criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children).

The record herein establishes that Mother's earliest possible release date from prison is May 3, 2012—over two years from the date of the termination hearing. She suggests that the juvenile court should have afforded her the opportunity to prove herself upon being released from incarceration, directing our attention to Rowlett in support of

her argument. In Rowlett, a panel of this court found that the trial court erred by terminating a father's parental relationship with his children when father was set to be released from incarceration only six weeks after the scheduled hearing.

We find Rowlett to be easily distinguishable from the circumstances herein. First, as noted above, Mother is not due to be released for approximately two years, rather than the brief six-week period in Rowlett. Furthermore, whereas in Rowlett the children had been placed with a grandparent with whom they would remain in the event of termination, in this case, Daughter is in temporary foster care. Rowlett, 841 N.E.2d at 623 (emphasizing that “[t]his is not the case where the children are in a temporary arrangement pending termination of the parental rights. Rather, in this case, continuation of the CHINS wardship will have little, if any impact upon them”). Therefore, we do not find that Rowlett controls this case, and find that the juvenile court did not err by refusing to make Daughter wait until Mother is released from prison to resolve this case.

The conditions that led to Daughter's removal from Mother's care were the months-long torture, abuse, and neglect of Daughter and Cousin, resulting in extensive physical and psychological trauma. Given that this was clearly not an isolated incident and that Mother has been—and will continue to be—incarcerated as a result of her abuse and neglect of Daughter, we find that the juvenile court did not err by finding a reasonable likelihood that the conditions that led to Daughter's removal will not be remedied.

C. Best Interests

Finally, Mother contends that the juvenile court erred by finding that termination is in Daughter's best interests. Professionals involved with Daughter's care, including her court appointed special advocate (CASA), testified that termination is in her best interests. Daughter's CASA testified that the Daughter needed permanency and that it was unlikely that Mother would ever be able to provide Daughter with a stable and safe environment that meets Daughter's special needs—many, if not all, of which she has developed only because of the extensive abuse and neglect she suffered at the hands of Mother and other adults in the household.

The record reveals that Daughter has improved in therapeutic foster care, but that she will continue to need extensive emotional and developmental assistance. Daughter also needs stability and permanence. Given the testimony of Daughter's CASA and other DCS employees, the extended torture that Daughter suffered at the hands of Mother—or, at the least, that Mother permitted to occur—and Daughter's need for emotional stability and permanence, we find that the juvenile court did not err by finding termination to be in Daughter's best interests. Mother's arguments to the contrary amount to a request that we reweigh the evidence, which we decline to do.

The judgment of the juvenile court is affirmed.

NAJAM, J., and MATHIAS, J., concur.