

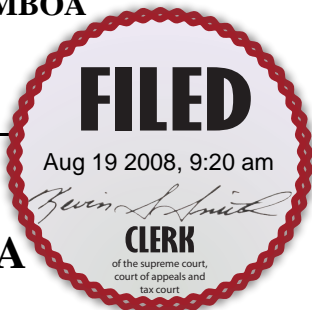
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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE)
TERMINATION OF THE)
PARENT – CHILD RELATIONSHIP)
OF T.K.,)
)
J.S.,)
)
Appellant-Respondent,)
)
vs.)
)
JOHNSON COUNTY DEPARTMENT)
OF CHILD SERVICES,)
)
Appellee-Petitioner,)

No. 41A01-0803-JV-98

APPEAL FROM THE JOHNSON CIRCUIT COURT
The Honorable K. Mark Loyd, Judge
Cause No. 41C01-0611-JT-20

August 19, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Jessica S. (“Mother”) appeals the involuntary termination of her parental rights, in Johnson Circuit Court, to her son, T.K. On appeal, Mother claims there is insufficient evidence supporting the trial court’s judgment terminating her parental rights to T.K. Concluding that the trial court’s judgment is supported by clear and convincing evidence, we affirm.

Facts and Procedural History

The facts most favorable to the judgment reveal that on or about May 23, 2005, passing motorists observed then three-year-old T.K. and his one-year-old brother playing in and around U.S. Highway 31. Investigating police officers found Mother asleep in a nearby motel. T.K.’s infant brother was also with Mother. Mother admitted to the police officers that she had been using methamphetamine and was unable to care for the children. All three children were immediately taken into protective custody.¹

On May 24, 2005, the Johnson County Department of Child Services (“JCDCS”) filed a petition alleging T.K. to be a child in need of services (“CHINS”). The CHINS petition and supporting documents alleged that Mother admitted using methamphetamine, that T.K. was a “victim of neglect[,]” and that T.K. was in danger “due to lack of supervision by Mother.” State’s Ex. B.

In August 2005, the trial court held a fact-finding hearing on the CHINS petition. Mother appeared at the hearing, with counsel, and admitted to the allegations contained in the CHINS petition. The trial court thereafter found T.K. to be a CHINS, and on August 26,

2005, ordered the JCDCS to prepare a pre-dispositional report containing its recommendation regarding appropriate care, treatment, and rehabilitation for T.K. and Mother. Sometime after the CHINS hearing and prior to the dispositional hearing held on November 2, 2005, Mother began an intensive outpatient drug rehabilitation program through Cummins Behavioral Health Systems, Inc. However, Mother failed to successfully complete the program.

On November 4, 2005, following the dispositional hearing held two days earlier, the trial court issued its Dispositional Decree ordering Mother to participate in a variety of services in order to achieve reunification with T.K. Mother was required to, among other things: (1) complete a drug and alcohol assessment and follow all recommendations, including an inpatient treatment program; (2) refrain from the use of alcohol and non-prescription drugs; (3) secure and maintain a legal source of income sufficient to support herself and all household members; (4) maintain safe, stable, and sanitary housing; (5) successfully participate in and complete home-based counseling; (6) submit to random drug screens; and (7) appropriately participate in supervised visitation with T.K. Mother subsequently began an inpatient treatment program at Richmond State Hospital, but was unsuccessfully discharged because she was found drinking alcohol during the program.

Mother continued to use methamphetamine throughout the duration of the CHINS proceedings. Mother also never obtained stable housing or employment and did not regularly exercise visitation with T.K. Mother submitted to random drug screens, but admitted to having provided someone else's urine in order to achieve a negative result.

¹ Paternity of T.K. was never established and T.K.'s alleged father does not participate in this appeal.

On November 2, 2006, the JCDCS filed a petition to involuntarily terminate Mother's parental rights to T.K. A two-day fact-finding hearing on the termination petition eventually commenced on August 29, 2007. Mother appeared and was represented by counsel. Meanwhile, on March 15, 2007, Mother pleaded guilty, under a different cause, to Class D felony neglect of a dependant.

The second day of the termination hearing was held on December 10, 2007. Mother failed to appear but was represented by counsel. At the conclusion of the evidentiary hearing, the trial court took the matter under advisement. On January 3, 2008, the trial court issued its judgment terminating Mother's parental rights to T.K. The following appeal ensued.

Discussion and Decision

I. Standard of Review

Mother challenges the sufficiency of the evidence supporting the termination of her parental rights to T.K. Initially, we note our standard of review. This court has long held a highly deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). Thus, when reviewing the termination of parental rights, we neither reweigh the evidence nor judge the credibility of the witnesses. In re Kay L., 867 N.E.2d 236, 239 (Ind. Ct. App. 2007). Instead, we consider only the evidence that supports the trial court's decision and the reasonable inferences drawn therefrom. Id.

Here, the trial court made specific findings in its order terminating Mother's parental rights. Where the trial court enters specific findings and conclusions thereon, we apply a

two-tiered standard of review. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second we determine whether the findings support the judgment. Id. In deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied, cert. denied, 534 U.S. 1161 (2002). Thus, if the evidence and inferences support the trial court's decision, we must affirm. Id.

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. Bester, 839 N.E.2d at 147. A parent's interest in the care, custody, and control of his or her children is perhaps the oldest of our fundamental liberty interests. Id. However, these parental interests are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. Parental rights may therefore be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. K.S., 750 N.E.2d at 836.

In order to terminate a parent-child relationship, the State is required to allege that:

- (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.

Ind. Code § 31-35-2-4(b)(2). The State must establish each of these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

II. Remedy of Conditions

Mother's sole allegation on appeal is that the JCDCS failed to prove by clear and convincing evidence there is a reasonable probability the conditions resulting in T.K.'s removal from her care will not be remedied. Although Mother admits that she is "ultimately responsible for her addiction and the conditions that resulted in [T.K.'s] removal[,] she states that she is "a mother suffering from a very serious drug addiction" and claims she was "failed" by the JCDCS due to its "lack of support and lack of reasonable efforts . . . to help her overcome her addiction and provide reunification efforts with her child." Brief of Appellant at 7-10.

We pause to note that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, a trial court need only find by clear and convincing evidence that one of the two requirements of subsection (B) have been met in order to terminate a parent-child relationship. See L.S., 717 N.E.2d at 209. Here, the trial court found both requirements of subsection (B) to be true; that is to say, the trial court determined, based on the evidence, both that there was a reasonable probability the conditions resulting in T.K.'s removal and continued placement outside Mother's care would not be remedied and that continuation of the parent-child relationship poses a threat to T.K.'s well-being. However, Mother does not challenge the trial court's latter finding that continuation of the parent-child relationship

poses a threat to T.K.'s well-being in her brief to this Court. In failing to do so, Mother has waived review of this issue. See Davis v. State, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005) (concluding that failure to present a cogent argument or citation to authority constitutes waiver of issue for appellate review), trans. denied. Waiver notwithstanding, given our preference for deciding cases on the merits, we will nonetheless address Mother's claim.

When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. However, the court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." 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. A.F. v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. The trial court may also consider the services made available to the parent by the Department of Child Services, as well as the parent's response to those services, as evidence of whether conditions will be remedied. Id.

The JCDCS is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability Mother's behavior will not change. Kay L., 867 N.E.2d at 242. Moreover, our Supreme Court has explicitly stated that Indiana's termination of parental rights statute does not require the Department of Child Services to

plead and prove that any services have been offered to a parent to assist in fulfilling parental obligations. S.E.S. v. Grant County Dep't of Welfare, 594 N.E.2d 447, 448 (Ind. 1992); see also A.P. v. Porter County Office of Family & Children, 734 N.E.2d 1107, 1118 (Ind. Ct. App. 2000) (explaining that the elements set forth in Indiana Code section 31-35-2-4 are exclusive), trans. denied.

In determining there is a reasonable probability the conditions resulting in T.K.'s removal and continued placement outside Mother's care will not be remedied, the trial court made the following pertinent findings:

11. [T.K.] was initially removed from the care and custody of [Mother] because she failed, refused or was unable to provide him with necessary and appropriate food, clothing, shelter[,] and medical care due to her substance abuse, which seriously endangered [T.K.'s] physical and emotional health and development.
12. Throughout the proceedings[,] [Mother] has failed to demonstrate either a willingness and/or an ability to provide for [T.K.'s] physical, mental[,] and emotional needs.
13. At the time of the initial detention, [T.K.] was found wandering on highway US 31, while [Mother] was asleep in a hotel.
14. [Mother] admitted to using methamphetamine within the day or two prior to this incident.
15. The [JCDCS] referred [Mother] to services with: Cummins Behavioral Health Systems, Inc.; Richmond State Hospital; and, home[-]based services through Preventative Aftercare.
16. [Mother] was further provided the following services:
 - (1) visitation with [T.K.];
 - (2) medical care for [T.K.]; and
 - (3) case manager services.
17. That despite these services, and over two (2) years of opportunity, [Mother] has been unable to conclude her substance treatment

successfully, or to re-initiate any meaningful care of [T.K.].

18. [Mother] admitted, as recently as August of 2007, to her family case manager, Joe Erickson, that she continues to use and abuse methamphetamine.
19. [Mother] met with the home[-]based counselor, Jessica Laymon, on multiple occasions, during which she admitted that she sometimes wants to quit using methamphetamine and sometimes she enjoys the lifestyle.
20. These admissions, at best, demonstrate [Mother's] ambivalence regarding her substance use. As a result of [Mother's] ambivalence or addiction, she missed seventeen (17) consecutive appointments with her home[-]based providers.

* * *

22. [Mother's] failure to comply with Court[-]ordered services and to make substantial progress for twenty-four (24) months on her personal goals, demonstrates her lack of genuine motivation to appropriately parent [T.K.] and provide for his mental, physical[,] and emotional development.

* * *

25. [Mother] has not demonstrated an ability to meet the needs of [T.K.].
26. [T.K.] should not be required to wait indefinitely pending the possibility that [Mother] may eventually, in the future, successfully complete services and become able to provide him with a safe, loving and nurturing home free from neglect.

Appellant's App. at 10-11. These findings, which are supported by the evidence, support the trial court's judgment terminating Mother's parental rights.

The evidence most favorable to the judgment reveals that T.K. was initially removed from Mother's care because she was unable to properly supervise T.K. and provide him with the basic necessities of life due to her addiction to methamphetamine. The reason for T.K.'s

continued placement outside of Mother's care was her ongoing inability to provide T.K. with food, clothing, shelter, and other life necessities due to her unresolved drug addiction that began when she was only seventeen years old. At the time of the termination hearing, these conditions had not been remedied. Specifically, Mother remained addicted to methamphetamine and had not successfully completed any drug rehabilitation program. Additionally, in October 2007, Mother admitted to home-based case manager Jessica Laymon that she was using methamphetamine intravenously "several times a day[.]" and was not sure if she wanted to quit because "at times [she] really liked using." Tr. at 65. As stated earlier, when determining whether to terminate a parent-child relationship, a trial court must assess a parent's ability to care for her child as of the date of the termination hearing. Rowlett v. Vanderburgh County Office of Family & Children, 841 N.E.2d 615, 621 (Ind. Ct. App. 2006), trans. denied.

In addition to failing to overcome her drug addiction, during the approximately two years leading up to the termination hearing, Mother had also failed to successfully complete a majority of the court-ordered dispositional goals. For example, Mother had failed to secure and maintain a legal source of income, had failed to obtain a safe and stable residence, had failed to exercise regular visitation with T.K., and had failed to successfully complete home-based counseling, having missed seventeen consecutive appointments. "[A] pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change." Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied.

Based on the foregoing, we conclude the JCDCS presented clear and convincing evidence that there is a reasonable probability the conditions leading to T.K.'s removal from Mother's care and custody will not be remedied. See In re A.K. and Kilbert, 755 N.E.2d 1090, 1098 (Ind. Ct. App. 2001) (concluding sufficient evidence supported trial court's conclusion that conditions leading to removal would not be remedied where there was no evidence mother had taken necessary steps to overcome her drug addiction). A trial court need not wait until a child is "irreversibly influenced" such that his physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. A.F., 762 N.E.2d at 1253. Under the facts of this case, it is unfair to ask T.K. to continue to wait until Mother is willing and able to get, and benefit from, the help that she needs. The approximately two years that have already passed is long enough. See In re Campbell, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (stating that the court was unwilling to put the children "on a shelf" until their mother was capable of caring for them).

Conclusion

The trial court's judgment terminating Mother's parental rights to T.K. is supported by clear and convincing evidence. Accordingly, we find no error.

Affirmed.

NAJAM, J., and MAY, J., concur.