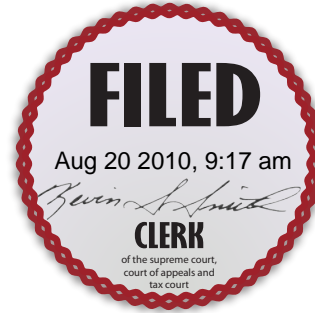


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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF:)

E.K.H., Child;)

K.E.N., Mother,)
C.J.H., Jr., Father,)

Appellants-Respondents,)

vs.)

INDIANA DEPARTMENT OF CHILD)
SERVICES,)

Appellee-Petitioner.)

No. 20A03-0912-JV-603

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Deborah A. Domine, Magistrate
Cause No. 20C01-0906-JT-43

August 20, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BARNES, Judge

Case Summary

K.N. (“Mother”) and C.H. (“Father”) appeal the termination of their parental rights to their daughter, E.H. We affirm.

Issue

The sole restated issue before us is whether there is sufficient evidence to support the termination of Mother and Father’s parental rights.

Facts

E.H. was born to Mother and Father in 1999. Both Mother and Father have been diagnosed with schizophrenia. When Father is taking his medications, he can function at a high level on a daily basis. However, Father has a repeated history of purposefully stopping his medications, which has led to numerous psychotic episodes and ensuing hospitalizations over the years. When Father does not take his medications, he develops severe psychotic symptoms, such as delusions regarding aliens. Father also has a history of smoking marijuana, which can exacerbate schizophrenia symptoms. As for Mother, there is little evidence in the record regarding the severity of her mental illness.

As of February 2008, Mother and E.H. had been living together for four or five years in Goshen. Father had sometimes lived with Mother and E.H., but often was hospitalized or sometimes lived with his mother (“Grandmother”). On February 15,

2008, the Goshen Police Department was called to Mother's residence, where she was found in the kitchen manufacturing methamphetamine with a neighbor. E.H. was in her bedroom sleeping. The State filed charges against Mother for Class A felony manufacturing methamphetamine and Class C felony neglect of a dependent; Mother was incarcerated while awaiting trial on these charges.

The Department of Child Services ("DCS") initiated a CHINS action with respect to E.H. Father was hospitalized at the time, and E.H. was placed with a foster family. There was no evidence that E.H. was malnourished, physically abused, or emotionally harmed at the time she was removed from Mother's care. However, E.H. later had to be moved to a different foster home because of an abusive environment in the first foster home. E.H. is doing very well in her current foster home placement.

While incarcerated awaiting trial, Mother had a mental breakdown of some kind and had to spend six months in Logansport State Hospital regaining her competency. The record does not reveal the nature of Mother's breakdown. Mother maintained contact with E.H. while incarcerated via phone calls. She also completed a drug and alcohol class while incarcerated but was not able to take any other classes related to her parenting.

On June 4, 2009, the DCS filed a petition to terminate Mother and Father's parental rights. On June 29, 2009, Grandmother filed a petition to intervene in the termination proceedings, contending that she could take custody of E.H. On July 9, 2009, the trial court denied the motion to intervene.

The trial court conducted a termination hearing on November 20, 2009. Mother, who has no prior criminal history, testified regarding her criminal case and indicated that she intended to plead guilty to the methamphetamine charge, although she was not sure whether conviction would be entered as a Class A or Class B felony. She did testify at one point that her attorney had told her she was facing a possible thirty-year sentence, which would be the advisory sentence for a Class A felony. Mother believed she was scheduled to be sentenced on December 31, 2009, and that her attorney was attempting to negotiate a home detention sentence for her rather than prison.

As for Father, Dr. Jay Shetler conducted a psycho-parenting assessment of him. The first part of the assessment consisted of a written questionnaire, which was given to Father in April 2009, but he failed to complete approximately twenty-five percent of the questions. In July 2009, Father was involuntarily hospitalized after he stopped taking his medication; he also apparently had used marijuana shortly before this hospitalization. After Father was released from this hospitalization, Dr. Shetler interviewed him in September 2009. After the interview, and after reviewing Father's records and his answers in the written questionnaire, Dr. Shetler was of the opinion that Father could not care for E.H. by himself. Dr. Larissa Chism, Father's treating psychiatrist, opined that Father's prognosis is fair, "contingent on ongoing compliance with medications." Tr. 230.

At the termination hearing, there was evidence presented that E.H. at various times had stated that she wanted to live with Mother, that she wanted to live with Father, and

that she wanted to be adopted by her current foster parents. Her current foster mother expressed willingness to adopt E.H., “[i]f it came down to that” Id. at 320. The CASA for E.H. testified that she believed neither Mother nor Father currently would be able to care for E.H., that she was receiving the best possible care in her current foster home, and that it was in her best interests for Mother and Father’s parental rights to be terminated.

On November 23, 2009, the trial court issued its judgment, accompanied by findings and conclusions, terminating Mother and Father’s parental rights. They now appeal.

Analysis

“When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility.” Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). “We consider only the evidence and reasonable inferences that are most favorable to the judgment.” Id. Where, as here, a trial court enters findings and conclusions granting a petition to terminate parental rights, we apply a two-tiered standard of review. Id. First, we determine whether the evidence supports the findings. Id. Then we determine whether the findings support the judgment. Id. We will set aside a judgment only when 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. Id.

A petition to terminate the parent-child relationship must allege:

(A) that one (1) of the following is true:

(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.

(iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(B) that one (1) of the following is true:

(i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.

(ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.

(iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services;

(C) that termination is in the best interests of the child; and

(D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2).

The DCS had the burden of proving these allegations by clear and convincing evidence. See Bester, 839 N.E.2d at 148. Clear and convincing evidence need not show that the custody by the parent is wholly inadequate for the child’s survival. Id. Instead, it is sufficient to show by clear and convincing evidence that the child’s emotional and physical development would be threatened by the parent’s custody. Id.

Mother and Father do not challenge the finding that a sufficient amount of time had passed to permit the termination of their parental rights. We begin by addressing Mother’s contention that the DCS failed to prove by clear and convincing evidence that the conditions that led to E.H.’s removal from her care will not be remedied in the near future.¹ In determining whether the conditions that led to a child’s removal will not be remedied, the trial court must judge a parent’s fitness to care for her child at the time of the termination hearing and take into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. However, the trial court must also “evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child.” Id. When assessing a parent’s fitness to care for a child, the trial court should view the parent as of the time of the termination hearing and take into account any evidence of changed conditions. In re C.C., 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), trans. denied. The trial court can properly consider the services that the State offered to the parent and the parent’s response to those services. Id. Moreover, the DCS is not required to rule out all possibilities of change,

¹ The trial court made no finding with respect to Mother that continuation of the parent-child relationship would pose a threat to E.H.

but only needs to establish that there is a reasonable probability the parent's behavior will not change. Moore v. Jasper County Dep't of Child Servs., 894 N.E.2d 218, 226 (Ind. Ct. App. 2008).

Here, E.H. was removed from Mother's care following allegations of an illegal act that was highly dangerous to E.H.—the manufacturing of methamphetamine in Mother's household while E.H. was sleeping in another room. Unlike some crimes for which a parent might be arrested, this posed an immediate threat to E.H.'s well-being. It also was a very serious crime, as evidenced by the Class A felony charge brought against Mother. As of the termination hearing, Mother's understanding was that she was facing a potential thirty-year prison sentence for this crime, which she had admitted committing.

Moreover, there are legitimate concerns about the stability of Mother's mental health. Like Father, she has been diagnosed with schizophrenia. Although, unlike Father, there is no evidence of a history of repeated hospitalizations, she did have a mental breakdown while in jail awaiting trial that required her to spend six months at Logansport State Hospital regaining competency to stand trial. Mother's lengthy incarceration and hospitalization while awaiting resolution of her criminal case also made it difficult, if not impossible, for her to complete any services or programs related to reunification with E.H. We note the DCS is not required to provide services to an incarcerated parent. See Castro v. State Office of Family & Children, 842 N.E.2d 367, 377 (Ind. Ct. App. 2006), trans. denied. All of this evidence leads us to conclude the trial court did not clearly err in finding that there was a reasonable probability that the

conditions leading to E.H.'s removal from Mother's care would not or could not be remedied at any time in the near future.

We now address whether there is sufficient evidence that the conditions leading to the placement of E.H. outside of Father's care after she was removed from Mother will not be remedied.² The reason E.H. was not placed with Father in February 2008 at the time of Mother's arrest was that he was hospitalized. There is substantial evidence in the record that this hospitalization was far from an isolated event. Instead, Father frequently is hospitalized for having psychotic episodes associated with his schizophrenia because he stops taking his medication. Father also regularly uses marijuana, which can exacerbate schizophrenia symptoms. Father's most recent hospitalization was in the summer of 2009, after the termination petition was filed. Again, it was caused by Father not using his medication, and he had used marijuana shortly before this most recent breakdown.

There was expert testimony presented that Father simply cannot be a suitable parent, due to his frequent psychotic episodes. The best that could be said for Father was that he can be a relatively stable individual, if he takes his medication. Unfortunately, he has a long and documented history of deciding on his own to stop taking it. Father notes that he is engaged to be married, and contends his fiancée would be able to take care of E.H. should he have difficulties again. This untested arrangement, however, is not

² The trial court made an alternate finding with respect to Father that continuation of the parent-child relationship would pose a threat to E.H.'s well-being. We need not address that finding. See Bester, 839 N.E.2d at 148 n.5.

sufficient to overcome the substantial evidence that the reasons that originally led to E.H.'s placement outside of Father's care will not be remedied.

Next, we address whether there is sufficient evidence that termination of Mother and Father's parental rights is in E.H.'s best interests. There is evidence that E.H. is doing very well in her current foster home placement, which likely would become permanent through adoption after termination. Also, the CASA assigned to the case opined that it would be in E.H.'s best interests to termination Mother and Father's parental rights. The DCS case manager believed that termination and subsequent adoption would provide E.H. with the structure and stability that she needs. This evidence, along with the evidence discussed above, is sufficient to establish that termination is in E.H.'s best interests.

Finally, we address whether the DCS had a satisfactory plan for E.H. following termination. Mother and Father's argument on this point primarily is directed to their claim that Grandmother is a viable option to be E.H.'s primary caregiver, and thus termination of their parental rights is unnecessary because E.H. simply could have been placed in Grandmother's custody. There was evidence presented, however, that the DCS looked into the possibility of E.H.'s placement with Grandmother and did not approve such an arrangement. In particular, there was evidence that Grandmother often assisted Father in attempting to skirt or disregard visitation limits while E.H. was in the care of her foster family. There also was evidence that Grandmother did not consider Father to

be any kind of threat to E.H., despite his mental health issues.³ Thus, Grandmother apparently would not be inclined to follow DCS rules intended to protect E.H. if she were granted custody of the child. Moreover, it would appear that placing E.H. with Grandmother would essentially make her a ward of the State indefinitely; we have disapproved of such an arrangement in other cases. See In re J.W., 779 N.E.2d 954, 963 (Ind. Ct. App. 2002), trans. denied. DCS's plan that E.H. be adopted, potentially by her current foster family, clearly is a satisfactory plan for her care following termination. See In re Termination of Parent-Child Relationship of D.D., 804 N.E.2d 258, 268 (Ind. Ct. App. 2004), trans. denied.

Conclusion

There is sufficient evidence to support the termination of both Mother and Father's parental rights to E.H. We affirm.

Affirmed.

FRIEDLANDER, J., and CRONE, J., concur.

³ Grandmother also refused to believe a report of child molestation, substantiated by the DCS, that Father was alleged to have perpetrated against another child of his. It does not appear that any criminal charges arose as a result of this substantiation.