

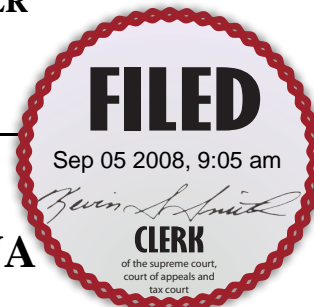
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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE MATTER OF THE)
INVOLUNTARY TERMINATION)
OF THE PARENT-CHILD)
RELATIONSHIP OF J.C.T,)
)
and)
)
S.T.,)
)
Appellant-Respondent,)
)
vs.)
)
SCOTT COUNTY DEPARTMENT)
OF CHILD SERVICES,)
)
Appellee-Petitioner,)

No. 72A01-0802-JV-88

APPEAL FROM THE SCOTT CIRCUIT COURT
The Honorable Roger L. Duvall, Judge
Cause Nos. 72C01-0505-JR-3

September 5, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

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

Facts and Procedural History

Mother is the biological mother of J.C.T., born March 13, 1999.¹ J.C.T. is a special needs child with cerebral palsy, muscular sclerosis, and asthma. The facts most favorable to the judgment reveal that in August 2004 Mother was arrested on charges of maintaining a common nuisance and neglect of a dependant after police officers searched Mother’s home on suspicion she was manufacturing methamphetamine in the home. J.C.T., who was in Mother’s care at the time of her arrest, was taken into protective custody on August 20, 2004. The SCDCS subsequently filed a petition alleging J.C.T. was a child in need of services (“CHINS”).² A Dispositional Hearing was held on September 2, 2004, during which Mother appeared in person and admitted that J.C.T. was a CHINS.

On October 2, 2004, the trial court issued its Dispositional Order finding J.C.T. to be a

¹ Mother is also the biological mother of two older children, K.N. and J.M. In 2001, K.N. died while in Mother’s custody. The Scott County Department of Child Services (“SCDCS”) substantiated a neglect referral as to Mother concerning the death of K.N., but the medical examiner could not determine K.N.’s exact cause of death. At the time of the termination hearing, J.M. was residing with his maternal grandmother and is not a party to these proceedings. Additionally, J.C.T.’s alleged biological father failed to participate in the underlying CHINS and termination proceedings. The trial court terminated Father’s parental rights to J.C.T. on November 30, 2007, following an evidentiary hearing. Father does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent to Mother’s appeal.

² Unfortunately, a copy of the CHINS petition was not included in the record thereby hampering our

CHINS and directing Mother to participate in a variety of services in order to achieve reunification with J.C.T. The trial court ordered Mother to: (1) successfully complete a substance abuse treatment program and follow all recommendations upon release from the program; (2) provide SCDCS with six consecutive “clean” drug screens; (3) meet weekly with therapist Scott Phillips; (4) complete a parenting class with Kids Place/New Hope Services; (5) participate in weekly visitation with J.C.T.; (6) obtain and maintain appropriate housing; (7) participate in J.C.T.’s medical and school appointments; and (8) meet regularly with and follow all recommendations of the SCDCS caseworker. Pet. Ex. 1.

Mother began meeting with licensed clinical social worker Scott Phillips, who had counseled Mother during a previous involvement with the SCDCS. During the next three years, Phillips admitted Mother to several substance abuse rehabilitation programs in an attempt to help Mother overcome her addiction to illegal drugs. Mother was admitted to the psychiatric unit of Wellstone Regional Hospital for substance abuse detoxification and psychiatric reasons on two separate occasions. Following these admissions, Phillips “attempted to stabilize [Mother]” with admissions to the Anchor House, a family reunification program in Seymour, Indiana. Tr. at 10. Mother left both programs prematurely and unsuccessfully due to relapse. Phillips also admitted Mother to Recovery House, a women-only substance abuse halfway house program in Louisville, Kentucky. Mother left Recovery House prior to successful completion of that program as well.

In March 2007, Phillips again admitted Mother to Hope House after another hospitalization for detoxification. Mother successfully completed a three-month recovery

review.

program and continued to reside at Hope House until August 2007, when she left Hope House against the advice of Phillips. Initially, Mother appeared to be maintaining her sobriety, and on August 30, 2007, Mother exercised visitation with J.C.T. Shortly thereafter, however, Phillips lost all contact with Mother.

On October 24, 2007, SCDCS family case manager Julie Gregory contacted Phillips and informed him that she had spoken with Mother at the Scott County Jail. Mother was in jail on shoplifting charges. Gregory told Phillips that Mother had admitted to using drugs again. Mother had also told Gregory “there was no need to drug test her because it would be dirty[,]” and had shown Gregory “track marks” on her left arm. Id. at 7.

Meanwhile, on May 13, 2007, SCDCS filed a petition for the involuntary termination of Mother’s parental rights to J.C.T. An initial hearing on the termination petition was held on July 8, 2005, and Mother denied the allegations in the petition. A two-day fact-finding hearing eventually commenced on November 13, 2007, and was concluded on November 20, 2007. Mother, who was incarcerated at the time of the hearing, appeared in person and was represented by an attorney.

During the termination hearing, evidence was presented that J.C.T. requires constant supervision and medical care. J.C.T. is primarily confined to a wheelchair but, due to consistent physical and occupational therapy while in foster care, J.C.T. is learning to walk and can now say a few words. Additionally, J.C.T. must be fed every four hours through a feeding tube.

At the conclusion of the evidentiary hearing, the trial court terminated J.C.T.’s father’s parental rights and took the matter under advisement as to Mother. On January 11, 2008, the

trial court issued its amended judgment terminating Mother's parental rights to J.C.T. 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 J.C.T. 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. When 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 trial 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. 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 either 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:

- (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 first asserts SCDCS failed to prove by clear and convincing evidence that

there is a reasonable probability the conditions resulting in J.C.T.'s removal from her care will not be remedied and that continuation of the parent-child relationship poses a threat to J.C.T.'s well-being. In so doing, Mother argues the evidence, which "demonstrates that [Mother's] most recent attempt at treatment was the longest period of time she has been clean since the removal of her child and she was progressing towards longer periods of being clean[,]" brief of appellant at 8, indicates the conditions resulting in J.C.T.'s removal will in fact be remedied sometime in the future. Mother further asserts there was no evidence proving that continuation of the parent-child relationship poses a threat to J.C.T.'s well-being, but, to the contrary, there is "much evidence" indicating Mother and J.C.T. were "bonded and that they both loved each other." Id.

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) has been satisfied in order to terminate a parent-child relationship. See L.S., 717 N.E.2d at 209. Here, the trial court found the SCDCS proved both requirements of subsection (B), that is to say, the trial court determined, based on the evidence, both that there was a reasonable probability the conditions resulting in J.C.T.'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 J.C.T.'s well-being. We therefore first review the trial court's findings and conclusions regarding Mother's ability to remedy the conditions that resulted in J.C.T.'s initial removal from and continued placement outside her care.

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. Additionally, the department of child services need not rule out all possibilities of change; rather, it need establish only that there is a reasonable probability a parent’s behavior will not change. Kay L., 867 N.E.2d at 242.

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

8. By clear and convincing evidence the allegations of the Petition concerning the mother are true in that there is a reasonable probability that the conditions that resulted in the child’s removal will not be remedied and that continuation of the parent-child relationship poses a threat to the well[-]being of the child:
 1. Over a period of more than three years there has been a continuous effort to provide appropriate treatment and services

to the mother with the goal of reunifying the child with her mother.

2. The child is a special needs child with cerebral palsy and asthma. The child is described as fragile. The medical care required for the child is significant to a level that an exceptional degree of time and commitment is demanded to properly care for [J.C.T.]. A person without a drug dependency problem would find the care for [J.C.T.] demanding. A person with a drug dependency problem cannot be expected to safely care for such a child.
3. Within a three[-]year period the mother was the subject of two admissions for acute care for her drug dependency and four periods of residency at residential facilities/half-way houses to assist her in addressing her addiction. While there were periods of success, there has been continual relapse into drug use. As recently as October 24, 2007, there was evidence of substance abuse including the observation of needle “tract marks” (sic) on the mother[']s arm.
4. The [SCDCS] [h]as provided counseling services for an extended period[] of time through Scott Phillips, LCSW, LMFT. The mother has left some facilities against the advice of [SCDCS].
5. The mother was warned by [SCDCS] that failure to cooperate could result in the institution of termination proceedings.
6. While significant services have been provided to the mother over an extended period of time, the mother has been unable to end her illegal use of controlled substances.
9. The mother, by the facts that are set forth in this Order displays an inability or unwillingness to appreciate the serious nature of her drug dependency and the resulting danger to which the child is exposed by such a lifestyle.
10. Services that were designed to provide for the safety of the child, allow the mother to end her drug dependency and facilitate reunification of the child were offered to the mother. The evidence is clear that the mother was not able to maintain her sobriety and . . . has continually relapsed into a lifestyle of substance abuse. Receiving services alone is

not sufficient if the services do not result in the needed change or only temporary change and the parents do not acknowledge a need for a change.

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 J.C.T. was initially removed from Mother's care because she was arrested on a drug-related charge and, consequently, was unable to care for J.C.T. The reason for J.C.T.'s continued placement outside of Mother's care was her unresolved drug addiction, which prevented Mother from successfully completing court-ordered services and from providing J.C.T. with an appropriate level of care and supervision, especially in light of J.C.T.'s significant medical needs.

At the time of the termination hearing, these conditions still had not been remedied. Specifically, only a few weeks prior to the termination hearing, Mother suffered a relapse, began using illegal drugs again, and was arrested for shoplifting. Thus, at the time of the hearing, Mother was incarcerated and unavailable to care for J.C.T. 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 three years leading up to the termination hearing, Mother also failed to successfully complete a majority of the court-ordered dispositional goals. For example, Mother failed to obtain appropriate housing, failed to exercise visitation with J.C.T. after August 20, 2007, failed to

maintain weekly contact with Phillips, and had recently left a recovery program against her therapist's recommendation. Moreover, during the termination hearing, SCDCS family case manager Lynn Smith acknowledged that, based on Mother's "recent relapse and continued drug abuse and inability to stay drug[-]free for an extended period of time[,]" she felt the conditions resulting in J.C.T.'s removal from Mother's care would not be remedied. Tr. at 66. Smith further admitted that she had "concern" for Mother's ability to care for J.C.T. when Mother was unable to maintain a drug-free existence. Id.

"[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 SCDCS presented clear and convincing evidence that there is a reasonable probability the conditions leading to J.C.T.'s removal from Mother's care and custody will not be remedied.³ 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 her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. A.F., 762 N.E.2d at 1253.

³ Having determined that the trial court's conclusion regarding the remedy of conditions is supported by clear and convincing evidence, we need not address the issue of whether SCDCS proved by clear and convincing evidence that the continuation of the parent-child relationships poses a threat to J.C.T.'s well-

III. Best Interests

Next, we address Mother's contention that termination of her parental rights is not in J.C.T.'s best interests. Although Mother admits J.C.T. was "flourishing" while in the care of her current foster parents, Mother insists that she loves her daughter very much and was "beginning to learn the skills necessary to care for her daughter" before she relapsed. Br. of Appellant at 16. Thus, Mother concludes, the trial court "should have given [Mother] the opportunity [to] get right back into Hope House and . . . break her addiction." Id.

We are mindful that in determining what is in the best interests of a child, the court is required to look beyond the factors identified by the department of child services and look to the totality of the evidence. McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). The purpose of terminating parental rights is not to punish the parents but to protect the children involved. K.S., 750 N.E.2d at 836. The trial court must therefore subordinate the interests of the parents to those of the child when determining the best interests of the child. McBride, 798 N.E.2d at 203. Additionally, the trial court need not wait until a child is irreversibly harmed before terminating a parent-child relationship. Id.

In addition to the findings set forth previously, the trial court made the following additional pertinent finding in determining that the termination of Mother's parental rights is in J.C.T.'s best interests:

11. By clear and convincing evidence the allegation of the Petition is true that termination is in the best interest of the child. In support of this finding the Court incorporates the findings that have been reported in this Order. The

being. See L.S., 717 N.E.2d at 209.

Court further finds that all service providers testified that the mother cannot properly care for a child with such special needs and those needs are currently being met by the foster parents.

Appellant's App. at 11. Testimony from Mother's therapist, J.C.T.'s treatment coordinator, and the SCDCS family case manager supports this finding.

When questioned as to whether termination would be in the best interests of J.C.T., Phillips acknowledged that Mother loves J.C.T. but went on to say, "[J.C.T.] has a lot of needs and a lot of services that are important, that have to be done consistently. Concern would clearly be noted that if [Mother] can't take care of herself, one would question how she could take care of [J.C.T.]." Tr. at 15. Amanda Taylor, J.C.T.'s treatment coordinator from the National Youth Advocate Program, described J.C.T. as "a medically fragile child." Id. at 30. Taylor explained that J.C.T. had been placed in her current foster home because the foster mother, who is a registered nurse, is able to take care of J.C.T.'s "special circumstances[.]" including bi-weekly physical and occupational therapy sessions. Id. Taylor also testified that since J.C.T.'s placement with her current foster parents in May 2006, she has "bonded" with the foster family and that they, too, "love [J.C.T.] very much." Id. at 32. Similarly, family case manager Smith informed the trial court that J.C.T.'s current foster family was willing to adopt her and that the foster home was "definitely" appropriate for J.C.T. Id. at 59. Smith further explained J.C.T. "has pretty much flourished since she's been in the [current foster] home" and that she has "made large amounts of progress due to regular physical therapy[,] increasing movement in her arms and legs . . . [and] using a walker to walk." Id. at 60. When asked whether she believed termination of Mother's parental rights was in J.C.T.'s best interests, Smith replied, "Yes I do." Id.

Based on the totality of the evidence, we are convinced that although Mother may love her daughter and have a genuine desire to be reunited with her, the testimony set forth above reflecting the fact J.C.T. is thriving in her pre-adoptive foster home, coupled with the evidence of Mother's current incarceration, failure to overcome her addiction to illegal drugs, and persistent inability to successfully complete court-ordered dispositional goals after approximately three years of extensive therapy and services, sufficiently supports the trial court's determination that termination of Mother's parental rights is in J.C.T.'s best interests.

Mother's arguments to the contrary amount to an invitation to reweigh the evidence, and this we may not do. In re D.D., 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), trans. denied. Moreover, it would be unfair to ask J.C.T. to continue to wait until Mother is willing and able to get, and benefit from, the help that she needs. The three 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 J.C.T. is supported by clear and convincing evidence. Accordingly, we find no error.

Affirmed.

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