

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEYS FOR APPELLANT:

MARK SMALL
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEY FOR APPELLEES:

TAMMI FORSTER
Marion County Department of Child
Services
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHLD)
RELATIONSHIP OF D.J., K.P., AND K.R.,)
MINOR CHILDREN, AND THEIR MOTHER,)
TEFFANY REAVES, AND THE FATHER OF)
K.R., KEVIN REAVES)

TEFFANY REAVES and KEVIN REAVES)
Appellants-Respondents,)

vs.)

MARION COUNTY DEPARTMENT OF)
CHILD SERVICES)
Appellee-Petitioner,)

and)

CHILD ADVOCATES, INC.)
Appellee-Guardian Ad Litem.)

No. 49A05-0803-JV-180

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Larry Bradley, Magistrate
The Honorable Marilyn A. Moores, Judge
Cause No. 49D09-0603-JT-9942

September 10, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

This case is before us once again, following this court’s remand to the trial court for the entry of further findings of fact and conclusions of law because some of the original findings lacked specificity such that the findings hindered appellate review, and the original conclusions were a mere recitation of the statutory factors. *In re the Involuntary Termination of D.J.*, Cause No. 49A05-0705-JV-241 (Ind. Ct. App., November 29, 2007).

Now, Appellants-Respondents Kevin and Teffany Reaves (the “Reaveses”) appeal the juvenile court’s order involuntarily terminating Teffany’s parental rights to K.P., D.J., and K.R. (“the children”) and Kevin’s parental rights to K.R., claiming that the trial court’s amended findings fail to raise the evidence to a level sufficient to support termination. The Reaveses also contend that the Marion County Department of Child Services (“MCDCS”) failed to prove that there was a reasonable probability that the conditions which resulted in the children’s removal or the reasons for placement will not be remedied, that the continuation of the parent-child relationship posed a threat to the well-being of the children, or that the termination of their parental rights were in the children’s best interests. In addition, the Reaveses also challenge the termination of their parental rights on three independent additional grounds. Concluding that the evidence was sufficient to support the termination of the Reaveses’ parental rights and that the Reaveses’ additional challenges are without merit, we affirm the judgment of the trial court.

FACTS AND PROCEDURAL HISTORY

As reported in the prior appeal, the facts are as follows:

Teffany Reaves is the biological mother of K.P., born October 29, 1999; D.J., born July 22, 2001; and K.R., born February 18, 2005. Teffany is married to Kevin Reaves who is K.R.'s biological father.

On October 16, 2003, after receiving an anonymous tip informing DCS of the alleged deplorable and unsanitary conditions found in the Reaveses' home, DCS removed K.P. and D.J. from the Reaveses' care. On October 18, 2003, DCS filed its Petition Alleging Children in Need of Services ("CHINS"), alleging neglect by the Reaveses, citing the deplorable condition of their home. On November 13, 2003, Teffany and Kevin, who did not dispute the allegations, signed separate agreed entries, and the juvenile court entered a CHINS disposition order as to both K.P. and D.J. On February 22, 2005, three days after K.R. was born, DCS filed its petition alleging CHINS with regard to K.R. On June 15, 2005, K.R. was found to be a CHINS.

Service provider Adult and Child Inc. began home-based counseling and supervised visitation on August 24, 2006. Starting December 9, 2006, supervised visitation was increased from two hours per week to four hours per week. Supervised visitation was later scaled down to two hours a week after an unsubstantiated allegation was made by K.R.'s foster father that he came home with a wet diaper. Adult and Child continued to provide services to the Reaveses until February 23, 2007.

On March 9, 2006, DCS filed a petition to terminate the Reaveses' parental rights, citing cleanliness of the home and safety of the children as its main concerns. After a two-day hearing, the juvenile court took the matter under advisement and, on April 13, 2007, issued its order terminating the Reaveses' parental rights to K.P., D.J., and K.R.

In re D.J., * 1.

As noted above, we determined in the original appeal that some of trial court's findings lacked specificity such that the findings hindered appellate review and the original

conclusions were a mere recitation of the statutory factors. Thus we concluded that the trial court's findings were insufficient to support the termination order, and we remanded this case to the trial court for the entry of proper findings and conclusions of law. *In Re D.J.*, *5.

On March 5, 2008, the trial court issued amended findings and conclusions and once again ordered the termination of the Reaveses' parental rights to the children. The trial court entered the following amended findings:

15. In-home visitations were commenced in December, 2007 for a minimum of four hours. This continued until March 2007 when visitations were lessened to two hour sessions. The visitations were reduced to two hour sessions after [K.R.]'s caregiver, William Hetterbrand, reported that on March 1, 2007, Mother had informed him that she had left a front door open and [D.J. and K.R.] left the home and ended up at a neighbor's house. Mother had left the front room, leaving the two children unsupervised.

17. Concerns about the daily maintenance of the home were discussed several times between home based counselors and Mother at child and family team meetings. Mother would have ideas as to how to keep the home clean on a daily basis, yet never followed through with her plans. April Saunders observed the home clean, with less clutter in late 2006. However, during the months of January, February and March of 2007, the home was again observed to be cluttered, untidy or messy. In March of 2007, Ms. Saunders noted that food remnants were left on tables and the floor of the parents' residence, and a dirty diaper was under a couch. The clutter of the house on one occasion amounted to there being no space in which the children could play.

18. On one visitation session, the parents' toilet did not work. On the next visit, Suzanne King observed the toilet to be working but still dirty and never appropriate for kids.

19. Carla Patterson, the relative caregiver of [K.P. and D.J.], took the two children to visits at the parents' house. She observed at times the front room was cluttered to the point where there was no place to sit. Both children do not want to go to visits, complaining that "it stinks and they can't eat." Ms.

Patterson finds the children to be hungry after visitation, with [D.J.] upset and a behavior problem.

20. Mother is inconsistent in her interaction with the children. She is more affectionate toward [D.J.] than [K.R.] [K.R.] is at times left alone to wander around and cry during the two hour visitation sessions. Mother and Father have a new baby, born in November of 2006 on which Mother provides her main focus. Mother genuinely cares for her children but lacks the skills to appropriately interact, redirect, and provide a safe environment clear of hazards as well as present proper supervision.

21. Given Mother's deficiencies, she would be overwhelmed with having a newborn and three boys (one with special needs) to supervise. Mother lacks the motivation to implement new ideas of parenting and housekeeping. [D.J. and K.P.] have returned from visitations, back to Carla Patterson, hungry and dirty. [K.R.]'s foster parent, William Hetterbrand, would mark [K.R.]'s diaper prior to a visit and the same diaper would be on him, dirty, after visitation.

22. Father was not present for a majority of the home based counseling team sessions, possibly due to work. During times he was present, he would sometimes sleep. Home based counselors addressed the need for Father to be present during team sessions several times to implement new parenting and housekeeping ideas. Suzanne King also had concerns that Father was not present a lot during visitation.

23. Father exhibits minimal engagement with [K.R.] Ms. Saunders observed Father initially trying to comfort [K.R.] but provides no nurturing or affection when he cries. During the last month of visitation in March of 2007, [K.R.] was mainly left to himself and would wander around and cry. Both Ms. Saunders and Ms. King felt that there was a lack of a bond between Father and [K.R.]

24. [D.J.] has special needs which include Attention Deficit Hyperactive Disorder and Pervasive Development Disorder (high functioning autism). He has uncontrolled temper tantrums.

26. Although Mother represented that she wanted to be more involved in [D.J.]'s care, both parents have failed to attend [D.J.]'s medication management sessions. Ms. Sanders felt that Mother was aware of some of [D.J.]'s problems but she did not fully understand his needs and treatment, and

Mother never followed through to learn more during the months of home based services.

27. Linda Hammel has been the children's Guardian ad Litem since October 26, 2006. Looking at how long the CHINS case has gone on, and taking into consideration the children's' [sic] safety, their emotional stability, and where they can obtain love and affection, Ms. Hammel feels it is in the best interests of the children that parental rights be terminated. Ms. Hammel has observed [D.J.]'s temper not being addressed by the parents, the home not being child proof and Mother not keeping track of the children, resulting in [K.R.] putting small items in his mouth. Father was not there to help.

31. The original CHINS proceeding commenced in October, 2003. In the almost three and one-half years that have elapsed, a maximum benefit level of services has been provided with the result of being minimal progress made toward Mother and Father obtaining the requisite skills needed to parent the three children, maintain a safe environment, and provide for [D.J.]'s special needs.

32. A pattern of an inability to maintain a supervised, clean environment has been exhibited. A marked improvement was made after the termination trial date was set, but problems reoccurred in March 2007. Cara Carver, family case manager, best summed up the Reaveses' progress as "two steps forward, two steps back."

33. The parents know of the scheduled visitations but leave the house unsafely cluttered. Incidents with dirty diapers, the boys being dirty and messy, and on one occasion, [D.J. and K.P.] leaving the house after being left unsupervised all occurs within the short two to four hours of visitation sessions.

36. The current foster parents and relative care giver are willing to adopt the children. MCDCS's plan for adoption is satisfactory.

Appellant's App. p. 73-76. Additionally, the trial court entered the following amended conclusions:

2. There is a reasonable probability that the conditions that resulted in the removal of the children and placement outside the home will not be remedied. Mother and Father have been working since October 2003 toward providing a home free of neglect. Home based counseling was closed in March of 2003 due to a lack of consistent progress in providing for the children's safety, lack of supervision, and lack of interactions and appropriate affections during visitations.

3. The continuation of the parent-child relationship poses a threat to the well-being of the children. Mother and Father have not participated in [D.J.]'s care regarding his special needs. [K.R.], having been in his current placement since he was two days old, has formed an attachment with his foster parents, where no formal bond exists between [K.R.] and Mother and Father.

4. Termination of the parent-child relationship is in the best interests of the children so they can move forward to a permanent placement after being in limbo for years. It would not be in the best interests of the children to wait while their parents be given additional time to participate in a third attempt at home based services, given the parents' history of making minimal progress in the first two.

5. There is a satisfactory plan for the care and treatment of the children, that being adoption.

Appellant's App. p. 76. The Reaveses now appeal.

DISCUSSION AND DECISION

While we acknowledge that the parent-child relationship is "one of the most valued relationships in our culture," we also recognize that "parental interests are not absolute and must be subordinated to the child's best interests in determining the proper disposition of a petition to involuntarily terminate one's parental rights." *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005) (internal quotations omitted). The involuntary termination of one's parental rights is the most extreme sanction a court can impose because termination severs all rights a parent has with regard to his or her children.

See In re T.F., 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. As such, termination is intended as a last resort, available only when all other reasonable efforts have failed. *Id.* The purpose of terminating one's parental rights is not to punish the parent, but rather to protect the child. *Id.*

I. Subsequent Findings

The Reaveses contend that the changes to the trial court's original order terminating their parental rights to the children do not address any new matters or raise the evidence to a level sufficient to support a the termination of their parental rights. However, it is apparent that the Reaveses' challenge to the trial court's substantive findings is based merely upon their disagreement with such findings. We observe that their contentions are more akin to their challenge to the sufficiency of the evidence, and, as such, will be discussed below.

II. Sufficiency of Evidence

The Reaveses contend that MCDCS failed to present sufficient evidence to support the trial court's order terminating their parental rights to the minor children. In reviewing termination proceedings on appeal, this court will not reweigh the evidence or assess the credibility of the witnesses. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We only consider the evidence that supports the juvenile court's decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the juvenile court includes findings of fact and conclusions thereon in its order terminating parental rights, our standard of review is two-tiered. *Id.* First, we must determine whether the evidence supports the findings, and, second, whether the findings support the legal

conclusions. *Id.*

In deference to the juvenile court's unique position to assess the evidence, we set aside the juvenile court's findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id.* A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it. *Id.* A judgment is clearly erroneous only if the legal conclusions made by the juvenile court are not supported by its findings of fact or the conclusions do not support the judgment. *Id.*

In order to involuntarily terminate the Reaveses' parental rights, MCDCS must establish by clear and convincing evidence 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;
 - (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);
- (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 interest 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) (2005). The Reaveses claim that MCDCS failed to show that there was a reasonable probability that the conditions resulting in the children's removal were unlikely to be remedied and that the continuation of the parent-child relationship posed a

threat to the children's well-being.¹ However, we note that because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, the trial court need only find by clear and convincing evidence that either the conditions resulting in the children's removal are unlikely to be remedied or the continuation of the parent-child relationship poses a threat to the children's well-being. *Bester*, 839 N.E.2d at 148 n.5.

In determining whether there is a reasonable probability that the conditions resulting in the children's removal from the Reaveses' care will be remedied, the trial court must examine the Reaveses' fitness to care for the children as of the time of the termination hearing, taking into account any evidence of changed conditions. *See In re S.P.H.*, 806 N.E.2d at 881. The trial court must also evaluate their patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* When making its determination, the trial court need not wait until the children have been irreversibly harmed so long as clear and convincing evidence exists that establishes that the shortfalls of the parents' abilities are not likely to be remedied. *In re B.D.J.*, 728 N.E.2d 195, 201 (Ind. Ct. App. 2000).

In this case, the children were initially removed from the Reaveses' home as a result of neglect and the unsanitary conditions found in the home. The Reaveses attempt to downplay the allegations of neglect and contend that they have remedied the unsanitary conditions found in the home. The evidence, however, establishes that the Reaveses continue

¹ The Reaveses do not challenge the trial court's findings that the children have been removed from the home for at least fifteen of the past twenty-two months, that the termination of the Reaveses' parental rights is in the best interest of the children, and that MCDCS has a satisfactory plan for the care and treatment of the children.

to exhibit patterns of neglect and that the home remains cluttered to the extent that it is unsafe for the children.

With respect to the continued pattern of neglect, the evidence establishes that on one occasion during March of 2007, Mother admitted to K.R.'s caregiver that she had left D.J. and K.R. in the front room unsupervised with the front door open for a period of time sufficient for the children to wander out of the home, only to be found at a neighbor's home a short time later. The Reaveses argue that this was merely a minor incident because the children were found a few minutes later and were never in any immediate danger. While we are thankful that the children were found unharmed, we cannot accept the Reaveses contention that this was merely a "minor" incident because we believe that leaving two young children in the front room of a house unattended with the front door wide open is a rather serious incident that unnecessarily exposes the young children to both known and unknown dangers. The evidence also establishes that during visitation, K.R. was often left to wander around the Reaveses' home crying. The evidence further establishes that Father exhibited minimal engagement with K.R. during visitation. In light of these facts, we conclude that the evidence establishes that the Reaveses have demonstrated a continued pattern of neglect.

Additionally, with respect to the condition of the home, the evidence establishes that the home remains cluttered and unsafe for the children. Specifically, the evidence establishes that on at least one occasion during the visitations sessions, the home was so cluttered that there was no room for the children to sit in the front room, and, on at least one other occasion

during the visitation sessions, the home was so cluttered that there was no room for the children to interact and play with each other. The evidence also establishes that the home remained in an unsanitary condition with food remnants left on tables, at least one dirty diaper that was evident even though it had been left under the couch, and the toilet in such a continuously dirty condition that its cleanliness never reached a level that was considered to be appropriate for the children by the Reaveses' case manager from Adult and Child. The evidence further established that the Reaveses had demonstrated a pattern of inability to maintain a clean environment. MCDCS family case manager Cara Carver acknowledged that at one point in either late 2006 or early 2007, the Reaveses had exhibited a marked improvement but that problems had shortly thereafter reoccurred. Carver summed up the Reaveses' progress over the course of MCDCS's involvement with the family as "two steps forward, two steps back." Tr. p. 187. In light of these facts, we conclude that the Reaveses have failed to make satisfactory progress to improve the ongoing cluttered and unsanitary conditions of their home.

Having concluded that the Reaveses have demonstrated a continued pattern of neglect and that the Reaveses have failed to make satisfactory progress to improve the ongoing cluttered and unsanitary conditions in their home, we further conclude that the evidence was sufficient to support a finding that there was a reasonable probability that the conditions resulting in the children's removal from the home will not be remedied. Consequently, we need not determine whether the continuation of the Reaveses' parent-child relationship with the children poses a threat to the children's well-being. *See Bester*, 839 N.E.2d at 148 n.5.

III. Additional Challenges

The Reaveses challenge the trial court's order terminating their parental rights on three additional grounds. The Reaveses claim that services were extended to them negligently. Additionally, the Reaveses claim that following the termination of their parental rights to the children, MCDCS will automatically terminate their parental rights to another child who is not at issue here. The Reaveses also claim that to the extent that the trial court relied on their poverty as a ground for terminating their parental rights, poverty should not be relied upon for a basis for removal or termination of parental rights.

The Reaveses challenge the termination of their parental rights on the ground that services were extended to them negligently. In support, they claim that at one point around October of 2006, they temporarily lost contact with MCDCS when their then-family case manager was placed on sick leave without notice to them, their case manager from Adult and Child allegedly failed to provide them with copies of Adult and Child's reports, and their case manager from Adult and Child based her opinions solely on Adult and Child's observations and records and not former observation by another agency. We observe, however, that the Reaveses have failed to show how their ability to make progress toward reunification with the children was negatively affected by the allegedly negligently extended services. In light of the Reaveses' failure to show that they suffered any harm from the allegedly negligent extension of services or that the allegedly negligent extension of services negatively affected the termination proceedings, we conclude that their challenge on this ground is without merit.

Next, the Reaveses challenge the termination of their parental rights on the ground that MCDCS will allegedly automatically terminate their rights to another child, not at issue in the instant proceedings, following the termination of their parental rights to the children. We note that such a challenge is improper because any possible subsequent contact between the Reaves family and MCDCS is beyond the scope of our review, which is limited to the facts and circumstances at issue here. We cannot rely upon speculation about possible future proceedings which may be instituted by MCDCS with regard to a child not at issue in the instant proceedings as justification for reversing the termination of the Reaveses' parental rights where, as here, we have concluded that the evidence is sufficient to support said termination.² Therefore, the Reaveses challenge on this ground is also without merit.

Finally, to the extent that the Reaveses argue that their poverty should not be used as a basis for the children's removal, we note that nothing in the record suggests that the children were removed from the Reaveses' home because of their alleged state of poverty. Rather, the record establishes that the children were removed due to concerns of neglect and the unsanitary conditions found in the Reaveses' home. On appeal, the Reaveses outline their financial situation for the court, but present no evidence suggesting that the trial court even considered their financial situation as a factor supporting the termination of their parental rights. Therefore, the Reaveses' challenge on this ground is without merit.

² The Reaveses claim that any possible future termination of their parental rights to an additional child would be automatic, however we note that any subsequent termination of the Reaveses' parental rights to the additional child would not be automatic, but rather, MCDCS would again have to prove by clear and convincing evidence that the termination was warranted.

CONCLUSION

Having concluded that the evidence is sufficient to support the trial court's determination that there is a reasonable probability that the conditions resulting in the children's removal from the Reaveses' home will not be remedied and that the Reaveses' additional challenges to the termination of their parental rights are without merit, we affirm the termination of the Reaveses' parental rights to D.J., K.P., and K.R.

The judgment of the trial court is affirmed.

RILEY, J., and BAILEY, J., concur.