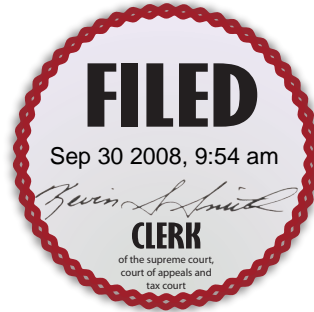


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEY FOR APPELLEE:

GREGORY L. FUMAROLO
Fort Wayne, Indiana

ROBERT J. HENKE
Indiana Department of Child Services
Fort Wayne, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

In the Matter of the Termination of the Parent-)
Child Relationship of S.B., the Minor Child,)
and Jennifer B., the Mother,)

JENNIFER B.,)

Appellant-Respondent,)

vs.)

No. 02A03-0802-JV-69

STATE OF INDIANA, OFFICE OF FAMILY)
and CHILDREN,)

Appellee-Petitioner.)

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Charles F. Pratt, Judge
The Honorable Lori K. Morgan, Magistrate
Cause No. 02D07-0702-JT-20

September 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

J.B. (“Mother”) appeals the trial court’s termination of the parent-child relationship with her son, S.B., upon petition of the Allen County Department of Child Services (“DCS”). The sole issue for our review is whether there is sufficient evidence to support the termination. We affirm.

FACTS AND PROCEDURAL HISTORY

S.B. was born on June 20, 1999. In July 2005, DCS received a referral that Mother was mentally unstable. During an investigation of the referral, Mother told a DCS case worker that M.M., the father of Mother’s four-year-old daughter, was a practicing devil worshipper who was threatening Mother and her two children with voodoo. Mother admitted that she suffered from depression but had stopped taking her medication the previous year. The caseworker found no harm to the children, and no action was taken.

Two months later, DCS received a second referral with concerns about Mother’s mental instability. During the investigation of this referral, Mother reported that M.M. broke into her home, put scabs in her milk, wiped his nose on her towels, and put a decapitated cat under the trailer where she lived with her children. Mother further explained that she did not take six-year-old S.B. to school because she was afraid M.M. would kidnap him. The caseworker referred Mother for an assessment and services.

Mother completed the assessment in October 2005. During the assessment, Mother explained that a group of people, including her mother and M.M., were involved in witchcraft, voodoo, and child pornography. According to Mother, these people turned her four-year-old daughter into a witch. The caseworker investigated Mother’s

allegations, but found no evidence of witchcraft, voodoo, or child pornography. Later that month, the DCS caseworker learned there was a warrant out for Mother in Steuben County because she had failed to pay child support for an older child. When Mother was taken into custody on the warrant, S.B. was placed in foster care.

In April 2006, following a hearing, the trial court adjudicated S.B. to be a Child in Need of Services (“CHINS”). The trial court’s order provided in pertinent part as follows:

4. [Mother] suffers from delusional thinking:
 - a. She believes [her daughter] is a witch
 - b. [She] believes [M.M.’s] companion . . . is a demon.
 - c. [She] removed [S.B.] from school because she believed the school is influenced by witchcraft.
 - d. She believes that demons are trying to put spells or take other action against her.
 - e. She believes that demons have put bloody scabs in her mail and drugged her coffee.
 - f. [She] has posted signs outside her home protesting animal pornography.
 - g. She believes there is a “psychic war going on.”
 - h. She believes [her four-year-old daughter has a sexually transmitted disease.]
 - i. She believes her mother practices voodoo.
5. [S.B.] was removed from school approximately two (2) months prior to the close of the 2005-2006 school year. He has not been re-enrolled since.
6. [Mother] does not believe that doctors and hospitals can be trusted. Her concern centers on the belief that [M.M] has a big family that is able to infiltrate the medical community. The children have not been afforded medical care.
7. [Mother] reports that she was diagnosed as suffering from PostTraumatic Stress Disorder. She was prescribed medications but she

has not taken? it as prescribed.

8. Since the first intervention by the DCS in July 2005, the caseworker has observed a decline in the mother. . . .

Appellant's App. at 48-49.

At the dispositional hearing four months later, the trial court ordered Mother to: 1) maintain clean, safe, and appropriate housing; 2) cooperate with caseworkers and attend all case conferences; 3) obtain a psychiatric evaluation by September 3, 2006 and follow recommendations, including those regarding medications; 4) attend and appropriately participate in all visits with children; and 5) refrain from all criminal activity.

Appellant's App. at 54.

In February 2007, after Mother failed to follow the court's orders, DCS filed a petition to terminate her parental relationship with S.B. The trial court held hearings on the petition in July and September 2007. Testimony at the hearings revealed that after Mother's psychological evaluation at Park Center in May 2006, Dr. Jennifer Fray concluded that Mother has schizo-typal personality characteristics that tend towards paranoid thinking. Dr. Fray was concerned about Mother's ability to parent because "if you are so paranoid that you cut off, you know, all your social supports or – or cut off the children from attending school or from other people, certainly that would indicate a fairly high level of dysfunction." *Tr.* at 32. Dr. Fray recommended a psychiatric evaluation of Mother, home-based services, and counseling. Mother, however, failed to follow any of Dr. Fray's recommendations.

Evidence at the hearing also revealed that S.B. suffers from an adjustment disorder

with mood disturbances, including anxiety and depression. According to S.B.'s counselor, S.B. needs a stable home environment where he knows what is expected of him and the parental figure is consistent.

In addition, although Mother was incarcerated during the July 2007 hearing, she was able to attend the September 2007 hearing. At that hearing, Mother admitted that she: 1) did not have a job and did not plan to get one; 2) had not scheduled a counseling appointment; 3) was not working with home-based services; 4) was not taking any medication; and 5) had been incarcerated three times since S.B.'s removal from her home in 2005. Testimony further revealed that Mother had not visited S.B. since April 2007, prior to her third incarceration, and that she had not requested visitation with S.B. since her release.

In December 2007, the court issued the following order terminating Mother's parental relationship with S.B.:

4. By the clear and convincing evidence the court determines that there is a reasonable probability that reasons that brought about the child's placement outside the home will not be remedied. Over a protracted period the mother has been offered services to correct the circumstances that brought about the intervention of the court. The Mother has consistently failed to accept services. She has not completed her psychiatric evaluation and has not participated in therapy. Mother's delusional thinking has not been corrected. For example, during her visits and in her most recent testimony the Mother has continued an irrational belief that [S.B.] had snakes on him and was bleeding from his rectum. The court concludes that the mother does not have a realistic view of parental expectations. Because she has refused the treatment she needs, the child continues to be at risk of neglect should he be placed in her care. This behavior has caused the child to languish outside the home and without a permanent safe living arrangement for two (2) years.

* * *

6. . . . [T]he Guardian Ad Litem has concluded that termination is in the child's best interests. The court concludes that through termination of the parent-child relationship, the child can be placed in a safe permanent home. Thus the child's best interests are served by granting the petition to terminate the parent-child relationship. The adoption of the child is an appropriate plan.

Appellant's App. at 20-21. Mother appeals the termination.

DISCUSSION AND DECISION

The purpose of terminating parental rights is not to punish parents but to protect their children. *In re Termination of the Parent-Child Relationship of D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parties are unable or unwilling to meet their responsibility as parents. *Id.*

This court will not set aside the trial court's judgment terminating a parent-child relationship unless the judgment is clearly erroneous. *In re R.S.*, 774 N.E.2d 927, 929-30 (Ind. Ct. App. 2002), *trans. denied*. When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, this court neither reweighs the evidence nor judges the credibility of the witnesses. *Id.* at 930. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.*

Indiana Code Section 31-35-2-4(b) sets out the following relevant elements that a department of child services must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

- (i) the child has been removed from the parent for at least six months under a dispositional decree:

* * *

- (A) there is a reasonable probability that:

- (i) the conditions that resulted in the child's removal or the reasons for placement outside the home will not be remedied;
or
- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

- (B) termination is in the best interests of the child; and

- (C) there is a satisfactory plan for the care and treatment of the child.

The trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances supporting the termination. *R.S.*, 774 N.E.2d at 930. Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. *Id.* The trial court need not wait until the child is irreversibly harmed before terminating the parent-child relationship. *Id.*

Mother contends that there is insufficient evidence to support the termination of her parental rights. Specifically, she contends that the DCS failed to prove that there is a reasonable probability that the conditions that resulted in her son's removal will not be remedied. To determine whether the conditions are likely to be remedied, the trial court must judge a parent's fitness to care for the child at the time of the termination hearing and take into consideration any evidence of changed conditions. *D.D.*, 804 N.E.2d at 266. 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.*

Our review of the evidence reveals that S.B. was initially removed from Mother when she was arrested and incarcerated for failing to pay child support for an older child. At the termination hearing two years later, Mother had been incarcerated three times and still did not have a job or plan to get one.

In addition, at the time of the hearing, Mother had refused to submit to a psychiatric evaluation, counseling, or home-based services to address her mental health issues. We further note that she had not visited S.B. for five months before the hearing.

Recognizing our deferential standard of review, we find that this evidence supports the trial court's finding that there is a reasonable probability that the conditions that resulted in S.B.'s removal will not be remedied.

Mother also contends that there is insufficient evidence that termination of the parent-child relationship is in the best interests of S.B. A parent's historical inability to provide adequate housing, stability, and supervision, coupled with a current inability to provide the same will support a finding that the continuation of the parent-child relationship is contrary to the child's best interests. *A.N.J.*, 690 N.E.2d at 722. Mother has historically been unable to provide adequate housing, stability, and supervision, and testimony at the hearing reveals that she is currently unable to do the same. Her argument therefore fails.

Lastly, Mother contends that the DCS failed to establish that there is a satisfactory plan for the care and treatment of her son. However, our review of the evidence reveals that the plan for the care and treatment of S.B. is adoption. This is a satisfactory plan.

See id. There is sufficient evidence to support the termination of the parent-child relationship.

We reverse a termination of parental rights “only upon a showing of ‘clear error’ – that which leaves us with a definite and firm conviction that a mistake has been made.” *Egley v. Blackford County DPW*, 592 N.E.2d 1232, 1235 (Ind. 1992). We find no such error here, and therefore affirm the trial court.

Affirmed.

VAIDIK, J., and CRONE, J., concur.