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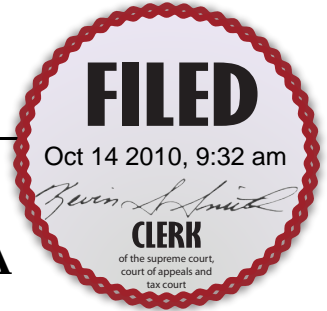
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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP OF)
J.P., J.P., AND A.P., (MINOR CHILDREN), and)
)
A.P. (FATHER) and A.P. (MOTHER),)
)
Appellants-Respondents,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
Appellee-Petitioner,)
)
and)
)
CHILD ADVOCATES INC.,)
)
Co-Appellee (Guardian Ad Litem).)

No. 49A02-1003-JT-385

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn Moores, Judge
The Honorable Larry Bradley, Magistrate
Cause No. 49D09-0909-JT-42473
Cause No. 49D09-0909-JT-42474
Cause No. 49D09-0909-JT-42475

October 14, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Al.P. (“Father”) and Am.P. (“Mother”) (collectively “the Parents”) had four children, Ji.P., Ja.P., Aa.P., and S.P.¹ On June 13, 2008, the Department of Child Services (“DCS”) filed a petition alleging that Ji.P., Ja.P., and Aa.P. were children in need of services (“CHINS”); S.P. was living with her paternal grandparents in Kentucky. The Parents were ordered to participate in services, which they largely failed to complete. On February 18, 2010, the juvenile court terminated the parent-child relationship of the Parents and Ji.P., Ja.P., and Aa.P. DCS planned to gradually transfer custody of the children to their paternal grandparents.

The Parents appeal the termination of their parental rights, arguing that there is insufficient evidence supporting the juvenile court’s decision. Based on the Parents’ failure to submit to drug testing and lack of cooperation with the homebased counselor’s attempt to address other safety issues, we conclude that the evidence supports the juvenile court’s finding that continuation of the parent-child relationship poses a threat to the children’s well-being. The children had been in limbo for nearly two years when the termination hearing was

¹ Ji.P. was born on July 7, 1996. Ja.P. was born on May 10, 2001. Aa.P. was born on July 7, 2002. S.P. was born on October 10, 2003.

held, and the evidence showed that they were in need of stability. Therefore we conclude that the evidence also supports the juvenile court's conclusion that termination of the parent-child relationship is in the children's best interests, and we affirm.

Facts and Procedural History

The Parents have a history of involvement with DCS. On May 15, 2001, DCS filed a CHINS petition, which alleged that Ja.P. had tested positive for cocaine when he was born, that Mother had admitted to smoking marijuana while pregnant, and that Father claimed to be unaware of Mother's drug use. The Parents admitted the allegations of the CHINS petition, and the court found that the children were CHINS. The children were reunited with the parents on October 10, 2001.

On October 15, 2003, DCS filed another CHINS petition, which alleged that S.P. had tested positive for cocaine. Mother admitted the allegations of the CHINS petition, and the children were again removed from the home. On November 20, 2003, the court entered a parental participation order, which required Mother to obtain a drug and alcohol assessment, undergo random drug testing, participate in substance abuse treatment, and to keep drugs out of the home. On March 26, 2004, Mother was found in contempt for failing to comply with the court-ordered services. The Parents eventually divorced, and Father was given custody of the children.

The current proceedings began with a CHINS petition that was filed on June 13, 2008. Police officers had performed a welfare check and discovered that the home, where Mother

and Father were both living despite their divorce, was dirty and unsafe. On February 9, 2009, the Parents admitted to the allegations of an amended CHINS petition, which read:

On or about June 12, 2008, [DCS] determined, by its Family Case Manager (FCM) Angela Swift, these children to be [CHINS] because their parents, [Am.P. and Al.P.], have failed to provide the children with a safe and appropriate home environment. Upon investigation, the home was found to be in deplorable condition, cluttered with clothes and trash. Parents have been participating in services, including home based counseling, but have not yet completed services such that the children can be placed back in their care.

Petitioner's Ex. 15. The court entered a parental participation decree, which ordered the Parents to: (1) have weekly contact with the family case manager; (2) obtain and maintain suitable housing with adequate bedding, functional utilities, and a supply of food and food preparation facilities and keep the home safe for residing within; (3) participate in and successfully complete a homebased counseling program with the children and successfully complete any recommendation of the counselor; (4) submit to random drug testing as recommended by a substance abuse treatment program or DCS or as ordered by the court; and (5) execute any current releases of information necessary to monitor compliance with the order.

On June 13, 2008, the Parents were referred to Mosaic Recovery for random drug testing. The Parents never contacted Mosaic Recovery and did not provide any urine samples for testing. The Parents received a second referral in August 2008 and a third referral in April 2009, but they never provided a single sample for testing.

The Parents were referred to St. Vincent New Hope for homebased counseling, and they completed an intake assessment on June 30, 2008. The homebased therapist, Monica

Brock, first met with Father on July 17, 2008. Mother was not present for the meeting because she was incarcerated at the time. Brock worked with the family through June 12, 2009, at which time the referral was closed unsuccessfully. During that time, Father was terminally ill with lung cancer. The Parents missed approximately a third of their appointments with Brock. They frequently claimed to be unable to attend appointments or to report to Mosaic for drug testing because of Father's doctor appointments and hospital stays. However, when Brock offered to meet them at the hospital or provide them with transportation to Mosaic, the Parents would refuse or make excuses. Although Mother admitted to past drug use, she consistently claimed that she was no longer using drugs.

During this time, Aa.P. alleged that Ji.P. had touched her in a sexually inappropriate manner, and a no-contact order was entered for Aa.P.'s protection. Brock attempted to provide education and counseling to address this issue, but the Parents refused to believe that there was any possibility that Aa.P.'s allegations were true.

Brock identified several goals for the family, including remaining clean and sober, obtaining a substance abuse evaluation, submitting to drug screens, participating in parenting classes, learning to process and deal with Father's terminal illness, improving communication with the children, dealing appropriately with the sexual abuse allegations against Ji.P., maintaining a safe home, following a safety plan, and providing stable income and housing. Brock felt that the condition of the home improved, but that the Parents made very little progress on any of the other goals. In light of Father's illness, Brock kept the referral open as

long as possible, but after a year with no significant progress, Brock felt that it was time to close the referral.

On March 24, 2009, the court suspended the Parents' visitation until they could provide three consecutive negative drug screens. On July 14, 2009, DCS filed a verified petition for rule to show cause, which alleged that the Parents still had not submitted to drug testing. The petition further alleged:

[The Parents] were unsuccessful at working with and completing home-base services which were terminated on June 12, 2009. They were re-referred for home-base services on July 7 after locating a services provider with openings. [The Parents] were referred for a Substance Abuse Assessment on April 22, 2009[, and] they failed to schedule a Drug and Alcohol Assessment. [Father] has not provided [the DCS family case manager] with an updated release of information to his primary care doctor in order to verify his reported terminal medical condition. [The Parents] have not made weekly contact with [the family case manager].

On April 1, 2009, [Father] was arrested for [resisting law enforcement]. [Mother] was arrested on February 13, 2009, for Unauthorized entry of a motor vehicle in which she pled guilty to.

Petitioner's Ex. 19. Mother admitted that she missed scheduled drug screens and had not completed a substance abuse evaluation. Father admitted that he was incarcerated and was unable to care for the children at that time. The court found both parents in contempt.

At a hearing on August 11, 2009, the permanency plan for the children was changed to adoption because the children had been removed since June 2008 and no visitation had occurred since March 2009 due to the Parents' refusal to submit to drug testing. The court authorized placement of the children with their paternal grandparents, subject to completion of the procedures of the Interstate Compact on the Placement of Children ("ICPC"). On September 16, 2009, DCS petitioned to terminate the parent-child relationship. Later, on

December 1, 2009, the juvenile court authorized the parents to have supervised parenting time upon positive recommendations from the children's therapist and guardian ad litem ("GAL"); however, the parents never received the necessary recommendations.

The termination hearing was held on February 18, 2010. Mattie Herald, the program director for Mosaic Recovery, testified that the Parents never contacted Mosaic and never submitted any urine samples, although they had been given three referrals.

Brock testified concerning her work with the family and the goals that she had set for them. Brock acknowledged that she "never saw any evidence of actual drugs in the home, besides prescription drugs;" however, she suspected that Mother was using drugs because she noticed on occasions that Mother's speech was slurred and her behavior was erratic. Tr. at 43. Despite her efforts to encourage the Parents to complete their drug screens, including offering them transportation, Brock never saw documentation that they had completed any drug screens.

Father gave Brock incomplete documentation of his medical condition and prescriptions. Father also has bipolar disorder, intermittent explosive disorder, and post-traumatic stress disorder, but he never provided documentation to show that he was receiving appropriate treatment. Brock wanted Mother to obtain a psychological evaluation because she believed that Mother might be suffering from anxiety or depression.

Brock attempted to help the family develop a safety plan, which included having fire extinguishers and smoke detectors in the home, using age-appropriate discipline, not allowing Ji.P. and Aa.P. to be alone together, providing appropriate supervision, not using

drugs or having drugs in the home, and planning who would take care of the children in the event of an emergency. Brock observed several visits with the children and never saw any inappropriate discipline. Brock felt that the children were bonded with the Parents and enjoyed visiting with them.

Brock testified that the Parents made progress toward making the house cleaner and safer. Overall, Brock felt that the Parents did not “make really any significant progress” during the year that she worked with them. *Id.* at 53. She felt that there was not a single goal “that was successfully met. There may have been parts of the goal that they accomplished.” *Id.*

Tewanna Perry, the family case manager, testified that the Parents had not cooperated with drug screening. She referred the Parents for mobile urine screens because they claimed to be unable to go to the testing facility due to Father’s health problems; however, they did not submit any samples to the mobile unit. She also offered them a free saliva screen that could be self-administered, but they refused. The Parents showed her documents that purported to be negative drug test results that they had obtained on their own; however, they

did not provide Perry with releases so that she could get the results directly from the testing facility, as required by DCS protocol.²

Perry testified that Father had been charged with several criminal offenses, including driving on a suspended license, maintaining a common nuisance, possession of drug paraphernalia, and resisting arrest. When she spoke to Father about his charges, “he was just kind of boasting about how he was gonna probably beat most of these matters and they were already just flying off.” *Id.* at 80.

Perry testified that the ICPC had been approved and that DCS planned to gradually transition the children to their grandparents’ custody during the summer vacation. Perry felt that adoption was in the children’s best interests because the grandparents were already raising one of their siblings. In addition, the children had been removed from the Parents’ care for approximately two years, and Perry felt that the adoption would give them the permanency that they need.

Mark Bass, the children’s GAL, echoed Perry’s feelings about the children’s best interests. Although the case was two years old, the Parents had still had not submitted to drug screens, and Bass felt that he could not even recommend visitation at that point.

² The Parents attempted to offer these documents into evidence at the hearing, but were unable to lay a sufficient foundation. In the “Summary of the Argument” section of their brief, the Parents state that “denial of the admission of Respondent’s Exhibit A which showed that Mother had completed thirteen (13) negative drug screens through Drug And Alcohol Testing, LLC, denied Mother and Father the opportunity to defend against the allegations of suspected drug use and was an abuse of the discretion for the trial court.” Appellants’ Br. at 14. The Parents, however, do not develop an argument that their proffered exhibit was admissible. Therefore, any argument that the juvenile court abused its discretion by denying admission of the exhibit is waived. *See Loomis v. Ameritech Corp.*, 764 N.E.2d 658, 668 (Ind. Ct. App. 2002) (an issue is waived if not supported by cogent argument or citation to authority); *see also* Ind. Appellate Rule 46(A)(8)(a) (issues must be supported by cogent reasoning and each contention must be supported by citation to authority or to the record).

On February 18, 2010, the juvenile court entered an order terminating the Parents' parental rights.³ The court noted that the Parents had not submitted to drug testing although extra efforts had been made to accommodate them, that visitation with the children had been suspended due to the Parents' noncompliance with drug testing, that homebased services were unsuccessfully closed after numerous missed appointments and little progress, and that the Parents had not made weekly contact with DCS or provided necessary medical releases. As a result, the court found that there was a reasonable probability that the conditions that resulted in the removal of the children and their continued placement outside the home would not be remedied, that continuation of the parent-child relationship poses a threat to the well-being of the children, and that termination of the parent-child relationship is in the best interests of the children. The Parents now appeal the termination of their parental rights.

Discussion and Decision

When reviewing a juvenile court's order terminating a parent-child relationship, we will not set it aside unless it is clearly erroneous. *Castro v. State Office of Family & Children*, 842 N.E.2d 367, 372 (Ind. Ct. App. 2006), *trans. denied*. We will neither reweigh evidence nor judge witness credibility. *In re A.I.*, 825 N.E.2d 798, 805 (Ind. Ct. App. 2004), *trans. denied*. Rather, we will consider only the evidence and inferences most favorable to the judgment. *Id.*

In *Bester v. Lake County Office of Family & Children*, our supreme court stated:

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. A

³ The court entered a single order for all three cause numbers.

parent's interest in the care, custody, and control of his or her children is perhaps the oldest of the fundamental liberty interests. Indeed the parent-child relationship is one of the most valued relationships in our culture. We recognize of course that parental interests are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. Thus, parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities.

839 N.E.2d 143, 147 (Ind. 2005) (citations, quotation marks, and alteration omitted). In recognition of the seriousness with which we address parental termination cases, Indiana has adopted a clear and convincing evidence standard. *Castro*, 842 N.E.2d at 377.

To obtain a termination of the parent-child relationship, DCS must establish 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).⁴

The Parents claim that the evidence is insufficient to support the juvenile court's findings and conclusions regarding the reasonable probability of remedied conditions and the threat to the children's well-being. However, we note that subsection (b)(2)(B) is written in the disjunctive. Thus, DCS was required to establish, by clear and convincing evidence, only

⁴ Indiana Code Section 31-35-2-4 was amended by Public Law Number 21-2010, Section 8 (effective March 12, 2010). We have quoted the version of the statute in effect at the time that the petition was filed. *See In re C.G.*, 2010 WL 3359536 at *12 n.3 (Ind. Ct. App. 2010) (applying the version of the statute in effect at the time the petition was filed) (opinion not yet certified).

one of the two requirements of subsection (B). *In re I.A.*, 903 N.E.2d 146, 153 (Ind. Ct. App. 2009).

We conclude that there was sufficient evidence that continuation of the parent-child relationship poses a threat to the well-being of the children. In determining whether the continuation of the parent-child relationship poses a threat to the child's well-being, the juvenile court need not wait until the child is irreversibly influenced by a deficient lifestyle before terminating the relationship. *In re E.S.*, 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002). Instead, "[w]hen the evidence shows that the emotional and physical development of a child in need of services is threatened, termination of the parent-child relationship is appropriate." *Id.* A parent's habitual pattern of conduct is relevant to determine whether there is a substantial probability of future neglect or deprivation of the child. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). "A court may properly consider 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." *McBride v. Monroe Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). The juvenile court may also consider the services offered by DCS to the parent and the parent's response to those services. *Id.*

Mother has a long history of drug use, to the detriment of her children. In 2001, Ja.P. tested positive for cocaine at birth. Mother admitted to using marijuana while she was pregnant. In 2003, S.P. tested positive for cocaine at birth. Mother was ordered to obtain a drug and alcohol assessment, undergo random drug testing, participate in substance abuse treatment, and to keep drugs out of the home. Mother was found in contempt for failing to

comply with the court-ordered services. Brock suspected that Mother might be using drugs based on her observation that Mother sometimes had slurred speech or exhibited erratic behavior. Father was arrested on drug-related charges including maintaining a common nuisance and possession of paraphernalia, and he boasted to Perry about how he was going to get out of his criminal charges. Both parents refused to submit to a single drug test although special efforts were made to accommodate them. Eventually, the Parents were denied visitation until they could provide three clean drug screens. By the time of the termination hearing, the Parents had not had visitation for nearly eleven months. The Parents' behavior demonstrates an unwillingness to take responsibility for their actions and a disinterest in being involved in their children's lives.

In addition, the Parents failed to cooperate with Brock's efforts to help them with other safety issues. Brock attempted to address the sexual abuse allegations against Ji.P., but the Parents insisted that there was no possibility that the allegations could be true. Regardless of what the Parents believed, there was a no-contact order between Ji.P. and Aa.P., and the Parents were not at liberty to simply ignore the issue.

Father was terminally ill and had unaddressed mental health issues, and Brock believed that Mother was suffering from anxiety and depression. Both parents were unavailable at times to parent the children due to incarceration. Despite these problems, the Parents did not cooperate with Brock in developing a safety plan, which would include making arrangements for the children's care in the event of an emergency. The Parents missed approximately a third of their appointments with Brock and made little progress

during the year that she worked with them. The Parents' unwillingness or inability to address issues related to the children's safety supports the juvenile court's conclusion that continuation of the parent-child relationship posed a threat to the well-being of the children. *See In re A.K.*, 924 N.E.2d 212, 221 (Ind. Ct. App. 2010) (sufficient evidence supported juvenile court's determination that continuation of the relationship posed a threat to the child where mother was not managing her mental illness, was unable to remain drug free, and had not seen the child in two years due to her non-compliance with case-plan requirements), *trans. dismissed*.

The Parents also argue that there is insufficient evidence that termination of the parent-child relationship is in the best interests of the children. "It is undisputed that children require secure, stable, long-term, continuous relationships with their parents or foster parents." *Baker v. Marion County Office of Family & Children*, 810 N.E.2d 1035, 1040 (Ind. 2004) (quoting *Lehman v. Lycoming County Children's Servs. Agency*, 458 U.S. 502, 513-14 (1982)). "There is little that can be as detrimental to a child's sound development as uncertainty over whether he is to remain in his current 'home,' under the care of his parents or foster parents, especially when such uncertainty is prolonged." *Id.* The Parents have failed to provide the children with the stability that they need. Nearly two years elapsed between the filing of the CHINS petition and the termination hearing, and in that time, the Parents had made little effort to address their drug use or other issues affecting the safety of the children. The Parents' visitation has been suspended since March 2009. Both the GAL and the family case manager believed that adoption by the grandparents will give the children

the stability that they need. In addition, living with the grandparents will allow them to share a home with their sibling, S.P. Therefore, we conclude that the evidence supports the juvenile court's conclusion that termination of the parent-child relationship is in the best interests of the children and affirm the order of the juvenile court. *A.J. v. Marion County Office of Family & Children*, 881 N.E.2d 706, 718 (Ind. Ct. App. 2008) (testimony from caseworker and GAL supports a finding that termination is in the child's best interests), *trans. denied*.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.