

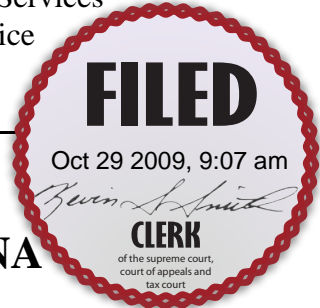
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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF:)
The Involuntary Termination of the)
Parent-Child Relationship of the Minor)
Children G.R. and E.E., and the Parent, J.R.)
)
Parent, J.R.,)
)
Appellant/Respondent,)
)
vs.)
)
DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee/Petitioner.)

No. 29A04-0905-JV-297

APPEAL FROM THE HAMILTON CIRCUIT COURT
The Honorable Paul Felix, Judge
The Honorable Todd L. Ruetz, Master Commissioner
Cause Nos. 29C01-0807-JT-1210 and 29C01-0807-JT-1211

October 29, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

J.R. (“Mother”) appeals juvenile court judgments terminating her parental rights to two of her children, E.E. and G.R.¹ We affirm and remand.

Issues

We restate and reorder the issues as follows:

- I. Did the juvenile court abuse its discretion in denying Mother’s motion for continuance?
- II. Is the evidence sufficient to support the juvenile court’s judgments terminating Mother’s parental rights?
- III. Did the juvenile court commit reversible error by listing the same cause number in judgments entered on both petitions?

Facts and Procedural History

On May 1, 2006, the Hamilton County Department of Child Services (“DCS”) initiated an investigation based on a report from Mother’s twelve-year-old daughter, J.E., that Mother had been missing from her home since April 29, 2006, leaving her three children, J.E., six-year-old E.E., and three-year-old G.R. unsupervised. J.E. also reported that she suspected that E.E. might have been molested by their stepfather, M.R. Mother remained absent from the home from April 29 to May 2, 2006, during which time she sought and used crack cocaine and engaged in prostitution to earn money for the drugs. DCS immediately implemented an informal adjustment, pursuant to which Mother agreed to take remedial steps

¹ Mother’s oldest child, J.E., was included in the initial CHINS proceeding. However, J.E.’s father, T.E., was granted sole legal and physical custody of J.E. on November 2, 2006. Mother’s parental rights concerning J.E. are not at issue in this appeal.

regarding her drug use and to provide appropriate supervision for her children, including a safety plan stipulating no contact between E.E. and M.R. pending the child molesting investigation.

On October 12, 2006, DCS received a report from E.E.'s school counselor that Mother had left home the night before in pursuit of drugs and did not return until the next morning. The children were removed from Mother that day and placed in foster care. Based on Mother's conduct and her failure to obey the safety plan separating E.E. from M.R., DCS filed petitions on October 16, 2006, alleging that E.E. and G.R. were children in need of services ("CHINS"). The relevant cause numbers differed by only one digit: G.R.'s was 29C01-0807-JT-1210, and E.E.'s was 29C01-0807-JT-1211. The juvenile court held a hearing that day and ordered that the children remain in foster care.

At a January 22, 2007 hearing, Mother agreed to enroll in an inpatient drug detoxification program. She failed to appear at the March 19, 2007 hearing on the CHINS petitions, but she appeared at the May 10, 2007 factfinding hearing and entered an admission to the allegations contained in the CHINS petitions. On July 27, 2007, the guardian ad litem ("GAL") filed a report in which she stated in part that

Mother ... visited [E.E.] and [G.R.] almost daily at foster home in fall of 2006. By the fist [sic] of 2007 Mom was disappearing for weeks at a time. Neither the girls nor family were hearing from her. Mom had two supervised visitations with girls in June. Mom was no show for visitations set up for June 30, 2007 and July 7, 2007. On July 18, 2007, Mom ... had supervised visitation with [G.R.]. No visit with [E.E.]. Mom entered Harbor Lights inpatient Drug Detox program on July 19, 2007.

Appellant's App. at 124.

On July 30, 2007, the juvenile court held a disposition hearing on the CHINS petitions. Mother did not attend due to her inpatient treatment. The juvenile court ordered Mother to complete the drug treatment program and comply with its after care directives, to submit to and pass random drug tests, to obtain and maintain stable housing and employment, and to provide DCS with twenty-four hours' notice of any changes in employment or residence.

On October 15, 2007, the juvenile court held a permanency hearing, at which Mother appeared in person. Based on the juvenile court's findings that Mother had failed to successfully complete substance abuse treatment and had continued to have episodes of drug use, the court approved a permanency plan that included the initiation of termination proceedings and a plan of adoption.

At a January 7, 2008 permanency review hearing, the juvenile court found that Mother had complied with the case plan. DCS recommended that the children be placed in foster care with their maternal grandmother and that Mother be permitted to live with them on a trial basis. However, Mother failed to complete her drug treatment program. On March 23, 2008, she was arrested for resisting law enforcement and disorderly conduct. On March 24, 2008, she was arrested for resisting law enforcement and battery on a law enforcement officer.

DCS filed termination petitions on July 21, 2008. In August 2008, Mother moved to Virginia and enrolled in Frontier Mental Health Program. The record is unclear as to the

specific services Mother received at Frontier. On September 8, 2008, the juvenile court held an initial hearing on the termination petitions and found that Mother had failed to enhance her ability to fulfill parental obligations and had been inconsistent in visiting the children due to her relocation to Virginia.

On December 4, 2008, the juvenile court held a review hearing and found that Mother had taken steps to enhance her ability to fulfill her parental obligations, had maintained stable housing and employment in Virginia, and had complied with the mental health and substance abuse services. At the same time, the juvenile court granted Mother's motion for continuance of the factfinding hearings on the termination petitions. Unbeknownst to the juvenile court, DCS, GAL, and Mother's counsel, Mother had been arrested in Marion County, Indiana, on December 2, 2008 for prostitution in the same vicinity she had frequented in 2006 and 2007. On January 14, 2009, Mother pled guilty to prostitution and served a forty-day executed sentence.

On March 9, 2009, the juvenile court held a factfinding hearing on the termination petitions. When Mother failed to appear, her counsel indicated that she expected her to appear and had heard nothing from her to explain her absence. Counsel then requested a continuance, which the juvenile court denied. During the hearing, DCS family case manager ("FCM") testified that Mother had never successfully completed the reunification services, including the mental health and substance abuse programs in which she participated. The FCM, GAL, and maternal grandmother all testified that termination would be in E.E.'s and G.R.'s best interests and that the appropriate permanency plan would include adoption by the

maternal grandmother. On March 16, 2009, the juvenile court issued findings of fact and conclusions thereon, entering judgments terminating Mother's parental rights to both G.R. and E.E. On July 6, 2009, the juvenile court issued amended findings, conclusions, and judgments of termination. This appeal ensued. Additional facts will be provided as necessary.

Discussion and Decision

I. Motion for Continuance

Mother contends that the juvenile court abused its discretion in denying her March 9, 2009 motion for continuance. In actions involving the termination of parental rights, we review a juvenile court's ruling on a motion for continuance for an abuse of discretion. *In re E.D.*, 902 N.E.2d 316, 321 (Ind. Ct. App. 2009), *trans. denied*. An abuse of discretion may be found "when the moving party has shown good cause for granting the motion." *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615, 618 (Ind. Ct. App. 2006), *trans. denied*. "However, no abuse of discretion will be found when the moving party has not demonstrated that he or she was prejudiced by the denial." *Id.*

Here, Mother failed to appear for the March 9, 2009 factfinding hearing on the termination petitions. Her counsel was unaware of her whereabouts and indicated that she expected her to arrive. Likewise, neither the juvenile court, nor the GAL, nor the maternal grandmother had any notice of her impending absence. Nonetheless, her counsel entered an oral motion for continuance at that time. The juvenile court denied the motion, heard evidence, and entered judgment terminating her parental rights to G.R. and E.E. Thereafter,

Mother did not pursue available procedural mechanisms to gain relief via Indiana Trial Rule 59 (motion to correct error) or Indiana Trial Rule 60(B) (motion for relief from judgment based on excusable neglect). To the extent she now argues that she had a reasonable explanation for her absence which she could not disclose at the time, we consider the evidence contained in the record and will not engage in speculation. Given Mother's failure to demonstrate error or excusable neglect as well as her pattern of unexplained disappearances, we conclude that the juvenile court acted within its discretion in denying her motion for continuance.

II. Sufficiency of Evidence

Mother also challenges the sufficiency of evidence to support the juvenile court's judgments terminating her parental rights to E.E. and G.R. 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*, 839 N.E.2d 143 (Ind. 2005), 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 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.

Id. at 147 (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;
- (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) months;

(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) (emphasis added).

Mother claims 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 one of the two requirements of subsection (B). *In re I.A.*, 903 N.E.2d 146, 154 (Ind. Ct. App.

2009). To determine whether there is a reasonable probability that the reasons for placement outside the home of the parent will not be remedied, juvenile courts must consider the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. *Id.* In this regard, courts have properly considered evidence concerning the parent's history of criminal conduct, substance abuse, neglect, and lack of adequate housing and employment. *Id.* 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.*

The following evidence supports the juvenile court's decision to terminate Mother's parental rights: (1) Mother's pattern of leaving her children unattended overnight and for extended periods of time in order to pursue illegal drugs; (2) her decision to leave her children in the care of the man under investigation for molesting E.E. in violation of the juvenile court's safety plan; (3) her failure to complete the substance abuse programs in which she has participated; (4) her failure to maintain stable employment and appropriate housing; (5) her arrests and incarceration during the life of the CHINS and termination proceedings; (6) her failure to disclose to the juvenile court during the December 4, 2008 review hearing that she had been arrested for prostitution just two days before the hearing; (7) her failure to maintain consistent visitation with the children, due in part to her relocation

outside the jurisdiction; (8) her failure to appear for the fact-finding hearing; and (9) the testimony of the FCM, GAL, and maternal grandmother that termination is in the children's best interests. Accordingly, we affirm the juvenile court's judgment terminating Mother's parental rights to G.R. and E.E.

III. Incorrect Cause Number

Finally, Mother raises a procedural challenge to the judgments. The juvenile court issued two sets of findings, conclusions, and judgment, one for each child. Each judgment is properly captioned with regard to the respective child's name, but the children's separate termination judgments both contain the 1211 cause number assigned to E.E.'s case. As a result, judgment was not officially entered on cause number 1210, assigned to G.R.'s case. Mother asserts that no valid judgment exists for either cause number.

Indiana Trial Rule 60(A) provides that "clerical errors in judgments, orders, or other parts of the record ... may be corrected by the trial court at any time before the trial court clerk issues its Notice of Completion of Clerk's Record." After the filing, "such mistakes may be so corrected with leave of the court on appeal." *Id.* Clerical error is defined as "a mistake by a clerk, counsel, judge, or printer that is not a result of judicial function and cannot reasonably be attributed to the exercise of judicial consideration or discretion." *Nextel West Corp. v. Ind. Util. Regulatory Comm'n*, 831 N.E.2d 134, 147 (Ind. Ct. App. 2005), *trans. denied* (2006). Here, it is clear that, although the judgments contain similar recitations regarding Mother's conduct and its ensuing effect on her ability to parent, they are distinct in addressing matters such as each child's date of birth, paternity, and the suspected

molestation of E.E. and not G.R. Thus, the error in the cause number listed in G.R.'s case is a clerical error. As such, we remand to the juvenile court to correct the error. In all other respects, we affirm.

Affirmed and remanded.

MAY, J., and BROWN, J., concur.