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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE TERMINATION )  
OF THE PARENT-CHILD RELATIONSHIP )  
OF M.T., Minor Child, and K.M.T., Mother. )

K.M.T., )

Appellant-Respondent, )

vs. )

No. 79A02-0907-JV-611 )

TIPPECANOE COUNTY DEPARTMENT )  
OF CHILD SERVICES, )

Appellee-Petitioner. )

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APPEAL FROM THE TIPPECANOE SUPERIOR COURT

The Honorable Diana LaViolette, Senior Judge

Cause No. 79D03-0812-JT-141

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**December 31, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-Respondent K.M.T. (“Mother”) appeals an order terminating her parental rights, upon the petition of the Appellee-Petitioner Tippecanoe County Department of Child Services (“the DCS”). We affirm.

## **Issue**

Mother alleges that the DCS failed to establish, by clear and convincing evidence, the requisite statutory elements to support the termination of her parental rights.

## **Facts and Procedural History**

Mother had three children, including two sons who are now young adults, and one child named in the instant petition for termination of parental rights, specifically, M.T., born in 2000. R.T. (“Father”) was previously married to Mother and adopted M.T.

Mother was living with Father when the DCS became involved with the family after Father tested positive for cocaine. Mother subsequently tested positive for cocaine. In September of 2005, M.T. was found to be a Child in Need of Services (“CHINS”) and both parents entered into a service referral agreement. With regard to Mother, primary goals involved dealing with her mental health issues and dependency on prescription medication and use of other substances. Mother had previously worked as a licensed pharmacist, well able to provide financially for her children; however, her license had been revoked by the State of Indiana, subject to reinstatement after six months of sobriety.

On February 5, 2007, the DCS petitioned to terminate Mother’s and Father’s parental rights. After hearing evidence, the trial court entered an order denying the termination

petition. Father, who had been released from a term of incarceration, attempted to provide a home for M.T. For several months, the plan appeared to be going well, but Father began to experience financial difficulties and then to use alcohol when he had M.T. in his care. He took M.T. to the home of her maternal grandparents, ostensibly for a visit, but then never returned for her.

Meanwhile, service providers were attempting to assist Mother, who steadfastly refused to acknowledge that she had mental health issues, that her prescription drug use was a problem, or that her sons' activities posed any threat to M.T. The DCS again petitioned to terminate Mother's and Father's parental rights. On May 4, 2009, after a hearing, the trial court entered an order terminating Mother's and Father's parental rights. Mother now appeals.<sup>1</sup>

## **Discussion and Decision**

### **A. Standard of Review**

This court will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). 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. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id.

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<sup>1</sup> Father is not an active party to this appeal.

## B. Requirements for Involuntary Termination of Parental Rights

Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied. The purpose of terminating parental rights is not to punish the parents, but to protect their children. Id.

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

(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) 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, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(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.

The trial court must subordinate the interests of a parent to those of the child when evaluating the circumstances surrounding the termination. In re A.A.C., 682 N.E.2d at 544. Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. Id. The trial court need not wait to terminate the parent-child relationship until the child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired. Id.

### C. Analysis

Mother does not challenge the trial court's determinations pursuant to Indiana Code Section 31-35-2-4(b)(2)(A) (removal from the parents) or (D) (satisfactory plan). However, she challenges the trial court's determinations relating to Indiana Code Section 31-35-2-4(b)(2)(B) (conditions will not be remedied or relationship poses a threat to child's well-being) and (C) (best interests of the child).

It is well-settled that 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). Among the circumstances that a trial court may properly consider are a parent's criminal history, drug and alcohol abuse, historical failure to provide support, and lack of adequate housing and employment. McBride v. Monroe County Office of Family and Children, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). The DCS is not required to rule out all possibilities of change; rather, it need establish "only that there is a reasonable probability that the parent's behavior will not change." In re Kay.

L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

With regard to Mother, the trial court found that she failed to adequately participate in services and to address her mental health issues. Evidence was presented that Mother had been diagnosed as suffering from a delusional disorder. She consistently reported to service providers and law enforcement personnel that her living space and her computer had been violated. Primarily, she blamed Father. At times, she believed that he had returned and was living in her attic. She refused to dust her furniture, explaining that tracks in the dust would be visible should someone invade her home. She thrust a scythe at a home service worker in an attempt to convince her that Father had gained entry to her home and left the implement as a threat. Mother perceived that she was threatened or opposed by her ex-husband, caseworkers, and family members. Mother's testimony at the hearing indicated her belief that the DCS has systematically threatened her by insisting that she reduce her medication or lose her child.

On the other hand, Mother had difficulty recognizing realistic danger with regard to M.T. She failed to refrain from drinking alcohol when using prescription medications. Mother would promise M.T. that they could go out for food during visitations, despite being so impaired that she could scarcely stay awake, play simple games, or communicate well. When the DCS substantiated an allegation by M.T. that one of her older brothers had sexually abused her, Mother responded that M.T. was a liar, who "lied 24/7" and "we couldn't believe a word she said." (Tr. 202.)

After approximately four years of services, Mother did not progress to the point of

being able to take M.T. for an unsupervised visit. Meanwhile, M.T. had remained in her grandparents' home, progressing academically and personally, and enjoying relationships with extended family members. M.T.'s therapist, caseworkers, and her CASA, Sharon Cornell ("Cornell"), unanimously testified that termination of Mother's parental rights was in M.T.'s best interests. Cornell testified that she had never visited in Mother's home without Mother taking medication, and described a typical scenario:

She's almost always taking medication when I've been around her. Many times during the visits with [M.T.] [Mother] might appear drunk or drugged or foggy; kind of slurring her words, very sleepy. Sometimes she would be non-participating, I guess I would call it, with [M.T.]; [M.T.] would want to do things with her and she would half-heartedly try to do them, but she couldn't concentrate; tried to play very simple checkers game one night and could not focus on how to play it[.]

(Tr. 247.) Cornell then opined that Mother's response to medication had worsened over time. As of the termination hearing, Mother continued to believe that all her current medications were necessary for pain relief, specifically including migraines that she characterized as stress-induced and exacerbated by contact with DCS representatives. As such, Mother seemed unable to adequately participate with any services offered by the DCS.

The DCS presented clear and convincing evidence that the conditions leading to M.T.'s removal would not, in reasonable probability, be remedied and that termination of Mother's parental rights was in the best interests of M.T.

### **Conclusion**

The DCS established by clear and convincing evidence the requisite elements to support the termination of Mother's parental rights.

Affirmed.

BAKER, C.J., and ROBB, J., concur.