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ATTORNEY FOR APPELLANT:

ATTORNEY FOR APPELLEE:

RONALD K. SMITH
Muncie, Indiana

TIMOTHY R. HOLLEMS
Indiana Department of Child Services
Muncie, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE TERMINATION OF THE)
PARENT-CHILD RELATIONSHIP OF K.H.,)
child, and JESSICA HARTMAN, mother,)
)
JESSICA HARTMAN,)
)
Appellant-Respondent,)
)
vs.)
)
DELAWARE COUNTY OFFICE OF)
FAMILY AND CHILDREN,)
)
Appellee-Petitioner.)

No. 18A02-0704-JV-301

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Joseph Speece, Master Commissioner
The Honorable Richard A. Dailey, Judge
Cause No. 18C02-0507-JT-39

December 4, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Jessica Hartman appeals the trial court's order terminating her parental rights with respect to her daughter, K.H. Hartman argues that the trial court erroneously admitted laboratory reports revealing the results of a number of Hartman's drug screens and that the evidence is insufficient to support the termination of her parental rights. Finding no error, we affirm the judgment of the trial court.

FACTS

On June 25, 2004, the Delaware County Office of Family and Children (OFC) removed K.H. from Hartman's care and filed a petition alleging that K.H., born August 3, 2003, was a Child in Need of Services (CHINS). The OFC alleged that Hartman "was using cocaine, and leaving her children[¹] in the care of relatives and friends for extended stays without providing adequate supplies to care for them." Appellant's App. p. 125. On November 29, 2004, K.H. was adjudicated a CHINS.

On July 11, 2006, the OFC filed a petition to terminate Hartman's parental rights. On November 14, 2006, the trial court held a factfinding hearing at which Hartman failed to appear. On February 27, 2007, the trial court terminated Hartman's parental rights with respect to K.H., finding and concluding in pertinent part as follows:

3. That Jessica Hartman was provided proper notice of this hearing and has failed to appear.

¹ Hartman apparently has another daughter, but the record neither reveals the age of that daughter nor the status of her relationship with Hartman.

5. That [Hartman's substance abuse counselor] testified that Hartman was referred to the Intensive Outpatient Program (IOP) for substance abuse treatment, attended six (6) sessions but dropped out of the program before completing the treatment.

7. . . . since Hartman discontinued drug treatment services, she has had no contact with her former client and has been formally dropped from the IOP.

9. . . . Hartman was removed from the Shepherd Center^[2] because she tested positive for drugs, was not keeping appointments, was not providing diapers or formula for her child, was not abiding by curfew, and was not following the rules of the facility.

11. . . . Hartman was not consistent in exercising her visitation rights and actually visited with the child in less than half of the scheduled visitation times.

14. That [K.H.'s foster parent] testified that the child has progressed well while in her care.

15. That [K.H.'s foster parent] testified that the last time Hartman saw the child was approximately one year ago, when she had two or three visits with the child.

17. That [Hartman's first OFC case manager] testified that Hartman never completed the court-ordered services, failed to regularly exercise visitation, failed to maintain a stable home environment, and continued to abuse drugs while he was case manager.

² The record does not provide a description of the Shepherd Center, but we infer that it is some sort of residential facility in which Hartman lived with K.H. for a period of time.

20. That [Hartman's subsequent OFC case manager] testified that she set up an appointment with Hartman on September 22, 2006[,] to discuss services that needed to be completed, but that Hartman failed to show at that appointment or call with an explanation as to why she missed that appointment.
21. . . . that Hartman has failed to contact [the case manager] since that time and has failed to inquire as to how to reinstate services, including visitation.
22. . . . that Hartman has failed to maintain contact with [the case manager], has failed to attain stable living conditions, has failed to complete a court-ordered chemical dependency program, has failed to complete court-ordered individual counseling, and has failed to consistently attend visits with her child or to show an on-going concern for her child.
23. That the Court Appointed Special Advocate . . . testified that she supports the termination of [Hartman's] parental rights . . . due to the fact that Hartman has been very inconsistent with services and has failed to prioritize the child's needs.
24. That based on the foregoing, there is a reasonable probability that the conditions that resulted in the child's removal will not be remedied.
25. That based on the foregoing, there is a reasonable probability that the continuation of the parent/child relationship herein poses a threat to the well being of the child.
26. Termination of the parent/child relationship is in the best interest of the child.
27. The Indiana DCS has a satisfactory plan for the care and treatment of the child, which includes adoptive placement.

Appellant's App. p. 15-17. Hartman now appeals.

DISCUSSION AND DECISION

Hartman argues that there is insufficient evidence supporting the trial court's decision to terminate her parental rights with respect to K.H.³ We 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). We neither reweigh the evidence nor judge the credibility of witnesses, and we will consider only the evidence that supports the trial court's decision and the reasonable inferences that may be drawn therefrom. Id. If the evidence and the inferences support the trial court's decision, we must affirm. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

We acknowledge that the involuntary termination of parental rights is the most extreme sanction a court can impose on a parent because termination severs all rights of a parent to his or her children. Id. Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. Id. The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Id. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities. Id.

To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing the following elements:

³ Hartman also argues that the trial court abused its discretion by admitting laboratory reports showing results of drug screens. In reviewing the trial court's termination order, it is apparent that the trial court did not rely on Hartman's positive drug screens in terminating her parental rights. Moreover, as described herein, there is sufficient evidence aside from those positive screens warranting the termination of Hartman's parental rights. Consequently, to the extent that the trial court may have erred in admitting the reports into evidence, such error was harmless.

- (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).

In construing this statute, this court has held that when determining whether certain conditions that led to the removal of the children will be remedied, the trial court must judge the parent's fitness to care for the children at the time of the termination hearing, taking into consideration evidence of changed conditions. In re D.J., 755 N.E.2d 679, 684 (Ind. Ct. App. 2001). A parent's habitual pattern of conduct must also be evaluated to determine the probability of future negative behavior. Id. The trial court need not wait until a child is

irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship. Id.

Additionally, the trial court may consider the services offered as well as the parent's response to those services. Id. Parental rights may be terminated when parties are unable or unwilling to meet their responsibilities. Ferbert v. Marion County OFC, 743 N.E.2d 766, 776 (Ind. Ct. App. 2001). Also, when determining what is in the best interests of the children, the interests of the parents are subordinate to those of the child. Id. at 773. Thus, parental rights will be terminated when it is no longer in the child's best interests to maintain the relationship. In re B.D.J., 728 N.E.2d 195, 200 (Ind. Ct. App. 2000).

Here, the OFC presented evidence that Hartman failed to participate in and/or complete court-ordered services, including individual and group counseling sessions, substance abuse treatment, and drug screens. Appellant's App. p. 82-85, 89, 90-93. She failed to maintain stable living conditions. Id. at 83-85. Even more troubling was Hartman's inconsistency with respect to her relationship with her daughter. Specifically, she attended less than half of her scheduled visitation meetings with K.H. Id. at 97-102, 109-11. After Hartman's visitation rights were suspended, she did not attend a scheduled meeting with her case manager to discuss how to restart visitation. Id. She has generally failed to communicate with her OFC case managers. Finally, Hartman did not even attend the termination hearing.

Essentially, Hartman's only argument is that the above evidence notwithstanding, she has never physically abused K.H. While that may be true, as noted above, we need not wait

until a child is irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship. In re D.J., 755 N.E.2d at 684. Hartman may not have physically harmed her daughter, but the record shows that Hartman refuses to prioritize K.H.'s needs above her own, declined to participate in court-ordered services designed to reunify the mother and daughter, and was unable to make the time to attend even half of her scheduled visits with K.H. or the termination hearing. Under these circumstances, we find that there was sufficient evidence supporting the trial court's conclusion that it was no longer in K.H.'s best interests to maintain this relationship; consequently, the trial court properly terminated Hartman's parental rights.

The judgment of the trial court is affirmed.

SHARNACK, J., and RILEY, J., concur.