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**IN THE
COURT OF APPEALS OF INDIANA**

LATIA CAMPBELL,)
)
Appellant-Respondent,)
)
vs.) No. 49A04-0603-JV-126
)
MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner.)
)
and)
)
CHILD ADVOCATES, INC.,)
)
Appellee (Guardian Ad Litem).)

APPEAL FROM THE MARION COUNTY SUPERIOR COURT
The Honorable Marilyn Moores, Judge
Cause No. 49D09-0409-JT-293

November 20, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

The Marion County Department of Child Services (“the DCS”) filed a petition to terminate Latia Campbell’s (“Campbell”) parental rights to her two children, A.H. and R.H., in the Marion County Superior Court. The DCS’s petition was granted and Campbell appeals, arguing that the evidence presented was insufficient to support the termination of her parental rights. Concluding that the evidence was sufficient to support the trial court’s termination of Campbell’s parental rights to A.H. and R.H., we affirm.

Facts and Procedural History

Campbell is the mother of R.H., born October 8, 1998, and A.H., born March 10, 2000. In December 2003, R.H. and A.H. were each found to be a child in need of services (hereinafter “CHINS”) by the DCS. Appellant’s App. p. 8. On March 9, 2006, the Marion County Superior Court Juvenile Division issued an order terminating the parent-child relationship between R.H., A.H. and Campbell.¹ Appellant’s App. pp. 12-13. In its order, the trial court made the following findings of fact and conclusions of law:

6. On December 8, 2003, Latia Campbell, admitted the amended allegations of the CHINS petition to wit:

On or about December 5, 2003, the [DCS] ... [d]etermined that [R.H. and A.H.] are children in need of services [d]ue to the fact that [Campbell] left the children with Mr. Rod Durham without advising him of how to properly [care] for [A.H.], who has a tracheotomy. While the children were with Mr. Durham, Ms[.] Campbell was arrested and subsequently [i]ncarcerated for driving...under the influence. Ms. Campbell has a prior DUI conviction, a prior substantiated

¹ Roger Hopkins, the biological father of R.H. and A.H., voluntarily consented to the adoption of the children.

neglect history with ... DCS, and a history of leaving her children unattended.

7. Ms. Campbell admitted that Mr. Durham had drank [sic] more alcohol than [sic] her when she left the home to go to [a] fast food restaurant in the early morning of the day she was arrested.

8. On January 8, 2004, the Juvenile Court[] held a dispositional hearing as to Ms. Campbell, and ordered the Children[] removed from her care and authorized the placement of the children in foster care under the supervision of DCS.

11. Ms. Campbell failed to complete a drug/alcohol treatment program arranged for her on three separate occasions, and as the date of final evidence, has not. On two occasions she was discharged after starting a drug and alcohol treatment program for very poor attendance, she failed to attend treatment for the final referral in May 2005.

12. Without successful completion of a drug and alcohol treatment program the likelihood of recovery from [sic] substance abuse is slim.

14. The juvenile court found on more than one occasion that Ms. Campbell was not cooperating with services.

15. The juvenile court found that Ms. Campbell was testing positive for cocaine and alcohol and not maintaining contact with the DCS case manager.

16. Ms. Campbell violated her probation by failing to complete substance abuse treatment as directed, parenting classes as directed, to obtain her General Educational Development diploma. As a result she served eighteen (18) days in Marion County Jail in 2005.

17. Ms. Campbell was ordered to participate in and successfully complete services to demonstrate that she could properly and safely parent so that the Children might be returned to her care.

24. The DCS filed its Petition because Ms. Campbell failed to show stable housing, demonstrate steady employment, to complete a drug and alcohol treatment program, to visit, and to submit random urine screens. In

addition, she has been incarcerated during this case. The Court specifically finds that these factual assertions by DCS are true.

25. The Children have been in relative care/foster care continuously since their removal from their parents, ... therefore, the Children have been removed from the care of Latia Campbell, under the terms of a dispositional decree for more than six (6) months.

27. The Children are endangered by Ms. Campbell's use of cocaine and alcohol during her continued failure to successfully participate in substance abuse treatment, by her housing and employment instability and failure to demonstrate such.

29. Ms. Campbell has failed to demonstrate an ability to provide for the needs of the Children[] by her failure to complete substance abuse treatment and other services designed to enhance her parenting skills.

30. The children need permanence and stability so that their mental, physical and emotional needs will be met by a consistent caretaker throughout childhood.

3. There is a reasonable probability that the conditions that resulted in the Children's removal from and continued placement outside the care and custody of Latia Campbell will not be remedied.

4. There is a reasonable probability that the continuation of the parent-child relationship between the Children and Latia Campbell poses a threat to the well being of the children.

5. Termination of the parent-child relationship between the Children and their mother, Latia Campbell, is in the children's best interest.

Appellant's App. pp. 8-12. Upon acknowledging and approving the DCS's plan to have R.H. and A.H. adopted, the trial court ordered Campbell's parental rights terminated. Id. Mother appeals. Additional facts will be provided as necessary.

Standard of Review

When reviewing termination proceedings on appeal, we neither reweigh the evidence nor judge the credibility of witnesses. In re M.M., 733 N.E.2d 6,11 (Ind. Ct. App. 2000). We will consider only the evidence most favorable to the trial court's judgment and the reasonable inferences to be drawn therefrom. Id. at 12. Where the trial court has entered findings of fact, we will not set aside the trial court's findings and judgment unless they are clearly erroneous. Id. "A finding is clearly erroneous when there are no facts or inferences drawn therefrom which support it." In re B.D.J., 728 N.E.2d 195, 199 (Ind. Ct. App. 2000) (citation omitted). If the evidence and inferences support the trial court's decision, we must affirm. In re T.F., 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), trans. denied.

Discussion and Decision

Campbell contends that the evidence presented at trial was insufficient to support the trial court's termination of her parent-child relationship with R.H. and A.H. Specifically, Campbell argues that the DCS and the Guardian Ad Litem failed to present clear and convincing evidence "proving that the reasons for removal of the child will not be remedied or that continuation of the parent-child relationship poses a threat to [R.H. and A.H.]." Br. of Appellant at 6.

The involuntary termination of parental rights is the most extreme civil sanction a court can impose; 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 parents but to protect their children." In re M.M., 733 N.E.2d at 12 (quoting In re A.N.J., 690 N.E.2d 716, 720 (Ind. Ct. App. 1997)). Parents have a

constitutionally protected interest in the right to establish homes and raise their children; however, those rights may be terminated when parents are unwilling or unable to meet their parental responsibilities. In re T.F., 743 N.E.2d at 773. Parents' rights are subordinate to the interest of protecting the welfare of the child in determining an appropriate disposition of a petition to terminate parental rights. In re M.M., 733 N.E.2d at 12.

Termination of a parent-child relationship is proper where the child's emotional and physical developments are threatened. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). The trial court need not wait until the child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. 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 at 13.

To effect the involuntary termination of a parent-child relationship, the DCS must allege 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) (1998 & Supp. 2005). The DCS must establish these elements by clear and convincing evidence. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied.

By failing to contest the State's proof of the statutory elements of Indiana Code 31-35-2-4-(b)(2)A, C and D Campbell has waived any argument regarding those elements. Instead, Campbell argues that the evidence was insufficient to establish that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied. "To determine whether there is a reasonable probability that the conditions which resulted in the removal of the child will not be remedied, the trial court should judge a parent's fitness to care for the child at the time of the termination hearing, taking into consideration evidence of changed conditions." In re L.S., 717 N.E.2d at 209. "Due to the permanent effect of termination, the trial court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child." Id. In this regard, trial courts have properly considered evidence of a parent's prior drug and alcohol abuse,

history of neglect, failure to provide support, lack of adequate housing, and employment.² In re A.L.H., 774 N.E.2d 896, 899 (Ind. Ct. App. 2002).

Campbell argues that her children were removed from her care and custody as a result of a single incident involving her arrest for operating a vehicle while intoxicated. Br. of Appellant at 7. Campbell maintains that no documentary evidence of what services she had been ordered to complete were ever submitted and that she attempted to participate in services as directed by the DCS, but could not “because she had to work.” Id. at 7, 11. Campbell also maintains that she tried to cooperate with the DCS, but her case manager and substance abuse counselor were not cooperative. Id. at 11.

Shan Anderson, a former employee of Family Works, performed a parenting assessment/substance abuse evaluation of Campbell after she was referred in December of 2003. Tr. p. 42. Ms. Anderson’s report recommended that prior to commencing reunification services, Campbell had to maintain consistent visitation to continue the parent child bond, complete a psychiatric evaluation to rule out a mental health disorder, remain drug free and complete an Intensive Outpatient Substance Abuse Treatment Program as well as complete ongoing random drug screens, and complete parenting classes to enhance her parenting skills. Ex. Vol., Pet.’s 18. These requirements were referred to as “Phase One” services. Id. Ms. Anderson’s report also recommended that once Campbell had completed all of the “Phase One” requirements, Campbell had to remain drug free and continue to complete an Intensive Outpatient Substance Abuse Treatment Program, as well as submit to ongoing random drug screens, participate in

² Campbell argues that her poverty was improperly considered by the trial court in determining that there was a substantial probability of future neglect or deprivation of the child. This argument is not supported by the trial record and was not preserved for appeal.

home-based counseling to address issues regarding the effects of substance abuse on family systems and parenting education, and maintain stable housing and secure a reliable source of income in order to provide for her children's needs. Id. These requirements were referred to as "Phase Two" services. Id. All of the required services listed in Ms. Anderson's report included referrals to aid Campbell in completing the services. Id.

Campbell's case manager from the DCS, Wendy Budwig, testified that Campbell's participation and cooperation with services was "very minimal." Tr. p. 107. Ms. Budwig testified that Ms. Campbell was unable to complete a drug treatment program despite the fact that she was referred at least three times. Tr. pp. 107-8. A trial court "can reasonably consider the services offered by (the DCS) to the parent and the parent's response to those services." McBride v. Monroe County Office of Family and Children, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003) (quoting In re A.A.C., 682 N.E.2d at 544). Ms. Budwig also testified that Campbell had been unable to demonstrate housing stability or stable employment and income. Tr. p. 111. Ms. Budwig testified that Campbell's participation and cooperation with services has not improved since the filing of the parental rights termination petition. Id. Ms. Budwig also testified that the reasons for the children's removal and continued placement outside Campbell's home had not been remedied. Tr. pp. 111-12.

Essentially, Campbell asks that we reweigh the evidence, which we may not do. In light of the applicable standard of appellate review, we cannot hold that the trial court's findings are clearly erroneous. Sufficient evidence supports the trial court's

finding that there is a reasonable probability that the conditions that resulted in R. H. and A.H.'s removal will not be remedied.

Campbell also argues that the evidence presented at trial was insufficient to find that the continuation of the parent-child relationship poses a threat to the well-being of R.H. and A.H.. Under Ind. Code § 31-35-2-4(b)(2), the DCS was required to demonstrate by clear and convincing evidence that *either*: (1) the conditions that resulted in the child's removal will not be remedied, *or* (2) the continuation of the parent-child relationship poses a threat to the child's well-being. As set forth above, sufficient evidence supported the trial court's finding that the conditions resulting in the children's removal will not be remedied. Consequently, we need not address Campbell's argument that continuation of her parental relationship does not pose a threat to the children's well-being. See, e.g., In re D.D., 804 N.E.2d 258, 272 n.2 (Ind. Ct. App. 2004), trans. denied; In re T.F., 743 N.E.2d at 774.

Conclusion

Under these facts and circumstances, the evidence is sufficient to support the trial court's termination of Mother's parental rights.

Affirmed.

KIRSCH, C. J., and SHARPNACK, J., concur.