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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF)
T.M.W.W., minor child)
DESTINY WOOTEN, natural mother,)

DESTINY WOOTEN,)

Appellant-Respondent,)

vs.)

TIPPECANOE COUNTY DEPARTMENT)
OF CHILD SERVICES,)

Appellee-Petitioner.)

No. 79A02-0608-JV-642

APPEAL FROM THE TIPPECANOE SUPERIOR COURT

The Honorable Loretta Rush, Judge

Cause No. 79D03-0508-JT-83

November 3, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, Destiny Wooten (Mother), appeals the trial court's involuntary termination of her parental rights to her minor child, T.W.

We affirm.

ISSUE

Mother raises two issues on appeal, which we consolidate and restate as the following single issue: Whether the evidence was sufficient to terminate Mother's parental rights to T.W.

FACTS AND PROCEDURAL HISTORY

On January 5, 2006, the trial court entered the following Order, in pertinent part, terminating Mother's parent-child relationship with T.W.:

The [c]ourt specifically finds as follows:

1. The [Tippecanoe County Department of Child Services' (TCDCS)] Petition to Terminate [Bradley E. Wooten's (Father)] [p]arental [r]ights is set for hearing on a different date.
2. [Mother and Father] are the parents of [T.W.], born September 29, 1999[,] and [S.W.], born September 24, 2003. Parents were married on May 11, 2002, and separated on January 22, 2003.
3. On January 18, 2004, [TCDCS] received a report of physical abuse of T.W. T.W. had numerous bruises on his body including staples on the back of his head. [TCDCS] substantiated neglect based on lack of supervision of the Father.

4. In April 2004, TCDCS received a report that T.W. had received minor injuries during a domestic dispute between the parents and had been treated in the emergency room. The injuries occurred because the parents were playing “tug of war” with T.W. TCDCS substantiated abuse and life/health endangerment against both parents.
5. Following highly contentious dissolution proceedings and numerous protective orders, both parents received joint custody with Mother having primary physical [custody]. Custody was then modified when Mother agreed that Father could have custody of T.W. in June 2004 and emergency custody of both children was granted to Father in August 2004.
6. On August 1, 2004, TCDCS received a report that Mother’s live-in boyfriend, Dave Thomas [(Thomas)], had sexually molested T.W. during a visit. Following an investigation, TCDCS substantiated child molest and physical abuse. [Thomas] is divorced and is allowed only supervised visitation with his own children based on allegations of sexual molest.

* * *

8. On September 15, 2004, White County [Child Protective Services] received a report that S.W. had major neurological damage as a result of non-accidental injuries sustained while in the care of the Father’s girlfriend, Jessica Sargent [(Sargent)]. T.W. was present when the fatal injuries were inflicted [on S.W.] and T.W. reported physical abuse from [Sargent]. S.W. was life-lined to Methodist Hospital in Indianapolis, Indiana. Her injuries were consistent with Shaken Baby Syndrome. TCDCS took protective custody of both T.W. and S.W. on September 16, 2004. S.W. remained in a coma, paralyzed from the chest down, until she died from injuries on December 6, 2004. T.W. remains in relative foster care.
9. While S.W. was in the hospital, [Mother and Father] continued their pattern of hostile and volatile behavior. The Guardian ad litem in the dissolution [proceedings] reported on December 10, 2004, “[b]oth parents have been observed to place little emphasis on either child. Both parents have failed to inquire about either child on a regular basis. Both parents were provided the opportunity to remain at the hospital free of charge and both declined to do so. Both parents appear to be more concerned about the other parent rather than either child. There is observable hostility between their respective families. [Father] has

continued to support [Sargent] rather than protect his children . . . [Mother] is currently five months pregnant purportedly by [Thomas] who is alleged to have molested [T.W.]”

10. Mother subsequently had a child with [Thomas], [I.T.], who remains in foster care under another CHINS cause. Father remains with [Sargent], who has pending homicide charges relating to S.W.’s death and they are expecting a child.
11. On October 24, 2004, Mother and Father admitted to CHINS based on the history of abuse and neglect and dispositional services were ordered on December 10, 2004. Mother was ordered to participate in individual counseling, family counseling, supervised visitation, drug screens, parenting classes, psychological evaluation, family preservation case management, pre-natal care, [Sexual Abuse Family Treatment Intervention Program (SAFTIP)] counseling and services, and CA/RE Group. Review hearings were held on March 2, 2005, April 28, 2005, and a Permanency Planning Hearing was held on August 3, 2005.
12. Jeffrey Vanderwater-Piercy, PhD., HSPP, performed a psychological evaluation of Mother and found that Mother had an avoidant personality. Dr. Piercy found, “[s]he utilizes an avoidant style of coping wherein she overlooks or ignores anything that might be distressing or disruptive. Her desire to look the other way makes it exceedingly difficult for her to confront unpleasant circumstances, such as the substantial sexual molestation of her son. [Mother] tends to analyze situations in a hasty, careless, and arbitrary fashion. Consequently, she is at high risk for errors of oversight when it comes to making decisions concerning her children.” []
13. Dr. Piercy noted [Mother’s] lack of critical thinking with several examples[:] remaining with [Thomas] regardless of the information of her son’s molest, and agreeing to allow T.W. to live with his father even with Father’s history of violence and abuse of T.W.
14. At the [P]ermanency [P]lanning [H]earing, additional services were ordered to assist Mother. Mother acknowledged that [Thomas] had molested her child and she did not want him around their son, [I.T.], who is in foster care under [a] separate CHINS [proceeding]. For a few weeks, Mother participated well in services and then fell back into her pattern of non-compliance with services and inconsistent participation in visitation.

15. Mother testified that she has been “too stressed” out to participate in services the last several months.
16. Mother’s ability to protect T.W., and place him as a priority, remains a concern. Mother reported in the Rapid Assessment on October 5, 2004, that Father had a history of physically abusing T.W. Yet, Mother agreed to allow Father [to have] custody of T.W. in June 2004, while Mother continued to live with [Thomas]. While Mother eventually stated that she believed [Thomas] molested her son, she is continuing to see him and has plans to marry him when the CHINS case is over. Mother filed a protective order in 2003 because she thought [Sargent’s] child was molesting T.W. Mother dropped the protective order and allowed T.W. to live with Father and [Sargent].
17. Mother has a history of instability in many aspects of her life. She has had numerous eviction actions, dropped out of school, does not have a GED, recently lost her employment and has had her utilities turned off.
18. Judith Anderson, Ph.D. [(Dr. Anderson)], Child Psychologist, has been providing psychological treatment to T.W. since October 2004, with over thirty-three (33) office visits and has done therapeutic visitation with his parents on over sixteen (16) occasions.
19. Dr. Anderson testified that both parents are “surprisingly passive” [about] the harm the parents’ have done to their children. Both parents lack the ability to care and protect their children. Mother is not able to keep T.W. safe. T.W. is a vulnerable child with special needs and traumatic life experiences. Mother chose to stay with her boyfriend instead of taking care of her son who had been physically abused by his father and [was] present when his sister was fatally injured. Mother has not been willing to put T.W.’s needs above those of her own. “Mother cannot protect him . . . and has blatantly refused to protect him.” Mother’s lack of appropriate responses increases the likelihood of T.W. being further harmed in her care.
20. Dr. Anderson testified that it is in T.W.’s best interests for parental rights to be terminated. Dr. Anderson reported that currently T.W. is in a survival mode and needs a permanent home so he feels safe and can grow.
21. Dave Thomas was assessed by SAFTIP [] in 2003 regarding child visitation issues in his divorce. The alleged victim was his young son. The evaluation was to assess his risk for sexually offending and it was

- recommended that all visitation be supervised. An updated assessment was done in April 2005, which continued to recommend that all visitation between [Thomas] and his children, be supervised.
22. Mary Jo Cuculic [(Cuculic)] was the TCDCS family case manager for this case. Cuculic does not believe that Mother can provide a minimally safe environment for her child.
 23. Karla Ross [(Ross)] has been CASA for T.W. during the CHINS case. Ross has spent extensive time working on T.W.'s case. CASA believes that termination is in T.W.'s best interests.
 24. The [c]ourt further finds, as a matter of law, that the child was removed from the parent's home under dispositional order dated more than six (6) months prior to the filing of the Petitions to Terminate Parental Rights.
 25. The [c]ourt finds, as a matter of law, that reasonable, appropriate, necessary services have been offered to Mother and child over an extended period of time commencing with the initial removal [in] September 2004, to date. The services have been exhaustive and have been designed to address the difficulties presented by the family in the initial CHINS petitions upon the initial removal of the child from the family, and to address other difficulties that have come to light since the TCDCS became involved with this family. The services have been aimed at alleviating the problems requiring the removal of the child from Mother's care and permitting reunification and minimizing safety, health, mental health[,] and emotional concerns.
 26. The [c]ourt finds, as a matter of law, that after approximately thirteen (13) months of rendering services of various kinds with different providers to this family that there is not any basis for any reasonable belief that the circumstances which resulted in the removal of the child from Mother's care or the reasons for continued placement outside the home will be remedied. Mother has demonstrated a continuing pattern of erratic behavior, failure to participate in services, failure to protect, failure to cooperate with and learn from services, and failure to place her children as a priority. Mother does not indicate that she has a basic understanding or belief of the harm her child has suffered given her lack of parenting skills, failure to protect, life choices and unstable lifestyle. Mother is, therefore, unable to provide a minimally safe, secure and stable home for her child.

27. The [c]ourt finds, as a matter of law, that the continuation of the parent-child relationship poses a threat to the well[-]being of the child.
28. The [c]ourt finds, as a matter of law, that it would not be in the best interests of the child to try to reunite this family.
29. The [c]ourt further finds that the TCDCS has an acceptable, reasonable, appropriate, and satisfactory plan for the care and treatment of the child. The child can be adopted. The plan is that he be adopted by his relative foster home.
30. The [c]ourt finds it would be in the best interest of the child for the rights of the natural Mother [to be terminated] so that the child can be placed for adoption at the earliest possible time.
31. Further efforts to reunify will have continuing deleterious effects on this child. An appropriate adoptive home can provide what this child needs to enable him to grow up to be a responsive and capable adult who is able to participate and interact in society in a positive way.

(Appellant's App. pp. 789-92). Subsequently, the trial court ordered that the parental rights of Mother to T.W. be terminated.

Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Mother argues that the trial court erred in terminating her parent-child relationship with T.W. Specifically, Mother contends that there is insufficient evidence to support the conclusion that the conditions leading to T.W.'s removal will not be remedied, as well as insufficient evidence that she poses a threat to T.W.'s well-being.

We will not set aside a trial court's order to terminate parental rights unless it is clearly erroneous. *In re Involuntary Termination of Parent Child Relationship of A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). In determining whether the evidence is sufficient to support the judgment of termination, we neither reweigh the evidence nor

judge the credibility of witnesses. *Id.* We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.*

The involuntary termination of parental rights is the most extreme measure that a court can impose and is designated only as a last resort when all other reasonable efforts have failed. *In re D.G.*, 702 N.E.2d 777, 780 (Ind. Ct. App. 1998). This policy is in recognition of the Fourteenth Amendment to the United States Constitution, which provides parents with the right to establish a home and raise children. *See id.* However, these protected parental rights are not absolute and must be subordinated to the children's interest to maintain the parent-child relationship. *See id.*

The purpose of terminating parental rights is not to punish parents but to protect their children. *Matter of A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). Although parental rights have a constitutional dimension, the law allows for their termination when parties are unable or unwilling to meet their responsibility as parents. *Id.* In the present case, to effect the involuntary termination of Mother's parent-child relationship with T.W., the TCDCS must have presented clear and convincing evidence establishing 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 Ind. Code § 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

officer of family and children for at least fifteen (15) months of the more recent twenty-two (22) months;

(B) there is reasonable probability that:

- (i) the condition 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.

I.C. § 31-35-2-4(b)(2).

Additionally, in determining whether a reasonable probability exists that the reasons for removal will not 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 any evidence of changed conditions. *In re Termination of Parent-Child Relationship of D.D.*, 804 N.E.2d 258, 266 (Ind. Ct. App. 2004), *trans. denied*. A trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation." *Id.*

Here, Mother first contends that the TCDACS failed to show that the conditions leading to T.W.'s removal from her care would not be remedied. In support of this assertion, Mother argues that the trial court ignored a substantial amount of positive testimony that would suggest she is capable of caring for T.W. In addition, Mother asserts that her initial resistance to ending her relationship with Thomas, her boyfriend, who sexually molested T.W., was due to confusion. However, she now insists that the

record does not contain sufficient evidence that she would not end her relationship with Thomas. We find no merit in any of Mother's arguments.

Foremost, we remind Mother that our standard of review does not allow us to reweigh the evidence or judge the credibility of the witnesses. *A.H.*, 832 N.E.2d at 570. Thus, despite testimony in the record that Mother has had some positive interactions with T.W. and has displayed some affection in visits with him, there is overwhelming evidence in the record that Mother has a history of poor decision-making, which poses a continuing threat to T.W. As the trial court's Order iterates, Dr. Piercy, a psychologist, testified at the termination hearing that in his examination of Mother, he found her to have "an avoidant style of coping" and described her as tending "to analyze situations in a hasty, careless, arbitrary fashion," and thus concluded that Mother "is at a high risk for errors of oversight." (Transcript pp. 81, 82). Further, we find that Mother's poor judgment skills are evident from the record's indication that after T.W. told her and others that Father was physically abusing him, Mother agreed to allow T.W. to move to Father's residence. Although T.W. was also not safe in Mother's care as long as she continued a relationship with Thomas, permitting T.W. to move into a home where physical abuse has been substantiated reveals a serious lack of concern for T.W.'s well-being on Mother's part. Therefore, based on our review of the record, we conclude that there is ample evidence to support the trial court's finding that the parent-child relationship between Mother and T.W. poses a threat to the well-being of T.W.

Also, in our review of the record, we find sufficient evidence to establish, at minimum, that there is a risk that Mother will continue her relationship with Thomas – a

probable fact that only accentuates her poor judgment skills and substantiates a conclusion that the conditions surrounding T.W.'s removal from her care are unlikely to change.¹ In particular, we note that at the termination hearing, Jeremy Brummett (Brummett), a friend of Mother's, testified that he had accompanied Mother to Thomas' residence and place of employment within the last sixty days. Brummett also testified that he witnessed Mother engage in many cell phone conversations with Thomas, and was a party to discussions where Mother expressed her plans to marry Thomas after the CHINS proceedings were completed. Furthermore, the record discloses testimony by Dr. Vanderwater-Piercy, stating that Mother is "inclined to view relationships in terms of what she want[s] them to be rather in terms of what they really [are]"; consequently, "her judgment [is] affected when it comes to choosing partners or making decisions as to whether to remain in a relationship or to end a relationship." (Tr. p. 82). For these reasons, we disagree with Mother's contention that the record inadequately supports a conclusion that the conditions leading to T.W.'s removal will not be remedied.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly terminated Mother's parental rights to T.W.

Affirmed.

BAILEY, J., and MAY, J., concur.

¹ I.C. § 31-35-2-4(b)(1)(B) only requires clear and convincing evidence of either a reasonable probability that the conditions resulting in the child's removal will not be remedied *or* a reasonable probability that the continuation of the parent-child relationship will pose a threat to the well-being of the children. Nonetheless, we address both of Mother's arguments.