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ATTORNEY FOR APPELLANT:

GREGG S. THEOBALD
Lafayette, Indiana

ATTORNEY FOR APPELLEE:

CRAIG JONES
Lafayette, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP)
OF M.O.H., and Michael Otis Hampton, Father,)

Appellant,)

vs.)

TIPPECANOE COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee.)

No. 79A04-0705-JV-281

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta H. Rush, Judge
Cause No. 79D03-0702-JT-49

December 3, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Michael Hampton appeals the involuntary termination of his parental rights with respect to his minor child, M.H. Hampton presents the following consolidated, restated issues for review:

1. Was the evidence sufficient to prove Hampton posed a threat to M.H.'s well-being?
2. Was the evidence sufficient to prove that the conditions resulting in M.H.'s removal still exist?
3. Was the evidence sufficient to prove termination of the parent-child relationship was in M.H.'s best interests?

We affirm.

In terminating Hampton's parental rights, the court issued findings of fact and conclusions of law. We reproduce here the somewhat lengthy facts as found by the court:

4. Mother and Father were married on May 3, 1995. At that time, Mother was sixteen (16) years old and Father was eighteen (18) years old. Parents' marriage was characterized by extreme domestic violence and substance abuse. Father's physical abuse of Mother started two weeks after the marriage began. According to Mother, Father repeatedly threatened Mother and Mother's family. The abuse often occurred with M.H. present. For example, one incident included Father pushing Mother into M.H.'s bassinet. M.H. would cry when parents were fighting. When M.H. was eighteen (18) months old, Father was upset because he could not find his Oxycontin and grabbed Mother's neck in front of the child. Father also left drugs around the house where, as a toddler, M.H. could easily find [sic]. This behavior escalated over time to the point that physical violence occurred at least two to three times a week. Father pointed a shot gun [sic] at Mother's face when he was angry. Father shot Mother with a BB-gun. M.H. was present at this time. Father also threatened Mother by holding a steak knife to her. Father physically abused the family pet in front of Mother; one incident included when he beat the dog with his fist until the dog's eye came out.

5. Mother reports extensive domestic violence between Mother and Father and that the violence escalated to points when M.H. was physically injured.

For example, Father struck Mother when she was holding M.H., causing injuries to Mother and child. Father threw a metal piece at his own mother who was holding M.H. The metal piece missed the paternal grandmother and hit M.H.

6. Parents' marriage was characterized by substance abuse. Father used cocaine, methamphetamine and Oxycontin; often in front of Mother, sometimes with Mother. The substance abuse worsened during the latter part of the marriage. Mother observed Father's increased use of drugs. Father would become violent when coming off the drugs. Father and Mother would smoke marijuana together almost daily. Father would allow M.H. to smell his marijuana and M.H. saw his Father inject drugs. Mother is an alcoholic.

7. Mother obtained an emergency protective order against Father; then reconciled with him. Father and Mother were together for the first four years of M.H.'s life. Mother was the primary caretaker for M.H.

8. Father has a history of instabilities in many areas of his life. He dropped out of school in the ninth grade and received his GED in 2005, while incarcerated. He has had numerous jobs, including working with a paving company, lumber company, as a carpenter, as an automotive mechanic and is currently employed. In the past, Father has been terminated from jobs based on being unreliable and using drugs. Father has maintained some employment since his release from prison in September, 2006.

9. Father has an extensive criminal history. Father engaged in "serious rule violations" as a teenager such as not following parents' rules, staying out all night and truancy. His adult criminal record includes arrests for substance related offenses, wanton endangerment, theft, robbery and tampering with physical evidence. Father was released from prison on parole in [sic] September 6, 2006, and is currently on parole in the state of Kentucky. Father's adult criminal history includes: 1994, Father was convicted for cultivating marijuana, numerous traffic tickets; 1998, Father was convicted of driving while suspended and no insurance; 1999, Father was convicted of public intoxication; 2000, Father was convicted of driving while suspended and no insurance coverage; 2001, Father was convicted of driving while suspended; 2002, Father was placed on probation for wanton endangerment involving a passenger pointing a gun; 2003, Father was convicted for driving without a license; and in 2003, arrested and convicted of four robberies, theft by unlawful taking, tampering with physical evidence and possession of a forged instrument. The four (4) separate robberies were combined into one conviction and Father received a six-year executed sentence.

10. Father admits the marriage was horrible; he denies most of the physical abuse, but admits to the extent of the verbal abuse. Father has a hard time accepting responsibility. For example, in Father's psychological evaluation he states that he plead [sic] guilty to a robbery but is innocent. Father says the protective orders were all based on false information.

11. Upon his release from prison on September 6, 2006, Father stated that he loved his son and would do whatever it took to get his son in his care. The Court appointed counsel to work with Father. Specific services were ordered for Father, which included a psychological evaluation, individual counseling, completion of substance abuse program, parenting classes, attendance at AA meetings on a regular basis, supervised visitation and cooperation with CASA and TCDCS. Court continued the required Permanency Planning Hearing until Father was able to participate in services since he was incarcerated for the better part of M.H.'s placement in foster care.

12. TCDCS and CASA recommended that Father arrange to have his parole transferred to Indiana so that he could better participate in services, visitation and work towards reunification with his son. Father's parole officer agreed to process the paperwork so that Father's parole could be transferred to Indiana. Father agreed to move to Indiana to be near family. However, just a few months after his release from incarceration and against the advice of TCDCS and CASA, Father stopped the interstate process to have the case transferred to Indiana. Father remains on parole in Kentucky.

13. Jeff Vanderwater-Piercy, Ph.D., HSPP, performed a psychological evaluation on Father on March 2, 2007. Piercy diagnosed Father with Anti-Social Personality Disorder. According to Piercy, Father needs individual therapy aimed at establishing and maintaining a responsible and socially conforming lifestyle. According to Piercy, "[w]hile Michael is willing to acknowledge past problems, he is likely to present a rather biased picture of his current functioning in which he minimizes problems, denies personality flaws, and glosses over concerns". In reviewing Father's individual therapy report, Piercy noted it appears Father is just going through the motions and not internalizing needed change.

14. Father has missed numerous appointments with his individual therapist. Father was allowed to do his individual therapy in Kentucky, a few miles from his residence. Father had excellent attendance when first released from prison. Soon after, however, his attendance declined and he has missed seven (7) out of seventeen (17) appointments. Father's therapist, Mark Islam [sic], MS, reported on January 18, 2007, that Father was

“reticent” and “superficial” in working on his issues in therapy. According to Isham, Father only came to therapy when he wanted something. Father was ordered to work on domestic violence issues, but told his therapist that he did not have any domestic violence issues. Father has not worked with his individual therapist for almost two (2) months. Contrary to his attendance in therapy, Father has not missed any of his appointments with his Parole Officer.

15. Father has missed three (3) of his scheduled visitations with his son and Father declined the opportunity for additional visitations. Again, Father had a strong start in his attendance at visits, but his participation deteriorated in the last two (2) months.

16. Father is currently employed full-time, has passed all his drug screens, wrote his son regularly when he was in prison, completed his substance abuse treatment, attended some NA/AA meetings, completed parenting classes and maintains regular contact with his parole officer. Father’s ability to stay away from drugs and meet his parole requirements has been outstanding.

17. Father was ordered to pay reimbursement to TCDCS toward the care of his son. At this time, Father is not current towards payment of reimbursement.

18. Father acknowledged that M.H. is doing well in his current foster placement. Father told a visit facilitator on March 30, 2007, that he does not want to terminate his parental rights, but that he could accept that this may be the best thing for M.H. Father noted the extensive criminal history of Father’s family in Kentucky and the negative impact it might have on M.H. in the future.

19. Father, while denying to his therapist and in his psychological evaluation that he had any problems with domestic violence, admitted during the TPR trial that he was physically abusive with Mother on limited occasions.

20. M.H. testified about violence in the home. M.H. saw his Father shoot his Mother with a gun. Dr. Judith Anderson has been M.H.’s child psychologist throughout the CHINS case. Dr. Anderson met with Father individually and has had several visits between M.H. and Father. Dr. Anderson is also part of the treatment team and has attended case conferences and Court hearings. Dr. Anderson testified that it is in M.H.’s best interest for parental rights to be terminated based on the length of time in foster care and the violence and instabilities that M.H. was exposed to

under his parents' care. M.H. told Dr. Anderson that he is frustrated that his Father missed scheduled visits with him. M.H. is content to not be placed with either parent. M.H. has been in the same foster home, has shown improvement in school, is a cub scout and needs to have permanency.

21. Dr. Anderson reported, as to Father, "[M.H.'s] father, while out of prison, is still entangled with his legal case in Kentucky and not in a position to provide a safe home for [M.H.]. Mike has not been able to maintain his visit schedule, and he is not able to relocate to be nearer to his son in order to participate in services. In addition, the allegations of domestic violence between [M.H.'s] parents have not been adequately addressed and therefore continue to be an area of significant concern". Dr. Anderson believes that M.H. would not be safe with either parent if the domestic violence issues were not adequately addressed.

22. Dr. Anderson noted that M.H. reacted negatively to his Father's missed visits. Even after Father missed visits with his son, Father did not make contact with M.H. Father was offered more visitations with his son, which he declined.

23. M.H. was appointed a CASA, Larry Parmeter, in the CHINS case. CASA believes that Father's parental rights should be terminated. Father was not cooperative in sharing information with the CASA. CASA noted Father missed his initial psychological evaluation appointment, a case conference and a Court hearing since his release from prison. CASA noted that Father does love his son and was entertaining during the visits. CASA noted Father is still on parole, has financial struggles, lacks consistency and has only superficially participated in services.

24. Rhonda Friend has been the TCDCS family case manager for M.H. throughout the CHINS proceeding. Father failed to keep Friend informed of his participation in services, work hours and employment. Friend's concerns include: Father has not received treatment for the domestic violence; Father declined the offer of additional visitation; Father withdrew his request to have his parole transferred to Indiana; and Father's missed appointments for IOP, individual therapy and visitations. Friend believes termination of parental rights is in M.H.'s best interest.

Appellant's Appendix at 10-13 (internal citation omitted).

A parent's interest in the care, custody, and control of his or her children is "perhaps the oldest of the fundamental liberty interests", and is protected by the

Fourteenth Amendment to the United States Constitution. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005) (quoting *Troxel v. Granville*, 530 U.S. 57 (2000)). Parental interests are not absolute, however, and must be subordinated to the child’s interests in determining whether to terminate parental rights. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143. Thus, “[p]arental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities.” *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. “[A] trial court does not need to wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship.” *Castro v. Ind. Office of Family & Children*, 842 N.E.2d 367, 372 (Ind. Ct. App. 2006), *trans. denied*. When the evidence shows that the emotional and physical development of a child is threatened, termination of parental rights is appropriate. *Id.*

In order to effect the termination of a parent-child relationship, the DCS must establish:

(A) that 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 . . . 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 Ann. § 31-35-2-4(b)(2) (West, PREMISE through 2007 Public Laws, approved and effective through April 8, 2007). These allegations must be proven by clear and convincing evidence. Ind. Code Ann. § 31-37-14-2 (West, PREMISE through 2007 Public Laws, approved and effective through April 8, 2007); *In re A.I.*, 825 N.E.2d 798 (Ind. Ct. App. 2005), *trans. denied*.

When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *Bester v. Lake County Office of Family of Children*, 839 N.E.2d 143. We consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* Where, as here, the trial court enters findings of fact and conclusions thereon in granting the petition to terminate, we apply a two-tiered standard of review. We first determine whether the evidence supports the findings, and then whether the findings support the judgment. *Id.* We will set aside the decision to terminate only if it is clearly erroneous. *Id.* "A judgment is 'clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment.'" *Id.* at 147 (quoting *In re the Matter of R.J.*, 829 N.E.2d 1032, 1035 (Ind. Ct. App. 2005)).

With the foregoing principles in mind, we address the issues Hampton presents.

1.

Hampton contends the evidence was not sufficient to prove he posed a threat to M.H.'s well-being.

As reflected in the court's findings, there was overwhelming evidence that Hampton has a significant history of violent behavior and, of specific relevance here, one of engaging in acts of domestic violence.¹ During the course of the proceedings below, Hampton often denied that he had engaged in any such behavior, but he acknowledged at the termination hearing that he had acted violently toward M.H.'s mother on at least some occasions. There is also evidence that M.H. was injured on several occasions during Hampton's violent outbursts. In fact, Hampton's propensity for violent behavior poses the greatest threat to M.H.'s well-being, and therefore his willingness and ability to address that behavior was critical. The evidence on that matter was, to put it mildly, not in Hampton's favor.

Dr. Anderson, M.H.'s therapist, testified that Hampton's tendency to act out violently has "not been adequately addressed" and therefore that his inability to control his anger continues to be "an area of significant concern". *Appellant's Appendix* at 13. Dr. Anderson's assessment is consistent with those of Isham, Hampton's private therapist, Dr. Piercy, who performed a psychological evaluation of Hampton, and

¹ We summarily reject Hampton's contention that the trial court erred in permitting M.H.'s mother to testify about Hampton's violent behavior during the time she and Hampton lived together, which was from 1995 until 2002.

Parmeter, M.H.'s CASA. Dr. Piercy diagnosed Hampton as having anti-social personality disorder and indicated that Hampton required individual therapy in order to establish and maintain a responsible and conforming lifestyle. According to Dr. Piercy, Hampton was not working toward achieving those results in his individual sessions with Isham, but instead was just "going through the motions" and "not internalizing needed change." *Id.* at 12. Dr. Piercy's opinion was consistent with that of Isham, who reported that Hampton was only superficially involved in his therapy, denied he had any domestic violence issues, and attended therapy sessions only when he wanted something. This "superficial" and unproductive participation in counseling services, coupled with Hampton's lack of cooperation with CASA, led Parmeter to conclude that Hampton's parental rights should be terminated. *Id.* at 13. TCDCS case manager Friend went further, expressing her concern that Hampton "has not received treatment for the domestic violence." *Id.* at 13.

Clearly, Hampton's violent propensities pose a threat to M.H.'s well-being. Hampton either has not or will not fully participate in services to change that aspect of his behavior. Indeed, he consistently refuses even to acknowledge he has such a problem in the first place. Although there was evidence that Hampton could be engaging and even pleasant during supervised visits with M.H., this is really beside the point. M.H.'s well-being is threatened not by a total lack of pleasantness in his relationship with Hampton, but by the unacceptably strong possibility that he will be victim of violence at Hampton's hands. The trial court's determination that continuation of the parent-child relationship poses a threat to M.H.'s well-being is not clearly erroneous.

2.

Hampton contends the evidence was not sufficient to prove that the conditions resulting in M.H.'s removal and placement outside of Hampton's home will not be remedied.

I.C. § 31-35-2-4(b)(2) provides that termination is warranted if it is proven either that the condition prompting removal of the child from the parents' home will not be remedied, or a continuation of the parent-child relationship poses a threat to the child. Because subsection (b)(2)(B) is written in the disjunctive, the trial court need find only one of those two elements by clear and convincing evidence to support termination. *Castro v. Ind. Office of Family & Children*, 842 N.E.2d 367. Having already concluded that the evidence supported the conclusion that continuation of the parent-child relationship posed a threat to M.H.'s well-being, we need not address this issue. *See id.*

3.

Hampton contends the evidence was not sufficient to prove termination of the parent-child relationship was in M.H.'s best interests.

The trial court found that Hampton has a significant history of violent behavior that has often been directed toward those with whom he lives. He has struck, thrown objects at, and shot at members of his household. In so doing, he has injured his wife,

mother, and M.H. on multiple occasions. Aware that his parental rights with respect to M.H. were in a significant way contingent upon controlling his violent outbursts, Hampton declined to meaningfully participate in services aimed at addressing that aspect of his personality and behavior. Thus, the trial court concluded that Hampton will be unable to provide a minimally safe, secure, and stable home for M.H. Among other things, this led Dr. Anderson and case manager Friend to opine that termination of Hampton's parental rights was in M.H.'s best interests and, along with CASA Parmeter, to recommend that Hampton's parental rights be terminated. This evidence is sufficient to support the trial court's conclusion that termination is in M.H.'s best interest.

We conclude the Tippecanoe County Division of Family and Children proved by clear and convincing evidence that continuation of the parent-child relationship posed a threat to M.H.'s well-being and that termination of Hampton's parental rights was in M.H.'s best interests. Therefore, we affirm the termination of Hampton's parental rights.

Judgment affirmed.

SHARPNACK, J., and RILEY, J., concurs.