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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP)
OF A.W., B.W., C.W., E.W., S.W.,)
V.W. and K.H., minor children,)
)
KIMBERLY M. WINCHESTER, natural mother,)
)
Appellant-Respondent,)
)
vs.)
)
TIPPECANOE COUNTY DEPARTMENT)
OF CHILD SERVICES,)
)
Appellee-Petitioner.)

No. 79A05-0606-JV-00345

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Cynthia P. Smith, Judge Pro-Tempore
Cause No. 79D03-0508-JT-87 Through 94

December 7, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-respondent Kimberly Winchester appeals from the involuntary termination of her parental rights with respect to her seven minor children.¹ Specifically, Winchester argues that the evidence was insufficient to support the termination of her parental rights because appellee-petitioner Tippecanoe County Department of Child Services (TCDCS) failed to prove that the conditions leading to the removal of the children would not be remedied, that continuation of the parent-child relationship posed a threat to the children, or that termination was in the children's best interests. Winchester also argues that TCDCS failed to prove that its plan for the children's adoptions was satisfactory. Concluding that the evidence was sufficient to support the termination of Winchester's parental rights and finding no other error, we affirm the judgment of the trial court.

FACTS

Winchester is the mother of the following children who are the subject of the termination proceedings:²

K.H., DOB: 2/2/98
B.W., DOB: 12/2/94
A.W., DOB: 5/14/91
C.W., DOB: 6/10/96
E.W., DOB: 8/14/93
V.W., DOB: 7/30/92
S.W., DOB: 5/27/90

¹ Winchester has two other children, N.W., born on May 27, 1986, and K.W., born on November 2, 1988, who are not involved in these proceedings.

² The fathers of the children are not parties to this appeal.

Winchester is a single mother to the above seven children and has been involved with the child protective services agencies in Clinton and Tippecanoe Counties on numerous occasions during the past several years. In October 1996, TCDCS became involved with Winchester when allegations of poor hygiene, lack of supervision, lack of food, clothing, and shelter, and educational neglect were substantiated against Winchester with regard to all of the children.

Later that same year, TCDCS again became involved with Winchester and the children when an instance of medical neglect was substantiated as to one of Winchester's other children, who is now deceased. That child was a terminally ill cancer patient and was not receiving proper medication. She developed heart problems while undergoing chemotherapy treatments, and her physician prescribed a strict regimen of medications and diet to keep her heart functioning. However, after missing a number of appointments, the child was admitted to Riley Children's Hospital in September 1996 because of cardiac arrest.

Thereafter, instances of poor hygiene were substantiated against Winchester on April 1, 1998, as to all of the children. And on August 12, 2002, TCDCS received a report regarding E.W., an insulin-dependent diabetic who suffers from occasional seizures. Less than one month later, medical neglect was substantiated as to E.W. and a service referral agreement was initiated as to all of the children. As a result, Winchester was required to work with various counselors and caseworkers to address various matters including parenting skills, employment, problem solving, financial concerns, and stress management.

At some point, Winchester informed her case manager that she did not know how to

control E.W.'s disruptive behavior. Hence, E.W. was hospitalized at the Valle Vista Health System (Valle Vista) in Greenwood in May 2003. While in the hospital, E.W. told his physician that he was "terrified of [Winchester, and that she] yells at everyone in the family." Appellant's App. p. 411. A psychiatric summary dated May 14, 2003, noted that E.W. threw temper tantrums when he was asked to do something, threatened to kill himself, banged his head against the wall, and had to be constrained at school. Two months later, Winchester stopped the services at Valle Vista after she became upset with the case manager.

After Valle Vista released E.W. to Winchester on August 27, 2003, allegations of life and health endangerment, lack of supervision, and medical neglect were again substantiated against Winchester as to E.W. Two days later, Child Protective Services (CPS) received a telephone call from the Lafayette Police Department indicating that E.W. had refused to go to school and had threatened to jump from a moving vehicle. As a result, a detention hearing was held on September 3, 2003, at which time TCDCS was granted temporary custody of E.W. A Child in Need of Services (CHINS) petition was filed with the trial court on September 10, 2003, which alleged that E.W.'s physical or mental condition was seriously impaired or endangered as a result of Winchester's neglect or refusal to supply him with necessities. Also on that day, TCDCS filed a petition for parental participation requiring Winchester to obtain assistance in fulfilling her obligations as a parent.

In September 2003, Kristine Ping, a licensed social worker, evaluated Winchester. Ping observed that Winchester experienced erratic mood swings that ranged from extremely calm to very angry. Ping also interviewed the children and reported that Winchester was

“very lazy” and that she “gets mad easy, grabs hair . . . or hits [them] with whatever she can get her hands on when [they] don’t do what she tells [them].” Appellant’s App. p. 1533.

E.W. was placed in four different foster homes and was subsequently removed from those locations because of behavioral problems. School personnel advised CPS personnel that E.W. had been classified as “severely emotionally disabled.” Id. at 314. On November 3, 2003, a pre-dispositional report was filed on behalf of E.W., in which TCDCS recommended that E.W. remain in substitute care at the Indiana United Methodist Children’s Home (IUMCH). E.W. was declared a CHINS, and Winchester agreed with the assessment that E.W. should remain at IUMCH.

Although Winchester was ordered to participate in family preservation services and follow the recommendations of the counselors, she failed to demonstrate any enthusiasm for any of the parenting programs that were offered. At some point, however, the TCDCS recommended that E.W. be discharged from IUMCH and reunified with Winchester.

Sometime in 2004, Winchester contacted the Lafayette Police Department on at least fifteen occasions requesting the removal of some of her children from the home because of domestic disturbances. The police were also contacted in May 2004 because one of Winchester’s boyfriends had battered two of the children.

In July 2004, a TCDCS caseworker went to Winchester’s residence and became so distraught over Winchester’s inadequate parenting that she contacted child protective services to assess the situation. Specifically, it was determined that Winchester had struck two of the children with a belt. Winchester then requested the family case manager to “call

someone” to have her children removed from the house. Id. at 390. All of the children were removed from Winchester’s residence on July 23, 2004.

The children were placed in foster care under the supervision of The Villages of Indiana (The Villages) on August 12, 2004. While Winchester was afforded visitation with the children, she often expressed her anger by yelling at the service providers in front of the children. Moreover, Winchester refused to accept any responsibility for her role in the children’s removal from her home. In a report that was prepared by the Families United Family Preservation Agency, the case manager stated that she heard Winchester tell the children on more than one occasion that she no longer wanted them in her home. Winchester also threatened to “sign her rights away” as to all of the children except those who behaved. Id. at 388. The children also stated that Winchester would repeatedly hit them with a wooden spoon and belt. Id.

On August 20, 2004, a CHINS petition was filed as to all of the children, alleging that their physical or mental conditions were endangered because of Winchester’s neglect or refusal to supply them with necessities. The petition also alleged that Winchester’s fifteen-year-old daughter, who had become pregnant and given birth to a child, was the victim of a sex offense.

In a pre-dispositional report dated October 28, 2004, TCDCS representatives recommended that S.W., A.W., and V.W. be reunited with Winchester, but with supervision and family support services. However, TCDCS recommended that B.W., C.W., and K.H. remain in approved specialized foster care through the Villages. Although all of

Winchester's children were returned to her at some point, the children were again removed from Winchester's home in January 2005. Winchester stated that a former boyfriend had been harassing her and breaking into her home. Thus, TCDCS personnel were concerned about neglect and domestic violence in the home. Following a CHINS hearing on January 21, 2005, the children were again placed in foster care.

At some point, Winchester was directed to participate in a case management plan through Wabash Valley Hospital. She refused. Although Winchester was permitted to visit with the children, she continually broke the rules. Specifically, Winchester would discuss the case in front of the children, speak negatively of the foster parents, and yell and scream at the program facilitators. During those visits, Winchester focused only on herself and failed to meet the needs of her children. On occasion, Winchester would cancel the visits and sessions with the service providers.

Additionally, some of the children contacted the case manager who oversaw the foster care placements. The children would often request shortened visits—or no visits—with Winchester. At least two of the children stated that they did not want any interaction with Winchester. When Winchester did visit, some of the children became upset and their negative behavior increased, which resulted in harm to their emotional and mental health. Consequently, a decreased visitation schedule was recommended. In at least one counselor's opinion, if Winchester failed to gain some insight into her responsibility and deficiencies with parenting, she would make no progress in the CHINS case because she was unwilling to accept any responsibility for her circumstances.

On August 29, 2005, TCDCS filed a petition to terminate Winchester's parental rights as to all of the children. At the trial that commenced on January 24, 2006, Winchester testified that she worked approximately seventeen hours per week at Mail, Inc., earning six dollars per hour. Winchester also acknowledged that she was "about three or four months behind" in her rent. Tr. p. 190.

Following the final removal from Winchester's residence, the children began to improve. In particular, E.W. began to improve and there was a plan for him to live at ResCare of Indiana with eventual placement in an adoptive home. A.W. was classified as a mildly mentally disabled student and was diagnosed as having Attention Deficit Hyperactivity Disorder (ADHD). She was removed from one foster home for violent behavior in May 2005, and was placed in a youth center. However, a permanent living arrangement for A.W. was established through IUMCH.

It was also determined that V.W. required "one-on-one" attention while in foster care. Id. at 1302. V.W. had improved while living at a youth center where Winchester had not been in contact with her. The permanency plan for V.W. and S.W. was placement through The Villages and the eventual acquisition of an adoptive home.

The evidence also demonstrated that B.W. had tremendous difficulty adjusting to foster homes and had to be moved several times because of anger control issues. B.W.'s therapist believed that he was being ignored while living with Winchester and that he was not receiving the required attention.

After B.W. was placed in foster care, he showed much improvement. Specifically,

B.W. became active in Boy Scouts and church activities. His grades were above average and he did not misbehave at the foster home. The therapist attributed much of B.W.'s stability to not having any contact with Winchester. In fact, B.W. told the service providers that he would like to be adopted so that he could have a "normal family." Appellant's App. p. 1207.

Foster care for C.W. was also a positive experience for her. The placement in foster care provided a firm, consistent, supportive environment for her to adjust to changes. Moreover, she has learned to follow directions from adults. A therapist from Wabash Valley Hospital recommended that C.W. either be placed separately in an adoptive home where she would receive individual care and attention or placed with her youngest siblings, K.H. and B.W.

K.H. repeatedly told her therapist at Wabash Valley Hospital that she did not like Winchester because she was mean to all of the children. K.H. had been diagnosed with reactive attachment disorder and her therapist testified that K.H.'s condition was a "direct outcome of [K.H.'s] early experiences being the youngest in a large group of siblings who apparently were left to bring themselves up with little appropriate adult guidance or emotional support." Id. at 756. K.H.'s therapist recommended initial placement at The Villages in a permanent adoptive home.

All TCDCS representatives recommended that the trial court terminate Winchester's parental rights as to all of the children. Moreover, the caseworkers believed that the children should not be placed in the same adoptive home because of their disjointed and stressful relationships and because there was no showing of a bonded family group. The trial court

terminated Winchester's parental rights as to all of the children, and she now appeals.

DISCUSSION AND DECISION

Winchester claims that the evidence was insufficient to support the termination of her parental rights as to her seven children. Specifically, Winchester claims that TCDCS failed to prove by clear and convincing evidence that the reasons for the children's removal from her home were unlikely to be remedied or that the continuation of the parent-child relationship posed a threat to the children. Winchester further contends that TCDCS failed to prove that termination was in the children's best interests and that a satisfactory plan for the placement of the children had not been established.

In addressing these claims, we first note that when reviewing termination of parental rights proceedings on appeal, this court neither reweighs the evidence nor judges the credibility of witnesses. We consider only the evidence that supports the trial court's decision and the reasonable inferences that may be drawn from that evidence. In deference to the trial court's unique position to assess the evidence, we set aside the judgment terminating a parent-child relationship only if it is clearly erroneous. If the evidence and inferences support the trial court's decision, we must affirm. In re L.S., D.S., and A.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

The involuntary termination of parental rights is the most extreme sanction that a court can impose. Id. Termination severs all rights of a parent to his or her children. 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 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 elements of Indiana Code section 31-35-2-4(b)(2). Thus, the State must prove 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.

I.C. § 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 will be remedied, the trial court must judge the parent's fitness to care for his 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. And 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). The best interests of the child are the ultimate concern in termination proceedings. That is, children should not suffer emotional or psychological harm or instability in order to preserve parental rights. In re L.S., 717 N.E.2d at 210.

In this case, the evidence established that Winchester was not able to provide a safe environment for her children. Winchester failed to complete any of the services and

counseling programs that were offered to her through TCDCS. On the occasions on which the children were returned to Winchester, the caseworkers observed that her ability to function as a parent had deteriorated. Appellant's App. p. 1552-53. Winchester also expressed anger toward the caseworkers and refused to accept responsibility for her own actions. Id. at 1777. Moreover, Winchester's defensiveness prevented her from making rational decisions. Id. at 1600. Although the children made tremendous progress while they were in foster care, Winchester was not supportive of that progress. Winchester made virtually no progress while in counseling, and her therapists and caseworkers knew of no additional services available in the community that could have been offered to her or the children. Id. at 1581. Moreover, the evidence showed that Winchester "struggled" just to take care of herself, and she was not able to meet the established goals for reunification with the children. Id. at 830, 1553. Winchester would only accept assistance when the children were "out of control." Id. at 390.

In essence, Winchester had the opportunity to participate in services offered by various agencies for over two years and she made no progress. Id. at 836. She did not meet the goals that she and her therapist had set, and she stopped seeing her family case manager at Wabash Valley Hospital. Id. at 830. None of the caseworkers believed that Winchester would remain stable and focused enough to present a suitable home for her children in the future. That said, Winchester's pattern of unwillingness to deal with her parenting problems and to cooperate with counselors and other service providers supports the trial court's determination that there exists no reasonable probability that the unacceptable conditions that

led to the removal of the children would be remedied.

We also note that even though TCDCS was not required to prove that the continuation of the parent-child relationship posed a threat to the well-being of the children in light of our determination that the evidence established that there was no reasonable probability that the conditions resulting in the children's removal would be remedied pursuant to Indiana Code section 35-2-4(b)(2)(B)(i), the CASA and TCDCS case manager agreed that continuing the parent-child relationship between Winchester and the children would be harmful to the children. Id. at 1557. The caseworkers all agreed that the children's emotional and physical development was threatened by Winchester's verbal and physical abuse. Moreover, the children felt neglected and insecure and were extremely worried about the return of Winchester's abusive boyfriends. Id. at 837. Hence, the trial court properly found that the continuation of the parent-child relationship posed a threat to the children's well being.

With regard to the children's best interests, the evidence shows that Ping—a social worker who was involved with Winchester and the children—recommended that the children be placed in a stable, consistent, safe environment, which Winchester could not provide. Id. at 1558-60. Ping believed that Winchester was not able to provide for her children's need to be loved because Winchester blamed the children for her troubles, including her breakups with her boyfriends. Moreover, Winchester typically excused the abusive behaviors of her boyfriends. Id. at 1559-60. In essence, Winchester could not meet the basic emotional needs of her children, and the caseworkers believed that Winchester was not able to place the children first in her life. Id. at 1514-16.

LaTonya Sanders, the case manager from Wabash Valley Hospital who worked with most of the children for over one year, was of the belief that it was in the children's best interests for them not to be returned to Winchester. Specifically, Sanders observed that all of the children struggled with behavioral issues after the visits with Winchester and that they "acted out" before and after the visits. Id. at 1514, 1580. All of the caseworkers involved with Winchester and the children believed that termination of parental rights and adoption were in the children's best interests because, among other things, the children required a sense of permanency. Id. at 826, 1662, 1779, 1781, 1802. In light of this evidence, we conclude that the trial court properly determined that the termination of Winchester's parental rights was in the children's best interests.

Finally, we reject Winchester's argument that TCDS failed to establish that there was a satisfactory plan for the placement of the children. In essence, Winchester contends that it was not feasible "for the children to be split up." Appellant's Br. p. 20. At the termination hearing, a TCDCS case manager testified that she believed that adoptive homes would be found for the children, and that she agreed with the other service providers that it was in the best interest of the children not to all be in one adoptive home because only some of the children co-existed well together. Appellant's App. p. 1780. In light of this evidence, we cannot conclude that the plan set forth for the adoption of the children—albeit in different homes—was unsatisfactory in accordance with Indiana Code section 31-35-2-4.

In considering the above and recognizing that the trial court heard the testimony of all of the witnesses at the final hearing, observed their demeanor, and judged their credibility, as

a reviewing court, we give proper deference to the trial court. Hence, we conclude that TCDCS presented clear and convincing evidence that Winchester's parental rights should be terminated pursuant to Indiana Code section 31-35-2-4.

The judgment of the trial court is affirmed.

ROBB, J., and BARNES, J., concur.