

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CJ 1280

STATE OF LOUISIANA

IN THE INTEREST OF S.B., D.B., & K.D.

Judgment Rendered: December 21, 2011.

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On Appeal from the
22nd Judicial District Court,
in and for the Parish of Washington
State of Louisiana
District Court No. J-09-142

The Honorable Mary Clemence Devereux, Judge Presiding

* * * * *

Randall A. Fish
Lacombe, La.

Counsel for Appellant,
C.D.

Walter Reed
District Attorney
Franklinton, La.

Counsel for Appellee,
State of Louisiana

Betsy Humphries Smith
Child Advocacy Program
Mandeville, La.

Counsel for Appellees,
S.B., D.B., & K.D.

Anne Thompson
Sandra B. Terrell
Covington, La.

Counsel for Appellee,
State of Louisiana, Department
Of Children and Family Services

John D. Allen
Franklinton, La.

Counsel for Appellee,
C.B.

* * * * *

BEFORE: CARTER, C.J., PARRO AND HIGGINBOTHAM, JJ.

SAJ
TML
RHO

CARTER, C.J.

Appellant, C.D., appeals the juvenile court judgment terminating her parental rights as to the minor children, S.B., D.B., and K.D. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

S.B., D.B., and K.D. are the children of C.B. and Appellant. S.B. was born in May 2006, D.B. was born in August 2007, and K.D. was born in May 2009. The children's parents were never married and currently live apart. The two older children, S.B. and D.B., first came to the attention of the Department of Children and Family Services (DCFS) in November 2007. S.B. and D.B. were taken into state custody in January 2008 and subsequently adjudicated as children in need of care. The two children remained in state custody until May 20, 2009, when they were returned to Appellant with the requirement that visitations with C.B. be properly supervised. One day after the two children were returned to Appellant, K.D. was born. K.D. tested positive for marijuana at birth.

The most recent state intervention occurred in December 2009 when Appellant took the children to the emergency room. Six-month-old K.D. had a knot on his head and bruising to his face in the shape of a handprint. He also had a healing fracture to his clavicle. D.B. had bruising to his eye. According to Appellant, the children had been at an extended visit with C.B., under the supervision of C.B.'s girlfriend. The injuries to K.D. were explained initially as being caused by a fall from a bed. D.B.'s bruising was explained as being caused by D.B. repeatedly hitting himself in the face with a cup while at C.B.'s home. No explanation was offered for K.D.'s

fractured clavicle. All three children were taken into state custody pursuant to a December 2, 2009, Instanter Order.

Following a hearing in January 2010, the disposition regarding S.B. and D.B. was modified, and they again were adjudicated children in need of care and continued in state custody. K.D. also was adjudicated a child in need of care and continued in state custody.

On June 10, 2010, DCFS filed a case plan with a stated goal of reunification. A six-month review hearing was held on July 15, 2010, and extensive testimony, including the testimony of experts, was presented. At the conclusion of the hearing, the trial court ruled that based on the evidence presented, the case plan was not appropriate and ordered that the case plan be revised. The attorney for the children then orally moved that the case plan goal be changed from reunification to adoption. The trial court granted the motion and approved the suspension of parental visitation.

On September 2, 2010, the State filed a petition for termination of parental rights and certification for adoption. At the two-day hearing, the court considered extensive testimony and numerous pieces of evidence. The court ultimately ruled that Appellant's and C.B.'s parental rights be terminated and declared S.B., D.B., and K.D. eligible for adoption.¹ The court provided detailed reasons in support of its conclusion that the state proved the allegations of the petition for termination by clear and convincing evidence and that its decision was based on the best interests of the children.

On appeal, Appellant challenges the trial court's judgment granting a termination of her parental rights and declaring the children eligible for

¹ C.B. has not appealed the trial court's judgment. Thus, the judgment is final and definitive as it relates to the termination of his parental rights to S.B., D.B., and K.D.

adoption. She also appeals the denial of her request that she be relieved of paying the costs of preparing the record for this appeal.

DISCUSSION

Termination of Parental Rights

Louisiana Children's Code article 1015 lists the statutory grounds for involuntary termination of parental rights, only one of which needs to be established. *See State ex rel. SNW v. Mitchell*, 01-2128 (La. 11/28/01), 800 So. 2d 809, 816. The State bears the burden of establishing the statutory ground for termination on which it relies by clear and convincing evidence. La. Child. Code Ann. art. 1035A; *SNW*, 800 So. 2d at 816. Once a ground for termination has been established by clear and convincing evidence, the judge may terminate parental rights if the termination is in the best interest of the child. *State ex rel. D.L.R.*, 08-1541 (La. 12/12/08), 998 So. 2d 681, 688; *see* La. Child. Code Ann. art. 1039. The manifest error standard applies to appellate review of the trial court's findings as to whether parental rights should be terminated. *State ex rel. K.G.*, 02-2886 (La. 3/18/03), 841 So. 2d 759, 762.

The State sought termination of Appellant's parental rights pursuant to Article 1015(5). Pursuant to Article 1015(5), a petition for termination of parental rights can be filed after one year has elapsed, or "sooner [if] permitted by the court," since the child was removed from the parent's custody pursuant to a court order when: (1) there has been no substantial parental compliance with a court-approved case plan for services, which has been deemed necessary for the safe return of the child; and (2) despite earlier intervention, there is no reasonable expectation of significant

improvement in the parent's condition or conduct in the near future, considering the child's age and his need for a safe, stable, and permanent home. Louisiana Children's Code article 1036 sets forth considerations in proving the lack of parental compliance with a case plan. Considerations include the failure to comply with a required program of treatment and a lack of any reasonable expectation of significant improvement, as evidenced by the inability to exercise parental responsibilities without exposing the children to a substantial risk of serious harm, based upon expert opinion or an established pattern of behavior. *See* La. Child. Code Ann. art. 1036C-D. Whether a parent has complied with a case plan, the expected success of rehabilitation, and the expectation of significant improvement in the parent's condition or conduct are all questions of fact, and the court's factual findings may not be set aside in the absence of manifest error. *State ex rel. JT v. J.M.*, 46,090 (La. App. 2 Cir. 12/12/10), 56 So. 3d 1009, 1013-14.

Appellant contends that the petition for termination was improper under Article 1015(5), as it was filed less than one year after the three children were taken into custody.² S.B. and D.B. were first removed from their mother's home in January 2008. They were returned to their mother's home in May 2009 and removed again, along with their infant brother, K.D., in December 2009. After hearing the evidence at the July 2010 six-month review hearing, the court concluded that the June 2010 case plan with a

² Appellant also contends that the trial court improperly accepted an oral motion for modification of the case plan goal from reunification and visitation to a more restrictive plan. *See* La. Child. Code Ann. art. 714. Appellant initially moved to appeal the change of the case plan goal; however, after the court issued its judgment terminating her parental rights, Appellant voluntarily dismissed her earlier motion for appeal. Moreover, pursuant to Louisiana Children's Code article 1004A, the court can on its own motion and at any time, including in any hearing in a child in need of care proceeding, order the filing of a petition for termination on any ground authorized by Article 1015.

stated goal of reunification was not appropriate and ordered DCFS to revise the plan.³ Thereafter, on September 2, 2010, the State filed its petition for termination, which the court set for a hearing. To the extent the petition for termination pursuant to Article 1015(5) may be construed as being filed within one year of all three children being taken into custody, the court clearly “permitted” the filing of the petition for termination. *See* La. Child. Code Ann. art. 1015(5); *see also* La. Child. Code Ann. art. 1004A.

Finally, Appellant maintains the trial court’s judgment terminating her parental rights is manifestly erroneous. At the conclusion of the termination hearing, the trial court concluded that the State met its burden of proving a ground for termination of Appellant’s parental rights by clear and convincing evidence and that termination of Appellant’s parental rights was in the best interests of the three children. We have thoroughly reviewed the record in this matter and the history leading up to the State’s petition for termination of Appellant’s parental rights. The record clearly and convincingly demonstrates that it was in the best interests of S.B., D.B., and K.D. that Appellant’s parental rights be terminated and that all three children be cleared for adoption. The trial court’s conclusion is supported by the evidence and is, therefore, not manifestly erroneous. We also find that the trial court’s oral reasons for judgment adequately explain the decision of the court, providing a clear statement of the conclusions drawn from the facts of the case.

³ Pursuant to Louisiana Children’s Code article 700, at the conclusion of a case review hearing, the trial court has the authority to find that the case plan is not appropriate, in whole or in part, based on the evidence and to order DCFS to revise the case plan accordingly.

Indigent Status

Appellant maintains that the trial court erred in denying her motion for production of the record free of charge for the purpose of an appeal. Counsel points out that because Appellant was indigent, counsel was appointed to assist her at all stages of the proceeding.

To the extent that a person is financially able, the court shall order them to pay court costs. La. Child. Code Ann. art. 321. A court may assess a determination of indigence at any time. La. Rev. Stat. Ann. § 15:574A(1)(a); *State v. In re. C.J.*, 08-2346 (La. 5/22/09), 9 So. 3d 845, 845 (per curiam). The trial court's determination will be reversed only if it constitutes an abuse of discretion. *See C.J.*, 9 So. 3d at 846. Herein, the trial court denied Appellant's request for indigent status after considering her testimony and her *forma pauperis* affidavit.⁴ We cannot say the trial court's decision was unjust or an abuse of discretion.

CONCLUSION

In conclusion, we find no abuse of discretion in the juvenile court's denial of Appellant's motion for indigent status. Moreover, finding no manifest or legal error in the court's judgment terminating Appellant's parental rights and declaring S.B., D.B., and K.D. eligible for adoption, we affirm. Costs of this appeal are assessed against Appellant, C.D. We issue this memorandum opinion in accordance with Uniform Rules—Courts of Appeal, Rule 2–16.1B.

AFFIRMED.

⁴ Although the *forma pauperis* affidavit was referred to in the transcript and in the court minutes, it was not filed into evidence. Therefore, this court's review is limited to Appellant's testimony.