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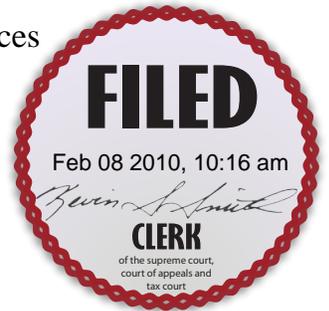
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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF PARENT-CHILD RELATIONSHIP OF)
N.L.W.,)
Minor Child,)
and)
E.W., Father, and M.W., Mother,)
Appellants,)
)
vs.)
)
TIPPECANOE COUNTY DEPARTMENT)
OF CHILD SERVICES,)
Appellee.)

No. 79A04-0907-JV-403

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Diana J. Laviolette, Senior Judge
Cause No. 79D03-0902-JT-10

February 8, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

M.W. (“Mother”) and E.W. (“Father”) (collectively “Parents”) appeal the termination of their parental rights to their child, N.W., in Tippecanoe Superior Court. Mother also raises the issues of whether the termination of her parental rights constitutes a “corruption of blood” in violation of Article I Section 30 of the Indiana Constitution and whether the termination constitutes double jeopardy. Concluding that the trial court’s judgment terminating Parents’ parental rights is not clearly erroneous and that the judgment does not violate Article 1 Section 30 or double jeopardy, we affirm.

Facts and Procedural History

N.W. was born to Parents on August 10, 2007. By the time Mother was seven months pregnant, Parents had separated and Mother had obtained a protective order against Father. Father has seen N.W. only one time in her life. He has never paid child support or otherwise aided in her care and support.

On April 8, 2008, at approximately 5:00 a.m., Mother drove with N.W. to visit an ex-boyfriend who had telephoned needing a ride from his new girlfriend’s house. Mother had separated from this boyfriend because of his infidelity and domestic violence, and had recently obtained a protective order against the boyfriend. In addition, Mother had recently had a physical altercation with the new girlfriend.

Upon arriving, Mother saw a group of people standing outside of the residence, including the new girlfriend. Mother intentionally drove her car into the new girlfriend, carrying her on the grill and pinning her against a building, causing serious bodily injury,

including multiple broken bones. Mother fled the scene and was arrested later that morning. N.W. was removed from her care that day.

Mother posted bond shortly after her arrest. On June 3, 2008, N.W. was found to be a child in need of services (“CHINS”). On June 11, 2008, the Tippecanoe County Department of Child Services (“DCS”) filed a motion to cease reasonable efforts to reunify. On June 25, 2008, the trial court entered a disposition order. In that order, a parental participation decree was entered as to Father and a no reasonable efforts finding was made as to Mother. On February 5, 2009, the DCS filed a petition to terminate Parents’ parental rights. A fact finding hearing was held on May 4, 2009.

On May 26, 2009, the trial court issued its findings of fact and conclusions of law.

Its order stated in pertinent part:

6. On March 13, 2009, in Cause Number 79D01-0804-FB-15, Mother was convicted of aggravated battery, leaving the scene of an accident resulting in personal injury and neglect of a dependent. On April 27, 2009, she was sentenced to sixteen years, with four suspended, four in community corrections, and eight in DOC. Her projected release date is in early 2013, with her community corrections time to follow. . . .

7. On August 4, 2005, in Cause Nos. 79D03-0505-JC-109 and 110, Mother’s two older children were adjudicated Children in Need of Services. The older child, who was then 5, had been dropped off from school and for the second time in a week with no adult to meet her. Mother had arranged for her boyfriend, Leonard Brewer, to meet the child but he failed to do so. Brewer had a lengthy criminal history, his own parental rights terminated, physically abused mother and a significant cocaine problem.

8. Mother has a long-standing history of engaging in destructive relationships with men who have substance abuse problems, significant criminal histories and physically abuse her.

9. The fathers of her two older children are Keith Miller and Lance Edwards. Miller has convictions for invasion of privacy against mother; operating while HTV; domestic battery; battery; five variations of operating

while intoxicated or operating per se, including two felonies; and multiple petitions to revoke during periods of probation or community corrections. Edwards has convictions for operating while HTV; three variations of operating while intoxicated, including two felonies; dealing marijuana; theft; public intoxication three times; and multiple petitions to revoke during periods of probation or community corrections. []

10. Mother has prior convictions for maintaining a common nuisance, criminal mischief, battery and leaving the scene of an accident.

11. In Cause Nos. 79D03-0505-JC-109 and 110, Mother was offered a variety of services targeted to address her relationship and substance abuse issues including individual therapy, family therapy, family preservation services, parenting classes, a bonding assessment and a psychological evaluation. The services were unsuccessful and on May 3, 2006, the Court entered a Permanency Plan of termination.

12. On August 18, 2006, in Cause Nos. 79D03-0605-JT-74 to 77, Mother's parental rights to her two prior born children were terminated.

13. During the course of Cause No. 79D03-0804-JC-96, Mother refused to execute a waiver so that DCS could monitor her success or failure in counseling.

14. During the course of Cause No. 79D03-0804-JC-96, Mother made only token payments toward her court-ordered reimbursement obligation.

15. During the fact finding in Cause Nos. 79D03-0605-JT-74 to 77, Mother testified that she had learned and would apply a variety of mechanisms for ensuring that she no longer made poor choices in men. Despite this (according to the testimony at trial), she continued to get involved with men who were violent with her, abused drugs and had worrisome criminal histories.

16. Before the incident leading to Cause No. 79D03-0804-JC-96, Mother had already participated in every service that DCS would likely recommend or that a Court might order in this kind of matter. In addition to the services provided in Cause Nos. 79D03-0505-JC-109 and 110, Mother has participated in a period of individual counseling and a women's self-esteem group.

17. At the time [N.W.] was removed from Mother's care, Father was already incarcerated and without any means to provide for [N.W.].

18. Father is presently incarcerated. On February 13, 2009, he was convicted of B felony dealing cocaine in Cause No. 79D02-0804-FA-16. He was sentenced to 12 years in the Department of Corrections with four years suspended and 315 days credit for time served. Assuming he received only full, good-time credit, Father's projected release date is in April 2012. []

19. Father has a history of criminal conduct, including a conviction for felony criminal confinement in 2007, two counts of driving while suspended, some manner of battery resulting from an incident in Florida and a theft.

20. Father has a significant history of substance abuse. He has used cocaine for many years and much of the criminal history described was in direct correlation with his drug use.

21. Father has never voluntarily sought treatment for his substance abuse problems.

22. Father has seen [N.W.] only one time and has never provided for her care.

23. After Mother became pregnant, Father engaged in acts of domestic violence against Mother. Although he was charged with a crime, Mother obtained a protective order against him.

24. Father knew [N.W.] had been born when he committed the acts which resulted in the conviction in Cause No. 79D02-0804-FA-16.

25. Since the underlying CHINS cause, Father has been unable to engage in any services to address his history of substance abuse or domestic violence.

26. In the event that termination is granted, DCS's plan for the care of treatment of [N.W.] is adoption. Based on her age and health, she is readily adoptable.

Conclusions of Law

Counsel for the Mother objected and was granted a continuing objection to any evidence, oral or documentary regarding the previous TPR (79D03-0605-JT-74) on constitutional grounds. The objection was taken under advisement pending a filing of a brief. Court has reviewed the brief, and

now overrules said objection, concluding that the objection is without merit. FURTHER:

1. Throughout all of her prior and present CHINS, as well as the intervening time, Mother has continued to make her relationships with men more important than her children. The records of her therapist are full of references to her boyfriend.

2. Mother has demonstrated no real understanding of the effect her choices have had on [N.W.]. She still does not take responsibility for anything substantial. She does not understand that her choices in men have hurt her child. She does not understand that continuing to take [N.W.] around her ex-boyfriend after she was forced to obtain a protective order was a dangerous choice. She continues to blame others for the problems she has experienced.

3. Although Mother testified to minor differences in her current psychological diagnosis from the diagnosis in 2005, there is no indication in the record that the services already received were deficient or that any future service would have a meaningful chance of succeeding.

4. Father is currently incarcerated, and his criminal record, his history of addiction, and his lack of parenting skills, or efforts to obtain them, would merit termination.

5. [N.W.] has been removed from her parents for at least six (6) months pursuant to a dispositional order of this court dated June 25, 2008.

6. Additionally, as to Mother only, on June 25, 2008 in Cause No. 79D03-0804-JC-96 a court entered a finding after a hearing under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required because Mother's rights to this child's siblings were involuntarily terminated on August 18, 2006 in Cause Nos. 79D03-0605-JT-74, 75, 76, and 77.

6. There is reasonable probability that the conditions that resulting in the removal of [N.W.] will not be remedied.

7. There is reasonable probability that the reasons for placement outside the parent's home will not be remedied.

8. Continuation of the parent-child relationship poses a threat to [N.W.'s] well-being.

9. It is in [N.W.]’s best interests that the parental rights of [Mother] be terminated.

10. It is in [N.W.]’s best interests that the parental rights of [Father] be terminated.

11. DCS has a satisfactory plan for the care and treatment of said child.

Appellant’s App. pp. 214-17. Parents now appeal.

Standard of Review

“The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. However, because the ultimate purpose of the law is to protect the child, the parent-child relationship must give way when the parents are “unable or unwilling to meet their parental responsibilities.” In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). Although a juvenile court need not wait until a child is irreversibly influenced by a deficient lifestyle such that her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship, the involuntary termination of parental rights is an extreme measure that terminates all rights of the parent to his or her child and is therefore designed to be used only as a last resort when all other reasonable efforts have failed. In re E.S., 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002).

We begin by noting that this Court has long had a highly deferential standard of review in cases concerning the termination of parental rights. K.S., 750 N.E.2d at 836. When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. Bester v. Lake County Office of Family &

Children, 839 N.E.2d 143, 147 (Ind. 2005). We will consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. Id. When reviewing findings of fact and conclusions thereon entered in a case involving a termination of parental rights, we apply a two-tiered standard of review. Id. First, we determine whether the evidence supports the findings. Id. Then, we determine whether the findings support the judgment. Id. The trial court’s judgment will be set aside 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. (quoting In re R.J., 829 N.E.2d 1032, 1034 (Ind. Ct. App. 2005)).

In order to terminate a parent-child relationship, the State is required to allege and 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;
- * * *
- (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). The State must establish each of these allegations by clear and convincing evidence. Egly v. Blackford County Dep’t of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992). Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. It therefore requires the juvenile court to find only one of the two

requirements of subsection (B) by clear and convincing evidence. See L.S., 717 N.E.2d at 209.

Discussion and Decision

I. Mother

A. Insufficient Evidence

Mother argues that the evidence was insufficient to support the trial court's termination of parental rights. As noted above, Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, and thus requires the Department of Child Services ("DCS") to establish by clear and convincing evidence only one of the two requirements of subparagraph (B). K.S., 717 N.E.2d at 209. Termination was proper if the DCS established that the conditions leading to removal would probably not be remedied or that the continuation of the parent-child relationship posed a threat to the children. The trial court concluded that DCS proved both of these requirements. However, for our review, we need only to find that the evidence supports one of the requirements. Therefore, we turn to review whether the evidence supports the finding that there was a reasonable probability that the conditions leading to the removal or reasons for placement outside of the home will not be remedied.

The trial court determined that Mother had an extensive history of harmful relationships with abusive men, criminal behavior, failure to take advantage of services offered from DCS, and Mother's prior parental rights terminations. The trial court also determined that Mother's long-term incarceration for aggravated battery will prevent Mother from providing any support or sustenance for N.W. until at least late 2012. These

two findings provide clear and convincing evidence supporting the trial court's conclusion that there was a reasonable probability the conditions leading to the removal or reasons for placement outside the home will not be remedied.

Mother attempts to argue that her subsequent attempts to improve her parenting skills such as her counseling sessions should be reevaluated and upon reevaluation should show that the trial court's findings do not support the judgment. This is merely a request that we reweigh the evidence which we will not do.

B. Corruption of Blood and Double Jeopardy

Mother next argues that the termination of her parental rights violates the Indiana Constitution's Article 1 Section 30 prohibition on corruption of blood.¹ Mother's argument shows a fundamental misunderstanding about the nature and purpose of parental rights termination. The purpose of terminating parental rights is not to punish the parent (and certainly not the child) for the parent's status, poor choices, or crimes. Rather, its primary, well-established purpose is to protect the child and ensure that the child's best interests are served. *See K.S.*, 750 N.E.2d at 836. The Article 1 Section 30 prohibition on corruption of blood bears no relation to and does not affect the process of termination of parental rights.

Mother attempts to argue that the termination of her parental rights violates the Indiana Constitution's Article 1 Section 14 prohibition on double jeopardy. Specifically,

¹ "Corruption of blood is, when any one is attained of felony or treason, then his blood is said to be corrupt; by means whereof neither his children, nor any of his blood, can be heirs to him, or to any other ancestor, for that they ought to claim by him. And if he were a noble or a gentleman before, he and all his children are thereby ignoble and ungentle[.]" *Diep v. Rivas*, 357 Md. 668, 745 A.2d 1098, 1103 n. 4 (2000) (citing *Termes de la Ley* 125 (1st Am.Ed. 1812), as quoted in Black's Law Dictionary 348 (7th ed. 1999)).

she contends that the termination of her parental rights is based solely on her commission of various offenses while N.W. was in her care and custody and that she is being doubly punished by being sentenced to a term in jail and by having her parental rights terminated. Once again, Mother misapprehends the purpose and process of parental rights termination. The trial court based its judgment not only on her current criminal convictions and incarceration but on Mother's extensive history of harmful relationships with abusive men, criminal behavior, failure to take advantage of services offered from DCS, and prior parental rights terminations.

The trial court's order did not violate the Indiana Constitution's prohibitions on corruption of blood or double jeopardy.

II. Father

Father argues that the evidence was insufficient to support the trial court's termination of his parental rights. As noted above, Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, and thus requires the DCS to establish by clear and convincing evidence only one of the two requirements of subparagraph (B). L.S., 717 N.E.2d at 209. Termination was proper if the DCS established that the conditions leading to removal would probably not be remedied or that the continuation of the parent-child relationship posed a threat to the children. The trial court concluded that DCS proved both of these requirements. However, for our review, we only need to find that the evidence supports one of the requirements. Therefore, we turn to review whether the evidence supports the finding that there was a reasonable probability that the conditions leading to the removal or reasons for placement outside of the home will not be remedied.

Father bases his argument that the trial court's findings were insufficient primarily on his inability to receive services while he was incarcerated. Yet this argument is hollow because he never voluntarily sought treatment and he never established a relationship with N.W. before he went to jail. He only sought treatment after he was incarcerated and faced with the termination of his parental rights; prior to this he did nothing.

The trial court found that Father has seen N.W. just one time and has never provided support for N.W. At the time N.W. was removed from Mother's care, Father was incarcerated because of a Class B felony dealing in cocaine conviction. Father's projected release date is April 2012, and he is without any means to provide for N.W. Father has prior convictions for felony criminal confinement, two counts of driving while suspended, theft, and a battery resulting from an accident in Florida. Father also has an extensive history of substance abuse which is directly related to his criminal history. Prior to this proceeding, Father has never voluntarily sought substance abuse treatment. Finally, Father committed acts of domestic violence against Mother while Mother was pregnant with N.W. Although Father was not convicted, Mother did obtain a protective order against him. The trial court also noted that Father has been unable to engage in any services to address his domestic abuse issues or his substance abuse issues.

Father never attempted to establish a relationship with N.W. before these proceedings, and N.W. should not be forced to wait for Father to be released from incarceration in April 2012 to discover whether, despite his long history of abuse and

neglect, Father has decided to be a father to her, or if he will just continue ignoring her presence as he did before these proceedings began.

The trial court's conclusion that there is a reasonable probability that the conditions leading to the removal or reasons for placement outside the home will not be remedied is not clearly erroneous.

Conclusion

We will not reweigh the evidence presented at trial by Mother regarding her counseling. The trial court's judgment did not violate the Indiana Constitution's prohibitions on corruption of blood or double jeopardy. The trial court's findings were adequately supported by the evidence as to both Parents. Those findings also supported the trial court's judgment as to both Parents. Clear and convincing evidence shows a reasonable probability that the reasons for removal of N.W. will not be remedied.

Affirmed.

BARNES, J., and BROWN, J., concur.