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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF A.W. and A.N., minor children, AND A.W. and R.N., their parents,	)	
A.W. and R.N.,	)	
Appellants-Respondents,	)	
vs.	)	No. 02A04-0908-JV-476
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Bruce E. Embrey, Senior Judge
Cause Nos. 02D07-0808-JT-143, -144

February 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellants-respondents A.W. (Father) and R.N. (Mother) appeal the trial court's order terminating the parent-child relationship of Father, Mother, and A.W. and A.N., their minor children. Father and Mother argue that there is insufficient evidence supporting the termination order. Finding sufficient evidence, we affirm.

FACTS

A.W. was born to Father and Mother on January 22, 2007. A.W. and Mother both tested positive for marijuana at the time of his birth. On February 21, 2007, Mother and Father were ordered to comply with an Informal Adjustment Plan (IAP). As part of the IAP, Mother and Father were required to remain drug-free and take part in a drug and alcohol abuse program. Additionally, Father was required to establish paternity for A.W.

On September 17, 2007, the Indiana Department of Child Services (DCS) filed an amended petition[1] alleging A.W. to be a child in need of services (CHINS), and on September 24, 2007, the trial court granted the petition and found A.W. to be a CHINS. Mother and Father admitted that they had failed to remain drug-free and had been discharged from the drug and alcohol program because of non-compliance. Father had also failed to establish paternity. A dispositional order was put in place requiring Mother and Father to take a number of actions, including refraining from criminal activity and taking part in drug and alcohol counseling.

[1] The record does not reveal the date on which the original petition was filed.

A.N. was born to Father and Mother on December 30, 2007. He was removed from his parents' care at birth because his parents had failed to abide by the dispositional order regarding A.W. Furthermore, Mother had repeatedly tested positive for opiates, cocaine, THC, and alcohol during her pregnancy with A.N. Additionally, Father was arrested for murder, criminal recklessness, and possession of a handgun without a license in December 2008. On January 25, 2008, DCS filed an amended petition[2] alleging A.N. to be a CHINS. On February 6, 2008, the trial court found A.N. to be a CHINS.

At the February 6, 2008, dispositional hearing, Mother admitted that she had tested positive for drugs at least forty times between March 8 and November 19, 2007, that she had tested positive for cocaine use in January 2008, that she did not have independent housing, that she was unemployed, and that she did not seek prenatal care until she was six months pregnant with A.N. Father admitted that he had not established paternity for A.N., that he was incarcerated on a charge of murder, and that he had tested positive for drugs at least twenty times between March 8 and November 19, 2007. Both parents admitted that they had failed to comply with the dispositional order regarding A.W. Following the hearing, the trial court entered a dispositional order regarding A.N. that essentially mirrored the dispositional order regarding A.W., with a few additions: Mother was to obtain appropriate independent housing by March 6, 2008, to maintain said house, and to participate in all of A.N.'s medical appointments; Father's requirements were the same as before, but he was to fulfill them once he was released from incarceration.

[2] The record does not reveal the date on which the original petition was filed.

On May 30, 2008, Father was convicted of murder, criminal recklessness, and possession of a handgun without a license. He was sentenced to sixty-three years imprisonment.

At some point not revealed by the record, DCS filed respective petitions to terminate the parent-child relationship of Mother, Father, A.W., and A.N., and the petitions were consolidated for trial. At the termination hearing that began on December 15, 2008, the family's case manager and the children's court appointed special advocate (CASA) recommended termination. On July 20, 2009, the trial court entered its order terminating the parent-child relationships of Mother, Father, A.W., and A.N. In pertinent part, the trial court found as follows with regard to A.W.:

> 5. It was established by clear and convincing evidence that the allegations of the petition are true as to [Mother], in that:
>
> ***
>
> c. The Dispositional Order required that she refrain from criminal activity, and she has filed [sic] to do so, having been charged and convicted of Public Intoxication, Possession of Cocaine and Shoplifting in a relatively short period of time and, at the last hearing on February 17, she was incarcerated for the possession of cocaine charge because, after release, she failed to follow through with treatment.
>
> d. She has failed to notify [DCS] of changes of address . . . .
>
> e. As of the December 15 hearing, she had not seen [A.W.] since October because she had filed [sic] to make arrangements with the agency that supervises visitation.

f. . . . [Mother] was put on hold (that is, her visits were suspended) five times because she failed to show up for visits a total of fourteen times. . . .

g. [Mother] was referred to Hope House to deal with her addictions to marijuana, alcohol and cocaine, which is normally a minimum of a six month stay. She left of her own volition after three weeks and therefore did not complete treatment. While there, counselors report she did not fully participate and, by her own admission to them, she could not handle the program.

h. DCS made a psychiatric referral for [Mother] and she completed the testing. Medications were recommended and she refused to take medications and refused to meet with doctors who were to evaluate her for medications.

i. [Mother] was referred to home-based therapy but failed to complete the recommended program.

j. [Mother] was ordered to begin participation in Narcotics Anonymous and/or Alcoholics Anonymous, and she failed to do so.

k. [Mother] failed to obtain and maintain employment . . .

l. [Mother] enrolled in parenting classes . . . but failed to complete the program.

m. [Mother] failed to pay support as ordered by the Court . . . .

n. The Dispositional Order required [Mother] to obtain a psychological evaluation . . . and follow treatment recommendations, which she failed to do.

o. [Mother] was ordered to cooperate with First Steps and follow all treatment recommendations. She enrolled but failed to complete the recommended treatment.

As to [Father]:

b. [Father] failed to comply with the requirement of the Dispositional Order that he refrain from criminal activity. He was convicted and sentenced on May 30, 2008, of

Murder, Possession of a Hand Gun Without a License, and Criminal Recklessness. He is serving a sixty-year sentence for Murder and a two-year sentence for Criminal Recklessness. His projected release date, as of the writing of this Order, is June 14, 2039.

c. [Father] failed to begin participating in Narcotics Anonymous and/or Alcoholics Anonymous, as required by the Dispositional Order.

d. [Father] entered drug/alcohol counseling as ordered, but was incarcerated before completing the program.

e. [Father] failed to comply with the requirement in the Dispositional Order that he cooperate with First Steps and follow recommendations. At [the] hearing, he indicated he did not know what First Steps was.

6. There is a reasonable probability that the conditions that resulted in the child's removal will not be remedied in that:

a. [Mother] has failed and refused to actively participate in substance abuse treatment even though it is clear she suffers from multiple addictions. She [has] also exhibited little interest in seeing the children by repeatedly being a no show for scheduled visitations. She has failed to provide for herself with employment and has failed to provide independent living arrangements and has been dependent on family for living quarters.

b. [Father] showed little interest in correcting the problems that caused removal before his incarceration and is now incarcerated, in all probability, for the remainder of the child's minority and is therefore unable to provide for [A.W.] in any way.

A.W.'s App. p. 44-46. The trial court entered another order relating to A.N. that is substantially identical to the order relating to A.W. The provisions that are different read as follows:

As to [Father]:

> a. . . . [Father] was arrested before the Dispositional Order, but committed the crimes after the birth of [A.N.], and will be incarcerated for the remainder of [A.N.'s] minority.
>
> b. [Father] is unable to participate in any meaningful way in services that relate to [A.N.] and, because of his incarceration for a knowing and intentional act, he does not have, and will not have during [A.N.'s] minority, the ability to support the child financially or emotionally.
>
> c. [Father's] participation in a similar order for services in the case of [A.N.'s] brother, [A.W.], demonstrates his unwillingness to cooperate with the services necessary to make him an effective father.

Id. at 47-49. Mother and Father now appeal.

DISCUSSION AND DECISION

I. Standard of Review

We will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). We neither reweigh the evidence nor judge the credibility of witnesses, and we will consider only the evidence that supports the trial court's decision and the reasonable inferences that may be drawn therefrom. Id. If the evidence and the inferences support the trial court's decision, we must affirm. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

We acknowledge that the involuntary termination of parental rights is the most extreme sanction a court can impose on a parent because termination severs all rights of a parent to his or her children. Id. 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, instead, 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 following elements:

> (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.

Ind. Code § 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 of the children will 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 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. 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).

II. Father

Father argues that there is insufficient evidence supporting the trial court's conclusion that it is reasonably probable that the conditions that resulted in removal will not be remedied and that termination is in the children's best interests. The record reveals that the children were removed from the parents, in part, because of the parents' drug use. Following the

informal adjustment, Father was required to maintain a drug-free environment for A.W., which he failed to do, testing positive for drug use at least twenty times between March and November 2007. He failed to complete drug and alcohol classes as ordered because he continued to have positive drug screens and missed too many classes.

Furthermore, the trial court was gravely concerned about the criminal behavior of Mother and Father throughout this case. Father was ordered to refrain from criminal activity. Instead of abiding by the order, in December 2007, when A.W. was not yet a year old and Mother was eight months pregnant with A.N., Father was arrested for murder, criminal recklessness, and carrying a handgun without a permit. Eight-months-pregnant Mother was in the car with Father when he committed those crimes. He was found guilty as charged in May 2008 and was sentenced to sixty-three years in prison, with an earliest possible release date in June 2039. Before his incarceration, Father failed to complete any of the services in which he had been ordered to participate.

We acknowledge that the mere fact of a parent's incarceration may not suffice to support termination of the parent-child relationship. See In re G.Y., 904 N.E.2d 1257, 1263 (Ind. 2009) (reversing termination because mother's criminal offenses had all occurred before her child was conceived, mother had completed a drug therapy program while incarcerated, had made good faith efforts to complete required services available to her in prison, and had maintained a consistent, positive relationship with her child while she was incarcerated). Here, however, Father's parental rights were not terminated merely because he was incarcerated. Instead, his rights were terminated because, in addition to serving a sixty-

three-year sentence, he continued to abuse drugs and alcohol, he failed to complete any court-ordered services, and he flagrantly violated the portion of the dispositional order requiring him to refrain from criminal activity by taking another human life. Therefore, we decline to reverse on this basis.

Father also argues that the trial court should have waited until the appeal process was complete in his criminal case. We cannot agree. As noted above, 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. In re D.J., 755 N.E.2d at 684. The children's interests, including their need for stability and permanence, trump the interests of the parent. Ferbert, 743 N.E.2d at 776. And in this case, it is not in the children's best interests to wait for Father's appeal to be completed, especially since, as noted above, there are multiple reasons aside from his incarceration supporting the termination.

Given the evidence in the record, we cannot say that the trial court erred by finding that there is a reasonable probability that the conditions that resulted in the children's removal will not be remedied. Additionally, the family's case manager and the children's CASA testified that termination would be in the children's best interests. That testimony coupled with the evidence already described herein supports the trial court's conclusion that termination was in A.W. and A.N.'s best interests. Therefore, we find sufficient evidence supporting the trial court's termination order with respect to Father.

III. Mother

Mother also argues that there is insufficient evidence supporting the trial court's conclusion that it is reasonably probable that the conditions that resulted in removal will not be remedied and that termination is in the children's best interests.

The record reveals that DCS became involved with this family when Mother and A.W. tested positive for marijuana at A.W.'s birth. Thereafter, Mother quickly became pregnant with A.N., and during A.N.'s pregnancy she tested positive for drugs and alcohol at least forty times. She failed to seek prenatal care until she was six months pregnant. Her attempts to address her drug addiction have all failed. She was discharged from a drug and alcohol program because of noncompliance, she left a six-month in-patient treatment facility after three weeks, and on the last day of the termination hearing, she testified that she was attempting to enter another in-patient facility. Although we do not doubt the sincerity of Mother's efforts to fight her addiction, it is significant that at the end of the case, as at the beginning, Mother was addicted to drugs.

Furthermore, notwithstanding the court's order to refrain from criminal activity, Mother has been arrested five times since her initial involvement with DCS: in September 2007, for possession of marijuana; in March 2008, for criminal mischief and public intoxication; in May 2008, for criminal conversion; in October 2008, for possession of cocaine and marijuana; and in February 2009, for failure to appear as part of the previous arrest.

Mother also participated only sporadically in visitation with her children. As of February 2009, Mother had not seen her sons since October 2008. When asked why, she responded that "I really don't have no reason." Tr. p. 219. Her visits had also been suspended on a number of occasions because she repeatedly failed to show up.

Mother has wholly failed to complete any court-ordered services during the pendency of this case. She also failed to obtain and maintain employment and independent housing. She has continued to abuse drugs and engage in criminal activity throughout this case. To the extent that Mother directs our attention to testimony that contradicts some of the trial court's findings of fact, we note that we may neither reweigh the evidence nor assess witness credibility. There is sufficient evidence supporting the trial court's findings, and we find this evidence sufficient to support the trial court's conclusions that there is a reasonable probability that the conditions that led to the children's removal will not be remedied and that termination is in the children's best interests.

The judgment of the trial court is affirmed.

BAILEY, J., and ROBB, J., concur.