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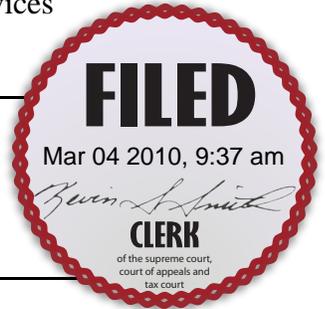
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**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF H.M., a Minor Child and)
HER MOTHER, J.M.)

J.M.,)
)
Appellant-Respondent,)

vs.)

INDIANA DEPARTMENT OF CHILD SERVICES,)
)
Appellee-Petitioner.)

No. 49A05-0907-JV-403

APPEAL FROM THE MARION SUPERIOR COURT
JUVENILE DIVISION

The Honorable Gary Chavers, Judge Pro Tempore
The Honorable Danielle Gaughan, Magistrate
Cause No. 49D09-0803-JT-13204

March 4, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, J.M. (Mother), appeals the trial court's Termination of her Parental Rights to her minor child, H.M.

We affirm.

ISSUE

Mother raises one issue on appeal, which we restate as: Whether the Indiana Department of Child Services (IDCS) established by clear and convincing evidence that Mother's rights to H.M. should be terminated.

FACTS AND PROCEDURAL HISTORY

H.M was born on September 14, 1997. She lived with her Mother, Father and two older siblings during the first two years of her life. When H.M. was two, her parents divorced and Father took the children with him. Father obtained a protective order against Mother and refused to let her see the children. The children remained with Father for the next four to five years. When the children finally visited Mother, she discovered Father had been beating them. IDCS removed the children from Father and placed them with Mother in October of 2004.

In 2006, Mother was using illegal drugs and asked her father (Grandfather) if he would take custody of her children. Grandfather took custody of the two older siblings and was preparing a room for H.M. when IDCS removed her from Mother's custody. Mother and H.M. had been living in a home for three months when it was shut down by the Health Department. Mother then left H.M. in the care of neighbors, hoping they would look after

her. During this time, Mother was prostituting and using cocaine. The IDCS's investigator found Mother at a local motel with several men. Her eyes were glazed over, her speech was slurred, and she was lethargic.

On September 25, 2006, IDCS filed a Child in Need of Services (CHINS) petition. Mother entered an admission to the allegations included in the petition. In its dispositional order, the trial court ordered H.M. removed from Mother's care. Additionally, the trial court ordered Mother to secure a source of income, obtain stable housing, participate in home based counseling, undergo drug and alcohol assessment and participate in random drug testing. Mother enrolled in Trauma IOP, designed for women who have had significant trauma in their lives, but dropped out after five sessions. Mother's visitation with H.M. was suspended by the trial court on April 5, 2007 and never reinstated.

Mother was incarcerated in Florida from April 26, 2007 through December 5, 2007 for "principle to burglary of a dwelling and principle to fraudulent use of I.D." (Transcript p. 6). After completing her prison sentence in Florida, Mother was sent back to Indiana where she was released and placed on probation on December 21, 2007, to serve her remainder time on the Florida convictions. While Mother was incarcerated in Florida, Grandfather sought placement of H.M. in his home—he had obtained guardianship over her siblings on October 1, 2007. At the time, IDCS was concerned about H.M.'s youngest brother, who had been accused of improper contact with a girl. Based on this concern, the trial court refused placement of H.M. with Grandfather. Later, H.M.'s youngest brother was adjudicated a juvenile delinquent for the equivalent of a Class B misdemeanor battery and has participated

in counseling. On March 26, 2008, Mother violated the terms of her probation because of a positive drug test for cocaine. She was sentenced to one year. Mother was incarcerated from March 26, 2008 until September 24, 2008. Upon her release, she was again placed on probation.

On March 25, 2008, one day before Mother's probation violation, the IDCS filed its petition for involuntary termination of the parent-child relationship. On February 17 and March 25, 2009 respectively, the trial court conducted a hearing on IDCS's petition for termination. During the hearing, Mother testified that since her release from prison on September 24, 2008, she has enrolled in substance abuse classes through Cummins Mental Health. She stated that she had completed more than sixteen weeks of the twenty-four week program. Mother also told the trial court that she had enrolled in GED classes, had obtained employment, was living with Grandfather, and parenting H.M.'s two older siblings there. She had applied for Medicaid and would be undergoing a psychiatric evaluation once approved. Mother stated she has been sober for six months.

At the time of the termination hearing, H.M.'s siblings continued to visit with their sister once a week as they had done for approximately two years. Initially, Grandfather had joined in the visitation until IDCS informed him that he no longer could visit H.M. The week before the termination hearing, H.M.'s oldest sibling had been detained for a misdemeanor battery.

Elizabeth Black (Black) was assigned as the family's case manager in November of 2007. Mother had minimal contact with her throughout the case. Black's first contact with

Mother was in January of 2008 when she provided Mother with bus tickets to attend her programs—Mother had been provided with substance abuse treatment services and had to take random urine screens through probation. After Mother’s release in September of 2008, Black first heard from Mother again by voicemail in January of 2009 and an email on January 14, 2009.

H.M. has been in her current foster home with her paternal great aunt and uncle for about a year and a half at the time of trial. H.M. has been diagnosed with an adjustment disorder with anxiety and depressed mood. She has an individualized education program at school and attends therapy every other week, social skills group every other week, and speech therapy twice a week. H.M. has blossomed in her current foster home. She is laughing and her speech has improved. She has gone from failing subjects to being on the A/B honor roll. Her Guardian Ad Litem (GAL) testified that H.M. was ready to be adopted and wanted her name changed to the surname of her pre-adoptive home.

On April 21, 2009, the trial court, with Mother’s and IDCS’s agreement but over objection of the GAL, held an *in camera* interview of H.M. The trial court noted that

[H.M.] was settled, secure and happy with her life with her foster family. [H.M.] did not mention her [M]other until asked directly, at which time she stated she missed her [M]other but enjoyed seeing her brothers for her weekly visitations. When [H.M.] spoke of her future, she spoke of her life in her foster home with her aunt. Not only did [H.M.] appear settled and secure in her placement, she articulated excitement about her summer, her school and her life with her foster family.

(Appellant’s App. p. 24). On June 26, 2009, the trial court issued its Findings of Fact and Conclusions Thereon, terminating the parent-child relationship between Mother and H.M.

The trial court concluded that there is a reasonable probability that the conditions that resulted in H.M.'s removal or the reasons for continued placement outside the home of Mother had not been remedied and continuation of the parent-child relationship would pose a threat to the well-being of H.M. The trial court found the termination to be in H.M.'s best interests.

Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Mother contends that the IDCS did not present sufficient evidence to support the involuntary termination of the parent-child relationship with H.M. In reviewing termination proceedings on appeal, this court will not reweigh the evidence nor assess the credibility of the witnesses. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We consider only the evidence that supports the trial court's decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the trial court enters findings of fact and conclusions of law in its termination of parental rights, our standard of review is two-tiered. *Id.* First, we determine whether the evidence supports the findings, and second, whether the findings support the conclusions of law. *Id.*

In deference to the trial court's unique position to assess the evidence, we set aside the trial court's findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id.* A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it. *Id.* A judgment is clearly erroneous only if the

conclusions of law drawn by the trial court are not supported by its findings of fact or the conclusions of law do not support the judgment. *Id.*

It is axiomatic that 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, the trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination of the parent-child relationship. *In re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Parental rights may therefore be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.* at 836.

To effect the involuntary termination of a parent-child relationship, the IDCS must present clear and convincing evidence establishing that:

(A) one (1) of the following exists:

(i) the child has been removed from the parent for at least (6) months under a dispositional decree;

(ii) a court has entered a finding under I.C. § 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) the child has been removed from the parent and had been under the supervision of a county officer of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is reasonable probability that:

(i) the condition 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 the instant case, Mother asserts that the trial court erred in terminating her parental relationship with her daughter. Specifically, she contends that the evidence was insufficient to establish that the parent-child relationship posed a threat to the well-being of H.M. or that there is a reasonable probability that the conditions which resulted in H.M.'s removal are not remedied. To determine whether conditions are likely to be remedied, the trial court must examine Mother's fitness to care for H.M. as of the time of the termination hearing and take into account any evidence of changed circumstances. *Matter of A.N.J.*, 690 N.E.2d 716, 721 (Ind. Ct. App. 1997). At the same time, the trial court must evaluate Mother's patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.*

The evidence reflects that H.M. was initially removed from Mother's care because of Mother's drug abuse and abandonment. A CHINS petition was filed on September 25, 2006. Although Mother enrolled in court-ordered services, she dropped out after five sessions. The record is devoid of any evidence that Mother attempted to re-enroll or participate in programs designed to reunify her with H.M. Mother was incarcerated from April 26, 2007 through December 5, 2007. After completing her prison sentence, she was placed on

probation, which she violated three months later, on March 26, 2008. She returned to prison until September 24, 2008.

IDCS filed its petition for termination on March 25, 2008, *i.e.*, one day before she violated her probation. The record shows that after her failed initial participation in services, Mother did not request additional services or seek out services until the petition for termination of her parental rights was filed. After she was served with this petition and while she was incarcerated, she started to participate in earnest. She became involved with Keys to Work and Addicts to Recovery. After her release from prison, she enrolled in substance abuse classes through Cummins Mental Health. At the time of the termination hearing, she had completed more than sixteen weeks of the twenty-four week program. In addition, Mother has enrolled in GED classes, has obtained employment, and is living with her father. Testimony reveals that she has been sober for six months.

It cannot be denied that Mother has come a long way: she is clean and sober, she has sought out services on her own after she became ineligible for services through IDCS, and she is employed. But, as pointed out by IDCS, we only have Mother's testimony as evidence for these programs as she failed to submit any paperwork or have therapists testify on her behalf. While we agree with IDCS that Mother could have taken the initiative to provide a list of her service providers to Black prior to trial, Black herself is not completely without blame in this. The termination of parental rights is a weighty and life-altering decision. Whereas Mother could have provided Black with the requested information in a more timely fashion, Black also could have taken efforts to contact Mother's probation officer, besides

the lone voicemail she claims to have left them, to be informed of service providers and status of services. Black knew Mother's probation officer and she was aware that Mother had signed a release of information form. While the effort shown by a parent can be used as an indicator to demonstrate the level of commitment to complete the actions necessary to preserve the parent-child relationship, it is not the determinative one.

Paramount in our analysis is H.M.'s best interest. *See In re K.S.*, 750 N.E.2d at 837. In 2006, H.M. was neglected and abandoned by her Mother. Now, she is living with her foster parents and has blossomed. She is under medical supervision to control her adjustment disorder with anxiety and depressed mood. H.M. has an individualized education program at school and has gone from failing subjects to being on the A/B honor roll. She attends therapy, social skills therapy, and speech therapy. H.M.'s GAL testified that H.M. is eager to be adopted and is looking forward to her name being changed to the surname of her foster parents, who have indicated a willingness to adopt her. During its *in camera* interview of H.M., the trial court observed that H.M. did not voluntarily mention her Mother; rather only when asked directly she stated that she missed her. When the trial court and H.M. talked about the future, it was clear that she envisioned her living in her foster home with her aunt.

In sum, based on the evidence before us, we affirm the trial court's termination of Mother's parental rights to D.D. Although Mother had opportunities to turn her life around and to participate in services when H.M. was adjudicated a CHINS, she failed to do so. In fact, she waited until she was served with IDCS's petition to terminate her parental rights to start complying with the trial court's original order to enroll in programs. Her contact with

the case worker was almost non-existent and she failed to submit paperwork of her involvement in services when requested. While it is undeniable that Mother is on the right track, it is all too little, too late. Requiring H.M. to wait until Mother has her life turned around and can adequately take care of her daughter would be harmful to H.M.'s emotional and physical growth. H.M. is ready to move on and start a new phase in her life. As we stated before, "[i]t is undisputed that children require secure, stable, long-term, continuous relationships with their parents or foster parents. There is little that can be as detrimental to a child's sound development as uncertainty." *Baker v. Marion County Office of Family and Children*, 810 N.E.2d 1035, 1040 (Ind. 2004). Accordingly, we conclude that there is a reasonable probability that the conditions which resulted in H.M.'s removal are not remedied, continuation of the parent-child relationship would pose a threat to the well-being of H.M. We find termination to be in H.M.'s best interest. As such, we refuse to disturb the trial court's decision.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly terminated Mother's parental rights to H.M.

Affirmed.

VAIDIK, J., and CRONE, J., concur.