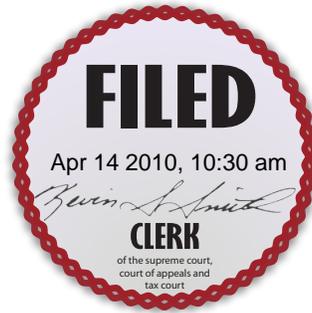


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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIPS OF)
M.D., II with M.D., I and R.E.)

M.D., I and R.E.,)

Appellants-Respondents,)

vs.)

No. 46A03-0909-JV-419)

INDIANA DEPARTMENT OF CHILD SERVICES,)

Appellee-Petitioner.)

APPEAL FROM THE LAPORTE CIRCUIT COURT
The Honorable Thomas J. Alevizos, Judge
The Honorable Nancy L. Gettinger, Magistrate
Cause No. 46C01-0903-JT-21

April 14, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

M.D., I (“Father”) and R.E. (“Mother”) appeal the termination of their parental rights to M.D., II (“Child”), arguing that the Indiana Department of Child Services (“DCS”) failed to present clear and convincing evidence that their parental rights to Child should be terminated. We affirm.

Issue

Mother and Father raise the sole issue of whether there is a reasonable probability that the conditions that resulted in the child’s removal or the reasons for placement outside the home of the parents will not be remedied.

Facts and Procedural History

Child lived with Mother and Father in squalid conditions, including flea infestation and floors covered in debris and dog feces. In July 2008, when Child was eight months old, he was adjudicated a CHINS and placed in foster care. A clinical psychologist evaluated each parent four months later. In April 2009, DCS petitioned for the involuntary termination of Parents’ rights to Child.

The trial court held an evidentiary hearing, issued findings and conclusions, and terminated the parental rights of Mother and Father to Child. Parents now appeal.

Discussion and Decision

On appeal, Parents argue that the DCS did not establish by clear and convincing evidence the statutory requirements for the involuntary termination of their parental rights to Child. “[P]arental interests are not absolute and must be subordinated to the child’s interests in determining the proper disposition of a petition to terminate parental rights.” In re G.Y., 904 N.E.2d 1257, 1259 (Ind. 2009), reh’g denied; see also Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). “Thus, ‘[p]arental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities.’” In re G.Y., 904 N.E.2d at 1259-60 (quoting Bester, 839 N.E.2d at 147).

I. Standard of Review

When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, this Court neither reweighs the evidence nor judges the credibility of the witnesses. In re G.Y., 904 N.E.2d at 1260. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id. Where, as here, the trial court entered findings of fact and conclusions of law, we apply a two-tiered standard of review. Id. We determine, first, whether the evidence supports the findings and, second, whether the findings support the judgment. Id. An order involuntarily terminating parental rights is clearly erroneous if the findings do not support the conclusions or the conclusions do not support the judgment. Id.

II. Requirements for Involuntary Termination of Parental Rights

Indiana Code Section 31-35-2-4(b)(2) establishes the elements that must be alleged

and proved to terminate a parent-child relationship. Of those elements, only one is at issue in the instant appeal: that “there is a reasonable probability that . . . the conditions that resulted in the child’s removal or the reasons for placement outside the home of the parents will not be remedied.” Ind. Code § 31-35-2-4(b)(2)(B)(i).¹

III. Analysis

In its order, the trial court found that “[a]t the time of the removal, July 8, 2009, the home was cluttered, dirty, and unsanitary. Parents had not been able to obtain suitable housing. In addition, at the time of the removal, neither parent was receiving treatment for their mental health issues.” Appellant’s Appendix at 4. It then concluded that there was a reasonable probability that these conditions would not be remedied.

A. Housing

With respect to housing, from April through mid-December of 2008, Parents resided in a number of different places, including the home of Mother’s mother and a residence on Grove Street. Mother admitted that, while living in the apartment on Grove Street, “it was so crappy I just felt depressed. I felt like, you know, yeah we got a roof over our heads, but I just so – I really didn’t care about the place and I didn’t want to raise a kid there, so I just kind of let it go.” Transcript at 131. For some period of time, they were transient, living between cities in LaPorte and St. Joseph Counties. Then, from mid-December 2008 through the time of the termination hearing in August 2009, they resided on Allen Street in LaPorte.

Rebecca Ryder, a case manager at Swanson Center, visited Parents’ homes twenty to

¹ The trial court did not conclude that there was a reasonable probability that the continuation of the parent-child relationship posed a threat to the child’s well-being. See Ind. Code § 31-35-2-4(b)(2)(B)(ii).

forty times from September 2008 through April 2009. She testified that, in September 2008, Parents' home had no heat or hot water. Parents had run an electric line from a neighbor's house. The floor was covered in trash and cat feces. In their next home, an apartment, Ryder saw on the floor a broken ashtray, cigarette butts, and empty liquor bottles. Despite advising Parents to pick up the broken ashtray, Ryder observed that it was still on the floor at the time of her next visit.

DCS case manager Mitzi Grogan-McGlone testified that, a month before the termination hearing, she found Parents' home as follows: "The home was not as cluttered as I've seen it in the past, but the floor was so dirty it was black." Tr. at 40. Father acknowledged that, at the time of the termination hearing, their home was "kind of a mess" because he had "been trying to get it back together because [he] just got out of jail [not long before]." Id. at 92. The week of the termination hearing, Mother canceled a scheduled counseling meeting because Parents' landlord had threatened to evict them if they did not clean their kitchen. She explained that their kitchen was dirty because they had run out of money for cleaning supplies.

Ryder, Grogan-McGlone, and Susan Lovetts, a licensed mental health therapist, all concluded that, based upon their visits to Parents' various homes, there was no point at which the home was appropriate for a small child.

B. Father's Mental Health

Clinical psychologist Clifton Titus performed "Psychological / Parenting Evaluations" on Mother and Father in November 2008. Exhibits 2 & 3. After reviewing Father's medical

history, interviewing him, and performing two psychiatric tests, Dr. Titus concluded the following:

Regarding parenting, [Father] appear[s] to display moods and behavior that would put his child at risk. Results from the Child Abuse Potential Inventory – Form 6 include a significant finding on the scale for Abuse Potential. Though there is no indication or report as yet of [Father] being abusive to his child, the probability is high and indications are that any drinking behavior would escalate this considerably.

...

Overall, indications are that reunification would seem to be a long way off. [Father] will need a lot of help with getting his emotional and behavioral problems under control. Until such time he would remain a significant risk of committing child abuse.

Ex. 2 at 6.

A registered sex offender, Father had two convictions of battery, one of which was committed upon Mother in Child's presence. He stated plainly that he had been prescribed medication for his anger issues, but that he had stopped taking it because it was expensive and he did not need it. Father testified as follows regarding his anger:

A: It's just – all's I have is an impulse control disorder. It's just when people just egg and egg and egg, and I just get, you know, pissed off and there's no stopping me.

Q: Okay. How do you handle it?

A: Normally, I go – I try and go for a walk, but, you know, I can't, you know, and I just go off and then I get in trouble, you know. Like going to jail.

Tr. at 103-04. Ryder added that Father "indicated that he did not think he needed therapy and that it would not help him." Id. at 28.

C. Mother's Mental Health

Dr. Titus concluded that “the present testing would seem to indicate that [Mother] manifests symptomology consistent with Bipolar Mood Disorder.” Ex. 3 at 4. He wrote:

She acknowledges that she is not taking medication at this time and though she continues to minimize the problem indications are her mood continues to be poor and fairly out of her control.

Results from the Child Abuse Potential Inventory indicate that there is some risk of her being physically abusive. She falls within the Significant range on the scale for Abuse. This would seem to be consistent with her poor anger and emotional control. There is no evidence at this point that she has been physically abusive towards her child, but testing would indicate that the risk may be substantial.

. . . She seems to indicate that she would prefer not to take medication, but it would seem that it may be essential in helping her to be able to maintain adequate behavior control and to reduce any potential risk of child abuse.

Id. at 4-5. Mother has three battery convictions.

Lovetts, licensed in mental health therapy, testified that Mother failed to perform homework assignments related to recording the degree, time of day, and circumstances leading to her anger. In addition, there were several times that Parents did not attend scheduled meetings with Lovetts. She concluded that Mother and Father were not dealing with their anger-management issues. Furthermore, court-appointed special advocate Melinda Swank testified that “they’re not staying on the medication consistently.” Tr. at 55.

Father's sister, who cared for Child for five months, acknowledged under cross-examination that she told Grogan-McGlone that she did not allow Parents to babysit her children. Grogan-McGlone concluded that there was no reasonable probability of improvement in the conditions that caused Child's removal. Ryder testified that Parents did

very little to reach their goals. Lovetts and Ryder each concluded that Parents were not capable of caring for a small child. Finally, Swank stated that Parents could not provide a stable environment for Child.

The facts most favorable to the judgment indicate that, from Child's removal from the home in July 2008 through the termination hearing in August 2009, Parents failed to secure housing appropriate for the care of a young child. Furthermore, despite their knowledge of their criminal histories and clear warnings from a clinical psychologist that they posed risks of committing child abuse, Parents were not taking the steps necessary to deal with their anger-management issues. Accordingly, we conclude that there is sufficient evidence for the trial court to find by clear and convincing evidence that there is a reasonable probability that the conditions that resulted in Child's removal from the home of his parents will not be remedied.

Affirmed.

MAY, J., and BARNES, J., concur.