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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT/CHILD RELATIONSHIP)
OF: N.B., E.H., and J.H., minor children,)

JULIE BARNES CARTER,)
Appellant-Respondent,)

vs.)

GIBSON COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner.)

No. 26A01-0712-JV-602

APPEAL FROM THE GIBSON CIRCUIT COURT
The Honorable Jeffrey F. Meade, Judge
Cause Nos. 26C01-0708-JT-0018, 26C01-0708-JT-0019 & 26C01-0708-JT-0020

May 7, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Julie C. (“Mother”) appeals the termination of her parental rights to her daughters, E.H. and J.H., and her son, N.B. She argues that the trial court violated her due process rights by conducting the termination of parental rights hearing in her absence, that the termination of her parental rights was an impermissible restraint on marriage, and that there is insufficient evidence to support the termination of her parental rights. Concluding that Mother’s due process rights were not violated, that there was not an impermissible restraint on marriage, and that the evidence is sufficient to support the termination of Mother’s parental rights, we affirm the decision of the trial court.

Facts and Procedural History

Mother and Edward H. (“Father”) are the biological parents of E.H., J.H., and N.B. E.H. and J.H. are twins and were born on March 30, 2004. N.B. was born on July 24, 2006. Father voluntarily terminated his parental rights to all three children on November 30, 2007.

Prior to the instant action, E.H. and J.H. were removed from Mother’s care on September 16, 2005. The children were placed in foster care due to Mother and Father being incarcerated in Illinois on charges of forgery and because the home was found to be inappropriate and unsafe for children. E.H. and J.H. were returned to Mother’s care on August 11, 2006.

Shortly thereafter, on September 26, 2006, Gibson County Department of Child Services (“DCS”) received a report regarding unsafe conditions at Mother’s home. DCS family case manager Lori Reinhart investigated the report. Reinhart found that there was

no running water in the home and that the toilet was full of fecal matter. She also noted that there were prescription drugs within the children's reach, dirty diapers strewn throughout the home on the floor, and trash intermingled with the children's toys. Based on these conditions, E.H., J.H., and N.B. were removed from the home and placed in foster care.

On September 27 and 29, 2006, the trial court held a detention hearing and found that it was in the children's best interest that they be removed from Mother's home. On September 29, 2006, DCS filed petitions alleging that E.H., J.H., and N.B. were children in need of services ("CHINS"). An initial hearing on the CHINS petitions was held on October 5, 2006. Mother was present at this hearing. The trial court issued an order on October 23, 2006, finding that E.H., J.H., and N.B. were CHINS.

Between October 2006 and April 2007, efforts were made to return the children to Mother's care, but these efforts failed. On April 23, 2007, the trial court issued a parental participation order that required Mother to do the following: (1) seek employment; (2) maintain a clean and safe home with emphasis on keeping certain dangerous items like prescription medications, bleach, and electrical wiring away from the children; (3) cooperate with the parent aide in obtaining parenting skills; and (4) provide DCS with documentation of any change of address and any other documentation DCS has reasonable need to request.

On August 3, 2007, DCS filed petitions to terminate Mother's parental rights to E.H., J.H., and N.B. The trial court held a hearing on the petitions on November 30, 2007. Mother was not present at the hearing even though she was given proper notice.

At the beginning of the hearing, Mother's counsel asked for a continuance, which the trial court denied.

During the hearing, evidence was introduced showing that Mother did not maintain steady employment. Reinhart testified that Mother had been employed by three different businesses that provided services to disabled adults. Mother worked for the first business for a month and then went to work for Unity Personnel. After working there for a month, Mother went to work for ResCare. ResCare ultimately terminated Mother's employment. Reinhart was not certain whether Mother was employed at the time of the hearing.

DCS presented evidence concerning the condition of Mother's home. Reinhart noted that she saw prescription medications and scissors in Mother's home that would have been in reach of the children. She also saw exposed electrical wires. On one occasion, Reinhart noted a cat litter box that was full of feces. For an extended period of time, Mother had a mattress inside the home that a dog had vomited, defecated, and urinated on. Reinhart told Mother that she needed to remove the mattress from the home, but she failed to do so. Additionally, Mother was behind on her electric, gas, and water bills.

Since the children were removed from her care in September 2006, Mother moved multiple times. At the time the children were removed, Mother lived at 315 South Main Street in Oakland City, Indiana, in Gibson County. A month later, Mother moved to 730 East Riverside Drive in Evansville. Three to four months later, she moved to 613 Monroe Street in Evansville. After living on Monroe Street for three or four months,

Mother moved to 1303 Grand Avenue in Evansville. Reinhart stated that Mother was evicted from several of these residences and that she failed to inform DCS of each of her new addresses.

Jacqueline Coomer testified that she worked with Mother on parenting skills. Coomer stated that Mother appeared to be receptive to the recommendations she made, but Mother never implemented any of the suggested techniques. She noted that during visitations, Mother did not interact with the children unless the children first approached her. Coomer related an incident where N.B. got stuck under a picnic table. N.B. hit his head three times on the table before Mother got up to help him. Coomer concluded that Mother made no progress towards improving her parenting skills.

Sometime in August 2007, Mother married Rodney C. (“Rodney”), who was from Kentucky. Mother met Rodney on the Internet and married him after knowing him for approximately a week. Reinhart spoke with Rodney in an attempt to get some information about him. Rodney refused to tell Reinhart his Social Security number or date of birth, was belligerent, and threatened her. At one point, Rodney told Reinhart that for all she knew, “he could be a serial killer.” Tr. p. 39.

E.H. and J.H.’s psychotherapist John Day testified at the hearing. He noted that E.H. and J.H. were suffering from post-traumatic stress disorder caused by significant parental neglect. He opined that the children’s risk of developing anxiety and depression disorders would be lessened if they were placed in a stable, predictable home.

At the conclusion of the hearing, Mother’s counsel requested that the trial court hold the matter in abeyance for thirty days before it made its ruling to allow time to find

out why Mother did not attend the hearing. The trial court denied Mother's counsel's request.

The trial court then made a ruling from the bench that Mother's parental rights to E.H., J.H., and N.B. should be terminated. In making its ruling, the trial court made the following comment:

[T]he most significant factor the Court considers is the fact that the mother marries a guy she meets over the Internet. In less than a week, she marries him and this father (sic) absolutely refuses to cooperate with the State of Indiana. I just think it's appalling to me that a mother would lose all sense of her maternal instincts and put her children – possibly put her children in a situation where they are in danger. This could be a convicted sex offender. Who knows what this person is, where he's from, what he's done. Obviously he don't [sic] want people to know because if he had a history that was pure as the wind driven snow, he wouldn't mind being questioned about that and be more open with the State. Obviously he has a past he wants to hide, and shame on any mother that would put her kids in that zone of danger.

Id. at 117-18.

The trial court issued a formal order terminating Mother's parental rights on December 27, 2007. In its order, the trial court made the following relevant findings:

27. [Mother] failed to comply with the Parental Participation Order by:
 - a. **Failing to maintain a safe, clean home.** The children were removed from the home due to unsafe conditions of the home. In January 2007, [Mother's] home was found to be unsafe because of exposed electrical wiring, cat feces and medications within the reach of the children. In March 2007, a mattress in the home was covered with dog vomit, urine and feces. In June 2007, the parent's home was found with bags of trash on the porch, dog feces on the porch, and medications on the floor of the home. The parents were unable to provide a stable home due to being repeatedly evicted. The parent aide testified that the parents could make progress in keeping the home safe, but could not consistently keep the home safe.

- b. **Failing to keep DCS apprised of her living addresses.** [Mother] refused to keep DCS informed as to her various addresses. The Family Case Manager had to search for her, and often found her by seeking information from the parent aide and others.
- c. **Failing to implement recommendations.** [Mother] failed to follow through with recommendations of the parent aide.

- 30. Continuation of the parent/child relationship posed a threat to the children. [Mother] has failed to remain at one home for more than a few months at a time. In addition, the mother has failed to maintain the home in [sic] safe and clean manner. Finally, the mother married a man whom she met on the internet, and had only known for a few days. She refused to provide [DCS] with any background information concerning this man.

- 36. The record is replete with evidence that the Mother has poor parenting skills, coupled with an unwillingness to cooperate with service providers. This culminated with the Mother marrying someone she met over the internet after having known [sic] only a few days. While this choice of conduct is suspect enough, the fact that the children's mother and new step-father have refused to cooperate regarding his identity or past causes this Court serious concern for the safety of these children.
- 37. Lack of cooperation, failure to consistently maintain a clean and safe home, and frequent changes of living locations, support this Court's finding that there exists no reasonable probability that the conditions will change.

Appellant's App. p. 187-89 (emphasis in original). Thereafter, this appeal ensued.

Discussion and Decision

Mother raises three issues on appeal. First, she argues the trial court violated her due process rights by conducting the termination of parental rights hearing in her absence. Second, Mother argues that the termination of her parental rights constituted an impermissible restraint on marriage. Third, Mother contends insufficient evidence was presented to support the termination of her parental rights.

When reviewing the termination of parental rights, we neither reweigh the evidence nor judge witness credibility. *In re Involuntary Termination of Parent-Child Relationship of Kay. L.*, 867 N.E.2d 236, 239 (Ind. Ct. App. 2007). We will consider only the evidence that supports the trial court's decision and the reasonable inferences drawn therefrom. *Id.* We will only set aside a judgment terminating a parent-child relationship if it is clearly erroneous. *Id.* A judgment is clearly erroneous when the findings do not support the trial court's conclusions or the conclusions do not support the judgment. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005).

I. Due Process

Mother argues that the trial court violated her Fourteenth Amendment due process rights when it conducted the termination of parental rights hearing in her absence. On August 14, 2007, the trial court held an initial hearing on DCS's petition to terminate Mother's parental rights. Mother was present at this hearing and was informed that the final hearing would be held on November 30, 2007. Thereafter, Mother was properly served with notice of the final hearing. A few days before the final hearing, Mother contacted DCS. She stated that she currently lived in Evansville in Vanderburgh County and did not have transportation to the hearing in neighboring Gibson County. DCS initially told Mother that it could not provide her with transportation to the hearing. DCS, however, later changed its position and attempted to contact Mother. DCS left messages on Mother's cell phone and contacted her attorney to let her know that it was willing to provide her with transportation to the hearing. DCS was never able to reach

Mother. On the day of the final hearing, Mother was not present, but her counsel was. Mother's counsel asked the trial court for a continuance. The trial court denied Mother's request for a continuance and proceeded with the hearing.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits state action that deprives a person of life, liberty, or property without a fair proceeding. *Q.B. v. Marion County Dep't of Child Servs.*, 873 N.E.2d 1063, 1067 (Ind. Ct. App. 2007). When the State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of due process. *Id.* The nature of process due in a termination of parental rights proceeding depends on the balancing of three factors: (1) the private interests affected by the proceeding; (2) the risk of error created by the State's chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure. *Id.* "The balancing of these factors recognizes that although due process is not dependent on the underlying facts of the particular case, it is nevertheless 'flexible and calls for such procedural protections as the particular situation demands.'" *Lawson v. Marion County Office of Family & Children*, 835 N.E.2d 577, 580 (Ind. Ct. App. 2005) (quoting *Thompson v. Clark County Div. of Family & Children*, 791 N.E.2d 792, 795 (Ind. Ct. App. 2003), *trans. denied*).

Here, both the private interests of Mother and the countervailing governmental interests that are affected by the proceeding are substantial. "A parent's interest in maintaining a relationship with his or her children is extremely high." *Q.B.*, 873 N.E.2d at 1067-68. On the other hand, the State has a significant interest in protecting the

welfare of children. *Id.* at 1068. Additionally, delays in the adjudication of a case impose significant costs upon the functions of the government as well as an intangible cost to the lives of the children involved. *Lawson*, 835 N.E.2d at 580.

Initially, we note that a parent does not have a constitutional right to be physically present at a final termination hearing. *Thompson*, 791 N.E.2d at 794. Although Mother was not present at the hearing, her counsel was. Mother's counsel had the opportunity to cross-examine witnesses and review and object to any evidence tendered by DCS. Mother's counsel's presence at the termination hearing ensured that Mother's due process rights were not fatally compromised. *See Q.B.*, 873 N.E.2d at 1068 (concluding that appellant's due process rights were not fatally compromised because he was represented by counsel throughout the termination of parental rights proceedings).

Mother also had adequate notice of the hearing. Mother was present at the August 14, 2007, initial hearing and was told on that day when the final hearing would be held. This gave Mother over three months to arrange for transportation to the hearing. Mother, however, failed to arrange for transportation and contacted DCS only days before the hearing to let it know she would not be in attendance. DCS offered to provide Mother with transportation to the hearing and left messages on Mother's cell phone informing her of this. Mother never contacted DCS to take advantage of this opportunity to attend the hearing. Mother's failure to attend the hearing is no one's fault but her own.

In balancing Mother's parental interests with those of the State and keeping in mind that there was minimal risk of error in proceeding with the hearing without Mother

because Mother's counsel was present, we conclude that the termination proceedings did not violate Mother's due process rights.

II. Restraint on Marriage

Mother contends that the trial court terminated her parental rights because of her marriage to Rodney and that this constitutes an impermissible restraint on marriage. In August 2007, Mother married Rodney. Mother met Rodney on the Internet and had only known him for approximately one week when they married. Reinhart spoke with Rodney in an effort to learn some personal information about him, specifically his Social Security number and date of birth. Rodney refused to give Reinhart any of his personal information, other than that he was from Kentucky, was belligerent with Reinhart, and threatened her. During their conversation, Rodney told Reinhart that for all she knew, "he could be a serial killer." Tr. p. 39. The trial court noted that Mother's marriage to Rodney was one of the most significant factors it considered when it decided to terminate Mother's parental rights.

Mother likens the trial court's termination of her parental rights to clauses in contracts and testamentary documents that impose a condition in restraint of marriage. Conditions in restraint of marriage in wills, testamentary trusts, and contracts are against public policy and void. *See* Ind. Code § 29-1-6-3 ("A devise to a spouse with a condition in restraint of marriage shall stand, but the condition shall be void."); *In re Estate of Robertson*, 859 N.E.2d 772, 776 (Ind. Ct. App. 2007) (concluding that restraints of marriage arising in testamentary trusts are void as against public policy); *Stauffer v.*

Kessler, 81 Ind. App. 436, 130 N.E. 651, 652 (1921) (contracts in restraint of marriage are against public policy and void).¹

The trial court's termination of Mother's parental rights was not an impermissible restraint on marriage. Although the trial court considered Mother's marriage to Rodney to be a significant factor, it was not the only factor upon which the trial court relied to terminate Mother's parental rights. The trial court noted that it was terminating Mother's parental rights because of her poor parenting skills, her unwillingness to cooperate with service providers, her failure to consistently maintain a clean and safe home, and her frequent home relocations.

Furthermore, in determining whether termination of parental rights is warranted, a trial court may properly consider the character and behavior of others who will be a substantial part of the children's life if the parent-child relationship continues. *See McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 202 (Ind. Ct. App. 2003) (considering evidence that mother maintained contact with an abusive partner after child services recommended that she cease contact); *In re D.G.*, 702 N.E.2d 777, 781 (Ind. Ct. App. 1998) (noting that the trial court considered the parent's choice of partners as a reason for termination and examining the danger posed to the child by the parent's current partner). In this case, had the trial court not terminated Mother's parental rights, as Mother's husband, Rodney would have been a substantial part of the children's

¹ The United States Supreme Court has recognized that the right to marry is part of the fundamental right of privacy implicit in the Fourteenth Amendment's Due Process Clause. *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978). Mother does not argue that by terminating her parental rights the trial court violated her right to marry under the Fourteenth Amendment. Therefore, we do not address this issue.

lives. Thus, the trial court could properly consider Rodney's character and behavior, which in this instance gave the court rightful cause for concern.

Therefore, the trial court did not err in considering evidence of Mother's marriage to Rodney, and the termination of Mother's parental rights was not an impermissible restraint on marriage.

III. Sufficiency of the Evidence

Mother last argues that the evidence is insufficient to support the termination of her parental rights. Under the Fourteenth Amendment to the United States Constitution, parents have the right to establish a home and raise their children. *In re B.D.J.*, 728 N.E.2d 195, 199 (Ind. Ct. App. 2000). However, the law allows for the termination of these rights when an individual is unable or unwilling to fulfill his or her responsibilities as a parent. *Id.* at 199-200. This policy balances a parent's constitutional rights to the custody of his or her children with the State's limited authority to interfere with this right. *Id.* at 200. "Because the ultimate purpose of the law is to protect the child, the parent-child relationship will give way when it is no longer in the child's interest to maintain this relationship." *Id.*

Indiana Code § 31-35-2-4(b) provides that in order to terminate a parent-child relationship, the State must prove:

- (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.

Indiana Code § 31-34-12-2 further provides that the State must establish the elements of Indiana Code § 31-35-2-4 by clear and convincing evidence.

Mother only argues that insufficient evidence was presented to show that there was a reasonable probability that (1) the conditions that resulted in the removal of E.H., J.H., and N.B. will not be remedied, or (2) the continuation of the parent-child relationship would pose a threat to the well-being of E.H., J.H., and N.B. Because Indiana Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, the trial court only had to find one of the two requirements of subsection (B) by clear and convincing evidence. *In re L.S.*, 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), *trans. denied*. Therefore, we begin by considering whether sufficient evidence was presented to support the trial court's finding that the conditions that resulted in the removal of E.H., J.H., and N.B. will not be remedied.

In order to determine whether there is a reasonable probability that the conditions that resulted in the removal of the children will not be remedied, the trial court should judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. The trial court, though, must also evaluate the parent's habitual patterns of conduct. *Id.*

“Such an evaluation assists in determining the probability of future neglect or deprivation of the child, as well as remedial possibilities.” *Id.* Pursuant to this rule, courts have properly considered evidence of a parent’s prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *Id.* Additionally, the juvenile court can properly consider the services offered by the office of family and children to the parent and the parent’s response to those services as evidence of whether conditions will be remedied. *Id.*

Here, the record reveals that Mother did not maintain steady employment. She worked for three different businesses that provided services to disabled adults. Mother worked for each of her first two employers for only a month and was terminated by the third employer, ResCare. At the time of the hearing, Reinhart was uncertain whether Mother was employed.

Evidence introduced at the hearing indicates that Mother did not maintain a safe and clean home. Reinhart saw prescription medications and scissors in Mother’s home that were within easy reach of the children. At one of Mother’s homes, there were exposed electrical wires. On one occasion, Reinhart observed a cat litter box inside the home that was full of feces. For an extended period of time, Mother had a mattress inside her home that a dog had vomited, defecated, and urinated on. Mother was told to remove the mattress from the home, but she did not. In June 2007, it was noted that there were bags of trash and dog feces on the porch of Mother’s home.

Mother did not maintain a stable home environment for the children. After the children were removed from her care in September 2006, Mother moved three times.

Mother only lived at each of her new residences for a matter of months and was evicted from several of these homes. Mother failed to inform DCS of her new addresses even though she was required to do so.

Mother did not make progress towards improving her parenting skills. Coomer worked with Mother on her parenting skills and noted that Mother appeared to be receptive to recommendations that were offered, but she never actually applied any of the techniques Coomer suggested. Visitations revealed a lack of interaction between Mother and the children and a lack of awareness on Mother's part of the children's needs.

Evidence introduced at the hearing also indicates a history of neglect. E.H. and J.H. were removed from Mother's care in September 2005 due, in part, to unsafe living conditions. Both children were returned to Mother's care in August 2006, but after only six weeks they were again removed from the home due to unsafe living conditions. Since the removal of the children in September 2006, Mother has not taken the necessary steps to make her home safe for her children.

Additionally, E.H. and J.H.'s psychotherapist John Day testified that both children were suffering from post-traumatic stress disorder caused by significant parental neglect. Day believed that the children's risk of developing anxiety and depression disorders would be lessened if they were placed in a stable and predictable home. The trial court could reasonably conclude based on the unsafe condition of Mother's homes and her frequent moves that Mother will not be able to provide the stable and predictable type of home her children need.

Based on this evidence, the trial court properly concluded that there was a reasonable probability that the conditions that resulted in the removal of E.H., J.H., and N.B. from Mother's home will not be remedied.² Therefore, sufficient evidence was presented to support the trial court's termination of Mother's parental rights.

Affirmed.

MAY, J., and MATHIAS, J., concur.

² Having determined that the trial court properly concluded that the conditions that led to E.H.'s, J.H.'s, and N.B.'s removal will not be remedied, we need not consider whether the trial court properly concluded that the continuation of the parent-child relationship poses a threat to E.H.'s, J.H.'s, and N.B.'s well-being. *See In re L.S.*, 717 N.E.2d at 209.