

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

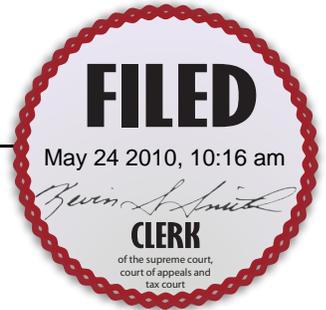
ATTORNEY FOR APPELLANT:

MARK SMALL
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

MICHAEL E. BOONSTRA
Kokomo, Indiana

ROBERT J. HENKE
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF: C.D., N.D., and D.D.,)
Minor children,)
)
C.D., Father and A.D., Mother,)
)
Appellants-Respondents,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
Appellee-Plaintiff.)

No. 52A02-0912-JV-1182

APPEAL FROM THE MIAMI SUPERIOR COURT
The Honorable Daniel C. Banina, Judge
Cause No. 52D02-0906-JT-7
52D02-0906-JT-8
52D02-0906-JT-9

May 24, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Ch.D. (“Father”) and A.D. (“Mother”) appeal the termination of their parental rights to C.D., N.D., and D.D. We affirm.

Issue

Father and Mother raise one issue, which we restate as whether there is sufficient evidence to support the termination of their parental rights.

Facts

Father and Mother have three children, C.D., born April 1, 2003, N.D., born October 12, 2004, and D.D., born July 27, 2006.¹ The Miami County Department of Child Services (“DCS”) first became involved with the family in October 2006 because of a substantiated report that the environmental conditions in the home were endangering the children and a substantiated report of medical neglect. DCS made a referral for a homemaker from Four County Counseling Center to work with Father and Mother.

Despite the services that were being offered, DCS received a report on December 19, 2006, that the children were dirty and had lice, that trash and old food were scattered throughout the house, and that a baby bottle containing soda and curdled milk was seen in the house. On the morning of December 20, 2006, DCS family case managers Carol Conrad and Kristen Weir went to the family’s home. They found that the home was cluttered with clothing and dirty dishes and that cat feces were on the floor. N.D. was in

¹ Father and Mother have since had another child, who is not part of these proceedings.

a dirty diaper and was covered with dried food, and D.D. was dirty and dressed in dirty clothing. The DCS obtained an emergency detention order and removed the children from Father and Mother.

On December 29, 2006, DCS filed petitions alleging that the children were children in need of services (“CHINS”). After a hearing in February 2007 at which the parents admitted the allegations of the CHINS petitions, the trial court found that the children were CHINS. The trial court authorized DCS to place the children with Father and Mother and to provide services. The trial court ordered Father and Mother to maintain a home free of lice and fleas, learn how to properly bathe and feed the children, learn how to budget money, take C.D. and N.D. to a dentist, send C.D. to preschool, enroll N.D. in speech therapy with First Steps, potty train C.D. and N.D., no longer give C.D. and N.D. bottles, participate in the Nurturing Parent Program, and follow all suggestions of the DCS, Four County Counseling Center, Healthy Families, and the Miami County Extension Office. In May 2007, the trial court also ordered Father to undergo a drug and alcohol evaluation and treatment if necessary and ordered Mother to undergo a psychological evaluation.

DCS referred Father and Mother for numerous services, including the assistance of a homemaker and the county extension office. They assisted Father and Mother with obtaining furniture to replace the existing dirty furniture. They also helped Father and Mother prepare a routine for the children and attempted to help them budget. However, Father and Mother were not consistent with following the budget. The DCS case manager found that Mother was sending C.D. to school dirty and wearing clothes that

were too big, observed Mother leave D.D. alone in the bathtub, and saw that the children were always dirty. There were problems with lice and fleas in the house, and Father and Mother had three different residences during the proceedings.

The homemaker found that the conditions in the homes were greatly different for unannounced visits than for announced visits. During unannounced visits, there were always extra people at the residence, and the conditions were dirty. Many times there were razors within the children's reach, and C.D. cut herself on one of them. The homemaker discussed the razors with Father and Mother at least six times. The homemaker also expressed concerns about urine all over the bathroom floor, the lack of working smoke detectors, and the lack of a baby gate on the stairs.

During one unannounced visit, the homemaker arrived at the home and found C.D. and N.D. outside in forty-three degree weather wearing nothing but urine-soaked diapers and adult tennis shoes. She took the children inside and found that Father and Mother were asleep. In March 2007, during a time that the parents were separated, Father expressed concern to the homemaker that Mother was allowing the children to be around James Geary, who is required to register on the Indiana Sex and Violent Offender Registry due to a child molesting conviction.

The county extension office attempted to teach Father and Mother how to provide nutritional meals, but it stopped providing services to Father and Mother because Mother "just didn't seem interested in the program." Tr. p. 34. The house was always full of people despite the county extension office's request that just Father and Mother be

present for the visits. Father and Mother either were not able to understand the program or “just didn’t care.” Id.

DCS received a report in May 2007 that Father and Mother were feeding D.D. from a bottle containing sour and moldy milk. On May 24, 2007, the children were again removed from Father and Mother and placed in foster care. At that time, the children and their clothing were dirty, and two of the children were infested with lice.

DCS case managers found that there were “a number of people in the home at all times” and they “never knew who [they] would find.” Id. at 25. DCS case manager Carol Conrad thought that the people were “sponging off of” Father. Id. at 42. Father worked, and it did not seem that any of the other people worked. A homemaker described the other people as “barracudas moving in for the feed every Friday” on Father’s payday. Id. at 57. DCS thought that Father and Mother would be unable to budget their money if they were feeding all of the extra people.

In July 2008, DCS filed a petition to terminate Father and Mother’s parental rights, but the petition was dismissed because the CASA wanted to try reunification again. DCS again instructed Mother on cooking nutritious meals, hygiene, and budgeting and increased visitations with the children. The foster mother noticed behavior changes in the children, including fits, hitting, and crying, immediately before and after visits with Father and Mother.

On March 11, 2009, C.D. and N.D. were returned to Father and Mother’s care. D.D. was not returned to Father and Mother because of medications that he takes for a heart problem. However, on March 18, 2009, DCS again removed C.D. and N.D. DCS

had received a report of dog feces in the home and that a registered sex offender was also living in the home. DCS workers confirmed that animal feces were on the floor in the home and that Dale Nicholson, who is required to register on the Indiana Sex and Violent Offender Registry due to a criminal confinement conviction, was living there. Additionally, two other convicted child molesters were in the residence and allowed to have contact with the children.

In April 2009, the trial court authorized DCS to file another petition to terminate Father and Mother's parental rights. On June 15, 2009, DCS filed another petition to terminate Father and Mother's parental rights to the children. On June 30, 2009, John Walker, assistant director of the Miami County CASA program, and Cassy Taylor, DCS family case manager, inspected Father and Mother's home. They found more than ten people in the residence, including a fifteen or sixteen-year-old girl sleeping with an adult male. They also found a three or four-year-old girl. Mother said that she had been watching the little girl for a few weeks and that she only knew the mother's first name. The home was very cluttered and dirty, and there was mold in the refrigerator. During visitations in the summer of 2009, Mother had difficulty controlling the children. Although Father's parenting skills had improved since 2007, Mother's parenting skills "still need[ed] a lot of improvement." *Id.* at 45.

After a hearing, the trial court entered findings of fact and conclusions thereon terminating Father and Mother's parental rights to the children. They now appeal.

Analysis

The issue is whether the trial court's termination of Father and Mother's parental rights to the children is clearly erroneous. The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment to the United States Constitution. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). However, these parental 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. Id. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id. The purpose of terminating parental rights is not to punish parents, but to protect children. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied, cert. denied.

When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. Bester, 839 N.E.2d at 147. We will consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. Id. Here, the trial court made findings in granting the termination of Father and Mother's parental rights. 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. (citation and internal quotations omitted).

Indiana Code Section 31-35-2-8(a) provides that “if the court finds that the allegations in a petition described in [Indiana Code Section 31-35-2-4] are true, the court shall terminate the parent-child relationship.” Indiana Code Section 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege, in part, that:

- (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.

The State must establish these allegations by clear and convincing evidence. Egly v. Blackford County Dep’t of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

A. Remedy of Conditions Resulting in Removal

Father and Mother argue that the trial court’s findings and conclusions are clearly erroneous regarding whether there was a reasonable probability that the conditions resulting in the children’s removal would not be remedied.² In making this determination, the trial court must judge a parent’s fitness to care for his or her child at

² We need not address the trial court’s conclusion that the continuation of the parent-child relationship poses a threat to the children’s well-being because the statute is written in the disjunctive. Thus, DCS was not required to prove both. See Bester, 839 N.E.2d at 148 n.5.

the time of the termination hearing and take into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. However, the trial court must also “evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child.” Id. When assessing a parent’s fitness to care for a child, the trial court should view the parent as of the time of the termination hearing and take into account any evidence of changed conditions. In re C.C., 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), trans. denied. The trial court can properly consider the services that the State offered to the parent and the parent’s response to those services. Id.

Father and Mother argue that they made enough progress to have the children returned to them in March 2009 and that other children living in the home were not removed by the Howard County DCS. They had resolved the lice and flea issues, and in an attempt to explain the animal feces on the floor, they argue that Mother had not had an opportunity to clean up and usually cleaned later in the day.

We conclude that Father and Mother’s argument is merely a request that we reweigh the evidence, which we cannot do. DCS presented evidence that, despite numerous services and opportunities given to Father and Mother, they have failed to remedy the conditions that initially resulted in the children’s removal. DCS started working with the family in October 2006, but the children were removed in December 2006 due to the filthy conditions in the home and the dirty condition of the children. The children were returned to Father and Mother in February 2007, but the poor conditions persisted, and the children were again removed in May 2007. At that time, the children

were dirty, two of the children had lice, and one of the children had been allowed to drink from a bottle containing curdled milk and mold. More services were provided, and the children were again returned to Father and Mother on March 11, 2009. Seven days later, the children were yet again removed because of the dirty conditions and the fact that three persons required to register on the Indiana Sex and Violent Offender Registry were in the residence.

Father and Mother were provided with many services and opportunities but failed to remedy problems. The trial court concluded that there was a reasonable probability that the conditions resulting in the children's removal would not be remedied, and this finding is not clearly erroneous.

B. Best Interests

Father and Mother also argue that termination of their parental rights was not in the children's best interests. The DCS was required to prove by clear and convincing evidence that the termination was in the children's best interests. In determining what is in the best interests of a child, the trial court is required to look at the totality of the evidence. A.F. v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1253 (Ind. Ct. App. 2002), trans. denied. In doing so, the trial court must subordinate the interests of the parents to those of the child involved. Id. “[T]he historic inability to provide adequate housing, stability, and supervision, coupled with the current inability to provide the same, will support a finding that continuation of the parent-child relationship is contrary to the child's best interests.” In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005).

Father and Mother note that several witnesses testified that they are very kind people and show love and affection for the children. Although the witnesses agreed that Father and Mother love the children, the issue here is whether termination is in the best interest of the children. Father and Mother repeatedly failed to provide a clean, safe home for the children, repeatedly failed to keep the children clean or provide good nutrition for them, and exposed them to child molesters. The DCS case workers recommended termination of the parents' parental rights. Although the CASA had recommended another attempt at reunification in 2008, at the time of the termination hearing, the CASA recommended termination. The CASA noted that Father and Mother had been offered a lot of services and they had "tons of opportunities" but they "didn't take advantage of them." Tr. p. 100.

Although Father and Mother participated in some services, the evidence demonstrated that they are unable to meet the children's needs. Given the totality of the evidence presented by DCS, the trial court's finding that termination is in the children's best interest is not clearly erroneous.

Conclusion

Clear and convincing evidence supports the trial court's judgment terminating Father and Mother's parental rights to the children. Accordingly, we affirm.

Affirmed.

BAILEY, J., and MAY, J., concur.