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.

FILED
May 24 2011, 8:22 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

STEPHEN P. MURPHY, JR.
Law Offices of Stephen Murphy, LLC
Vincennes, Indiana

ATTORNEYS FOR APPELLEE:

GARA U. LEE
DCS-Knox County Office
Vincennes, Indiana

ROBERT J. HENKE
DCS-Central Administration
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF:	)	
K.K., (Minor Child)	)	
and	)	
C.W., (Mother),	)	
Appellant-Respondent,	)	
vs.	)	No. 42A04-1010-JT-699
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE KNOX SUPERIOR COURT
The Honorable W. Timothy Crowley, Judge
Cause No. 42D01-1003-JT-15

May 24, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-respondent C.W. (Mother) appeals the trial court's judgment terminating her parental rights as to her minor daughter, K.K., claiming that there is insufficient evidence to support the termination order. Mother claims that the appellee-petitioner Indiana Department of Child Services (DCS) failed to sufficiently demonstrate that the reasons for K.K.'s removal would not be remedied and that the termination of her parental rights was in K.K.'s best interests. Finding no error, we affirm the judgment of the trial court.

FACTS

K.K. was born on August 4, 1998. On October 30, 2007, DCS filed a petition alleging that K.K. was a child in need of services (CHINS), because Mother and Father had failed to adequately supervise K.K., they had used drugs and were unable to obtain and maintain steady employment, and that Mother had thoughts of suicide. K.K. was subsequently adjudicated a CHINS, and both parents were ordered to participate in and complete various counseling and parenting services.

On January 5, 2009, DCS filed its first petition to involuntary terminate Mother and Father's parental rights as to K.K. Petitions were also filed at that time with regard to K.K.'s half-brothers. After several fact finding hearings, the trial court terminated

Mother and Father's parental rights as to K.K's siblings,[1] but denied DCS's petition as to K.K. because K.K.'s Father had shown some progress in the DCS programs.

The evidence showed that since the termination hearings, both parents have failed to comply with many of the orders of the CHINS court, including participation in parenting classes and keeping counseling and medical appointments. In short, Mother made little progress and Father began abusing drugs. As a result, on March 1, 2010, DCS filed a petition to terminate Mother and Father's parental rights as to K.K. During the course of the hearings that were conducted on June 29 and July 13, 2010, family case manager Tiffanie Bailey testified that Mother did not interact and cooperate with her as the trial court had ordered. Although Mother met with the service providers regarding parenting skills, she did not incorporate those skills when visiting K.K. in foster care. Mother also did not abide by the visitation rules that DCS instituted. Mother would talk on her cell phone, curse, and behave inappropriately during the visits that she had with K.K. Mother also failed to submit to drug screenings that were required.

When Bailey visited the residence, she noticed that Mother had very little food, and the home was strewn with trash. Mother also failed to notify Bailey when her new boyfriend, Patrick Dehut, moved into the residence. Mother met Dehut on the internet, and the evidence demonstrated that he was a convicted felon and was not listed on Mother's apartment lease.

[1] The Father of K.K.'s half brothers voluntary agreed to the termination of his parental rights.

Service provider Melissa Edgin testified that following Mother's suicide attempt in late 2009, Mother told K.K. that she had been in the hospital giving birth to a new baby. Edgin also testified about some inappropriate comments that Mother made to K.K. about interacting with a sibling who had molested her.

Mother could not account for her own monthly spending habits, even though she had exhausted all of her social security benefits. Moreover, Mother could not state how she could provide for K.K. if she were placed back in the home.

Edgin did not believe that Mother could appropriately parent K.K. because of Mother's lack of preparedness, her use of inappropriate language and conversation during her visits, her apparent inability to arrange for transportation, and her lack of interpersonal skills. Edgin testified that Mother's visits had a negative impact on K.K., and that termination of Mother's parental rights would be in K.K.'s best interests.

In April 2010, Joan Cox substituted for Edgin and supervised one of the visits. On that occasion, Mother used her cell phone in violation of the visitation rules and focused on Father's missed visits instead of interacting with K.K. And when other family members appeared for the visit, Mother engaged in a verbal altercation with her oldest son.

Cindy Granger, one of the other service providers, testified that Mother is not able to adequately care for K.K. Thus, Granger believed that the termination of Mother's parental rights were in K.K.'s best interests. Granger acknowledged that she and one of Mother's daughters assisted Mother in obtaining necessities for daily living. Moreover,

although Granger tried to help Mother enroll in the food stamp program, Mother never pursued it. In fact, Mother failed to notify the public assistance office of her mailing address even after Granger reminded her to do so. Mother showed very little initiative and Granger did most of the "leg work" on her behalf. Appellant's App. p. 21.

The evidence also showed that Father failed to maintain steady employment, did not stay in contact with the DCS personnel, and could not remain sober. At some point, Father tested positive for opiates and other drugs. Father did not complete a court-ordered drug and alcohol counseling program. Since February 2010, Father attended only eleven of twenty scheduled visits with K.K.

Finally, DCS representatives testified that K.K. was doing well in foster care and that its plan for K.K. was adoption following the termination of Mother and Father's parental rights. On September 14, 2010, the trial court terminated both Mother and Father's parental rights as to K.K. Mother now appeals.[2]

DISCUSSION AND DECISION

I. Standard of Review

We initially observe that the Fourteenth Amendment to the United States Constitution protects the traditional right of parents to raise their children. In re Involuntary Termination of Parent-Child Relationship of I.A., 934 N.E.2d 1127, 1133 (Ind. 2010). However, parental rights are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental

[2] Father is not a party to this appeal.

rights. In re D.D., 804 N.E.2d 258, 264-65 (Ind. Ct. App. 2004). The purpose of terminating parental rights is not to punish parents but to protect their children. In re S.P.H., 806 N.E.2d 874, 880 (Ind. Ct. App. 2004). Thus, parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. In re D.D., 804 N.E.2d at 265.

When reviewing the termination of parental rights, we neither reweigh the evidence nor judge witness credibility, considering instead only the evidence and reasonable inferences that are most favorable to the judgment. In re I.A., 934 N.E.2d at 1133. Because the trial court entered specific findings of fact and conclusions thereon in its order terminating Mother's parental rights, we apply a two-tiered standard of review. Bester v. Lake Cnty. Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005).

First, we determine whether the evidence supports the findings, and then consider whether the findings support the judgment. Id. 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). A judgment is clearly erroneous when the evidence does not support the findings or the findings do not support the result. In re I.A., 934 N.E.2d at 1133.

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

(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 . . . 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 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).

II. Mother's Contentions

A. Conditions Remedied

Mother claims that DCS failed to prove that the reasons for K.K.'s removal would not be remedied. Mother maintains that while DCS presented evidence about this factor, "the lack of fully implementing parenting skills was not quantified so that a clearer understanding of those issues could be had, . . . [and] the testimony appears unreliable in light of developments on cross-examination." Appellant's Br. p. 14.

In determining whether the conditions will be remedied, the juvenile court must judge the parent's fitness to care for the child 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). However, a parent's habitual patterns of conduct must also be evaluated to determine the probability of future neglect. Id. Evidence of a parent's pattern of unwillingness or lack of commitment to address parenting problems supports a termination decision. Lang v. Starke Cnty. OFC, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007). DCS need only establish that there is a reasonable probability that the parent's behavior will not change. In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

As discussed above, the evidence established that both Mother and Father failed to comply with the trial court's orders during the CHINS proceedings. Tr. p. 158-66. Father abused drugs and Mother showed little progress in the court-ordered parenting programs. Id. at 126, 267-69. Mother's residence was strewn with trash, and there was very little food in the house at times. Id. at 121-23, 146, 150, 159. Although Mother met with the service providers, she did not follow through with their recommendations. Id. at 165-66. In fact, Granger had met with Mother on only three occasions since the prior termination proceedings. Id. at 139, 254-56. Mother knew the visitation rules but did not comply with them. Id. at 35-36. The caseworkers observed that the visitations had a negative impact on K.K. Id. at 74. Mother also violated DCS rules when she failed to notify her caseworker that Dehut moved into the residence. Id. at 221.

The caseworkers also testified that Mother was not able to appropriately parent K.K. because of her lack of preparedness, her inappropriate language and conversation, and lack of interpersonal skills. Id. at 39-40. Granger testified that Mother was unable to provide for her own needs as well as those of K.K. Id. at 119-30, 151-52.

Most of the evidence regarding Mother's alleged progress was self-reported and otherwise unsupported. It remains unknown whether Mother is able to provide for K.K. When considering the evidence that was presented at the final hearing, the trial court properly found that the conditions that caused K.K.'s removal would not be remedied. Mother's claim to the contrary is a request to re-weigh the evidence and to reassess the credibility of witnesses, which we will not do. In re I.A., 934 N.E.2d at 1133.

B. K.K.'s Best Interests

Finally, Mother contends that DCS failed to establish that termination of her parental rights was in K.K.'s best interests. In determining whether termination is in the best interests of the child, the juvenile court must look beyond the factors identified by DCS to the totality of the evidence. C.T. v. Marion Cnty. Dep't of Child Servs., 896 N.E.2d 571, 585 (Ind. Ct. App. 2008). In so doing, the court must subordinate the interests of the parent to those of the child. Id. A child's need for stability and permanency is paramount. McBride v. Monroe Cnty. Office of Family & Children, 798 N.E.2d 185, 192-193 (Ind. Ct. App. 2003). Recommendations from the caseworker and guardian ad litem that parental rights be terminated have been held sufficient to support a

finding that termination is in the child's best interests. Id. at 203; A.J. v. Marion Cnty. Office of Family & Children, 881 N.E.2d 706, 718 (Ind. Ct. App. 2008).

As discussed above, Mother has a history of termination of her parental rights with regard to her other children and has shown an inability to provide for herself. Mother has failed to provide for herself and has not been able to maintain safe and stable housing. Mother did not have a steady source of income, and her oldest daughter was paying some of her bills. Tr. p. 120-21, 201-03. The family case manager and the service providers testified that Mother failed to comply with court orders and failed to show that she could provide for herself and K.K. Case Manager Bailey testified about K.K.'s need for permanency in light of Mother and Father's inability and failure to provide for K.K.'s emotional and physical needs. The GAL's report also indicated that termination of parental rights was in K.K.'s best interests. Appellant's App. p. 50-82.

In light of this evidence, we cannot say that the trial court's findings are clearly erroneous. Thus, we conclude that the trial court properly determined that termination of Mother's parental rights was in K.K.'s best interests.

The judgment of the trial court is affirmed.

MAY, J., and BRADFORD, J., concur.