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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF KA.S. and KE.S., CHILDREN IN NEED OF SERVICES,	)	
B.M.,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A02-0812-JV-1088
MARION COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Respondent.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary Chavers, Judge Pro Tempore
The Honorable Beth Jansen, Magistrate
Cause Nos. 49D09-0805-JC-21808
49D09-0805-JC-21809

June 3, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

B.M. ("Mother") appeals the trial court's order relieving the Marion County Department of Child Services ("DCS") of its obligation to make reasonable efforts to reunify Mother with her infant children, Ka.S and Ke.S. On appeal, Mother raises one issue, which we restate as whether the statute authorizing the trial court to relieve DCS of its reasonable efforts obligation, Indiana Code section 31-34-21-5.6(b)(4), violates Mother's substantive due process rights as guaranteed by the Fourteenth Amendment of the United States Constitution. Concluding the statute does not violate Mother's substantive due process rights, we affirm.

Discussion and Decision

On May 2, 2008, Mother gave birth to Ka.S and Ke.S. Shortly thereafter, drug testing indicated that Mother and one of the children (the record is not clear which one) tested positive for cocaine. Based on the positive drug test, DCS filed a petition on May 15, 2008, alleging that Ka.S and Ke.S were children in need of services ("CHINS"). On June 26, 2008, DCS filed a motion requesting that the trial court relieve DCS of its obligation to make reasonable reunification efforts. In support of its motion, DCS alleged that Mother's parental rights to another child had been involuntarily terminated on September 4, 2007.

On September 25, 2008, the trial court conducted a hearing on the CHINS petition and the reasonable efforts motion, hearing testimony from Mother and the DCS caseworker,

among others, and admitting several documents into evidence. Based on this evidence, on October 30, 2008, the trial court entered an order adjudicating Ka.S. and Ke.S. to be CHINS and relieving DCS of its reasonable efforts obligation. Mother now appeals.

Discussion and Decision[1]

Mother argues the trial court's order relieving DCS of its obligation to provide reasonable reunification efforts is invalid because the statute authorizing such relief, Indiana Code section 31-34-21-5.6(b)(4), violates her substantive due process rights as guaranteed by the Fourteenth Amendment of the United States Constitution.[2] The parties agree the statute infringes on a parent's fundamental right to raise her children. Accordingly, for the statute to survive constitutional scrutiny, it must serve a compelling state interest and be narrowly tailored to serve that interest. Crafton v. Gibson, 752 N.E.2d 78, 91 (Ind. Ct. App. 2001). In making this determination, we begin with the presumption that the statute is valid and will not disregard that presumption unless it is clearly overcome by a contrary showing. Boehm v. Town of St. John, 675 N.E.2d 318, 321 (Ind. 1996).

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[1] On March 25, 2009, DCS filed a motion to strike portions of Mother's appendix, specifically an order by the trial court entered after the trial court's October 30, 2008, order (i.e., the appealed order) and a DCS permanency report. These materials have played no part in our resolution of Mother's constitutional challenge, and given our rejection of that challenge below, we deny as moot DCS's motion to strike.

[2] Mother purports to argue that the statute also violates Article I, Section 12, of the Indiana Constitution, but does not conduct an independent analysis of this state constitutional provision. Accordingly, we will address Mother's federal constitutional argument only. See Rynerson v. City of Franklin, 669 N.E.2d 964, 966 n.1 (Ind. 1996); see also N.B. v. Sybinski, 724 N.E.2d 1103, 1112 (Ind. Ct. App. 2000) ("[S]tate and federal substantive due process analysis is identical."), trans. denied; cf. Lake Cent. Sch. Corp. v. Scartozzi, 759 N.E.2d 1185, 1189 n.5 (Ind. Ct. App. 2001) ("Although our supreme court has cautioned against broad generalizations in all situations regarding the similarities of the protection afforded by and the analysis of claims brought under the Due Process Clause of the United States Constitution (Fourteenth Amendment) and the Due Course of Law provision of the Indiana Constitution (Article 1, Section 12), we believe the rights provided for and the analysis used with regard to the state constitution in the present case are analogous to the federal constitution.").

Section 5.6(b)(4) permits the trial court to relieve DCS of its obligation to provide reasonable efforts to reunify a child with the child's parent if the parent's parental rights to another child have already been terminated. The statute was enacted in response to a federal statutory scheme that, among other things, requires states to relieve entities such as DCS of their reasonable efforts obligation in certain circumstances, including where the parent's rights to another child have already been involuntarily terminated, as a condition to receiving federal aid for child welfare programs. See 42 U.S.C. § 671(a)(15)(D). The purpose of relieving these entities of their reasonable efforts obligation is based on Congress's recognition that scarce resources should not be devoted to parents who are unlikely to benefit from such efforts, as evidenced by a criminal history of sex abuse or a prior involuntary termination of parental rights, among other examples. See G.B. v. Dearborn County Div. of Family & Children, 754 N.E.2d 1027, 1030 n.2 (Ind. Ct. App. 2001) (quoting from the legislative history of the federal statutory scheme), trans. denied.

To the extent Mother argues section 5.6(b)(4) is unconstitutional on its face, this court has already rejected such an argument. In G.B., a panel of this court concluded that the statute served the state's compelling interest of protecting the welfare of children and that it served this interest narrowly because it "include[d] only those parents who have had at least one chance to reunify with a different child through the aid of governmental resources and have failed to do so." 754 N.E.2d at 1032. The court also noted that its conclusion was consistent with other jurisdictions that had addressed similar constitutional challenges and that regardless of whether the trial court relieved DCS of its reasonable efforts obligation, the

parent was still entitled to the full range of statutory protections in the event DCS ultimately sought to terminate the parent's rights. Id. at 1032-33.

Mother does not appear to argue that G.B. was wrongly decided or otherwise invite us to reconsider the opinion; instead, she appears to cast her argument in terms of an as-applied challenge, contending section 5.6(b)(4) is not narrowly tailored to serve the state's interest of protecting the welfare of children because it "does not take into account the amount of time that has passed from the previous involuntary termination" to the request to relieve DCS of its reasonable efforts obligation. Appellant's Brief at 6. Given the statute's silence regarding the relevance of any time lapse, Mother further notes that DCS "could be relieved of its duty to make reasonable efforts to reunify a parent and a child, even though a parent's rights were involuntarily terminated with respect to an older sibling ten years ago, fifteen years ago, even twenty years ago." Id. However, even assuming that an extended time lapse may be constitutionally significant, we cannot say the statute is invalid as applied to the facts of this case. The record indicates that Mother's parental rights with respect to another child were terminated on September 4, 2007, which is slightly less than ten months before DCS filed its motion to be relieved of reasonable efforts. Given such a short time period, it is not unreasonable, let alone unconstitutional, for the legislature to conclude that additional efforts at reunification would be a waste of resources. Accordingly, we conclude that as applied to the facts in this case, the statute is narrowly tailored to achieve the state's compelling interest of protecting the welfare of children.

We also note in closing that Mother's argument that she "will not receive the

opportunity to show that she is now able to properly parent her children due to her inability to properly parent a child in the past" is misplaced. Id. As we observed in C.T. v. Marion County Dep't of Child Servs., 896 N.E.2d 571, 583-84 (Ind. Ct. App. 2008), trans. denied,

> a finding pursuant to Indiana Code Section 31-34-21-5.6 does not abolish a parent's fundamental right to family integrity. Nor does it presuppose an automatic termination of the parent-child relationship. The procedural safeguards contained in Indiana's termination statutes are designed to ensure that parents receive a full and fair hearing before a termination of their parental rights may occur. MCDCS plays an integral part in ensuring that such procedural safeguards are strictly followed, and may not simply wash its hands of a case even after a court has determined that reunification services are no longer required.

See also G.B., 754 N.E.2d at 1032 ("We further note that even if the trial court finds that reasonable reunification efforts are not required, the court and OFC are still required to follow the statutory procedures in both CHINS and termination cases."). In sum, section 5.6(b)(4) does not alter the statutory protections available to Mother in the event DCS seeks to involuntarily terminate her parental rights.

Conclusion

Indiana Code section 31-34-21-5.6(b)(4) does not violate Mother's substantive due process rights as guaranteed by the Fourteenth Amendment of the United States Constitution.

Affirmed.

DARDEN, J., and BAILEY, J., concur.