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FILED
Jun 05 2009, 9:11 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF T.J., T.J., and T.J., Minor Children, and T.J., Mother.	)	
T.J. (MOTHER),	)	
Appellant-Respondent,	)	
vs.	)	No. 49A02-0812-JV-1071
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Diana Burleson, Magistrate
Cause No. 49D09-0804-JT-15944

June 5, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

T.J. ("Mother") appeals the involuntary termination of her parental relationship with her children, T.N.J. ("Eldest Child"), T.N.J. ("Middle Child"), and T.J. ("Youngest Child") (collectively referred to as "Children"). We affirm.

Issue

Mother raises one issue, which we restate as follows: Whether the juvenile court's judgment is clearly erroneous.

Facts and Procedural History

On April 9, 2008, the Marion County Department of Child Services ("DCS") filed a petition to terminate the parent-child relationship between Mother and Children. Following a hearing, on October 7, 2008, the juvenile court entered its judgment terminating the parental relationship between Mother and Children,[1] which provides in relevant part as follows:

FINDINGS OF FACT

> ….
>
> 8. DCS filed a Petition Alleging Children in Need of Services on January 4, 2007, … alleging that [Mother] had failed to complete the informal Adjustment program entered into on or about October 26, 2005. [Mother] tested positive for cocaine when she was admitted into the hospital for preterm labor on or about November 26, 2006 ([Youngest Child] was born November 29 at 28 weeks). The petition further alleges that [Mother] admitted to using cocaine while pregnant, and wanting to abort or give the infant up for adoption. Because [Mother] tested positive for cocaine while pregnant, and failed to cooperate with the services of the Informal Adjustment, DCS alleged that the [C]hildren were endangered in her care.

[1] This judgment also terminates the parent-child relationship between Middle Child and her father. Appellant's App. at 14. On October 14, 2008, the parent-child relationship between Eldest Child and her father was terminated. *Id*. at 41-42. Youngest Child's father is unknown.

9. On April 26, 2007, [Mother] admitted that the allegations in the CHINS petition were true and waived her right to a pre-dispositional report. At that time, the court entered a parental participation decree ordering [Mother] to complete services to enhance her ability to parent safely and facilitate reunification with her [C]hildren.

….

12. The events leading to the filing of the CHINS case being filed are as follows:

    a. In August 2005 a DCS case manager spoke to [Mother] regarding positive cocaine screens on July 27 and July 30, 2005 at which time she was 20 weeks pregnant. [Mother] denied that she had a problem with cocaine.

    b. On August 2, 2005 [Mother] was told she should complete a safety plan with YES. She completed the plan on August 9, 2005. She was also referred to Project Home for prenatal care but she didn't go.

    c. On October 11, 2005 [Mother] went to Community East Hospital for a pregnancy check up, tested positive for cocaine, and left the hospital against medical advice.

    d. On October 17, 2005 a DCS case manager counseled [Mother] on the seriousness of drug use while pregnant.

    e. On October 26, 2005 [Mother] signed an Informal Adjustment contract.

    f. In November 2005 [Mother] gave birth to a stillborn baby.

    g. [Mother] never successfully completed a program of home based counseling as ordered by the CHINS court. [Mother] had home based counseling in place during the informal adjustment but was never able to successfully complete the program. [Mother] was unsuccessfully discharged December 18, 2006 for continuing to test positive for cocaine. Because she had been unsuccessfully terminated from home based counseling during the Informal Adjustment period, [Mother] was made aware that

home based counseling would not be referred in the CHINS matter until she was able to produce 5 consecutive clean random urine screens. [Mother] failed to do so and home based counseling was not referred.

h. Two extensions of the prior Informal Adjustment contract had been allowed by the CHINS court. [Mother] either missed her scheduled drug screens or tested positive for cocaine. [Mother] was never able to meet the goals of the informal adjustment, specifically five consecutive clean urine drug screens.

13. Pursuant to the terms of the CHINS participation decree, [Mother] was ordered to complete an array of services including: contacting the caseworker weekly, participating in home based counseling and successfully completing it and any recommendations of the home based counselor, complete a parenting assessment and follow all recommendations of the parenting assessor, complete a substance abuse evaluation and follow all recommendations, successfully complete a substance abuse treatment program and all follow up treatment, participate in random drug screens, demonstrate that she had secured and could maintain a legal, stable source of income adequate to support herself and the [C]hildren, and demonstrate that she had obtained and could maintain suitable housing with functional utilities and adequate provisions for herself and her children.

14. [Mother] completed a parenting assessment in February 2007. The assessment recommended that [Mother] complete an intensive outpatient drug treatment program and submit random urine screens. It was further recommended that after [Mother] had completed the program, she participate in a support group.

15. [Mother] failed to participate in the first referred intensive outpatient drug treatment program.

16. [Mother] successfully completed her 14 day inpatient stay at the Salvation Army Harbor Light Program in the summer of 2007. [Mother] was discharged June 11, 2008 from intensive outpatient treatment through CASI. She had missed numerous scheduled appointments, tested positive for cocaine at fifteen of the eighteen random urine drops and failed to follow through with finding a furthering care program or attending Narcotics Anonymous as urged by her counselor.

17. [Mother] did not contact her case manager weekly as ordered by the Court.

18. By her own admission, [Mother] has never been able to stay clean for more than 30 days during the duration of her addiction. [Mother] has been addicted to cocaine for several years, but she is unsure of exactly how long.

19. The use of illegal drugs impairs a parent's judgment and alters mood. Drugs like cocaine affect a person's ability to parent by impairing the ability of the parent to make appropriate decisions for the care and safety of her children; the parent cannot think beyond the current situation and will often be unresponsive to the needs of a child. Additionally, a parent's "drug seeking behaviors" pose a substantial risk of harm to children as the parent will do whatever is necessary to satisfy a craving or desire for drugs, even engaging in risky behavior.

20. There is reasonable probability that the reasons for placement of the children outside the home of [Mother] will not be remedied. [Mother] has been using cocaine at least since August of 2005 and since that time has had numerous opportunities through home based counseling, inpatient services, intensive outpatient services, and support groups to overcome her addiction. She has had DCS intervention since August 2005 and court intervention since October 2005 and yet she has not completed the services offered and has not been able to provide 5 consecutive positive drug screens. Since her children were removed from her in April 2007 she has known what is necessary to reunify her with her [C]hildren, and has not completed what was requested of her.

….

25. [The Children] have been in relative care continuously since April 26, 2007. First they were placed with a maternal aunt, and since May 23, 2008, they have been placed with their maternal grandmother, [D.J.].

26. [D.J.] loves her grandchildren and she is committed to adopting them and providing a safe, stable permanent home for them until they reach adulthood. [The Children] are thriving in their grandmother's care. They are doing well in school and have a lot of family support. The [C]hildren have bonded with their grandmother and have adapted well to the routines of her household.

27. Termination of the parent-child relationship is in the best interests of [the Children]. [They] need permanency in a loving and stable home with a caregiver that they can rely on. At the time of DCS's intervention into [Mother's] life, [Eldest Child] was 5, [Middle Child] was 3, and [Youngest Child] was not born. The [C]hildren are now 8, 6, and 2 years of age and have thrived in their grandmother's care.

28. The plan the DCS has for these [C]hildren is that they be adopted by their grandmother.

29. Adoption is a satisfactory plan for the care and treatment of these [C]hildren.

30. The Guardian ad Litem is in agreement that termination of the parent-child relationship is in the best interests of the [C]hildren.

CONCLUSIONS

….

2. There is [a] reasonable probability that the reasons for placement of the [C]hildren outside the home of their parents will not be remedied.

3. Termination of the parent-child relationship between [the Children] and their mother … is in the best interests of the [C]hildren.

Appellant's App. at 9-14.

Discussion and Decision

Mother asserts that the juvenile court's judgment is not supported by sufficient evidence. In reviewing her claim, we observe,

> This court has long had a highly deferential standard of review in cases concerning the termination of parental rights. Thus, when reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. We consider only the evidence and reasonable inferences that are most favorable to the judgment.

In re A.J., 877 N.E.2d 805, 815 (Ind. Ct. App. 2007) (citations omitted), *trans. denied* (2008).

Here, the juvenile court supported its judgment with findings of fact and conclusions thereon.

> Where the [juvenile] court enters specific findings of fact, we must first determine whether the evidence supports the findings. Then, we determine whether the findings support the judgment. We will not set aside the trial court's judgment terminating parental rights unless it is clearly erroneous. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. A judgment is clearly erroneous only if the findings of fact do not support the trial court's conclusions thereon, or the conclusions thereon do not support the judgment.

Id. (citations omitted).

The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution. *In re Termination of Parent-Child Relationship of L.V.N.*, 799 N.E.2d 63, 68 (Ind. Ct. App. 2003). However, these parental interests are not absolute and must be subordinated to the child's best interests. *Id*. Although parental rights are of a constitutional dimension, where a parent is unable or unwilling to meet her parental responsibilities, parental rights may be terminated. *In re Termination of Parent-Child Relationship of D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*.

To terminate a parent-child relationship, the State must prove by clear and convincing evidence that:

> (A) [o]ne (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.

Ind. Code § 31-35-2-4(b)(2); *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992).

Specifically, Mother argues that the DCS failed to prove that there is a reasonable probability that the reasons for the Children's placement outside her home will not be remedied, that is, that she cannot overcome her cocaine addiction. In determining whether the conditions that resulted in the child's removal will not be remedied, the juvenile court must evaluate a parent's fitness to care for a child at the time of the termination hearing, taking into consideration evidence of changed conditions. *A.J. v. Marion County Office of Family & Children*, 881 N.E.2d 706, 714 (Ind. Ct. App. 2008), *trans. denied*. The juvenile court must also take into account the parent's habitual patterns of conduct to determine whether there is a substantial probability of future negative behaviors. *J.K.C. v. Fountain County Dep't of Pub. Welfare*, 470 N.E.2d 88, 92 (Ind. Ct. App. 1984). Additionally, the juvenile court may consider how the parent responded to the services provided to remedy the situation. *In re B.J.*, 879 N.E.2d 7, 18 (Ind. Ct. App. 2008), *trans. denied*. Where the parent has achieved temporary improvements but has engaged in a pattern of conduct that fails to show actual progress, the court might reasonably find that under the circumstances, the unsatisfactory situation will not improve. *Matter of D.L.W.*, 485 N.E.2d 139, 142-43 (Ind. Ct. App. 1985).

Mother admits that she is a recovering drug addict but contends that her relationship with her Children should not be terminated "where she successfully completed two drug treatment programs." Appellant's Br. at 3. She asserts that Finding 16 is misleading in that it states that she was "discharged" from CASI, whereas Keith Sneed, Mother's substance abuse counselor, testified that she was "successfully discharged." Tr. at 53. It is true that Sneed testified that Mother was successfully discharged. *Id*. at 60. More specifically, Sneed testified that her discharge was successful *with* the stipulation that she had received maximum benefit gains; that is, there was nothing more that the program could provide to Mother toward the goals of abstinence and sobriety. *Id*. at 55-56. Sneed also testified regarding Mother's compliance with the program's objectives as follows:

> "[O]ne thing was being honest, uh, she did have quite a few positive screens but it wasn't like she was denying the fact, trying to cover it up, or, or lying about it …. Uh, she recognized that she, that she did need help and that, um she's just slow about gettin' it done. But, um, but she did do some things correct. Uh, a lot of people in her situation would have quit but she never quit, so um, that was a positive and that was why we [were] willing to work with her, because we, you know, like I [and the] staff … we all decided that … she needed a little more help so [we were] willing to do that for her.

Id. at 62.

However, at the time of discharge, Mother continued to fail random drug screens. *Id*. at 55. In fact, she had failed fifteen of eighteen drug tests. *Id*. at 71. Thus, Mother was unable to completely end her drug use as a result of her participation in CASI, and in that sense she was not successful. In fact, Karen Williams, Mother's family case manager, testified that in light of Mother's repeated positive drug screens, the CASI program was not very successful. *Id*. at 117. She further testified that "[i]f someone is still providing unclean

screens then, the program itself isn't successful[.]" *Id*. at 119. In light of Mother's failure to achieve abstinence, the juvenile court's finding that she was "discharged," rather than "successfully discharged," is not clearly erroneous.

Mother also challenges Finding 19, arguing that it is only a general statement regarding the incompatibility of parenting and drug use and that the findings are devoid of actual instances that Mother neglected, harmed, or endangered her Children. Our review of the record shows that testimony regarding the dangers to children of parental drug use was presented. Tr. at 57-58, 77, 96. "Termination of parental rights is proper where the children's emotional and physical development is threatened." *In re W.B.*, 772 N.E.2d 522, 528 (Ind. Ct. App. 2002). "The [juvenile] court need not wait until the children are irreversibly harmed such that their physical, mental, and social development are permanently impaired before terminating the parent-child relationship." *Id*. at 529. Accordingly, the fact that specific instances of harm, neglect, or endangerment of the Children were not found does not establish that the juvenile court's judgment is clearly erroneous.

Lastly, Mother argues that the juvenile court's conclusion that she cannot remedy her drug addiction is not supported by the record. She notes that Sneed and Adrianne Harris, head of the Residential Treatment Department at the Salvation Army Harbor Light Center, "believed that [she] had insight into her condition and she was committed to overcoming her addiction" and that "[s]he was drug free and had been employed for a month at the time of

the termination hearing."[2] Appellant's Br. at 5. We recognize that Mother fulfilled some of the requirements imposed by DCS and the juvenile court and that for the month preceding the termination hearing she was employed and drug-free. We are mindful of the difficulties facing an addict. We commend Mother's perseverance and encourage her not to give up. However, Mother's argument essentially amounts to an invitation to reweigh the evidence, which we cannot do. *See A.J.*, 877 N.E.2d at 815; *see also L.V.N.*, 799 N.E.2d at 70-71 (concluding that mother's arguments that the conditions had changed and that she was now drug-free constituted an invitation to reweigh the evidence).

Mother has not challenged the juvenile court's findings other than Findings 16 and 19. Although we found Mother's arguments unpersuasive, even if we had accepted them, the remaining findings support the juvenile court's conclusion that there is a reasonable probability that the reasons for placement of the Children outside her home will not be remedied. Mother has been continually using cocaine since August 2005 and has not been free from cocaine use for more than thirty days, those days being the days immediately preceding the termination hearing. We observe that DCS is not required to rule out all possibilities of change; rather, "DCS need establish only that there is a reasonable probability that the parent's behavior will not change." *In re Involuntary Termination of Parent-Child Relationship of Kay.L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). Accordingly, we conclude that the juvenile court's judgment is not clearly erroneous. *See Prince v. Dep't of Child*

[2] We observe that Mother failed to cite Harris's testimony. Our review of the record revealed that Harris did not testify in the manner Mother asserts.

Servs., 861 N.E.2d 1223, 1231 (Ind. Ct. App. 2007) (concluding that "[i]n light of [parent's] past failure to maintain sobriety and her admission that she failed to fully take advantage of the services offered her, we cannot say the court erred when it concluded the circumstances resulting in the children's removal had not changed.").

Affirmed.

BRADFORD, J., and BROWN, J., concur.