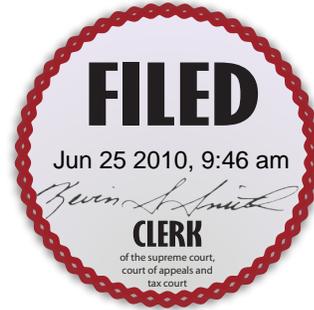


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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF: INVOLUNTARY)
TERMINATION OF PARENT-CHILD)
RELATIONSHIP OF Z.H., the child,)
)
A.H., Mother,)
)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
Appellee-Petitioner.)

No. 20A03-1002-JT-49

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
The Honorable Deborah A. Domine, Juvenile Magistrate
Cause No. 20C01-0907-JT-59

June 25, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent A.H. (Mother) appeals the trial court's order terminating her parent-child relationship with her minor son, Z.H. Specifically, Mother argues that appellee-petitioner Indiana Department of Child Services (DCS) failed to present clear and convincing evidence that there was a reasonable probability that the conditions that resulted in the removal of Z.H. and his placement outside Mother's home will not be remedied. Mother also claims that DCS failed to establish that she "would have been a threat to her son's well-being and the evidence did not support the court's decision that termination of [Mother's] rights were in Z.H.'s best interests." Appellant's Br. p. 12. Finally, Mother contends that DCS failed to establish that adoption was a satisfactory plan for Z.H. because there were no attempts at reunification.

Concluding that the evidence was sufficient to support the termination order, we affirm the trial court's judgment.

FACTS

On April 22, 2008, Mother, who was seventeen years old at the time, gave birth to Z.H. At some point, DCS received a report that Mother was not properly caring for Z.H. Mother and Z.H. were living with Z.H.'s maternal grandmother (Grandmother) in Elkhart. Grandmother was not able to care for herself or an infant, and she did not want Mother "running around" and leaving Z.H. at home with her. Appellant's App. p. 12. It was reported that the residence was dirty, "with bugs everywhere," and there was moldy

food on plates in the kitchen, on the coffee table, and in the bedroom. Id. Additionally, a urine-soaked cat litter box was in the hallway that was overflowing with feces.

After DCS assessors had visited the residence on several occasions, there were ongoing concerns about Z.H.'s safety. It was also determined that Mother was verbally abusive to Grandmother and she had difficulty administering medication that had been prescribed for Z.H. DCS personnel also observed that Mother would not sterilize Z.H.'s bottle before feeding him.

In light of these observations, numerous community support services were provided to the family, including financial management counseling and assistance by a community health nurse. Because these services were not sufficient to remedy the conditions in the home, Z.H. was removed from Mother's care on June 19, 2008, and placed in a foster home.

Thereafter, DCS filed a Child In Need of Services (CHINS) petition, alleging, among other things, that Mother was unable to provide Z.H. "with the level of supervision and care he needs." Id. at 7. A CHINS petition was also filed with respect to Mother. This petition alleged that

[Mother] is a danger to herself or others. [Mother] has threatened to stalk [Grandmother] and have [Grandmother's] friend killed. [Mother] roams the neighborhood and engages in sexual activity which poses a risk to her own well-being. [Grandmother] is unable to provide [Mother] with the necessary care and supervision.

Id. at 26.

Both Mother and Z.H. were found to be CHINS. Mother was placed at Bashor Home—a residential facility—where she would receive independent living skills if she

demonstrated those capabilities. On July 24, 2008, dispositional orders were entered in both cases. The order in Z.H.'s case directed that he remain in foster care with a move to a less restrictive placement at the discretion of DCS's case manager. Mother was also to have supervised visitation with a move to unsupervised visitation at the discretion of the case manager. Mother was to complete a Psychological Parenting Assessment and follow the prescribed recommendations.

Mother remained at Bahor, and Z.H. remained in foster care. Z.H. was never returned to Mother's care, and Mother never demonstrated that she was capable of visiting her son without supervision and direct assistance to attend to his needs. On the other hand, DCS and Z.H.'s foster parents worked with medical providers and therapists to address his numerous special needs, which included feeding and swallowing problems, and corrective braces for his wrists and ankles.

Mother participated in weekly supervised visitation with Z.H., attended parenting classes, and worked with her case manager in an effort to identify a living situation other than a residential facility. Although possible adult foster care placements were considered, Z.H. could not be placed with Mother at any of the identified housing options.

Dr. Anthony Berardi, Ph.D., H.S.P.P., who performed the parenting assessment, determined that Mother was "mildly mentally handicapped." Appellant's App. p. 198. Dr. Berardi's report also indicated that Mother's inability to care for herself would render it difficult for her to care for a child. A disabilities case manager determined that Mother

will need support services to live on her own, and Mother admitted that she does not know how to care for a child.

On July 30, 2009, DCS filed a petition to terminate Mother's parental rights as to Z.H. At the January 4, 2010, termination hearing,¹ the DCS supervisor who monitored the visits between Mother and Z.H. testified that Mother continues to require assistance in providing for Z.H.'s basic needs. Mother cannot change a diaper on her own and she gets confused about the various medications that must be administered to Z.H.

Z.H.'s foster mother testified that Z.H. undergoes developmental and physical therapy, is involved with social workers, and is unable to walk or speak. Z.H. takes three different medications on a daily basis and travels to Riley Children's Hospital once every two months for specialized care.

DCS case manager Tiffany Smith testified that Z.H. requires much attention and support that Mother cannot provide for him. Mother cannot care for herself and she lacks the ability to care for Z.H. and provide for his many special and basic needs. Smith also testified that the conditions resulting in Z.H.'s removal have not been remedied and to continue the parent child relationship would be a threat to Z.H.

The Court Appointed Special Advocate (CASA) testified that Z.H. is developmentally delayed, has serious medical problems, and Mother is unable to provide for his needs. Mother told a therapist that she is "afraid she will not be able to get [Z.H.] to Riley Hospital" for his required medical needs. Appellant's App. p. 10. Moreover,

¹ Although Z.H.'s father had notice of the final hearing, he failed to appear and is not a party in this appeal. Appellant's App. p. 6.

Mother admitted that she would not know how to care for Z.H. if he was returned to her care.

The evidence also demonstrated that Z.H. is making improvements and “doing well” in foster care. Id. at 10. The foster parents will continue to care for Z.H. and pursue adoption if Mother’s parental rights are terminated.

At the conclusion of the hearing, the trial court terminated Mother’s parental rights as to Z.H. She now appeals.

DISCUSSION AND DECISION

I. Standard of Review

In reviewing termination proceedings on appeal, this court will not reweigh the evidence nor assess the credibility of the witnesses. In re Involuntary Termination of Parental Rights of S.P.H., 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We consider only the evidence that supports the trial court’s decision and reasonable inferences drawn therefrom. Id. Where, as here, the trial court enters findings of fact and conclusions of law in its termination of parental rights, our standard of review is two-tiered. Id. First, we determine whether the evidence supports the findings, and second, whether the findings support the conclusions of law. 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).

We acknowledge that the involuntary termination of parental rights is the most extreme sanction a court can impose on a parent because termination severs all rights of a parent to his or her children. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. Id. The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Id. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities. Id.

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

- (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 under IC 31-34-21-5.6 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) after July 1, 1999, 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).

In construing this statute, this court has held that when determining whether certain conditions that led to the removal of the children will be remedied, the trial court must judge the parent's fitness to care for the children 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). A parent's habitual pattern of conduct must also be evaluated to determine the probability of future negative behavior. Id. Pursuant to this rule, courts have properly considered evidence of a parent's history of neglect, failure to provide support, and lack of adequate housing and employment. A.F. v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002). The trial court need not wait until a child is irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship. In re D.J., 755 N.E.2d at 684.

The trial court may also consider the services offered as well as the parent's response to those services. Id. Parental rights may be terminated when parties are unable or unwilling to meet their responsibilities. In re T.F., 743 N.E.2d 766, 776 (Ind. Ct. App. 2001). Also, when determining what is in the best interests of the children, the interests of the parents are subordinate to those of the child. Id. at 773. Thus, parental rights will be terminated when it is no longer in the child's best interests to maintain the relationship. In re B.D.J., 728 N.E.2d 195, 200 (Ind. Ct. App. 2000).

Finally, we acknowledge that a trial court may not base its termination decision solely on a finding that a parent is of limited mental faculties. Egly v. Blackford County

Dep't of Child Welfare, 592 N.E.2d 1232, 1234 (Ind.1992). However, we have historically considered a parent's mental capacity in considering whether the needs of the child can be satisfied. See In re J.T., 742 N.E.2d 509, 513 (Ind. Ct. App. 2001) (affirming termination of parental rights based on evidence that mother did not understand child care, provide safe environment, tendency to be impatient, impulsive, intolerant, immature, all interfering with ability to parent); R.G. v. MCOFC, 647 N.E.2d 326, 330 (Ind. Ct. App. 1995) (holding that while mental retardation alone is not a proper ground for terminating parental rights, a mental disability may be considered when the parents are incapable of or unwilling to care for their child).

II. Mother's Claims

A. Conditions Not Remedied and Threat to Child's Well-Being

As discussed above, DCS had to prove by clear and convincing evidence that either 1) the conditions that resulted in Z.H.'s removal or the reasons for placement outside the home of the parent will not be remedied; or 2) the continuation of the parent-child relationship poses a threat to Z.H.'s well-being. I.C. § 31-35-2-4(b)(2)(B).

Here, the trial court found that DCS had proven both of these provisions by clear and convincing evidence. We will discuss whether the evidence supports the trial court's findings in turn, but note initially that either a finding that conditions will not be remedied or that continuation of the parent-child relationship poses a threat to Z.H.'s well being is sufficient. In other words, the trial court must find one, but not both, to involuntarily terminate Mother's parental rights. In re L.V.N., 799 N.E.2d 63, 69 (Ind. Ct. App. 2003).

In concluding that a reasonable probability existed that the conditions resulting in Z.H.'s removal would not be remedied, the trial court relied upon:

- (1) Mother's acknowledgement that supervised contact between her and Z.H. would have to continue;
- (2) Mother's mental condition made her unable to care for herself and would make it difficult for her to care for a child;
- (3) Mother's continuing need for support services to live on her own;
- (4) None of the services considered for Mother could accommodate Z.H.;
- (5) Mother confided that she does not know how she could care for a baby;
- (6) Mother continues to require help in providing for Z.H.'s basic needs and that she has difficulty administering medication to Z.H.; and
- (7) Z.H.'s need for attention and support, which Mother could not provide at the time of removal and continues to be unable to provide today.

Appellee's App. p. 3-4.

The evidence presented at the final hearing essentially demonstrated that Mother had effectively abdicated her parenting responsibilities to Grandmother and resided in a home that was dirty and unsafe for a child. More than sixteen months after Z.H.'s birth, Mother remained incapable of fulfilling her parental responsibilities to house and care for Z.H. Additionally, Dr. Anthony Berardi testified that

A parent should be able to take care of themselves first and be independent and self-sufficient before we want to entrust a child in their care. So the thrust, as I indicated and recommendation for, was for [Mother] to move increasingly toward semi-independent and then fully independent living. I indicated it would be difficult to know exactly how quickly she'd be able to do that given her weaknesses as identified in the report.

Appellee's App. p. 7. The identified weaknesses included Mother's mental handicap, her inability to do well without the support of others, substantial difficulty in nurturing abilities, and a lack in adaptive living skills that are necessary for independent living and raising a child. Appellant's App. p. 198. Dr. Berardi testified that Mother "did not demonstrate that she had independent living skills and wasn't able to really stand on her own two feet." Id. at 158.

Additional evidence demonstrated that Mother has remained dependent upon others to provide for her own safety and well-being. Indeed, when Z.H. was removed from the residence, Mother was not living independently, was relying on a representative payee to manage her monetary benefits and community resources for parenting and homemaking skills.

It was also established that during the course of the CHINS proceedings, the danger of placing Z.H. with Mother never subsided. Mother did not progress beyond supervised visitation with Z.H. because the evidence revealed that it would have been too dangerous to allow her to visit with him unsupervised. Appellee's App. p. 11. Rena Schmucker, the visit supervisor, testified that Mother was not capable of visiting with Z.H. alone. Schmucker also expressed concern about Mother's ability to give Z.H. his medication, get him to appointments, and obtain proper housing. Id. at 8-9, 13.

In sum, the evidence presented at the termination hearing established that there is a reasonable probability that the conditions resulting in Z.H.'s removal would not be remedied. Thus, we decline to set aside the termination order on this basis.

With regard to the finding that the continuation of the parent-child relationship poses a direct threat to Z.H.'s well-being, the evidence demonstrated that Mother was not able to administer Z.H.'s medications without direct intervention. Appellee's App. p. 10, 12. And she needed someone else to tell her the type and quantity of medication to give Z.H. The visit supervisor never recommended that Mother have unsupervised visitation because Mother needed "continuing guidance" for Z.H.'s sake and safety. Id. at 11. This evidence, in addition to that discussed above, establishes that the continuation of the parent-child relationship poses a direct threat to Z.H.'s well being if the parent-child relationship continued.

B. Z.H.'s Best Interests

Mother also maintains that terminating the parent-child relationship would be detrimental to Z.H. In other words, Mother argues that DCS failed to prove that termination of her parental relationship with the children was in Z.H.'s best interest.

In determining what is in the best interest of a child, the trial court is required to look beyond the factors identified by the DCS and look to the totality of the evidence. McBride v. MCOFC, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In doing so, the court must subordinate the interests of the parent to those of the child. Id. The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. Id. As we observed in Matter of D.T., 547 N.E.2d 278, 286 (Ind. Ct. App. 1989): "Children continue to grow up quickly; their physical, mental, and emotional development cannot be put on hold while their recalcitrant parent fails to improve the conditions that led to their being harmed and that would harm them further."

We have also determined that recommendations by a case manager and child advocate to terminate parental rights, coupled with evidence demonstrating that the conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in the child's best interests. See In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

In this case, the trial court made specific findings of fact pertaining to Z.H.'s best interests. The trial court cited the case manager and CASA's testimony that the termination of parental rights was in both Z.H.'s and Mother's best interests. Id. at 18-19. In our view, the testimony of these individuals, the evidence establishing that the conditions that resulted in the removal of Z.H. from Mother's care will not be remedied, and the evidence showing the continued threat to Z.H.'s well-being, was sufficient to establish by clear and convincing evidence that termination of Mother's parental rights was in Z.H.'s best interest.

C. Satisfactory Plan for Care and Treatment of Z.H.

Finally, Mother contends that the termination order must be set aside because DCS failed to establish that adoption by Z.H.'s foster parents was satisfactory. Mother argues that DCS's adoption plan must fail because there were no efforts at reunification.

Indiana Code section 31-35-2-4(2)(D) provides that DCS must have a satisfactory plan for the care and treatment of the child when petitioning for termination of parental rights. Thus, DCS must introduce evidence at the termination hearing regarding its plan for the future care and treatment of the child. However, DCS is only required to give a general sense of direction for the child's future care and treatment and does not require

the plan to be detailed or definitive. In re D.D., 804 N.E.2d 258, 268 (Ind. Ct. App. 2004). Moreover, keeping a child a ward of the State indefinitely is not in the child's best interests, the parent's best interests, or the State's best interests. In re J.W., 779 N.E.2d 954, 964 (Ind. Ct. App. 2002).

In this case, the evidence showed that Mother is in no position to care for Z.H. Z.H. suffers from serious developmental delays, is unable to speak, and requires a home that can address his special needs on an on-going basis. Appellee's App. p. 17-18. To his benefit, Z.H. now finds himself in such a home with foster parents who have the skills that are required to meet his special needs. Therefore, contrary to Mother's arguments, this is not an instance where placement of Z.H. with an adoptive family would simply be "better" or where the parent had a few shortcomings. Rather, DCS's permanency plan of adoption, including the specific placement with his current foster parents, satisfies the statutory requirement that a satisfactory plan exists for the care and treatment of Z.H.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and ROBB, J., concur.