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
Jul 08 2009, 8:46 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

CHRIS P. FRAZIER
Marion County Public Defender
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

TIMOTHY R. HOLLEMS
Department of Child Services
Muncie, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF L.G., minor child, and P.G., her mother,	)	
P.G.,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A04-0902-JV-92
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner,	)	
and	)	
CHILD ADVOCATES, INC.,	)	
Co-Appellee-Guardian Ad Litem.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Beth Jansen, Magistrate
Cause No. 49D09-0808-JT-035313

July 8, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent P.G. (Mother) appeals the juvenile court's order terminating her parental rights with regard to her minor child, L.G. Specifically, Mother argues that the Indiana Department of Child Services (DCS) failed to establish the elements of Indiana Code section 31-35-2-4(b)(2) by clear and convincing evidence as required to terminate her parental rights. Finding that DCS met its burden, we affirm the judgment of the juvenile court.

FACTS

Mother is the biological mother of L.G., born on October 25, 2007. Shortly after L.G.'s birth, Mother placed L.G. with a relative who was also caring for her older child.[1] On October 31, 2007, DCS initiated a Child in Need of Services (CHINS) petition against Mother, alleging that Mother suffered from unresolved mental health issues that led to an unsafe living environment and that Mother was living in a shelter that did not allow children. On December 19, 2007, L.G. was adjudicated a CHINS and the juvenile court ordered Mother to participate in services with the goal of reunification with L.G.

On August 6, 2008, DCS filed a Petition for the Termination of the Parent-Child Relationship. Mother did not file an appearance in the termination proceeding and failed to

[1] Mother's parental rights with respect to her older child have also been terminated.

attend the September 4, 2008, initial hearing. Consequently, the juvenile court continued the matter until November 20, 2008, and scheduled a default hearing for that date.

Mother failed to appear at the default hearing, and the juvenile court granted her appointed counsel's motion to withdraw representation. DCS presented evidence regarding Mother's serious mental health issues, including attempted suicide, for which she refused to take medication or to otherwise treat. In addition, DCS presented evidence showing Mother's lack of cooperation and progress towards reunification with L.G. Specifically, the DCS case manager assigned to Mother and L.G. testified that Mother had not visited with L.G. in the last six months, that attempts to contact Mother had been unsuccessful, and that Mother had failed to complete any court-ordered services with respect to L.G. The case manager further testified that L.G. was thriving in the relative's home `and that the permanency plan was for the relative to adopt L.G. The Guardian Ad Litem (GAL) testified that the petition to terminate Mother's parental rights should be granted.

The juvenile court granted the petition to terminate Mother's parental rights, finding, in part, that:

> 3. The child has been removed from the parent, [Mother] for at least six (6) months under the dispositional decree.
>
> 4. There is a reasonable probability that the conditions which resulted in the removal of the child will not be remedied, that the conditions which require continued placement outside the home will not be remedied and that continuation of the parent-child relationship poses a threat to the child's well being.
>
> 5. Termination of the parent-child relationship is in the best interests of [L.G.].

> 6. The [DCS] has a satisfactory plan for the care and treatment of the above named child.

Appellant's App. p. 8. Mother now appeals.

DISCUSSION AND DECISION

Mother argues that the DCS failed to establish the necessary requirements to terminate her parental rights. Specifically, Mother argues that the DCS failed to prove by clear and convincing evidence that the conditions that resulted in the child's removal would not be remedied, that the continuation of the parent-child relationship posed a threat to the well-being of the child, or that termination was in the best interests of the child.

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to raise their children. Troxel v. Granville, 530 U.S. 57, 65 (2000); Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). But 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 rights. In re D.D., 804 N.E.2d 258, 264-65 (Ind. Ct. App. 2004). Thus, parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id. 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 A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). Here, the juvenile court made specific findings and conclusions thereon in its order terminating Mother's parental rights. Where the juvenile court enters specific findings and

conclusions thereon, we apply a two-tiered standard of review. Bester, 839 N.E.2d at 147. First, we determine whether the evidence supports the findings, and then we determine whether the findings support the judgment. Id. We will not set aside the juvenile 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 S.F., 883 N.E.2d 830, 834 (Ind. Ct. App. 2008).

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) 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).

Mother argues that the juvenile court erred when it determined that the conditions that led to the removal of L.G. would not be remedied. When determining whether or not 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 negative behavior. Id.

Here, when the case manager was asked whether Mother had completed any court-ordered services, she responded, "No, no, with respect to [L.G.]." Tr. p. 21. In addition, the case manager indicated that Mother had not seen L.G. in six months. Furthermore, the record reflects that Mother's parental rights had already been terminated with respect to her older child. Even more compelling, Mother failed to attend both the initial hearing and the default hearing. Given Mother's past conduct, we cannot say that the juvenile court's conclusion that the conditions would not be remedied was clearly erroneous.

Mother also argues that that there was insufficient evidence to show that she was a threat to her child's well-being. Indiana Code section 31-35-2-4(b)(2)(B) requires that the DCS show either that there exists a reasonable probability that conditions will not be remedied or a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child. The juvenile court had sufficient evidence to

conclude that there was a reasonable probability that conditions would not be remedied. Thus, DCS did not have to prove that the continuation of the parent-child relationship posed a threat to the well-being of the child. Nevertheless, the juvenile court concluded that the continuation of the parent-child relationship would pose a threat to the well-being of the child. Given the evidence previously discussed and Mother's unresolved mental illness, we cannot say that this determination was clearly erroneous.

Finally, Mother argues that the DCS failed to prove that terminating her parental rights was in L.G.'s best interest. When determining whether termination of parental rights is in the best interest of the child, the juvenile court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development are permanently impaired before terminating the parent-child relationship. In re A.A.C., 682 N.E.2d at 545.

The case manager testified that Mother had not visited her child in six months. In addition, the case manager stated that L.G. had thrived since living with the relative who planned to adopt her and her older sibling. Finally, the GAL stated that the petition to terminate Mother's parental rights should be granted.

In sum, the testimony of the case manager coupled with Mother's serious and unresolved mental illness, her failure to complete court-ordered services, her failure to appear at the termination proceedings, and the GAL's recommendation that the petition should be granted were sufficient to support a finding that termination of parental rights was in the child's best interest. See In re A.J., 881 N.E. 2d 706, 718-19 (Ind. Ct. App. 2008) (holding that the recommendations of the children's caseworker and GAL coupled with evidence of

the mother's extensive drug history, her incompletion of court-ordered services, and testimony that the children were happy and doing well in their foster homes were sufficient for the juvenile court to determine that termination of parental rights was in the children's best interest).

The judgment of the juvenile court is affirmed.

MAY, J., and BARNES, J., concur.