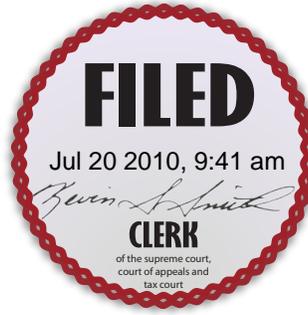


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF D.W. and T.W,)
)
N.W. (Mother),)
)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
Appellee – Petitioner,)
)
and)
)
Child ADVOCATES. INC.,)
)
Co-Appellee (Guardian Ad Litem).)

No. 49A02-0912-JV-1280

APPEAL FROM THE MARION SUPERIORCOURT
The Honorable Marilyn Moores, Judge
The Honorable Larry Bradley, Magistrate
Cause No. 49D09-0906-JT-27732
49DO9-0906-JT-27733

July 20, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

N.W. (“Mother”) appeals the trial court’s termination of the parent-child relationship with her daughter, twelve-year-old Ta.W., upon the petition of the Marion County Department of Child Services (“DCS”). She argues 1) her due process rights were violated when the trial court refused to grant her a continuance and order her to obtain a psychological evaluation, and 2) the evidence is insufficient to support the termination. Concluding Mother’s due process rights were not violated and DCS proved there is a reasonable probability that the conditions that resulted in Ta.W.’s removal will not be remedied, we affirm.

Facts and Procedural History

The facts most favorable to the judgment reveal that Mother has four children, C.W. born in 1990, Te.W. born in 1991, D.W. born in 1992, and Ta.W. born in 1997. The father of the three oldest children is deceased. Ta.W.’s father lived with Mother and the four children until the children were removed from the home in April 2008 following allegations of

neglect.¹ The petition alleging the children were in need of services (“CHINS”) alleged Mother was not providing the children with the necessary food, clothing, shelter, or medical care. The petition further alleged Mother had failed to provide the children with a safe, stable, and appropriate home environment where Ta.W.’s bedroom had a hole in the ceiling and was uninhabitable. In addition, Ta.W. has asthma and wears a pacemaker but was not taken to the doctor for follow-up care for either condition.

In July 2008, Mother admitted the allegations in the CHINS petition and Ta.W. was adjudicated to be a CHINS. Thereafter, the trial court entered a participation decree, which ordered Mother to 1) contact the DCS caseworker every week; 2) obtain suitable housing; 3) participate in and successfully complete a home-based counseling program; 4) complete a psychological evaluation as referred and approved by DCS; 5) participate in a drug and alcohol assessment; and 6) participate in and successfully complete a comprehensive family profile and follow all recommendations. When Mother failed to follow most of the terms of the participation decree, DCS filed a petition to terminate her parental relationship with Ta.W. in June 2009.

At the October 2009 termination hearing, the evidence revealed that Ta.W. had been with her foster mother since August 2008. The foster mother would like to adopt Ta.W., who is mildly mentally handicapped and has both orthopedic and speech impediments. When she arrived at her foster mother’s home, Ta.W. had not taken her asthma medication for one year even though she should never have stopped taking it. Ta.W. also has a pacemaker and needs

¹ The three oldest children are now in independent living programs because of their ages and are no longer involved in this case. Ta.W.’s father has voluntarily relinquished his parental rights to Ta.W. and is not

bi-monthly check-ups to monitor it. Mother had not provided appropriate care to Ta.W. for either of the medical conditions. At the time of the hearing, Ta.W. was bonded with her foster mother and participated in church and school activities. She was making A.'s and B.'s in school. During visits between Ta.W. and Mother from August 2008 through November 2008, the home-based therapist noticed a lack of communication and interaction between the mother and daughter. At the time of the termination hearing, Ta.W. had not seen Mother in nine months and did not want to return to her care.

The evidence also revealed Mother receives social security disability payments because she has been diagnosed with childhood lead poisoning. She did not contact the DCS case manager every week, and she did not successfully complete a home-based counseling program because her case was closed in November 2008 when she slapped the home-based therapist in the face for asking Mother a question about Father's participation in services. Mother refused to take responsibility for the removal of her children and did not believe she needed services, such as the psychological evaluation. She did not complete the Family Profile despite two referrals for this service. At the termination hearing the Guardian Ad Litem Christy Nunley recommended terminating Mother's parental relationship with Ta.W. According to Nunley, the twelve-year-old girl did not want to be reunified with Mother.

During the hearing, Mother's counsel noted that although the court had previously ordered Mother to complete a psychological evaluation as referred and approved by DCS, and the home-based therapist had recommended a psychological evaluation to assess Mother's developmental issues and possible depression, no such evaluation had taken place.

The DCS caseworker explained Mother told her she would not participate in the evaluation. The caseworker initially did not refer Mother for the psychological evaluation because Mother refused to participate in it, and DCS's priority was to address the issues that led to the children's removal so the children could be returned to the home. DCS was already aware of Mother's developmental disability due to the childhood lead poisoning, and did not believe a psychological evaluation, which was not one of DCS's "normal contracted services," would have been beneficial at that point. Transcript at 143. The DCS caseworker referred Mother for the psychological evaluation in May 2009 to "restart some kind of . . . dialogue" with Mother. Transcript at 149. Mother had not contacted DCS and asked about her daughter since the November 2008 incident with the home-based therapist. The termination petition had already been filed, but the DCS caseworker would have been willing to move forward with reunification if Mother had responded to the evaluation referral and scheduled an appointment for it.

Dr. Jeffrey Vanderwater-Piercy received the referral for the evaluation. He sent a letter to Mother at the address DCS gave him. The letter asked Mother to contact his office to schedule an appointment. The post office returned this letter as undeliverable. DCS gave Dr. Vanderwater-Piercy another address for Mother. The doctor sent out another letter to Mother. This letter was not returned, but Mother never contacted him, and no psychological evaluation was performed.

Because Mother had not completed the psychological evaluation, Mother's counsel asked the court to continue the termination hearing and order Mother to obtain the evaluation.

Mother's counsel explained Mother was not able to assist in her pretrial preparation or at trial, and did not appear to understand the nature of the court proceedings. The trial court denied counsel's request. Counsel renewed the request at the end of the hearing, and the trial court denied it again. In October 2009, the trial court issued an order terminating the parental relationship between Mother and her daughter. Mother appeals.

Discussion and Decision

The purpose of terminating parental rights is not to punish parents but to protect their children. In re D.D., 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), trans. denied. Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parties are unable or unwilling to meet their responsibility as parents. Id.

The trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. In re R.S., 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), trans. denied. Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. Id. The trial court need not wait until the child is irreversibly harmed before terminating the parent-child relationship. Id.

I. Due Process Rights

A. Assist Counsel and Understand the Proceedings

Mother first argues her due process rights to assist her counsel and understand the proceedings against her were violated when the trial court refused to grant her a continuance and order her to obtain a psychological evaluation. A trial court's ruling on a motion for a

continuance in a termination of parental rights case is reviewed for an abuse of discretion. In re E.D., 902 N.E.2d 316, 321 (Ind. Ct. App. 2009), trans. denied. Regarding the process due to a parent in a termination proceeding, this court has previously explained the Due Process Clause of the United States Constitution prohibits state action that deprives a person of life, liberty, or property without a fair proceeding. In re C.C., 788 N.E.2d 847, 852 (Ind. Ct. App. 2003), trans. denied. When the State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of due process. Id. The nature of the process due in a termination of parental rights proceeding turns on the balancing of three factors: 1) the private interests affected by the proceeding, 2) the countervailing governmental interest supporting use of the challenged procedure, and 3) the risk of error created by the State's chosen procedure. Id.

In termination cases, both the private interests of the parent and the countervailing government interests that are affected by the proceeding are substantial. E.D., 902 N.E.2d at 321. In particular, this termination concerns Mother's interest in the care, custody, and control of her daughter, which has been repeatedly recognized as one of the most valued relationships in society. Id. In addition, it is well settled the right to raise one's child is an "essential basic right that is more precious than property rights." C.C., 788 N.E.2d at 852. Mother's interest in the accuracy and justice of the proceeding is therefore a "commanding" one. Id.

On the other hand, the State's parens patriae interest in protecting the welfare of the child is also significant. Id. The State has a compelling interest in protecting the welfare of a

child by intervening in the parent-child relationship when parental neglect, abuse, or abandonment is at issue. Tillotson v. Clay County Dep't of Family & Children, 777 N.E.2d 741, 745 (Ind. Ct. App. 2002), trans. denied.

When balancing the competing interests of a parent and the State, this court must also assess the risk of error created by the challenged procedure. Here, Mother contends the risk of error is great because when the court denied her request to continue the termination hearing and order her to complete a psychological evaluation, the court denied her due process rights to assist counsel in her defense and understand the proceedings against her.

However, this court has previously explained that the due process safeguards afforded a defendant in a criminal trial are not applicable to a parent in a civil termination proceeding. E.D., 902 N.E.2d at 322. The Indiana Supreme Court has further recognized that criminal prosecutions and termination proceedings are substantially different because the resolution of a termination proceeding focuses on the best interests of the child, not on guilt or innocence as in a criminal proceeding. Baker v. Marion County Office of Family & Children, 810 N.E.2d 1035, 1039 (Ind. 2004) (explaining the inquiry into whether a parent's counsel in a termination proceeding was ineffective is not the same Strickland inquiry used in criminal cases). Mother's contention that a termination hearing for a possibly incompetent parent should be continued until the parent can be psychologically evaluated to determine whether she has the competency necessary to assist counsel "runs contrary to the termination proceeding's purpose of protecting the child and trying to achieve stability and permanency for the child and could result in an inordinate delay." E.D., 902 N.E.2d at 322. Delays in the

adjudication of a termination case “impose significant costs upon the functions of the government as well as an intangible cost to the lives of the children involved.” D.A. v. Monroe County Dep’t of Child Services, 869 N.E.2d 501, 510 (Ind. Ct. App. 2007).

Further, Mother’s rights in this termination hearing were not significantly compromised. She was represented by counsel throughout the proceedings, and counsel thoroughly cross-examined the State’s witnesses. Under these circumstances, we have recognized the risk of an inaccurate result decreases significantly. See E.D., 902 N.E.2d at 322. In addition, Mother fails to allege any specific prejudice that resulted from her alleged inability to assist counsel. See id. Based on the foregoing, we conclude the risk of error caused by the trial court’s denial of counsel’s requests for a continuance and a psychological evaluation of Mother was minimal.

After balancing the substantial interest of Mother with that of the State, and in light of the minimal risk of error created by the challenged procedure, we conclude that under the facts of this case, the trial court did not deny Mother due process of law when it refused to grant Mother a continuance and order her to obtain a psychological evaluation.

B. Statutory Duty to Pursue Reasonable Efforts

Mother also argues that her due process rights were violated because without the psychological evaluation, DCS could not have followed its statutory duty pursuant to Indiana Code section 31-34-21-5.5(b)(2) to pursue all reasonable efforts to reunite Mother and Ta.W. First, Mother has waived appellate review of this issue because her arguments are not supported by citations to authorities and relevant parts of the record on appeal. See Ind.

Appellate Rule 46(A)(8)(a); Davis v. State, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005) (noting that failure to present citation to authority constitutes waiver of the issue for appellate review), trans. denied.

Waiver notwithstanding, we find no error. The statute does not require DCS to pursue all reasonable efforts to reunify families. Rather, the statute specifically provides DCS shall make “reasonable efforts to preserve and reunify families . . . [and] make it possible for the child to return safely to the child’s home as soon as possible.” Ind. Code section 31-34-21-5.5(b)(2). Despite the statutory language, the law concerning termination of parental rights does not require DCS to offer services to parents to correct their deficiencies in childcare. In re B.D.J., 728 N.E.2d 195, 201 (Ind. Ct. App. 2000). Rather, although a participation plan serves as a useful tool in assisting parents in meeting their obligations, and although DCS routinely offers services to parents in regaining custody of their children, termination of parental rights may occur independent of them so long as the elements of Indiana Code section 34-35-2-4 are proven by clear and convincing evidence. Id. Therefore, a parent may not sit idly by without asserting a need or desire for services and then successfully argue she was denied services to assist her with her parenting. Id.

Here, Mother told DCS in 2008 she did not need a psychological evaluation and that she would not participate in one. In 2009, Mother did not respond to Dr. Vanderwater-Piercy’s letter asking her to call his office to schedule an evaluation. The trial court’s participation decree ordered Mother to complete a psychological evaluation “as referred and approved by” DCS. Volume of Exhibits at 31. DCS was not required to order a

psychological evaluation, and Mother cannot now complain that the trial court erred in failing to order one.

II. Sufficiency of the Evidence

Mother also argues there is insufficient evidence to support the termination of her parental relationship with Ta.W. This court will not set aside the trial court's judgment terminating a parent-child relationship unless the judgment is clearly erroneous. R.S., 774 N.E.2d at 929-30. When reviewing the sufficiency of the evidence to support an involuntary termination of a parent-child relationship, we neither reweigh the evidence nor judge the credibility of the witnesses. Id. at 930. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id.

Indiana Code section 31-35-2-4(b)(2) sets out the following relevant elements that DCS must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

- (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.

Here, Mother specifically contends DCS failed to prove there is a reasonable probability that the conditions that resulted in her daughter's removal will not be remedied.

To determine whether the conditions are likely to be remedied, the trial court must judge a parent's fitness to care for her children at the time of the termination hearing and take into consideration any evidence of changed conditions. D.D., 804 N.E.2d at 266. The court must also evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. Id.

Our review of the evidence reveals Ta.W. is mildly mentally handicapped and has both orthopedic and speech impediments. She also has asthma and wears a pacemaker. Mother did not provide appropriate medical care to Ta.W. for any of her medical conditions. Ta.W. has lived with her foster mother for almost two years and is now making A.'s and B.'s in school and participates in school and church activities. She does not want to return to Mother's care. In addition, Mother did not complete most of the programs to which the trial court referred her. She did not complete the home-based treatment program because her case was closed when she slapped the home-based therapist in the face. She did not complete the Family Profile despite two referrals for this service, and she refused to take responsibility for the removal of her children and did not believe she needed services, such as the psychological evaluation. The trial court may properly consider the services offered to the parent by DCS, and the parent's response to these services as evidence of whether conditions will be remedied. In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). Recognizing our deferential standard of review, we find this evidence supports the trial court's finding that

there is a reasonable probability that the conditions that resulted in Ta.W.'s removal will not be remedied.²

We reverse a termination of parental rights “only upon a showing of ‘clear error’ – that which leaves us with a definite and firm conviction that a mistake has been made.” Egley v. Blackford County Dep’t of Pub. Welfare, 592 N.E.2d 1232, 1235 (Ind. 1992). We find no such error here and therefore affirm the trial court.

Conclusion

Mother’s due process rights were not violated, and there is sufficient evidence to support the termination of Mother’s parental relationship with her daughter.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.

² Mother further argues DCS failed to prove the continuation of the parent-child relationship poses a threat to the well-being of her daughter. However, because it is written in the disjunctive, the statute requires the trial court to find only one of the two requirements of subsection (B) by clear and convincing evidence. In re L.S., 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), trans. denied. Standing alone, the finding that there is a reasonable probability that the conditions that resulted in Ta.W.’s removal will not be remedied satisfies the requirement listed in subsection (B). Id. We therefore need not address Mother’s argument that DCS failed to prove the continuation of the parent-child relationship poses a threat to the well-being of her daughter.