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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF M.C.,	)	
K.C.,	)	
Appellant-Respondent,	)	
vs.	)	No. 48A04-0904-JV-184
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Jack L. Brinkman, Judge
Cause No. 48D02-0806-JT-316

July 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Appellant K.C. ("Mother") appeals the involuntary termination of her parental rights to her daughter M.C. Mother raises one issue on appeal, which we restate as whether Indiana Code Section 31-35-2-4(b)(2)(A)(i) violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. We affirm.

On December 5, 2006, Mother gave birth to M.C. The identity of M.C.'s father is unknown. On April 25, 2007, the Madison County Division of Child Services ("DCS") received a report that Mother was neglecting M.C. The report contained allegations that Mother was using crack cocaine in the home, was addicted to crack cocaine, was prostituting herself for drugs, and was leaving M.C. in unsafe environments. After conducting an investigation of the allegations of neglect, DCS and Mother entered into an informal adjustment on May 22, 2007.

Pursuant to the informal adjustment, on June 4, 2007, Mother took M.C. to her six-month check-up with Dr. Egbert.[1] Dr. Egbert noted that since he had last seen M.C. at her two-month check-up, she had gone from the 50th percentile for weight to the 10th percentile and had gone from the 95th percentile for height to the 50th percentile. Dr. Egbert believed that M.C. may have motor delays and a protein deficiency. He instructed Mother to take M.C. to the hospital to have some blood work done and to return to his office on June 11, 2007, for a follow-up appointment. Mother did not have the blood work done, nor did she return for the June 11 appointment. Dr. Egbert reported this to DCS.

In light of Dr. Egbert's report, DCS removed M.C. from Mother's care and placed her

[1] Dr. Egbert's first name is not provided in the record.

in foster care. DCS then filed a petition alleging that M.C. was a child in need of services ("CHINS"). Mother admitted that M.C. was a CHINS on June 12, 2007. Thereafter, a dispositional decree was entered by the juvenile court. Under the decree, Mother was to obtain a mental health and substance abuse assessment, and would have supervised visitation with M.C. Although the decree barred Mother from engaging in any illegal activity, Mother used crack cocaine in October 2007, November 2007, and April 2008. Mother was then ordered to participate in an intensive outpatient program, but she did not regularly attend the counseling sessions.

On June 26, 2008, DCS filed a petition to terminate Mother's parental rights to M.C. The juvenile court held a fact-finding hearing on September 25, 2008, at which Mother was represented by counsel. On November 17, 2008, the juvenile court issued an order terminating Mother's parental rights. Thereafter, this appeal ensued.

As a preliminary matter, DCS contends that this appeal should be dismissed because Mother did not file a timely notice of appeal. This issue was presented to the motions panel of this Court via a motion to dismiss filed by DCS on May 8, 2009. The motions panel denied the motion to dismiss on June 16, 2009. Although the motions panel has already ruled on this issue, DCS is not precluded from presenting this argument in its appellee's brief. *Miller v. Hague Ins. Agency, Inc.*, 871 N.E.2d 406, 407 (Ind. Ct. App. 2007). "While we are reluctant to overrule orders decided by the motions panel, this court has inherent authority to reconsider any decision while an appeal remains *in fieri*." *Id.*

The timely filing of a notice of appeal is a jurisdictional prerequisite. *Bohlander v.*

Bohlander, 875 N.E.2d 299, 301 (Ind. Ct. App. 2007), *trans. denied*. Indiana Appellate Rule 9(A)(1) states that a notice of appeal must be filed within thirty days after the entry of a final judgment. A party that does not file a timely notice of appeal forfeits his or her right to appeal. Ind. Appellate Rule 9(A)(5).

Here, the juvenile court held a fact-finding hearing on September 25, 2008. At the conclusion of the hearing, the court took the matter under advisement and instructed the parties to file proposed orders. Mother filed her proposed order on October 8, 2008, and DCS filed its order on October 14, 2008. On November 12, 2008, the following entry was made to the chronological case summary ("CCS"):

> Come now the Court and having had this matter under advisement now finds by clear and convincing evidence that it is in the best interest of the child that the parent/child relationship be and is hereby ordered terminated this date, as per Decree of Termination as to both parents. No costs assessed. JUDGMENT.

Appellant's App. vol. 1 at 3. On November 17, 2008, the juvenile court issued an order titled "Decree of Termination of Parental Rights" that was signed by the juvenile court judge. Appellant's App. vol. 2 at 17. In the order, the juvenile court made the following findings:

> 1. [Mother and Unknown father are the parents of [M.C.] born December 5, 2006 and said child has been removed from their [sic] parents continuously for more than six (6) months under a dispositional decree of this Court entered on the 19th day of July 2007.
>
> 2. There is a reasonable probability that the conditions that resulted in the children's [sic] removal from their [sic] parents will not be remedied.
>
> 3. There is a reasonable probability that continuation of the parent-child relationship poses a threat to the well-being of the children [sic].
>
> 4. Termination is in the best interests of the children [sic].

> 5. [DCS] has a satisfactory plan for the care and treatment of the children [sic] which is adoption.

Id. Based on these findings, the juvenile court concluded that Mother's parental rights to M.C. should be terminated. A notation at the bottom of the order indicates that it was to be distributed to Mother's counsel and DCS. Thereafter, Mother filed her notice of appeal on December 15, 2008.

DCS argues that the juvenile court entered its final judgment on November 12, 2008, and that Mother's notice of appeal was untimely because it was not filed within thirty days of the entry of final judgment. However, the CCS entry for November 12, 2008, does not indicate that the parties were present when the court announced its judgment. Additionally, the record on appeal does not contain any order issued by the juvenile court on November 12, 2008, reflecting the CCS entry. Thus, based on the record before us, the first order issued by the juvenile court terminating Mother's parental rights was the November 17, 2008, order. Furthermore, the November 12, 2008, CCS entry notes that Mother's parental rights are terminated "as per Decree of Termination . . . ." Appellant's App. vol. 1 at 3. The Decree of Termination was not filed and signed by the juvenile court judge until November 17, 2008. As such, final judgment was not entered by the juvenile court until November 17, 2008. Because Mother's December 15, 2008, notice of appeal was filed within thirty days of November 17, 2008, her notice of appeal was timely, and therefore we have jurisdiction to consider her appeal.

On appeal, Mother argues that the juvenile court's order terminating her parental

rights should be reversed because Indiana Code Section 31-35-2-4(b)(2)(A)(i)[2] violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. DCS argues that Mother has waived this argument by failing to raise it before the juvenile court. DCS first raised this argument in its May 8, 2009, motion to dismiss. As noted above, the motions panel of this Court denied DCS's motion to dismiss. Nevertheless, we have inherent authority to reconsider any decision made by the motions panel while an appeal remains *in fieri*. *Miller*, 871 N.E.2d at 407.

This Court has previously stated that "[c]hallenges to the constitutionality of a civil statute may be waived if they could have been raised to the trial court but the appellant failed to do so." *In re R.S.*, 774 N.E.2d 927, 929 (Ind. Ct. App. 2002), *trans. denied*. Here, there is no indication in the record that Mother ever challenged the constitutionality of Indiana Code Section 31-35-2-4(b)(2)(A)(i) before the juvenile court. Therefore, this issue is waived. Consequently, we affirm the trial court's order terminating Mother's parental rights.

Affirmed.

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

[2] Indiana Code Section 31-35-2-4(b)(2)(A)(i) provides that a petition to terminate a parent's parental rights must allege that "the child has been removed from the parent for at least six (6) months under a dispositional decree . . . ."