

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.



ATTORNEYS FOR APPELLANTS:

AMY KAROZOS
Indianapolis, Indiana

JILL M. ACKLIN
Westfield, Indiana

ATTORNEY FOR APPELLEE:

ALEXANDRA D.A. THOMAS
Indiana Department of Child Services
Montgomery County Office
Crawfordsville, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF PARENT-CHILD)
RELATIONSHIP OF C.H., H.H., AND U.H.)

M.H. and R.H.,)
)
Appellants-Respondents,)

vs.)

No. 49A05-0811-JV-648

INDIANA DEPARTMENT OF CHILD)
SERVICES)
)
Appellee-Petitioner.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn Moores, Judge
The Honorable Danielle Gaughan, Magistrate
Cause No. 49D09-0704-JT-16464

August 6, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

R.H. (Father) and M.H. (Mother) (collectively, Parents), appeal the trial court's termination of the parent-child relationship with their daughters, U.H., H.H., and C.H., upon the petition of the Marion County Department of Child Services (the DCS). They present the following issues for our review:

1. Did the trial court err in refusing to allow Mother to cross-examine the girls' foster mother about the adequacy of the plan for the girls' care and treatment?
2. Is there sufficient evidence to support the termination?

We affirm.

Father and Mother have seven children: 1) son E.H., born in 1990; 2) son J.H., born in 1991; 3) son I.H., born in 1992; 4) son M.H., born in 1994; 5) daughter U.H., born in 1998; 6) daughter H.H., born in 1999; and 7) daughter C.H., born in 2002. In November 2005, U.H. told Father that I.H. had touched her inappropriately. Father contacted law enforcement officials, and DCS became involved in the case. DCS entered into a safety plan with Parents whereby I.H. would move to his grandmother's home. In December 2005, however, DCS learned that I.H. was back in his parents' home in violation of the safety plan.

Because of this violation, DCS removed the three girls from Parents' home and filed a petition alleging that they were Children in Need of Services (CHINS). Mother and Father admitted the allegations in the petition, and the court adjudicated the three girls to be CHINS in May 2006. During the course of the CHINS proceedings, the three girls made additional disclosures to their respective therapists concerning other incidents of sexual abuse involving not only I.H., but M.H. as well. C.H. told her therapist that she was afraid to return home

because of her fear that people might hurt her. Also during the pendency of the CHINS proceeding, clinical psychologist Dr. Mary Papandria performed psychological assessments on Parents. She found that Parents lacked insight and minimized what had happened to their daughters. In April 2007, DCS filed a petition to terminate the parental relationship between Parents and their daughters.

Testimony at the termination hearing revealed that Parents both believed that I.H. touched U.H. one time and that he was unlikely to do it again. Mother believed I.H. simply fondled U.H. “out of curiosity.” *Transcript* at 591. Neither parent believed their other two daughters had ever been molested. Parents did not like or trust their daughters’ therapists and believed that the therapists were conspiring against them. I.H. admitted at the hearing that he had molested both U.H. and H.H.

Home-based therapist Amanda Stropes testified that although Parents participated in DCS services, including a sexual abuse class, they were unable to incorporate what they learned into the parenting their children, and remained in denial. Stropes was concerned that if Parents did not believe their son or sons had molested their daughters, the molestations would continue.

Testimony at the hearing further revealed that after spending time at Resolute, a treatment facility for sexually maladaptive young adults, I.H. returned home during the summer of 2007. During that time, Resolute home-based counselor Becky Vandenburg had concerns that Parents were not getting I.H. to the required aftercare group. According to Vandenburg, aftercare is an important component of sex offender therapy. Vandenburg

was also concerned that Parents did not believe that I.H., who was classified as a high risk to re-offend, had done anything wrong and therefore would not adequately supervise him. In addition, Stropes was concerned that Parents could not control I.H., who was expelled from school for fighting. Parents did not accept responsibility for their inability to control I.H. They simply said I.H. made his own choices, and Parents could not control those choices.

DCS Family Case Manager Christopher Powell also expressed concern that Parents continued to minimize and disbelieve their daughters' allegations and were also unwilling to appropriately supervise I.H. Powell shared his concern that Parents' inability to control their sons put their daughters at risk of being molested again. Powell opined that the continuation of the parent-child relationships posed a threat to the girls' well-being.

The girls' foster mother testified that when H.H. came to stay with her, the seven-year-old girl did not talk and had no social skills. When she played with baby dolls, H.H. placed the dolls in sexual positions. She also played with the genitals of the foster family's dog. H.H. had holes in her teeth and had to have five of the teeth removed. She also had ringworm. Eight-year-old U.H. was also withdrawn and did not talk. She placed the foster family's dogs in sexual positions and shocked one of the dogs so hard with a shock collar that the family feared the dog had suffered nerve damage. After visits with her parents, U.H. sometimes urinated on herself. C.H. sometimes cried and vomited after visits. According to the foster mother, the girls did not feel safe during unsupervised visits with Parents. The foster mother further testified that the girls now interacted with other children and were doing well in school. The guardian ad litem observed that the children are very comfortable in their

foster home. The plan for the care and treatment of the girls' was adoption by the foster parents.

DCS Case Manager Rita Mack testified it is in the girls' best interests to terminate Parents' rights because Parents continued to minimize the sexual abuse of their daughters. According to Mack, the parents were no better able to care for their daughters at the time of the hearing than they were at the time the girls were initially removed from their home. The guardian ad litem also testified that it was in the girls' best interests to terminate Parents' parental rights.

Following nine days of hearings on the petition to terminate held during a six-month period, the trial court terminated the parental rights of both parents. They both appeal the terminations.

The purpose of terminating parental rights is not to punish parents but to protect their children. *In re Termination of the Parent-Child Relationship of D.D.*, 804 N.E.2d 258 (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 (Ind. Ct. App. 2002), *trans. denied*.

This court will not set aside the trial court's judgment terminating a parent-child relationship unless the judgment is clearly erroneous. *Id.* When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship,

we neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.*

1.

Mother argues that the trial court erred in refusing to allow her to cross-examine the girls' foster mother about the adequacy of the plan for the girls' care and treatment. Mother is correct that a parent is entitled to cross-examine witnesses in a termination proceeding. *See* Ind. Code Ann. § 31-32-2-3 (West, Premise through 2009 Public Laws approved and effective though 4/20/2009). It is, however, DCS, and not the foster parent, that is responsible for the adequacy of the plan for the children's care and treatment. In this regard, DCS is not required to completely detail a child's life in its plan. *Matter of D.L.W.*, 485 N.E.2d 139 (Ind. Ct. App. 1985). Rather, DCS need only point out in a general sense the direction of its plan. *Id.* Here, DCS's plan for the three girls is adoption by the foster parents. The guardian ad litem observed that the children are comfortable in their foster home, and the foster mother testified that the girls now interact with other children and are doing well in school. We find no error.

2.

Ind. Code Ann. § 31-35-2-4(b)(2) (West, Premise through 2009 Public Laws approved and effective though 4/20/2009) sets out the following relevant elements that the DCS was required to allege and prove by clear and convincing evidence in order to terminate the parent-child relationship:

(i) the child has been removed from the parent for at least six 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.

Parents contend there is insufficient evidence to support the termination of their parental rights. Specifically, they contend the DCS failed to prove that the continuation of the parent-child relationship poses a threat to the well-being of their three daughters. A trial court need not wait until a child is irreversibly influenced by a deficient lifestyle such that her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. *In re E.S.*, 762 N.E.2d 1287 (Ind. Ct. App. 2002).

Our review of the evidence reveals that two therapists and two DCS case workers testified that Parents minimized and disbelieved their daughters' allegations of sexual abuse and did not trust the girls' therapists. Mother believed I.H. fondled U.H. one time "out of curiosity." *Transcript* at 591. The therapists and case workers were concerned that if Parents did not believe the girls' allegations, the molestations would continue. When the girls went to live with their foster parents, the girls played with the family dog's genitals, put the dogs in sexual positions, and put their dolls in sexual positions. Further, Parents were unable to

control I.H.'s behavior while the girls were in foster care. Recognizing our deferential standard of review, we find that this evidence supports the trial court's finding that the continuation of the parent-child relationship poses a threat to the girls' well-being. We reject the invitation to reweigh the evidence.

Because of our determination above, we need not reach the issue of whether there is a reasonable probability that the conditions resulting in the girls' removal or the reasons for continued placement outside their parents' home were unlikely to be remedied. *See In re Termination of Parent-Child Relationship of L.V.N.*, 799 N.E.2d 63 (Ind. Ct. App. 2003) (noting that I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive and, therefore, only one of the two requirements of subparagraph (B) needs to be established by clear and convincing evidence).

Parents also argue that there is insufficient evidence that it is in the girls' best interests to terminate the parental relationship. This court, however, has held that the testimony of the guardian ad litem and caseworker that reunification was not in the child's best interests was sufficient to support the court's conclusion that termination was in the child's best interests. *See McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). Here, as in *McBride*, both the guardian ad litem and the caseworker testified that reunification was not in the children's best interests. This testimony supports the trial court's conclusion that termination was in the children's best interests. *See McBride*.

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 (Ind. 1992). We find no such error here and therefore affirm the trial court.

Judgment affirmed.

NAJAM, J., and VAIDIK, J., concur.