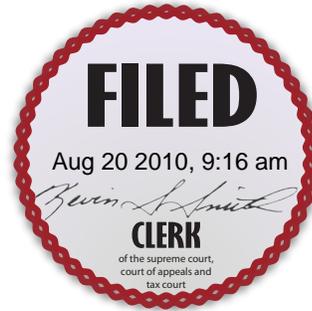


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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE INVOLUNTARY TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP)
OF A.E. AND S.W.,)

S.E. (FATHER) and A.E. (MOTHER),)
Appellants-Respondents,)

vs.)

INDIANA DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner.)

No. 17A03-0911-JV-558

APPEAL FROM THE DEKALB CIRCUIT COURT
The Honorable Kirk D. Carpenter, Judge
Cause Nos. 17C01-0901-JT-00002
17C01-0901-JT-00003

August 20, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

In this consolidated appeal, An.E. (“Mother”) appeals the trial court’s termination of the parent-child relationship with her daughter, S.W., and her son, A.E.; and S.E. (“Father”) appeals the termination of the parent-child relationship with his son, A.E., upon the petitions of the DeKalb County Department of Child Services (“DCS”).¹ The sole dispositive issue is whether there is sufficient evidence to support the terminations. Concluding there is sufficient evidence that 1) the two children had been removed from their parents for at least six months under a dispositional decree; and 2) there is a satisfactory plan for the care and treatment of the children, we affirm.

Facts and Procedural History

The facts most favorable to the termination reveal that ten-year-old S.W. and eight-year-old A.E. were removed from their home in March 2008 because of their parents’ drug use. The children were placed in foster care on March 19, 2008. Several days later, DCS filed a petition alleging the children were Children in Need of Services (“CHINS”). Both parents completed psychological evaluations in June 2008 with Dr. David Lombard, who

¹ The parental rights of S.W.’s father, D.H., were previously terminated. He did not appeal the termination.

diagnosed both parents with methamphetamine dependence. Dr. Lombard further diagnosed Mother with an antisocial personality disorder and concluded Father demonstrated symptoms of the same personality disorder, which was either a result of his substance abuse or long-term personality traits of the personality disorder. Dr. Lombard recommended in-patient drug treatment for both parents to be followed by intensive out-patient drug treatment, and further recommended behavioral therapy for both parents. According to Dr. Lombard, both parents were at high risk for abuse or neglect of their children because of their drug dependence.

The trial court held a dispositional hearing on June 30, 2008. A dispositional order was entered that same day; however, for some unknown reason, the order was not entered on the chronological case summary (“CCS”). Both parents were ordered to abstain from drug use, complete regular drug screens, obtain drug treatment and therapy as recommended by Dr. Lombard, follow a parental participation plan, and obtain stable housing and employment. When neither parent complied with the court’s order, DCS filed a petition to terminate their parental rights on January 12, 2009. The petition alleged that the children had been both: 1) removed from their parents for at least six months under a dispositional decree; and 2) under the supervision of DCS for not less than fifteen of the most recent twenty-two months. The petition also alleged there was a satisfactory plan for the care and treatment of the children.

The hearing on the petition was held on August 25 and September 1, 2009. Testimony at the hearing revealed both parents are methamphetamine addicts who continued to use

drugs during the course of the CHINS and termination proceedings. Father refused to take 96 drug screens. He submitted to 33 drug screens and failed 23 of them. Mother refused to take 96 drug screens. She submitted to 43 drug screens and failed 13 of them. Neither parent complied with the parental participation plan, or obtained stable housing or employment. In June 2009, Mother was convicted of unlawful purchase of pseudoephedrine, and in July 2009, Father was convicted of theft. Father had pending charges for receiving stolen property and unlawful purchase of pseudoephedrine. The testimony further revealed that the plan for the children was adoption. The trial court admitted into evidence several documents from the CHINS proceeding, including the CCS and CHINS Progress Reports completed in June 2008, December 2008, March 2009, June 2009, and August 2009. All of the progress reports identify the date of the CHINS dispositional decree as June 30, 2008.

On October 8, 2009, the trial court issued an order terminating the parental rights of both parents. The order provided in relevant part as follows:

24. On June 30, 2008, the Court issued its Dispositional Order in the CHINS case.

* * *

29. [Mother and Father] have failed to cooperate with the DCS and with the Orders of the Court since the children have been removed from their home.

* * *

75. [S.W. and A.E.] have been removed from [Mother and Father] for at least fifteen (15) out of the most recent twenty-two (22) months.

* * *

91. The allegations in the Petition for the Involuntary Termination of the Parent-Child Relationship filed by the DeKalb County Office of the Indiana Department of Child Services are true in both cases.

Mother's Appendix at 16-27.

Both parents filed notices of appeal. In her appellate brief, Mother argued there was insufficient evidence to support the termination because it was "chronologically impossible that at the time the termination petition was filed . . . the children [had] been under the supervision of the Indiana Department of Child Services, Local Office in DeKalb County for not less than fifteen (15) months of the most recent twenty-two (22) months." Mother's Brief at 6. She also argued there was insufficient evidence the children had been removed from their parents and had been under DCS's supervision for at least six months under a dispositional decree because there was no dispositional decree in the record, and the trial court did not take judicial notice of one.

DCS responded with a Verified Motion to Resolve Disagreement as to Clerk's Record or Transcript and Motion to Certify Statement of Evidence wherein DCS asked the trial court to enter a certified statement of the evidence pursuant to Indiana Appellate Rules 31(A) and 32(A) to show the court took judicial notice of the entire underlying CHINS case, which would have included the June 30, 2008, CHINS dispositional order, at the termination hearing at DCS's request. DCS explained that during the termination hearing, when DCS asked the trial court to take judicial notice of the entire underlying CHINS case, the courtroom recorder system was not on. In support of its motion, DCS attached an affidavit

from Mother's attorney wherein the attorney swore under oath she believed the trial court took judicial notice of the entire underlying CHINS case.

The trial court granted the motion that same day without a hearing and without a response from Mother. A few days later, Mother filed a motion to vacate the trial court's order granting DCS's motion. Specifically, Mother argued the trial court erred in granting the motion without giving her a chance to respond. She further argued the trial court did not take judicial notice of the entire underlying CHINS case. In support of this argument, Mother attached an affidavit from Father's counsel wherein he stated he found no reference in his notes from the termination hearing about the trial court being asked to take judicial notice of any matters. Mother also argued the trial court would have erred had it taken judicial notice.

The trial court concluded Mother should have been allowed to file a response to DCS's motion. The court therefore vacated its order, denied Mother's objections, and reissued the Order Modifying the Clerk's Record and Transcript in full using the same language and terms used in the previously issued order. Mother filed an amended appellate brief wherein she argues the trial court erred in granting DCS's motion. Mother further argues even if the trial court did not err in granting the motion, the court erred in taking judicial notice of the entire CHINS proceeding during the termination proceeding. Mother and Father both argue there is insufficient evidence to support the termination. As discussed below, the documents admitted into evidence during the termination hearing provide sufficient evidence to support the terminations; therefore, we need not address Mother's

issues regarding DCS's motion and judicial notice. The sole issue we review is whether there is sufficient evidence to support the terminations.

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.

This court will not set aside the trial court's judgment terminating a parent-child relationship unless the judgment is clearly erroneous. Id. 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:

- (A) that one (1) of the following is true:
 - (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.
 - (iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

- (B) that one (1) of the following is true:
 - (i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.
 - (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.
 - (iii) The child has, on two separate occasions, been adjudicated a child in need of services;

- (C) that 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 and Father specifically contend DCS failed to prove both that their children had been removed from them for at least six months under a dispositional decree and that their children had been removed from them under the supervision of a county office of family and children or probation department for at least fifteen of the most recent twenty-two months. According to Father, “it is a mathematical impossibility” that the children were removed for fifteen of the most recent twenty-two months, and there is no evidence the trial court ever issued a dispositional order. Father’s Brief at 12.

Both parents are correct there is insufficient evidence to prove the children had been under the supervision of DCS for fifteen of the most recent twenty-two months. The children were removed from their home and placed under DCS’s supervision in March 2008. DCS filed the termination petition in January 2009. The time period between the children’s removal and the filing of the termination petition is less than fifteen months. However, we have stated before that subsection (b)(2)(A) is written in the disjunctive. In re B.J., 879 N.E.2d 7, 20 (Ind. Ct. App. 2008), trans.denied. DCS was therefore required to allege and prove only one of the enumerated elements in subsection (A), which it did. See id. The children were removed from their parents in March 2008, and have been in foster care since that time. The CHINS hearing was held on June 30, 2008, and according to all CHINS progress reports admitted into evidence at the termination hearing, a dispositional order was issued that same day. On that date, the children would have been removed from their home “under a dispositional decree.” The termination petition was filed on January 12, 2009.

Therefore, DCS proved by clear and convincing evidence that the children had been removed from their parents' care for at least six months under a dispositional decree.

Nevertheless, Mother argues the trial court's termination order erroneously states the children had been removed from their parents and had been under the supervision of DCS for at least fifteen of the most recent twenty-two months but made no finding with regard to whether the children had been removed from their parents' care for at least six months under a dispositional decree. However, our review of the termination order reveals the trial court concluded the "allegations in the Petition for the Involuntary Termination of the Parent-Child Relationship . . . are true in both cases." Mother's App. at 27. This conclusion encompasses all allegations in the petition, including the allegation the children had been removed from their parents for at least six months under a dispositional decree. To the extent the trial court's order erroneously states the children had been removed from their parents and had been under the supervision of DCS for at least fifteen of the most recent twenty-two months, we note that the trial court in this case entered twenty-eight pages of findings of fact and conclusions of law. One mischaracterization of the evidence does not render the remaining findings and conclusions clearly erroneous. See Matter of D.T., 547 N.E.2d 278, 283 (Ind. Ct. App. 1989), trans.denied, (finding three mischaracterizations of the evidence in thirty-nine findings did not render the remaining findings or conclusions clearly erroneous). This error is therefore harmless. See id.

Lastly, both parents argue DCS failed to prove there is a satisfactory plan for the care and treatment of the children. This court has previously explained that the plan for the care

and treatment of the child need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated. In re L.B., 889 N.E.2d 326, 341 (Ind. Ct. App. 2008). Here, the DCS caseworker testified the plan for the care and treatment of S.W. and A.E. is adoption. This is a satisfactory plan. See Matter of A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997).

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.” Egly 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

There is sufficient evidence to support the termination of Mother’s parental relationship with her daughter and son, and Father’s parental relationship with his son.

Affirmed.

MAY, J., and VAIDIK, J., concur.