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FILED
Aug 24 2009, 8:41 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

CRAIG A. DECHERT
Howard County Public Defender
Kokomo, Indiana

ATTORNEY FOR APPELLEE:

DAVID E. COREY
Indiana Department of Child Services
Kokomo, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF R.B.,	)	
T.B.,	)	
Appellant-Respondent,	)	
vs.	)	No. 34A04-0905-JV-278
HOWARD COUNTY DEPARTMENT OF CHILD SERVICES	)	
Appellee-Petitioner.	)	

APPEAL FROM THE HOWARD CIRCUIT COURT
The Honorable Lynn Murray, Judge
Cause No. 34C01-0809-JT-20

August 24, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

T.B. ("Mother") appeals the trial court's order that terminated her parental relationship with her daughter, R.B.

We affirm.

ISSUES

Whether sufficient evidence supports the trial court's determination that the conditions which led to the placement of R.B. with the Indiana Department of Child Services ("DCS") would not be remedied, and that it was in R.B.'s best interest that the parental relationship of T.B. be terminated.

FACTS

On March 24, 2007, Mother gave birth to R.B., whose meconium at birth tested positive for cocaine. On April 19, 2007, the Howard County local office of the Indiana Department of Child Services ("DCS") removed R.B. from Mother's custody, apparently while Mother was living in the home of Hobart Tingley. Family case manager Lori Meyer conducted an investigation, and DCS substantiated that R.B. had cocaine and benzoylecgonine in her system at the time of her birth. Meyer had previously served for nearly four years as a family case manager for Mother's other two children, whose parent-child relationship with Mother was eventually terminated, and she was familiar with Mother's history of drug use. At the time of R.B.'s removal, Mother was on probation for a conviction for dealing in cocaine.

At an emergency detention hearing on April 23, 2007, the trial court found that DCS had substantiated that R.B. had cocaine and benzoylecgonine in her system at birth; that Mother had a long history of drug use; and that she had neglected her other two

children. The court also found that DCS had substantiated that Mother was not following the physician's instructions regarding R.B.'s physical therapy and care. When Meyer removed R.B. from Mother's custody on April 19, 2007, R.B. was only wearing one diaper despite the physician's order that R.B. be dressed in two diapers to alleviate her hip dysplasia.

On April 25, 2007, DCS filed a petition alleging that R.B. was a child in need of services (CHINS). At the initial hearing on May 14, 2007, Mother appeared and denied the allegations in the petition. On June 18, 2007, the trial court conducted a fact-finding hearing and granted the petition.

At the time of the hearing, Mother was residing at "Open Arms," a women's shelter in Kokomo, Indiana. Mother had previously lived at "Home with Hope," a halfway house, but she had been terminated from that program due to her lack of compliance with its rules. Subsequently, in early July of 2007, Mother was terminated from the Open Arms Program because her employment as a dancer conflicted with the program's schedule. Following this termination, Mother moved back into the home of Hobart Tingley.

On July 9, 2007, the court held a dispositional hearing wherein it made R.B. a ward of the State and ordered that she remain in foster care. The court further ordered that Mother cooperate with DCS and service providers; attend supervised visits with R.B.; find and maintain suitable housing; keep DCS informed of any changes to her contact information; complete a drug rehabilitation program; submit to random drug

screens; refrain from illegal activity; maintain a legal source of income; and comply with the policies and requirements of the Open Arms Program.

During July of 2007, Mother enrolled in an intensive-outpatient (IOP) program at Howard Regional Behavioral Health but was discharged for non-attendance on July 31, 2007. In September of 2007, Mother started another program at Trinity through St. Joseph Hospital but was terminated from the program for non-participation. Although she re-enrolled, she was terminated a second time for non-attendance.

On October 1, 2007, the court conducted a six-month review hearing and found that while Mother had attended visits with R.B., she had not participated consistently with the mandated services and had not found stable housing or employment. R.B.'s placement in foster care continued, and the court reiterated its previous orders, but ended Mother's obligation to attend the Open Arms Program. The court also ordered Mother to keep DCS informed of all criminal matters and to follow recommendations of DCS and all service providers.

On January 7, 2008, the trial court conducted a three-month review hearing. Mother appeared, and no changes were made to R.B's placement or the trial court's prior orders. During the month of January, Mother moved from Hobart Tingley's home to the home of her new boyfriend Mike Rhine. By February 28, 2008, Mother had completed the first half of the Howard Regional IOP program.

On April 14, 2008, the court held a permanency hearing and found that Mother had made some progress along her case plan and had become more compliant with

services. The court allowed Mother's visits with R.B. to transition to semi-supervised at the discretion of DCS, noting that the visits could transition to unsupervised upon Mother's completion of a drug relapse program.

In the following months, Mother failed to follow DCS visitation rules on three separate occasions. On June 17, 2008, visitation supervisor Lisa Hsieh was unable to locate or contact Mother and R.B. during a semi-supervised visit. Mother was not at home at the scheduled check-in time, despite specific instructions that she was not to leave the residence. Mother and R.B. eventually returned home in a van being driven by an unidentified man. Upon her arrival home, Mother explained to Hsieh that she needed a ride to the bank. At trial, Mother identified the driver as Hobart Tingley. Although DCS had previously instructed her that only Mike Rhine was permitted to accompany Mother during visitation, Mother claimed that she "wasn't aware" that R.B. could not be in Tingley's presence since they had lived in his home before R.B. was removed. (Tr. at 145).

On July 1, 2008, Hsieh witnessed another visitation violation. On that date, Mother informed Hsieh that she had a job interview and would be leaving R.B. in Rhine's care. When Hsieh asked if Rhine was permitted to be alone with R.B., Mother told Hsieh that DCS caseworker Laura Redding had said Rhine could watch her. Hsieh could not reach Redding via telephone to confirm. Redding later testified that she told Mother that Rhine could watch R.B. only in an emergency. Redding also testified that she had discussed examples of emergencies with Mother and did not consider a pre-

scheduled job interview to be an emergency situation. Mother's third visitation violation occurred when she attended a doctor's visit with R.B. and the foster parent, and no visitation supervisor was present.

On July 9, 2008, Mother completed a drug relapse program. Two days later, Mother submitted to a drug screen, which tested positive for both cocaine and marijuana. Following this failed drug screen, DCS modified Mother's visitation from semi-supervised within the home to fully-supervised outside the home. On July 14, 2008, the court held a three-month review hearing and made no changes to its previous orders.

On August 12, 2008, Mother filed a motion requesting modification of visits, seeking a return to semi-supervised in-home visitation. On September 9, 2008, DCS filed a Petition for Involuntary Termination of the Parent-Child Relationship. The trial court held an initial hearing on September 22, 2008, at which Mother appeared and denied DCS's allegations. The court reiterated its order that visitation would continue at the discretion of DCS and that Mother was to attend and complete a drug treatment program, in addition to submitting to drug screens on a weekly basis.

On October 20, 2008, the trial court held a six-month review hearing and ordered that R.B.'s placement should remain the same. The court also found that while Mother's earlier compliance had allowed for the transition to semi-supervised visitation, due to Mother's positive drug screen and her violation of visitation rules, subsequent visits would remain supervised.

On December 8, 2008 and December 15, 2008, the court held fact-finding hearings regarding the involuntary termination of parental rights. Therein, evidence was presented for the court to determine whether Mother had participated and cooperated with DCS and her service providers; whether she had successfully completed her case plan and obeyed the court orders; and, to consider the recommendations regarding the best interests of R.B.

Several witnesses testified about Mother's participation and cooperation with DCS and her service providers. Family case manger Lori Meyer, visitation supervisor Lisa Hsieh, and DCS caseworker Laura Redding testified to the above. Joyce Stout, a homemaker and service provider referred by DCS, testified regarding Mother's cooperation during her instructional sessions on parenting. Stout described Mother's behavior as "sickly sweet" and said she suspected that Mother was really "mocking [her] sometimes." (Tr. 41). Stout also testified that Mother had four different jobs throughout the duration of their sessions together, and rejected Stout's numerous attempts to "help her find stable work instead of temporary work." (Tr. 45).

Debra Bernard, Mother's probation officer, testified that there had been "about twelve" instances when Mother failed to report on schedule. (Tr. 48). In each of the instances, Mother's tardiness ranged in length from one week to two months. Bernard characterized Mother's behavior as generally "less compliant" than similarly-situated parents whose probation she had handled. (Tr. 49). Bernard expressed her doubts that Mother could show consistent compliance, noting that her periods of improvement were

only for "short periods of time and then she would relapse or go back to old patterns of behavior." (Tr. 58). Bernard also testified that at the time of the termination hearing, Mother's probation was pending revocation due to the positive drug screen in July 2008.

Redding testified that it would be in R.B.'s best interest to terminate Mother's parental relationship with her. (Tr. 94-94). She also testified that she believed the parental relationship posed a threat to R.B. and that the post-termination plan for R.B. would be adoption.

On February 24, 2009 the trial court issued its Order Granting the Involuntary Termination of the Parent-Child relationship.

DECISION

Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibility. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied* (citing *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied*). The purpose of terminating parental rights is not to punish parents but to protect children. *Id.*

The trial court must subordinate the interests of the parent to those of the child when evaluating the circumstances surrounding the termination. *R.S.*, 774 N.E.2d at 930. Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. *Id.* Moreover, the trial court need not wait until the child is irreversibly harmed such that her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* The parent's

habitual pattern of conduct is relevant to determine whether there is substantial probability of future neglect or deprivation of the child. *Id.*

On appeal, this court will not set aside the trial court's decision to terminate a parent-child relationship unless the decision is clearly erroneous. *Id.* at 929-30. When reviewing the sufficiency of evidence to support the judgment of involuntary termination of the parent-child relationship, we neither reweigh the evidence nor judge the credibility of witnesses. *Bester v. Lake Co. Office of Family and Children*, 839 N.E.2d 143, 147 (Ind. 2005). We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.*

When a county office of family and children seeks to terminate parental rights, the office must plead and prove by clear and convincing evidence that:

> (A) The child had been removed from the parent for at least six (6) 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 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), 31-35-2-8(a).

Mother does not argue that DCS failed to prove that R.B. had been out of her care for the requisite period of time, or that DCS had no satisfactory plan for R.B.'s care and treatment. Mother argues only that

> [t]he court lacked sufficient evidence to rule by clear and convincing evidence that the conditions which resulted in the child's removal or the

> reasons for placement outside the home would not be remedied, or that the continuation of the parent-child relationship posed a threat to the well-being of the child. Further the Court relied on insufficient evidence that did not arise to the level of clear and convincing evidence when it ruled that termination of [Mother's] parental rights was in the best interest of the child.

Mother's Br. at 17. We cannot agree.

Mother first argues that the trial court erred when it concluded that the conditions that led to the removal had not been remedied. In determining whether conditions which resulted in the child's initial removal will not be remedied, the trial court should judge the parents' fitness to care for the child at the time of the termination hearing. *In re W.B.*, 772 N.E.2d 522, 530 (Ind. Ct. App. 2002). While the trial court should take into account evidence of changed circumstances concerning the parent, the trial court should also consider the parent's habitual patterns of conduct to determine "the probability of future detrimental behavior." *In re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001).

Without judging witness credibility and considering only the evidence most favorable to the trial court's judgment (*see Bester*, 839 N.E.2d at 147), we turn to the following evidence. Mother failed to cooperate with DCS and service providers, and she did not remain drug-free throughout the CHINS proceeding. Mother tested positive for both cocaine and marijuana two days after completing a relapse prevention program, and she failed to complete a subsequently-ordered drug rehabilitation program. Her resistance to services provided to her supports the trial court's conclusion that Mother is either unable or unwilling to remedy the conditions – namely Mother's illicit drug use – that led to R.B.'s removal from her custody. The sundry arguments to the contrary made

in Mother's brief – citing the five drug-free months following her positive screen, the stability of her relationship with Rhine, the housing and employment Rhine provided her, and the high hopes her former IOP counselor held for her – are merely invitations to reweigh evidence, which we will not do. *Id.*

Mother further contends that the trial court lacked sufficient evidence that the continuation of the parent-child relationship posed a threat to R.B.'s well-being. The trial court must find a reasonable probability that the conditions which resulted in the removal of the child would not be remedied, *or* that the continuation of the parent-child relationship posed a threat to the well-being of the child. I.C. § 31-35-2-4(b)(2)(B) (*emphasis added*). Because we find that the evidence clearly supports the trial court's finding as to the former, we need not address Mother's contention that DCS failed to prove the latter. *Matter of A.N.J.*, 690 N.E.2d 716, 721 n.2 (Ind. Ct. App. 1997).

Mother's final argument is that the trial court lacked clear and convincing evidence that termination of her parental rights was in R.B.'s best interest. At trial Redding cited R.B.'s need for permanency in recommending termination to allow R.B. to be adopted. Redding testified that Mother's recent criminal activity and pending probation revocation for a prior felony conviction caused her concern that R.B.'s fate would be uncertain for "however long [Mother] might have to go to jail for." (Tr. 118). Katina Silver, the court-appointed special advocate, also testified that she believed terminating the parent-child relationship would benefit R.B., and her testimony supports the trial court's findings that termination is in R.B.'s best interest. Although Mother

includes arguments that she could possibly provide a stable home for R.B. in the future, her arguments again invite this court to reweigh evidence, which we will not do. *Bester*, 839 N.E.2d at 147.

Based on the evidence before it, the trial court concluded, and we agree, that DCS had established the statutory factors necessary for termination of Mother's parental relationship by clear and convincing evidence. We find no error herein.

Affirmed.

ROBB, J., and MATHIAS, J., concur.