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FILED
Aug 31 2009, 9:14 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF PARENT-CHILD RELATIONSHIP OF M.M., MINOR CHILD AND HER MOTHER Q.M.,	)	
Q.M., (MOTHER)	)	
Appellant-Respondent,	)	
vs.	)	No. 49A05-0903-JV-116
MARION COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner,	)	
and,	)	
CHILD ADVOCATES, INC.,	)	
Co-Appellee-(Guardian Ad Litem).	)	

APPEAL FROM THEMARION SUPERIOR COURT
The Honorable Marilyn Moores, Judge
The Honorable Danielle Gaughan, Magistrate
Cause No. 49D09-0809-JT-43139

August 31, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Q.M. ("Mother") appeals the termination of her parental rights. We affirm.

Issues

Mother raises two issues, which we reorder and restate as:

I. whether the trial court properly denied her motion for a continuance; and

II. whether there is sufficient evidence to support the termination of her parental rights.

Facts

M.M. was born on June 23, 2007. When she was born, she tested positive for marijuana. At that time, Mother entered into an informal adjustment agreement with the Marion County Department of Child Services ("DCS"). Mother was required to provide adequate food, clothing, and shelter for M.M. and her three older siblings. Mother was also required to complete a substance evaluation and follow through with all recommendations from the evaluation, meet the children's medical and mental health

needs, submit to random urine screens, engage in home-based counseling, and attempt to establish paternity of the children. The children remained in Mother's custody.

Mother did not comply with the terms of the informal adjustment agreement, and in October 2007, the children were removed from her custody. On October 22, 2007, the DCS alleged that the children were children in need of services ("CHINS"). The CHINS petition specifically alleged that Mother had:

> substance abuse and mental health issues which significantly impair her ability to appropriately parent her children. [DCS] became involved with the family and offered services through a proposed program of Informal Adjustment when [M.M.] was born marijuana positive. Despite these efforts, [Mother] failed to participate in the services offered and address the needs of her family.

Exhibit 3.

M.M.'s older siblings were placed with their father, and M.M., whose paternity had not been established, was placed in foster care. Mother again did not complete the services offered to her. On September 23, 2008, the DCS filed a petition to terminate Mother's parental rights to M.M. On January 8, 2009, the trial court held a hearing on the petition to terminate Mother's parental rights. At the beginning of the hearing, Mother moved to continue the hearing because she had recently reenrolled in certain services. The trial court denied Mother's motion and conducted an evidentiary hearing that day. On January 13, 2009, the trial court issued findings of fact and conclusions thereon and terminated Mother's parental rights. Mother now appeals.

Analysis

I. Continuance

Mother argues that the trial court improperly denied her motion to continue the hearing on the DCS's petition to terminate her parental rights because she had recently reenrolled in certain programs and needed more time to complete them. "The decision to grant or deny a motion for a continuance rests within the sound discretion of the trial court." Rowlett v. Vanderburgh County Office of Family and Children, 841 N.E.2d 615, 619 (Ind. Ct. App. 2006), trans. denied. We will reverse the trial court's decision only for an abuse of that discretion. Id. "An abuse of discretion may be found in the denial of a motion for a continuance when the moving party has shown good cause for granting the motion." Id. An abuse of discretion will not be found unless the moving party has demonstrated prejudice. Id.

Here, services were first offered to Mother in June 2007. In April 2008, Mother was formally discharged from the home-based counseling program because of her lack of participation. Mother did not restart her therapy until November 2008, after the DCS filed its petition to terminate her parental rights. Because Mother had only recently reenrolled in therapy and had not completed any other of the DCS's requirements, the trial court did not abuse its discretion in denying Mother's motion to continue the termination hearing.

II. Sufficiency of the Evidence

Mother also argues there is insufficient evidence to support the termination of her parental rights. Mother claims that the DCS did not prove by clear and convincing evidence that the conditions resulting in M.M.'s removal from the home would not be remedied or that the termination of her parental rights was in M.M.'s best interests.

"When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility." Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). "We consider only the evidence and reasonable inferences that are most favorable to the judgment." Id. Where a trial court enters findings and conclusions granting a petition to terminate parental rights, we apply a two-tiered standard of review. Id. First, we determine whether the evidence supports the findings. Id. Then we determine whether the findings support the judgment. Id. We will set aside a judgment that is clearly erroneous. Id. A judgment is clearly erroneous when the findings do not support the trial court's conclusions or the conclusions do not support the judgment. Id.

A petition to terminate the parent-child relationship must allege:

> (A) one (1) of the following exists:
>
> > (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; or

> (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
>
> (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.

Ind. Code § 31-35-2-4(b)(2) (2008).[1]

The DCS had the burden of proving these allegations by clear and convincing evidence. See Bester, 839 N.E.2d at 148. Clear and convincing evidence need not show that the continued custody of the parent is wholly inadequate for the child's very survival. Id. Instead, it is sufficient to show by clear and convincing evidence that the child's emotional and physical development is threatened by the parent's custody. Id.

Regarding the conditions that led to M.M.'s removal, the CHINS petition alleges that M.M. tested positive for marijuana when she was born and that mother had untreated drug and mental health issues, which affected her ability to address the needs of her family. Mother testified at the termination hearing that she was five months pregnant

[1] Effective July 1, 2009, subsection (b)(2)(A)(iii) of this statute was reworded slightly. See P.L. 131-2009 § 65. We quote the version of the statute in effect at the time of the proceedings in this case.

with her fifth child and again had used marijuana while she was pregnant. She had not completed drug treatment or successfully treated her depression. She had not seen a psychiatrist since 2007, and she had only recently restarted therapy. She was living with her sister and cousin and their children in a two bedroom apartment and was unemployed. The DCS presented clear and convincing evidence that there was a reasonable probability that the conditions resulting in M.M.'s removal had not been remedied.

Regarding whether termination was in M.M.'s best interests, M.M.'s foster mother testified that she intended to adopt M.M. The DCS family case manager testified that adoption by the foster mother was in M.M.'s best interests because M.M. had bonded with the foster mother and needed permanency. The guardian ad litem involved in the case testified that M.M. was doing well in her foster home, that M.M.'s needs were being met, and that adoption by the foster mother was in M.M.'s best interests. The guardian ad litem recommended that M.M. not be reunified with Mother and that Mother not be given additional time to complete services. This evidence along with the evidence of Mother's failure to fully participate in the services offered by the DCS is clear and convincing evidence that the termination of Mother's parental rights was in M.M.'s best interests.

Conclusion

The trial court did not abuse its discretion in denying Mother's motion for a continuance. The DCS presented sufficient evidence to support the termination of Mother's parental rights. We affirm.

Affirmed.

NAJAM, J., and KIRSCH, J., concur.