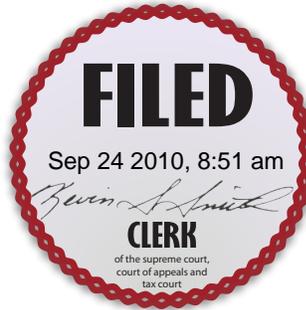


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

C. V.,)
)
Appellant-Respondent,)
)
vs.) No. 79A02-1003-JT-794
)
TIPPECANOE CO. DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner.)

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta H. Rush, Judge
Cause No. 79D03-0911-JT-121

September 24, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent C.V. (Mother) appeals the trial court's judgment terminating her parental rights as to her minor daughter C.O.V., claiming there is insufficient evidence to support the termination order. Specifically, Mother argues that the appellee-petitioner, Tippecanoe County Department of Child Services (DCS),¹ failed to establish that the conditions leading to C.O.V.'s removal would not be remedied, the evidence did not show that the termination of parental rights was in C.O.V.'s best interests, and that the trial court erroneously concluded that Mother posed a threat to C.O.V. Finding no error, we affirm the trial court's judgment.

FACTS

Mother and Father are the parents of C.O.V., who was born on September 6, 2008, in Lafayette. Mother has two other children who have both been declared Children in Need of Services (CHINS) as a result of Mother's substance abuse and domestic violence issues.

On September 8, 2008, DCS removed C.O.V. from Mother's care, following allegations of substance abuse and episodes of domestic violence that occurred between Mother and Father during the pregnancy. As a result, Mother obtained a no contact order against Father.

When C.O.V. was born, her meconium tested positive for marijuana. The trial court issued a dispositional order on November 8, 2008, directing Mother to undergo inpatient drug treatment, aftercare services, and home-based preservation services in

¹ We note that DCS has not filed an appellate brief in this case.

Lafayette. Father, who was no longer in a relationship with Mother, was ordered to attend an anger management program and to obtain suitable housing and employment.

It was discovered that C.O.V. has significant health issues, including food allergies that demand constant attention. In fact, a number of medical professionals monitor C.O.V.'s eating habits, which require special dietary products, health food substitutes, and probiotics. C.O.V. will also have to undergo treatments at Riley Hospital in Indianapolis.

Mother failed several drug screens through the pendency of the various CHINS proceedings, did not follow up with housing appointments, and failed to follow medication and case management plans. Moreover, Mother refused services at a residential recovery program. As a result, Mother was not able to sustain employment or housing.

Although Mother underwent inpatient drug treatment at Fairbanks Hospital, she continued her drug use and tested positive for marijuana throughout the CHINS proceedings. Thus, Mother's visits with C.O.V. were suspended on September 21, 2009, until she again started participating in drug treatment.

A psychological assessment determined that Mother suffered from major depressive and panic disorders, marijuana dependency, and an antisocial personality disorder. The evaluation also concluded that Mother lacked the energy and stamina to consistently fulfill her parenting responsibilities.

During supervised visitations, Mother had difficulty following C.O.V.'s feeding routines and dietary restrictions. At times, Mother would become angry, yell, and "slam things." Ex. 7. Mother also failed to show for those appointments at times.

Mother was eventually arrested on a probation violation for failing a drug screen. She failed to attend three probation meetings and did not stop using drugs until January 2010. Mother also stopped participating in services and communicating with anyone involved in C.O.V.'s CHINS case.

On November 9, 2009, DCS filed a petition to terminate both Father and Mother's parental rights as to C.O.V., alleging that the conditions that resulted in the removal of C.O.V. will not be remedied, the continuation of the parent-child relationship poses a threat to C.O.V.'s well-being, and that termination of parental rights was in C.O.V.'s best interests. DCS also alleged that it has a satisfactory plan for the care and treatment of C.O.V. Following a hearing on February 8, 2010, the trial court issued findings of fact and conclusions thereon, terminating Mother and Father's parental rights as to C.O.V. Mother now appeals.

DISCUSSION AND DECISION

Mother claims that the termination order must be set aside because DCS failed to present clear and convincing evidence that the conditions leading to C.O.V.'s removal would not be remedied, that the continuation of the parent-child relationship poses a threat to C.O.V.'s well-being, and that termination was in C.O.V.'s best interests.

I. Standard of Review

We initially observe that the Fourteenth Amendment to the United States Constitution protects the traditional right of parents to raise their children. But parental rights are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. In re D.D., 804 N.E.2d 258, 264-65 (Ind. Ct. App. 2004). Thus, parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id. at 265.

When reviewing the termination of parental rights, we neither reweigh the evidence nor judge witness credibility, considering instead only the evidence and reasonable inferences that are most favorable to the judgment. R.W., Sr. v. Marion County Dep't of Child Servs., 892 N.E.2d 239, 244 (Ind. Ct. App. 2008). Here, the trial court made specific findings and conclusions thereon in its order terminating Mother's parental rights. Thus, we apply a two-tiered standard of review. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005).

First, we determine whether the evidence supports the findings, and then we determine whether the findings support the judgment. Id. We will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). A judgment is clearly erroneous when the evidence does not support the findings or the findings do not support the result. In re S.F., 883 N.E.2d 830, 835 (Ind. Ct. App. 2008).

To effect the involuntary termination of a parent-child relationship, DCS must present clear and convincing evidence establishing the following elements:

(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) 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).

Before addressing Mother's specific contentions, we note that DCS was not required to prove both that the conditions which led to C.O.V.'s removal had not been remedied and that the continuation of the parent-child relationship posed a threat to C.O.V.'s well-being. The applicable statute requires the DCS to establish only one or the other of these requirements. McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 202 n.13 (Ind. Ct. App. 2003).

II. Mother's Contentions

A. Conditions Leading to C.O.V.'s Removal

In addressing Mother's claim that the termination order must be set aside because the DCS failed to show that there is a reasonable probability that the conditions that resulted in C.O.V.'s removal from her care would not be remedied, we have previously recognized that a trial court is not limited to examining only the parent's fitness at the time of the termination hearing. Rather, the parent's habitual patterns of conduct should also be considered to determine whether there is a substantial probability of future neglect or deprivation of the child. McBride, 798 N.E.2d at 199. The trial court may properly consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. Id. Moreover, a trial court can reasonably consider the services offered to the parent and the parent's response to those services. Id. Finally, a court need not wait until a child is irreversibly harmed such that her physical, mental, and social development are permanently impaired before terminating the parent-child relationship. In re D.J., 755 N.E.2d 679, 684 (Ind. Ct. App. 2001).

At the termination hearing, the DCS case manager testified that Mother has consistently failed to comply with court-ordered drug treatment programs, is currently incarcerated, and has not established stability with regard to housing and employment. Moreover, Mother has not followed through with mental health treatments and parenting programs. Tr. p. 189. Also, Mother has been incarcerated four times during C.O.V.'s

CHINS proceedings, and DCS representatives testified that Mother is not able to provide a safe and secure home that will meet C.O.V.'s special medical and dietary needs.

In light of this evidence, the DCS established legitimate concerns regarding Mother's failure to complete the court-ordered services drug treatment programs, and her failure to place C.O.V. as her top priority. The record also demonstrates that Mother has a significant history of criminal activity and substance abuse. Mother has not shown a willingness or ability to alter the conditions that led to C.O.V.'s removal from her care.

Testimony from various caseworkers and service providers makes clear that despite a wealth of services that were made available to Mother, her circumstances remained largely unchanged, and she was still incapable of showing that she could provide C.O.V. with a safe and stable home environment. As a result, the trial court correctly concluded that there was a reasonable probability that the conditions that resulted in C.O.V.'s removal will not be remedied.²

B. C.O.V.'s Best Interests

Mother asserts that the evidence failed to demonstrate that terminating her parental rights was in C.O.V.'s best interests. We are mindful that, in determining what is in the best interests of a child, the trial court must look beyond the factors identified by DCS and examine the totality of the evidence. McBride, 798 N.E.2d at 203. In so doing, the trial court must subordinate the interests of the parent to those of the child. Id. The court

² As noted above, DCS was not required to prove that the continuation of the parent-child relationship posed a threat to C.O.V.'s well-being and that the conditions that resulted in C.O.V.'s removal would not be remedied. McBride, 798 N.E.2d at 202 n.13. Nonetheless, our review of the record indicates that DCS also proved this element by clear and convincing evidence.

need not wait until a child is irreversibly harmed before terminating the parent-child relationship. Id. Moreover, we have previously held that recommendations by a case manager and child advocate to terminate parental rights, coupled with evidence demonstrating that the conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in the child's best interests. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

In addition to the evidence discussed above, C.O.V.'s foster mother (Foster Mother) testified that she has cared for C.O.V. for nearly seventeen months. She tends to C.O.V.'s special dietary and medical needs and takes her to the necessary appointments. Tr. p. 31-35. The trial court considered the evidence and determined that C.O.V. is "doing well" in her current placement and there is a plan for C.O.V.'s adoption by her foster family. Appellant's App. p. 311.

The DCS case manager testified that Mother has made "poor choices" and has "not bonded with C.O.V." Tr. p. 145. Moreover, she did not believe that Mother "understands the needs that [C.O.V.] has both physically and emotionally, including her diet, [and what] her occupational therapy will entail. [She does] not believe that [Mother] can do all of those things." Id. at 146. As a result, the DCS case manager testified that the continuation of the parent-child relationship would represent a threat to C.O.V. and that it would be in C.O.V.'s best interests to terminate the parental relationship. Tr. p. 145-46.

C.O.V.'s Court Appointed Special Advocate (CASA) agreed with the assessment that it was in C.O.V.'s best interests that Mother's parental rights should be terminated.

She testified that “of the seventeen months of [C.O.V.’s] life . . . maybe a month and a half or two the parents have put forth an effort to show that they really want to parent the child.” Tr. p. 239. The CASA also testified that C.O.V. “has a difficult time with the bonding thing, . . . so I feel like they have placed a good family setting for her with the [Foster Mother] and her spouse.” Id. at 239-40.

Based on the totality of the evidence, including: a) Mother’s refusal to complete home-based counseling; b) her inability to demonstrate that she can provide C.O.V. with a safe and stable home environment; c) her history of criminal activity and drug abuse; and d) the testimony from DCS personnel and the CASA recommending termination of the parent-child relationship, we conclude that clear and convincing evidence supports the trial court’s judgment that termination of Mother’s parental rights is in C.O.V.’s best interests.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.