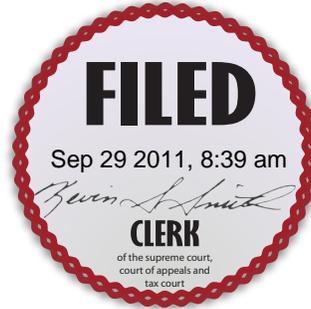


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

DONALD E. BAIER
Baier & Baier
Evansville, Indiana

ATTORNEYS FOR APPELLEE:

CARRIE E. HARMON
Evansville, Indiana

ROBERT J. HENKE
Indiana Department of Child Services
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

N.W.,)
)
Appellant-Respondent,)
)
vs.) No. 65A01-1101-JT-7
)
INDIANA DEPARTMENT OF CHILD SERVICES,)
)
Appellee-Petitioner.)

APPEAL FROM THE POSEY CIRCUIT COURT
The Honorable James M. Redwine, Judge
Cause Nos. 65C01-1007-JT-118 and 65C01-1009-JT-167

September 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

N.W. (“Mother”) appeals the trial court’s orders terminating her parental rights to her minor children B.W. and J.W. (collectively “the children”) following an evidentiary hearing.¹ Mother contends that the evidence is insufficient to support the termination orders. Concluding the Indiana Department of Child Services (“DCS”) presented clear and convincing evidence to support the trial court’s judgment terminating Mother’s parental rights, we affirm.

FACTS AND PROCEDURAL HISTORY

Mother gave birth to B.W. on July 18, 2008. At the time of B.W.’s birth, Mother was living at the shelter at the YWCA.² Shortly after B.W.’s birth, Mother moved to the Ozanam Shelter, where she lived for one or two months. Mother then moved in with family in Kentucky, where she lived for two to four months. After that, Mother lived for short periods of time at two additional shelters, including the House of Bread and Peace. While at that shelter, Mother had difficulty keeping her living area clean by properly disposing of dirty diapers. Mother then moved in with her boyfriend Kevin Sturm and later became pregnant with J.W.

In January 2009, DCS filed a verified petition alleging that B.W. was a child in need of services³ (“CHINS”) and requested a detention order. B.W. was placed in foster

¹ The trial court entered termination orders in a separate cause for each child. The two cases have been consolidated on appeal.

² Except as otherwise stated in this decision, the parties have not indicated in what towns particular facilities are located.

³ The parties have not included in the record on appeal a copy of the CHINS petition regarding B.W. Mother asserts that the CHINS petition for B.W. was based on Mother’s lack of housing at the time.

care. At the continued initial hearing on January 22, Mother admitted the allegations in the CHINS petition regarding B.W. DCS referred Mother for extensive parent aide services, child and family team meetings, case management services, and community services.

In May 2009, Mother moved to the Goodwill Family Center (“Goodwill”). B.W. was still in foster care, but DCS provided Mother parenting time. Personnel at Goodwill, including assistant director Carlada Flowers, provided services to Mother. DCS also continued to provide services. For example, DCS case manager Davita Hubbard helped Mother with “parenting issues with making sure [B.W.] was supervised at all times, making sure she didn’t get into anything that could harm her, bathing, hygiene[. T]hose issues continued to be worked on throughout the case.” Transcript at 143-44. According to Hubbard, initially Mother “cooperated really well with working with the [DCS] parent aide and getting signed up for Medicaid, Social Security [disability], pretty much anything [DCS] asked.” Id. at 142.

On November 13, 2009, Mother gave birth to J.W. Following the birth, Mother and J.W. lived at Goodwill, and Mother continued to have visitation with B.W. Prior to January 2010, DCS allowed Mother unsupervised overnight visitation with B.W., and on January 2, 2010, DCS returned B.W. to Mother for an extended “trial home visit.” Id. at 144. The purpose of the trial home visit was to “make sure that reunification could occur and that no further intervention from DCS was be [sic] necessary for that to happen.” Id.

Several concerns arose during B.W.’s trial home visit, including B.W.’s “crying and screaming, concerns with [Mother] being able to maintain the living conditions,

concerns about supervision.” Id. at 145. Mother also appeared overwhelmed from having the care of both children, and her own hygiene worsened despite efforts by Goodwill staff to assist her. At times Mother fell asleep in a recliner with J.W., still an infant, in her arms. Mother told Goodwill staff that she was uncertain whether she had fallen asleep or “blacked out.”⁴ Id. at 95. Mother was counseled about unsafe sleeping practices and the risk of smothering her child.

Goodwill staff gave Mother fourteen written reprimands and sixty-five to seventy counseling sessions to address problems including Mother’s overuse of the internet, falling asleep in the lounge, not cleaning off her table, not completing chores, and allowing the children to scream and cry without responding to them. Additionally, the condition of Mother’s room at the shelter deteriorated when the children were in her care. In Mother’s room there were feces-filled diapers lying on the floor, unlocked medications within B.W.’s reach, dirty and clean clothes scattered around, and clothes piled in J.W.’s crib. The condition of Mother’s room eventually became a safety concern.

On February 24, 2010, during an inspection of Mother’s room, Goodwill staff discovered that Mother’s room was in worse condition than it had been earlier in the week. Also, Flowers found J.W. lying on a twin bed with a plastic bag in his hand. After Goodwill staff reported the conditions to DCS, Hubbard and her supervisor went to Goodwill and inspected Mother’s living space as well. DCS removed B.W. and J.W. from Mother’s care that day due to the condition of Mother’s room, the fact that Mother

⁴ Mother had received treatment in 2007 and in July 2009 for dissociative disorder, not otherwise specified; post-traumatic stress disorder; and borderline personality disorder. And Mother testified that, at the time of the termination hearing, she was receiving Social Security disability as a result of her mental health diagnoses. Mother’s therapist from 2007 testified that Mother needed ongoing treatment one or two times per week for at least one year.

was overwhelmed by having the care of both children, and continued reports of Mother not responding to B.W.'s screaming. DCS placed the children in the foster home where B.W. had previously resided and filed a petition alleging J.W. was a CHINS.⁵

As long as the plan was reunification, Mother could have remained at Goodwill following the children's removal. But on March 5, Mother left the shelter and moved into a motel with a male roommate. DCS attempted to continue to provide services to Mother. For example, the parent aide continued to provide transportation to Mother for appointments and visitation, even after Mother left Goodwill. But approximately two to three weeks after Mother moved to the hotel, Mother and her room were found to have bed bugs. At that point, visitation and transportation services were ceased until Mother could provide a doctor's note stating that she no longer had bed bugs. Mother never provided such a note. And Mother did not request visitation after that point.⁶

In August 2010, Mother moved to Mt. Vernon where she shared a two-bedroom mobile home with a male roommate and, eventually, a family of three. The mobile home had a leaky roof, and there was no place for Mother's children to sleep.

On July 23, DCS filed verified petitions to terminate Mother's parental rights to the children, and on September 22 DCS filed amended termination petitions. The petitions alleged in part that there was a reasonable probability that the conditions that

⁵ The record contains conflicting evidence as to whether the children were removed on February 24 or 25. DCS reports, without citation to the record on appeal, that the CHINS petition regarding J.W. was filed on February 25. And the record on appeal does not contain a copy of the CHINS petition regarding J.W.

⁶ At one point later, Mother met DCS personnel to voluntarily terminate her parental rights, and she asked to see the children at that time. The parties do not state when this occurred or why parental rights were not voluntarily terminated.

had resulted in the children's removal would not be remedied and that the continuation of the parent-child relationship posed a threat to the well-being of the children. On December 8 and 9, the court held a joint hearing on the amended petitions.

At the time of the termination hearing, Mother was living in Mt. Vernon in the mobile home with four roommates. She had not sought mental health services since 2009. Her therapist from 2007 stated that, in her clinical opinion, Mother was not "able to safely be alone with her children." Id. at 15. Additionally, Mother had begun treatment with a new therapist on July 15, 2009, but she had attended only four appointments. Mother's last mental health appointment was January 29, 2010. During the 2009 appointments, Mother had reported blackouts, blanks in her memory, and panic attacks. And at the hearing Mother admitted that she needed treatment but stated she could not afford it and lacked transportation. However, she also admitted that she had not requested or investigated mental health services and that she did not want to go to a local mental health office that was within walking distance of her mobile home.

Also at the time of the hearing, Mother had lost her Medicaid benefits. Based on her mental health diagnoses she was receiving Social Security disability, which she had applied for with the assistance of service providers. But after living expenses she had only "ten or twenty dollars to last the rest of the month in case of an emergency." Id. at 35. Mother had taken no steps to re-establish her Medicaid benefits.

On December 9, 2010, the trial court entered orders terminating Mother's parental rights to the children ("Orders"). The Orders provide, in relevant part:

5. In this case, and in the case of [B.W.'s] sibling under a separate cause, Mother has been receiving services for almost two (2) years.

6. [DCS] has provided a great array of services, including, but not limited to, counseling, treatment, transportation, parent aides, housing, foster care, parenting time, overnight parenting time, and parenting oversight.
7. Mother has failed to take full advantage of these services.
8. It is clear to this Court that Mother loves [B.W.] and [J.W.], but love is not enough. [B.W. and J.W.] need stability and permanency which Mother cannot provide.
9. During incident after incident, [B.W.] was placed in dangerous situations by Mother.
10. It is beyond the ability of Mother to keep [B.W. and J.W.] out of dangerous situations.
11. [B.W.] was placed back with Mother on a trial home visit to see if there was a reasonable probability that the situation that resulted in removal was ever going to be remedied.
12. [B.W.] was removed after fifty-eight days with Mother on the trial home visit, due to unsanitary and dangerous conditions in the home at the Goodwill Shelter, including, but not limited to, soiled diapers on the floor, medicine and/or ointments left within reach of [J.W.'s] older sibling, and excessive and dangerous clutter.
13. The Guardian Ad Litem, Beth Folz, does not believe the situation that resulted in the removal of [B.W.] will ever be remedied.
14. The family case manager, Davita Hubbard, believes that termination of the parental rights of [Mother] is in [B.W.]'s best interest.
15. The permanency plan for [B.W.] is adoption by her foster mother.

Conclusions of Law

* * *

5. The Court now finds by clear and convincing evidence that the allegations of the petition are true in that:

a. [B.W.] has been removed from [Mother] under a dispositional decree for at least six (6) month and has been under the supervision of [DCS] since said dispositional decree was entered on February 10, 2009, with the exception of the trial home visit from January 4, 2010[,] to February 24, 2010.

b. There is a reasonable probability that the conditions that resulted in [B.W.]’s removal from, and continued placement outside[,] the care and custody of [Mother] will not be remedied.

c. There is a reasonable probability that the continuation of the parent-child relationship between [B.W.] and [Mother] poses a threat to [B.W.]’s well-being.

d. Termination of the parent-child relationship between [B.W.] and [Mother] is in the child’s best interests.

e. The plan of [DCS] for the care and treatment of [B.W.], termination of parental rights followed by adoption, is acceptable and satisfactory.

WHEREFORE, the Court finds that the parental rights of [Mother] should be terminated, and that the child [B.W.] shall remain under the supervision of [DCS] as a child in need of services under cause number 65C01-0910-JC-11.

Appellant’s App. at 8-10.⁷ Mother now appeals.

DISCUSSION AND DECISION

We begin our review by acknowledging that this court has long had a highly deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses.

⁷ The Order terminating Mother’s parental rights to J.W. is nearly identical to the Order quoted with two exceptions. First, J.W.’s Order refers to B.W. as the sibling. Also, J.W.’s Order includes the following finding not contained in B.W.’s Order: “[J.W.] was born while his sibling’s Child In Need of Services case was still pending.” Appellant’s App. at 23.

In re D.D., 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. Id. Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied, cert. denied denied, 534 U.S. 1161 (2002). A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment thereon. Bester v. Lake County Office of Family and Children, 839 N.E.2d 143, 147 (Ind. 2005). Thus, if the evidence and inferences support the trial court's decision, we must affirm. L.S., 717 N.E.2d at 208.

A parent's interest in the care, custody, and control of his or her children is arguably one of the oldest of our fundamental liberty interests. Bester, 839 N.E.2d at 147. Hence, "[t]he traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. These parental interests, however, are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. Id. In addition, although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. K.S., 750 N.E.2d at 836.

Before an involuntary termination of Mother's parental rights may occur, the State is required to allege and prove:

(A) that 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. . . .

(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.

* * *

(C) that termination is in the best interests of the child; and

(D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2)(A)-(D) (2011). Moreover, "[t]he State's burden of proof in termination of parental rights cases is one of 'clear and convincing evidence.'" In re G.Y., 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code § 31-37-14-2 (2008)).

Here, Mother challenges only the trial court's conclusion that there is a reasonable probability that the conditions that resulted in the children's placement outside Mother's care and custody would not be remedied. Mother does not challenge either the trial court's findings or its conclusions that the children had been removed under dispositional decrees for at least six months; that continuation of the parent-child relationships between Mother and the children poses a threat to the well-being of the children; that termination of Mother's parent-child relationships is in the best interests of the children; or that DCS'

plans for the care and treatment for the children (adoption) are acceptable and satisfactory. Those elements are sufficient to support the trial court's Orders terminating Mother's parental rights to the children.

Affirmed.

RILEY, J., and MAY, J., concur.