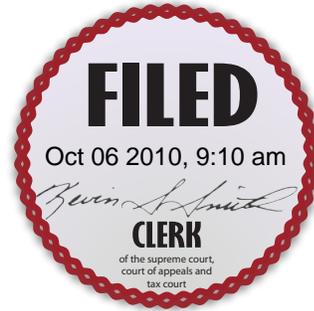


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEY FOR APPELLEE:

NANCY A. MCCASLIN
McCaslin & McCaslin
Elkhart, Indiana

ASHLEY MILLS COLBORN
ROBERT J. HENKE
Elkhart, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE TERMINATION OF THE)
PARENT-CHILD RELATIONSHIP OF:)
)
C.R. (minor child),)
)
and,)
)
N.Q. (mother),)
)
Appellant-Respondent,)
)
vs.)
)
THE INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
Appellee-Petitioner.)

No. 20A03-1003-JT-135

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
The Honorable Deborah A. Domine, Magistrate
Cause No. 20C01-0908-JT-72

October 6, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BARNES, Judge

Case Summary

N.Q. (“Mother”) appeals the termination of her parental rights to her son, C.R. We affirm.

Issue

Mother raises two issues, which we consolidate and restate as whether the trial court properly terminated her parental rights.

Facts

In early 2008, thirteen-year-old C.R. was adjudicated a delinquent child for committing what would have been Class B felony arson if it had been committed by an adult. As part of the proceeding, C.R. was placed on probation and removed from Mother’s custody. C.R. was eventually placed in foster care, where he “flourished.” Tr. p. 208.

As part of C.R.’s probation, Mother was required to undergo a psychological evaluation. At some point, Mother was diagnosed with schizoaffective disorder, biopolar type, and neuroleptic-induced Parkinsonism. Mother was also required to participate in individual counseling, a medication management program, a case management program, parenting classes, and develop a support system. Mother’s participation in these services was “[v]ery poor.” Id. at 200. In 2009, after in-patient mental health treatment, Mother’s mother was appointed the legal guardian of Mother.

On August 27, 2009, the Indiana Department of Child Services (“DCS”), petitioned to terminate Mother’s parental rights. On February 12, 2010, following a hearing, the trial court issued an order terminating Mother’s parental rights. Mother now appeals.

Analysis

“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. When 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) 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) 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) 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).¹

DCS has 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.

Mother argues that the trial court should not have admitted Exhibit 1 into evidence because it contained hearsay. Exhibit 1 consisted of the certified copies of the court

¹ Effective March 12, 2010, this statute was amended. There is no dispute that the previous version of the statute applies.

documents from the underlying juvenile delinquency adjudication.² “The admission of evidence is entrusted to the sound discretion of the trial court.” In re A.J., 877 N.E.2d 805, 813 (Ind. Ct. App. 2007), trans. denied. An abuse of discretion only occurs where the trial court’s decision is against the logic and effect of the facts and circumstances before the court. Id. “The fact that evidence was erroneously admitted does not automatically require reversal, and we will reverse only if we conclude the admission affected a party’s substantial rights.” Id. “In general, the admission of evidence that is merely cumulative of other evidence amounts to harmless error as such admission does not affect a party’s substantial rights.” In re Paternity of H.R.M., 864 N.E.2d 442, 450-51 (Ind. Ct. App. 2007).

Mother acknowledges that her trial attorney did not specify which documents contained hearsay and the trial court did not specify which, if any, of these documents it used to make its decision. She argues, however, that reversal is required because it is not possible to know whether the judgment is supported by substantial independent evidence. Even if Exhibit 1 was erroneously admitted over Mother’s objection, any error is harmless. At the hearing, C.R.’s probation officer testified regarding Mother’s obligations as part of C.R.’s probation and her failure to complete those requirements. C.R. also testified at the hearing regarding the arson adjudication. Without more, Mother has not shown how the admission of the court documents from C.R.’s delinquency adjudication affected her substantial rights.

² Mother relies on some of these same documents to establish her mental illness and other facts on appeal. Our decision is based on testimony taken at the termination hearing and the unchallenged Exhibits 2 and 3.

Mother also argues that the trial court abused its discretion when it based its decision to terminate her parental rights on evidence of C.R.'s wishes and improvement while in foster care. C.R., who was fifteen at the time of hearing, testified that he wanted Mother's parental rights to be terminated, that when he was in her custody she often did not care for him, and that he was afraid of what might happen if Mother's parental rights were not terminated. C.R.'s probation officer testified that while in foster care, C.R. has made great progress emotionally and socially. Mother argues that the trial court should not have based its decision on this evidence because Mother's mother was willing to help C.R., because it does not address Mother's mental illness, and because it does not explain why C.R. began exhibiting behavior problems in the first place. This is largely an attack on the relevancy of this evidence.

“All relevant evidence is admissible, except as otherwise provided by court rules or applicable law.” Spar v. Cha, 907 N.E.2d 974, 983 (Ind. 2009) (citing Ind. Evidence Rule 402). “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Evid. R. 401. At the very least, this evidence is relevant to whether termination was in C.R.'s best interests. Mother has not established that the trial court abused its discretion in considering this evidence.

Finally, Mother argues that her parental rights should not have been terminated because her mental illness prevented her from complying with the trial court's orders. She argues, “The court's findings should not have been used to terminate mother's

parental rights because mother has a mental illness.” Appellant’s Br. p. 19. Mother’s parental rights were not terminated because she was mentally ill; they were terminated because she repeatedly failed to treat her mental illness and could not adequately care for C.R.

Specifically, the evidence showed that, after Mother finally completed in-patient mental health services, Mother’s mother was appointed as Mother’s guardian. During the guardianship proceedings Mother disputed her psychiatrist’s diagnosis. Further, at the termination hearing, Mother testified that she was required to take her medication via injection and that, recently, police intervention was required for her to take her medication. She testified that she planned on getting off the medication and that the injections are not needed.

Further, as more proof that Mother’s parental rights were not terminated because of her mental illness, the trial court specifically found, “Despite the intervention by mental health professionals, [Mother] testified that she currently remains unemployed, she is without income, and without a home of her own. She acknowledged that she has been appointed a guardian to care for her and has not cared for [C.R.] for two years.” App. p. 9. The trial court recognized that Mother is unable to care for herself, that she poses a danger to herself and to others, and that she has no home or money. It is not Mother’s mental illness that caused the termination of her parental rights; instead, the termination of her parental rights is based on the fact that she is “unable to care for her child.” Id. at 9.

Conclusion

Mother has not established that the trial court improperly terminated her parental rights. We affirm.

Affirmed.

FRIEDLANDER, J., and CRONE, J., concur.