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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF PARENT CHILD)
RELATIONSHIP OF [C.B., JR.], MINOR CHILD)
AND HIS MOTHER TYNA SIMS AND HIS)
FATHER CARL BLACK, SR.,)

Appellants-Respondents,)

vs.)

No. 49A05-0611-JV-663

MARION COUNTY DEPARTMENT OF CHILD)
SERVICES,)

Appellee-Petitioner,)

and)

CHILD ADVOCATES, INC.,)

Co-Appellee.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Viola Taliferro, Senior Judge
Cause No. 49D09-0505-JT-18235

July 3, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Tyna Sims (“Mother”) and Carl Black, Sr. (“Father”) (collectively, “Parents”) appeal the termination of the parent-child relationship with their son, C.B., Jr., (“C.B.”) upon petition of the Marion County Department of Child Services (“DCS”). Mother raises the following two restated issues for our review:

- I. Whether the trial court erred in denying her motion to continue the termination hearing.
- II. Whether there is sufficient evidence to support the termination.

Father raises the following restated issue for our review:

- I. Whether there is sufficient evidence to support the termination.

We affirm.

FACTS AND PROCEDURAL HISTORY

C.B. was born on January 26, 2000. He suffered from several medical problems at birth, including kidney damage. C.B. was immediately placed on a variety of medications and had several food and fluid restrictions. In March 2004, C.B. was admitted to Riley Hospital with excess fluid retention and dangerously high blood pressure. He remained hospitalized for almost two months, and was then placed in foster care. C.B. was subsequently adjudicated to be a child in need of services (“CHINS”). In December 2004, C.B. received a kidney transplant.

Before C.B.’s discharge from the hospital on January 1, 2005, the transplant nursing staff reviewed all required discharge and follow-up instructions with C.B.’s foster parents.

Mother was only present for part of the instructions and had to make arrangements to return to the hospital to complete the required education, which she never did. C.B.'s first clinic and follow-up appointments were scheduled for January 3, 2005, at 8 a.m. and 4 p.m., respectively. Mother was one hour late for the clinic appointment and missed the follow-up appointment because she arrived too late.

Three days later, C.B.'s foster mother brought C.B. to the hospital for a blood draw and a clinic appointment. Mother was not present and efforts to reach her by phone were unsuccessful. Later that day, Mother telephoned and explained that she was unable to keep the appointment because her older daughter had a fever, she did not feel well, and her hands were swollen.

On January 10, 2005, Mother met with Transplant Social Worker Chella McClead and requested another opportunity to learn about C.B.'s medical care. McClead and Mother scheduled a session for January 13, 2005, at 9 a.m. The foster parents and C.B. were at the hospital before 9:00 that day. They waited until 9:35 and went home. Mother and Father did not arrive at the hospital until 9:42 a.m., when it was too late to complete the session.

On February 10, 2005, the organ transplant staff prepared a detailed list of C.B.'s post-operative needs. The list provided that both parents would attend clinic appointments with C.B. Mother attended five of twenty scheduled appointments in a sixteen-month period, and was late for three of them. Father did not attend any of the appointments.

In May 2005, DCS filed a petition to terminate both parents' parental rights. A fact-finding hearing was scheduled for October 26, 2005. The hearing was subsequently rescheduled for April 2006 and August 2006. The day of the hearing an incarcerated Sims

was not transported to the hearing. Her counsel asked the trial court to reschedule the hearing for the end of the year after Sims' scheduled release date. The court denied the motion and reset the hearing for September 22, 2006.

One week before the hearing, Sims filed a motion to continue, which the trial court denied. The court held the hearing as scheduled on September 22, 2006. Testimony at the hearing reveals that Mother and Father were unsuccessfully discharged from a counseling program with David Wright of Just Harmony Counseling Services in 2006 after one year of services. Wright would not recommend for Mother to have unsupervised visitation with C.B. because of Mother's failure to complete the necessary medical training. Father's supervised visitation with C.B. was terminated after Father had three no-call no-shows. Father made no attempt to reinstate the visitation.

At the time of the October 2006 termination order, Mother and Father were both incarcerated. Mother had been convicted of theft as a Class D felony, and Father had been convicted of trespass. Neither parent had stable housing or employment, or reliable transportation.

Lastly, testimony at the termination hearing revealed that C.B. has an opening in his abdomen that allows a catheter to be inserted to drain the urine from his bladder. C.B. must be catheterized and the opening in his abdomen must be cleaned every day. In addition, C.B.'s blood pressure, heart rate, and temperature must be checked daily before C.B.'s blood pressure medicine is administered. C.B. must be weighed daily and anything pertaining to his care must be documented. C.B.'s caregivers must follow strict fluid restrictions, and administer C.B.'s thirteen medications twice daily. C.B. also requires a monthly blood draw

and follow-up visits to his doctor once every three months.

It is critical that his caregivers attend to C.B.'s needs promptly and efficiently. If C.B. does not receive the care recommended by the medical staff, his body could reject the transplanted kidney. If that occurred, C.B. would face dialysis treatment for the remainder of his life or death.

One month after the hearing, the court issued an order terminating both parents' parental rights. Both parents appeal.

DISCUSSION AND DECISION

I. Motion for a Continuance

Mother first argues that the trial court erred in denying her motion for a continuance. In support of her argument, she directs us to *Rowlett v. Vanderburgh County Office of Family and Children*, 841 N.E.2d 615 (Ind. Ct. App. 2006), where an incarcerated father filed a motion to continue the termination hearing. The trial court denied the motion and the father appealed. This court found that the trial court abused its discretion in denying the continuance because the father had not had the opportunity to participate in services designed to reunite him with his children. *Id.* at 619-20. Here, however, Mother had such an opportunity but failed to participate in the services, including the medical training to care for her son.

We further note that the decision to grant or deny a motion for a continuance rests within the sound discretion of the trial court. *Id.* at 619. We will reverse a trial court 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.* However, no abuse of discretion will be found when the moving party has not demonstrated that he or she was prejudiced by the denial. *Id.* Here, Mother has not demonstrated that she was prejudiced by the denial, and we find no error.

II. Sufficiency of the Evidence

Mother and Father both also argue that there is insufficient evidence to support the termination. The purpose of terminating parental rights is not to punish parents but to protect their children. *In re Termination of the Parent-Child Relationship of D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parties are unable or unwilling to meet their responsibility as parents. *Id.*

This court will not set aside the trial court's judgment terminating a parent-child relationship unless the judgment is clearly erroneous. *In re R.S.*, 774 N.E.2d 927, 929-30 (Ind. Ct. App. 2002), *trans. denied*. When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, this court neither reweighs the evidence nor judges the credibility of the witnesses. *Id.* at 930. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.*

Indiana Code Section 31-35-2-4(b) sets out the following relevant elements that a department of child services must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

- (A) the child has been removed from the parent for at least six 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 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.

Mother and Father contend that there is insufficient evidence to support the termination of their parental rights. Specifically, they contend that the DCS failed to prove that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to C.B.’s well being.

Termination of the parent-child relationship is proper where the child’s emotional and physical development is threatened. *R.S.*, 774 N.E.2d at 930. Although the trial court should judge a parent’s fitness at the time of the termination hearing, it must also evaluate the parent’s habitual pattern of conduct to determine whether there is a substantial probability of future neglect of the children. *Matter of C.M.*, 675 N.E.2d 1134, 1139 (Ind. Ct. App. 1997). The trial court need not wait until the child is irreversibly harmed such that the child’s physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

Here, our review of the record reveals that C.B. has ongoing medical needs that require daily attention. Specifically, C.B. must be catheterized daily, and the opening in his

abdomen must also be cleaned daily. His blood pressure, heart rate, and temperature must be checked daily before his blood pressure medication is administered. In addition, thirteen medications must be administered twice daily. If these needs are not attended to, C.B. could lose the transplanted kidney, require dialysis, or die.

Mother and Father did not complete the necessary medical education to care for their son. Mother attended only five of sixteen clinic appointments with C.B. from February 2005 through June 2006. Father did not attend any of the appointments. In addition, neither parent has stable housing or employment, or reliable transportation to take C.B. to blood draws and follow-up medical appointments. Both parents were incarcerated at the time of the termination hearing.

Recognizing our deferential standard of review, we find that this evidence supports the trial court's finding that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to C.B.'s well-being.

We reverse a termination of parental rights "only upon a showing of 'clear error' – that which leaves us with a definite and firm conviction that a mistake has been made." *Egley v. Blackford County DPW*, 592 N.E.2d 1232, 1235 (Ind. 1992). We find no such error here, and therefore affirm the trial court.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.