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**IN THE
COURT OF APPEALS OF INDIANA**

In the Matter of the Termination of the Parent-)
Child Relationship of W.Y., Minor Child,)
and Gerald "Joey" Youngblood, Father,)
)
GERALD "JOEY" YOUNGBLOOD,)
)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner.)

No. 18A05-0606-JV-292

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Joseph M. Speece, Master Commissioner
The Honorable Robert L. Barnet, Judge
Cause No. 18C03-0208-JT-21

July 6, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Gerald Youngblood (Father) appeals the trial court's order terminating his parental rights as to his minor child, W.Y. He presents the following restated issues for review:

1. Did the trial court err in denying Father's motion for continuance?
2. Did the Delaware County Division of Family and Children develop a satisfactory plan for the child?
3. Was CASA's involvement insufficient to sustain the termination?
4. Was the evidence sufficient to support termination?

We affirm.

On July 5, 1997, W.Y. was born to Father and his then-wife, Melissa Clifford (Mother). In August 2001, the Delaware County Division of Family and Children (the DFC) removed W.Y. from the custody of Mother,¹ with whom he had been living, and placed him in foster care. A petition alleging that W.Y. was a Child in Need of Services (CHINS) was filed on August 16, 2001, and on October 23, 2001, the trial court issued an order adjudicating W.Y. to be a CHINS. As part of the CHINS proceedings, both Mother and Father were to follow certain objectives of the dispositional order. Father was ordered to report any changes in address, employment, or living circumstances and to cooperate with the DFC case manager by keeping scheduled home visits and maintaining communication with the DFC. Periodic reviews in the CHINS proceedings reflect that Father was complying with the dispositional order, and on April 30, 2002, W.Y. was placed in Father's custody. At that time, the dispositional order was modified, and Father was ordered to participate in a

¹ Mother was initially a party to the termination proceedings below, but the petition to terminate parental rights was dismissed as to her. In fact, W.Y. was eventually returned to her custody, and he remained in Mother's custody at the time of this appeal.

parenting support group and individual and family counseling at Comprehensive Mental Health Services (CMHS).

On August 22, 2002, while W.Y. continued to reside with Father, the DFC filed a petition to terminate Mother's parental rights because she had not complied with the terms of the dispositional order and had not made the necessary changes in her lifestyle to allow for the safe return of W.Y. to her home. On February 18, 2003, the DFC removed W.Y. from Father's custody and placed him in a foster home because, in W.Y.'s presence, Father had hit W.Y.'s stepbrother, who suffered from brittle bone disease. For this reason, the dispositional order was again modified, and Father was ordered to comply with certain terms, including the following: (1) Complete a psychiatric evaluation at CMHS and follow all recommendations; (2) complete a psychological evaluation and follow all recommendations; (3) participate in anger management therapy; (4) participate in any parenting classes recommended by his therapist; and (5) cooperate with the CMHS case manager to develop a workable budget and maintain proper home conditions.

On April 7, 2003, the trial court dismissed the petition to terminate Mother's parental rights on the DFC's motion because she had begun to comply with the terms of the dispositional order. On March 9, 2004, Father was charged with intimidation as a class D felony. He pled guilty to this charge and was sentenced to an eighteen-month suspended sentence with sixty days on home detention and the balance on supervised probation. On November 14, 2004, Father was arrested for possession of methamphetamine, and as a result, his visitation with W.Y. was suspended. He eventually pled guilty to possession of methamphetamine as a class D felony and was sentenced to a one-year executed sentence.

His probation was also revoked, and he was ordered to serve six months of his previously suspended sentence consecutive to the one-year sentence.

On November 18, 2004, the DFC filed a petition to terminate Father's parental rights. A two-day termination hearing was commenced on October 31, 2005 and concluded on February 27, 2006. The evidence at those hearings revealed that Father: (1) did not regularly report changes in his address and employment to the DFC; (2) never scheduled any home visits with the DFC; (3) participated in both a psychiatric and psychological evaluation; (4) did not successfully complete anger management classes; (5) participated in, but did not complete parenting classes; and (6) did not consistently participate in individual therapy. On May 3, 2006, the trial court issued the order Father now challenges, i.e., an order terminating his parental rights as to W.Y. Further facts will be supplied where appropriate.

A parent's interest in the care, custody, and control of his or her children is "perhaps the oldest of the fundamental liberty interests", and is protected by the Fourteenth Amendment to the United States Constitution. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005) (quoting *Troxel v. Granville*, 530 U.S. 57 (2000)). Parental interests are not absolute, however, and must be subordinated to the child's interests in determining whether to terminate parental rights. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143. Thus, "[p]arental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities." *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. "[A] trial court does not need to wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship." *Castro v.*

Ind. Office of Family & Children, 842 N.E.2d 367, 372 (Ind. Ct. App. 2006), *trans. denied*.

When the evidence shows that the emotional and physical development of a child is threatened, termination of parental rights is appropriate. *Id.*

In order to effect the termination of a parent-child relationship, the DFC must establish the following elements:

(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;
- (ii) a court has entered a finding . . . 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.

I.C. 31-35-2-4(b)(2). These allegations must be proven by clear and convincing evidence.

I.C. 31-37-14-2; *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*.

Because subsection (b)(2)(B) is written in the disjunctive, the trial court need only find one

of those two elements by clear and convincing evidence. *Castro v. Ind. Office of Family & Children*, 842 N.E.2d 367. With the foregoing principles in mind, we address the issues Father presents.

1.

Father contends the trial court erred in denying his motion for continuance.

The decision to grant or deny a motion for a continuance rests within the trial court's sound discretion and will be reversed only for an abuse of that discretion. *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615 (Ind. Ct. App. 2006), *trans. denied*. A trial court abuses its discretion in denying such a motion when the moving party demonstrates good cause for granting the motion. *Id.* No abuse of discretion will be found, however, when the moving party has not demonstrated he or she was prejudiced by the denial. *Id.*

At the beginning of the first day of the termination hearing, Father submitted an oral motion for continuance. The reasons given for the request were that Father had not been able to complete services while incarcerated, had been hindered in preparing his defense, and W.Y.'s court-appointed special advocate (CASA) had not yet spoken with Father. Father requested that the hearing be continued until February 2006. The trial court denied the motion.

We note first that the termination hearing had been scheduled for more than three months, which gave Father and his counsel ample time to prepare Father's defense. We note also that the CHINS action relative to W.Y. had been ongoing since 2001 and that the termination proceeding had been initiated in 2003. During that time, Father had not taken

advantage of many of the services that were offered to him in conjunction with the CHINS action and the termination proceeding. In fact, he was to be released from incarceration barely three weeks before the date he proposed to commence the termination hearing. It is doubtful there would even be time to complete services after his release, even if he were inclined to participate. In view of this, it is reasonable to conclude that a continuance would accomplish little more than delay the outcome, rather than change it.

Finally, we note that Father has not indicated what an interview with CASA would have accomplished in preparing his defense. As will be set forth more fully in Issue 3 below, CASA's testimony reflects that an interview with Father would not have changed CASA's opinion on the question of whether Father's parental right should be terminated. In view of the foregoing, the trial court did not err in denying Father's motion for continuance.

2.

Father contends that the DFC did not develop a satisfactory plan for W.Y. in the event of termination of Father's parental rights, which is a required element for termination under I.C. § 31-35-2-4(b)(2)(D).

At the time of the termination hearings, Mother was no longer married to Father. Although Mother initially was the subject of termination proceedings, she eventually took advantage of the services offered to her and complied with all that was required of her by the DFC. Mother ultimately progressed to the point that the DFC determined reunification with W.Y. was in W.Y.'s best interests. At the time of the termination, case manager Amber Snider testified, "currently [W.Y.]'s living with his mother and things have been going well with that. If things continue to go well, he would be dismissed with living with his mother."

Transcript at 173. In view of Mother's marked improvement in the opinion of DFC officials, and in view of the fact that reunification of parent and child is the goal of any CHINS proceeding, the trial court did not err in concluding that the DFC had a satisfactory plan for W.Y. if Father's parental rights were terminated.

3.

Charles Rife was W.Y.'s court-appointed special advocate, or CASA. Father contends CASA's involvement was not meaningful, and did not promote W.Y.'s best interests. This contention is premised primarily upon the facts that CASA did not interview W.Y. or Father prior to the termination hearing.

According to Ind. Code Ann. § 31-32-3-6 (West, PREMISE through 2006 Second Regular Session), the CASA has a duty to represent and protect the best interests of the child. The effective discharge of that duty is not a matter of specific statutory directive. Thus, for instance, there is no requirement that a CASA speak with the child or the parent whose rights are in question. To be sure, such contact would normally be expected and useful to CASA in protecting the child's best interests. In the present case, however, CASA based his recommendation that Father's parental rights be terminated on: (1) an interview with Mother, (2) interviews with both grandmothers, (3) a discussion with W.Y.'s counselor, (4) a discussion with W.Y.'s case manager, (5) observation of W.Y. in his second-grade classroom during school, and (6) reviewing a considerable number of reports and documents related to this case. Those documents revealed patterns of behavior on Father's part that included drug abuse, a history of violent behavior and an inability to control his anger, and intermittent participation in services offered by the DFC. Moreover, CASA explained that he was

unable to arrange a time to meet with Father because Father was incarcerated and his (CASA's) schedule would not permit traveling to the prison to speak with Father.

CASA explained that he did not speak with W.Y. because he was advised that W.Y. exhibited "behavioral issues if he knew that someone was around that was associated with the case." *Transcript* at 285. Based on these facts, we cannot say CASA failed to represent and protect the best interests of W.Y.

4.

Father's final claim amounts to a contention that the evidence was not sufficient to support the trial court's finding that termination was in W.Y.'s best interest. In essence, Father contends he is improving in those areas that jeopardized his continuing relationship with W.Y. When reviewing the sufficiency of the evidence supporting 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. We consider only the evidence and reasonable inferences most favorable to the judgment. *Id.*

Father's challenge requires an assessment of the evidence pertaining to Father's lifestyle, behavioral tendencies, and personal habits, and the impact of those factors upon W.Y.'s life. Dr. Paul Spengler evaluated Father and reported that Father has a history of drug abuse, and has been diagnosed with bipolar disorder. During his evaluation, Father reported to Dr. Spengler that he hears voices and that he has experienced magical thinking because premonitions that appeared to him in a dream have come true. Dr. Spengler testified that Father has an MMPI profile that predicts a volatile and unstable personality, a high likelihood of drug and alcohol abuse, and an underlying narcissistic personality structure.

Moreover, Father's behavior, both observed and self-reported, was consistent with that profile. Dr. Spengler testified the prognosis for successful treatment was poor.

Barbara Hisel was Father's primary therapist. She reported that the focus of therapy was to enable Father to control his explosive anger and violent behavior. During therapy, Youngblood missed appointments, disrupted some group sessions in which he participated, broke the glass on an entry door in a fit of anger, and threw a case manager against a wall. He was eventually dismissed from treatment after he threatened violence against building personnel. Hisel testified that Father was dishonest, failed to take responsibility for his actions, and continued to be prone to displays of violence.

Margaret Richardson was a therapist at Meridian Services and worked with W.Y. She revealed that W.Y. told her that Father showed him (W.Y.) how to kiss, encouraged him to touch his stepsister's genitals, and gave the children pills to induce them to sleep. W.Y. reported witnessing many instances of violence between Father and his wife. Richardson testified that W.Y. had progressed since being removed from Youngblood's care, and that re-establishing contact with Father would disrupt and harm the child.

Amber Snider was the case manager in charge of this CHINS action. She testified that Father never completed anger management or parenting classes. In fact, he did not complete any of the therapeutic services in which he was ordered to participate. She testified that at the time of the commencement of the CHINS action, Father had been convicted of possession of methamphetamine, and that he was on probation when he was arrested for possession of methamphetamine. While the CHINS case was in process, Father was convicted of class C felony intimidation. Snider also testified that Father had threatened to run away with W.Y.

and to kill anyone that came between Father +and his family.

In summary, the experts who testified for the DFC unequivocally shared the view that termination of the parent-child relationship between Father and W.Y. was a desirable outcome, and our review of the evidence leads us to the same conclusion. The evidence was sufficient to demonstrate a reasonable probability that a continuation of the parent-child relationship with respect to Father poses a risk to W.Y.

Judgment affirmed.

RILEY, J., concurs.

KIRSCH, J., dissenting with separate opinion.

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KIRSCH, Judge, dissenting.

I respectfully dissent.

In determining what is in the best interests of the child, the trial court is required to look at the totality of the evidence. *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. In doing so, the trial court must subordinate the interests of the parents to

those of the child involved. *Id.*

Here, the trial court terminated Father's parental rights as to W.Y., but did not terminate Mother's parental rights. At the time of the termination hearing, W.Y. was back in the custody of Mother and reunification was going well. Therefore, because Mother had custody of W.Y., she should have the right to receive child support from Father for the benefit of W.Y.

This court has previously cautioned trial courts to "be wary of voluntarily terminating the parental rights of a non-custodial parent before adjudicating the parental rights of the custodial parent." *In re J.T.*, 742 N.E.2d 509, 514 (Ind. Ct. App. 2001), *trans. denied*; see also *In re D.J.*, 755 N.E.2d 679, 683 (Ind. Ct. App. 2001), *trans. denied* (2002). This is because "[d]oing so could materially affect the rights of the child to receive support in the event the custodial parent's rights are not terminated." *In re J.T.*, 742 N.E.2d at 514. Although this is not a situation where one parent is voluntarily terminating his or her rights before the other parent's rights are adjudicated, the same concern for the child's right to receive support exists. Because Father's parental rights were terminated, but Mother's have not been, W.Y.'s right to receive child support from Father was materially affected because Father no longer had the obligation to pay child support.

I do not believe that it was in the best interest of W.Y. to terminate Father's parental rights when Mother's rights had not been terminated and she had custody of W.Y. because

this eliminated the child's right to receive support from Father.² Therefore, I would conclude that sufficient evidence was not presented to support the trial court's finding that termination was in the best interest of W.Y. and reverse the decision of the trial court.

² During the termination hearing, the DFC case manager was asked why the DFC had proceeded to terminate Father's parental rights even though W.Y. was placed in Mother's custody. The case manager responded that the reason was because of Father's "history of violence and drug use" and because there was "concern that if [Father's] parental rights were [not] terminated he could petition in custody court and either gain custody of [W.Y.] or even gain visitation," which she thought could be detrimental to W.Y. Although I understand the DFC's concern, I believe that this situation may be appropriately dealt with by the trial court if and when Father petitions for custody or visitation of W.Y.