

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:

**BRENT R. DECHERT**  
Howard County Public Defender  
Kokomo, Indiana

ATTORNEY FOR APPELLEE:

**REBECCA R. VENT**  
Russell McIntyre Hilligoss & Welke  
Kokomo, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

DEBORAH F. GIBBS, )  
 )  
Appellant-Respondent, )  
 )  
vs. ) No. 34A02-0701-JV-15  
 )  
HOWARD COUNTY DEPARTMENT OF )  
CHILD SERVICES, )  
 )  
Appellee-Petitioner. )

---

APPEAL FROM THE HOWARD CIRCUIT COURT  
The Honorable Lynn Murray, Judge  
Cause No. 34C01-0502-JT-5 and 6

---

**July 11, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Deborah F. Gibbs appeals the involuntary termination of her parental rights as to her two youngest children, J.G. and B.G. She presents the following restated issue for review: Was sufficient evidence presented to support the termination of her parental rights?

We affirm.

Gibbs is the biological mother of five children: S.G., born October 23, 1990; W.W., born January 8, 1993; N.W., born January 21, 1994; J.G., born October 29, 1997; and, B.G., born February 8, 2000. The fathers of S.G. and J.G. have never been involved in their child's life and have not provided any financial support. William Walker, Gibbs's ex-husband, is the father of W.W. and N.W. and has had custody of the children for many years. Finally, James Gifford is the father of B.G. Although Gifford initially participated in the underlying CHINS proceeding, he had not been involved for several years and did not appear at any of the termination hearings.

Before September 2002, the Howard County Department of Child Services (the DCS) had significant contact with Gibbs. In fact, the DCS had substantiated neglect by Gibbs with regard to one or more of her children on six prior occasions for either maintaining an unsanitary home or for lack of supervision. Her children were removed for a period of time in 1998 due to lack of supervision. It is unclear when the children were returned and under what circumstances.

The DCS once again became involved with the family when police contacted the DCS regarding the welfare of four of Gibbs's children who had been found unsupervised in her home just before midnight on September 23, 2002. The four children (S.G., N.W.,

J.G., and B.G.) ranged in age from two to eleven years old at the time. The youngest, B.G., was found sleeping on the floor wearing only a soiled shirt and no diaper or underpants. J.G. was found sleeping on a bed without sheets, while N.W. was sleeping on a couch and S.G. was sleeping on the floor. The home was filthy with food, roaches, and clothes on the floor. The home smelled of urine, dishes were strewn about, and furniture was overturned.

The children did not know the whereabouts of their mother, and police were unable to locate her. Therefore, the officers contacted the DCS. The children were then taken into custody and placed in foster care, except for N.W. who was placed with his father, William Walker. Around 3:30 a.m., Gibbs finally returned home to find her children gone. She was met by police and arrested for child neglect. Gibbs later pleaded guilty to class D felony neglect of a dependant and was sentenced to time served and placed on probation.

At an emergency detention hearing on September 24, 2002, the trial court found probable cause that S.G., J.G., and B.G. were children in need of services (CHINS). Thereafter, in December, all three children were found to be CHINS. Pursuant to the dispositional order, Gibbs was ordered to obtain independent housing, maintain suitable housekeeping standards, obtain steady employment, pay child support, participate in the family preservation program, attend individual counseling, complete nurturing classes, maintain contact with the DCS, and visit with the children.

J.G. and B.G. were placed in foster care together for a few months but B.G. soon had to be moved to a separate foster home because J.G. was displaying sexual aggression

toward him.<sup>1</sup> Upon entering foster care, J.G. and B.G. were profoundly delayed, both physically and mentally, and out of control behaviorally. J.G., who turned five shortly thereafter, did not know her ABCs, could not identify colors, could not count to ten, and did not know how to hold a pencil or speak in sentences. She would smear her feces on the walls and even urinated on her little brother, B.G. J.G.'s foster mother throughout this case, who initially had both children in her care, testified that the children were the most undisciplined she had ever seen.

B.G.'s current foster mother, with whom he has been placed since September 2003, described him as "like a little wild animal" when he was placed with her family. *Transcript* at 67. He was nonverbal and words, shapes, colors, numbers, and crayons seemed foreign to him. The supervised visitation coordinator explained that when B.G. first started visits he was underdeveloped socially, emotionally, and cognitively.

J.G. has been diagnosed with mood disorder, ADHD, and oppositional defiant disorder. B.G. has similarly been diagnosed with ADHD and oppositional defiance disorder, as well as pervasive developmental disorder. Since being adjudicated CHINS, J.G. and B.G. have received therapeutic and special education services. They have also benefited greatly from the structure, safety, and routine offered in their foster homes. While both children have improved dramatically in their current placements, they still require a great deal of specialized care. Specifically, they require a safe, nurturing, and

---

<sup>1</sup> Due to incorrigible and harmful behaviors, S.G. was eventually removed from foster care and placed at the Youth Opportunity Center (the YOC) where he was provided services in a structured therapeutic setting. He remained there until June 2004, when he was returned to Gibbs's care.

highly structured environment, with constant supervision and strict adherence to their medication regimens.

During the first year of the CHINS case, Gibbs failed to substantially comply with the court's dispositional order. While she participated in parenting classes and visited regularly with her children, Gibbs failed to obtain stable housing or employment and failed to regularly attend individual counseling. She also received a negative drug screen for marijuana in December 2003. Gibbs's instability and lack of compliance resulted in a petition for termination of parental rights being filed at the end of 2003.

Finally, by December 2003, Gibbs secured an independent residence and was granted unsupervised visits with J.G. and B.G. Around this time, Gibbs also began maintaining stable employment and participating in family educator services. With the threat of termination, Gibbs exhibited much improvement over the next six months, and the termination petition was eventually dismissed. In June 2004, her unsupervised visits with J.G. and B.G. were expanded to include overnights, and S.G., who was thirteen years old and had made much progress at the YOC, was placed with Gibbs as an in-home CHINS. Reunification of J.G. and B.G. with Gibbs was also planned in the near future.

Within a short period of time, however, "things start[ed] to go down hill seriously". *Id.* at 480. The family's case manager, Lori Myer, explained:

It was just that deterioration. As soon as [S.G.] got home, lack of follow through. We had asked Ms. Gibbs about day care for [B.G.] It just seemed to drag on and on and on. There were people coming in and out. She as [sic] not following through with the therapy sessions for [S.G.] or herself. It just, just seemed to go over, just completely overturned.

*Id.* at 476. Gibbs's abilities and willingness to properly care for S.G. declined, resulting in an almost immediate deterioration in S.G.'s emotional well-being. After S.G. started school in August 2004, he had an inordinate amount of tardies and absences, numerous disciplinary problems and school suspensions, and was failing academically. Gibbs was largely non-responsive to efforts by the school and the DCS in attempting to resolve these problems. Gibbs was unable to properly discipline or control S.G., and in May 2005, S.G. was removed from her home and placed in foster care. S.G. has since thrived in foster care and is now doing well in school and no longer labeled an emotionally disabled student. He has recently informed Gibbs that he prefers to stay in foster care.

As set forth above, Gibbs had overnight visits with J.G. and B.G. beginning in June 2004. When picked up by their foster parents after such visits, the children were often tired and, at times, B.G. was inappropriately dressed and bathed. Concerns also arose regarding Gibbs's supervision of the children. In particular, on or about December 31, 2004, she left the children unattended in a bedroom during a New Year's party at a friend's house and J.G. had inappropriate sexual contact with B.G.<sup>2</sup> After this incident, unsupervised visit were immediately suspended but soon thereafter allowed again, with J.G. and B.G. visiting at separate times. Visits, however, returned to being supervised in May 2005 and have remained that way since.

Meyer, the family's caseworker, described Gibbs's household in the spring of 2005 as "complete havoc." *Id.* at 491. Meyer explained:

---

<sup>2</sup> Gibbs had been instructed never to leave the children alone together due to J.G. having previously been sexually aggressive towards B.G.

[S.G.] had done very poorly in school. We were struggling with that issue. [Gibbs] was kind of barely managing to hang on. She was behind in her rent. She was behind on the utilities. She had switched jobs from the Sweet Shop to Baja Burrito, which I can understand, she wanted an increase in salary. However, within a few days she was terminated from there due to poor attendance.... She was no longer able to receive financial assistance through the trustee because she had a great deal of hours that she needed to work off. She was not involved in counseling. It was very inconsistent counseling for [S.G.] and when [S.G.] did go he usually walked there himself and it just seemed that [S.G.] was constantly filthy. Just the clothes, his appearance, just seemed very, very poor.

*Id.* at 491-92. In April 2005, Gibbs was evicted from her residence, though she soon relocated to 900 E. Vaile Street, Kokomo, Indiana. She also eventually obtained employment at a Sonic restaurant in July.

Since May 2005, Gibbs has consistently visited with J.G. and B.G. in a supervised setting. She and the children show genuine affection during the visits. The children, whether alone or together, often exhibit difficult-to-control behaviors, and Gibbs does not usually follow through with exercising proper discipline of the children. Rather, she acts more like a friend to them and often looks to the visitation supervisor to control the children. In fact, the supervisor, Amy Royal, testified that Gibbs's failure to properly discipline her children is an issue in a minimum of three out of four visits a month, requiring Royal to step in. Royal further testified that at a few of the visits she suspected that Gibbs might have been under the influence of alcohol or drugs, though this was never confirmed. In sum, Royal testified, as did J.G.'s and B.G.'s foster mothers, that she had seen no improvement in Gibbs's parenting skills over the last several years. J.G.'s foster mother further opined that Gibbs loves her children but that she just cannot deal with one of these special needs children, let alone both.

The DCS was also exceedingly concerned about Gibbs's choice in men, as she allowed a number of sex offenders and physically abusive men into her home and around her children. For example, Gibbs allowed James Roberts, who had a conviction for sexual misconduct with a minor, to frequent her home in the spring of 2005. J.G., who no one disputes had been sexually abused in the past, alleged that she was once again sexually abused by one of her mother's boyfriends, apparently Roberts, in the spring of 2005.

In another incident, Gibbs was battered by one of the men with whom she cohabitated, David Goehst, while W.W. was visiting. In July 2005, Goehst became drunk and hit Gibbs in the face with his fist and threw a beer can at her. W.W. called the police in an attempt to protect his mother. Once the police arrived, Gibbs filled out a domestic violence affidavit and Goehst was arrested for domestic battery, to which he later pleaded guilty. Gibbs, however, unsuccessfully attempted to drop the no-contact order the day after it was issued against Goehst. Gibbs and Goehst then proceeded to regularly violate the no-contact order. Further, Gibbs testified at the termination hearing that she was not concerned about exposing herself or her children to Goehst in the future because he is "a good man" who simply "made a mistake". *Id.* at 207.

On February 22, 2005, the DCS filed the instant petition to terminate Gibbs's parental rights as to J.G. and B.G.<sup>3</sup> The fact-finding hearing was held on December 8, 2005, January 17, 2006, April 10, 2006, and May 9, 2006. Thereafter, on October 23,

---

<sup>3</sup> Such a petition was not filed with respect to S.G., principally due to his age.



2006, the trial court issued a detailed order granting the involuntary termination of Gibbs's parental rights as to J.G. and B.G.<sup>4</sup> The following excerpts from the order adequately summarize the court's reasons for terminating parental rights:

38. In the nearly four (4) years since the children have been removed from their mother's care, [Gibbs] has not shown any marked improvement in her parenting skills. [J.G.] and [B.G.] have special needs that require caregiver(s) who can provide consistently a safe, nurturing and highly structured environment, as well as attend to the children's demanding behavioral, emotional and medical needs. In the judgment of the court, Debbie Gibbs is not capable of providing for her children's needs on a consistent basis as a full-time caregiver.

39. Prior to the children's removal in September 2002, Debbie had a history of substantiated neglect of her children. Custody of her sons [N.W.] and [W.W.] have been with their father since shortly after their divorce in 1998. Since the [sic] September 2002, Debbie has been on her own with no children in her care, except for the period [S.G.] was living with her. During such periods, Debbie has shown a certain degree of personal stability by maintaining employment and a residence, while participating in family educator services and visiting the children consistently. However, she has also showed degrees of bad judgment by exposing her children to persons of criminal history and domestic violence.

40. After Debbie demonstrated certain stability and [S.G.'s] behaviors improved with placement at YOC, [S.G.] was placed back in her custody. As the evidence shows, Debbie failed to provide [S.G.] the basics of a safe, nurturing, and structured environment, and she could not control his behaviors. [S.G.], at ages 13 to 14 years was much more self-sufficient and had far less special needs that [sic] either [J.G.] or [B.G.] When Debbie's visitations with [J.G.] and [B.G.] were expanded to unsupervised, Debbie was not able to properly care and provide for them for more than a short time, even after the visits with the children were held separately.

41. As children having special needs, [J.G.] and [B.G.] each requires [sic] the security of a safe, consistent environment and routine providing them with stability. The children also need a parent/custodian who has the parenting skills to set appropriate boundaries, administer appropriate discipline, and provide consistent supervision. Most importantly, [J.G.] and [B.G.] need permanency in their lives.

---

<sup>4</sup> The parental rights of J.G.'s putative father, Michael Clauffer, and B.G.'s father, James Gifford, were also terminated. Clauffer and Gifford did not appear in the termination proceedings below and are not parties to this appeal.

42. In the judgment of the court, Debbie Gibbs is unlikely to ever adequately care and provide for [J.G.] and [B.G.] consistently as a custodial parent.

43. The court recognizes that Debbie has made efforts to maintain stability in her life by maintaining employment and a residence, and she has been compliant with participating in services such as family educator services and visitation. But, Debbie asks and expects the court and her children to delay for an indefinite time consideration of the children's dire need for permanency. Debbie's desires are subservient to [J.G.'s] and [B.G.'s] best interest.

\* \* \* \*

47. The court finds it is reasonably probable that the conditions, namely mother's inability to properly supervise the children and provide them with a suitable environment, will not be remedied to the degree that Debbie Gibbs will be able to provide [J.G.] and [B.G.] with the nurturing, stable, and appropriate care and environment the children require on a long-term basis. The court need not wait until a child is irreversibly harmed such that his or her physical, mental and social development is permanently impaired before terminating a parent-child relationship.

48. The Court further finds by clear and convincing evidence that the continuation of the parent-child relationships between Debbie Gibbs and Michael Clauffer and [J.G.], and Debbie Gibbs and James Gifford and [B.G.] pose a threat to the well-being of each child. A termination of the parent-child relationships is in the best interest of said children because [J.G.] and [B.G.] need permanency with caregivers who can provide each with a nurturing environment that is secure and free of abuse and neglect and meets his and her basic and special needs until each reaches the age of majority. Neither parent has demonstrated a past or current ability to provide [J.G.] or [B.G.] permanency. A parent's historical inability to provide stability and supervision, coupled with a current inability to provide same will support a finding that the continuation of the parent-child relationship is contrary to the child's best interest.

49. The court further finds by clear and convincing evidence that termination of the parent-child relationships...is in the best interests of said child[ren], in that further efforts to reunite the parent and either child are unlikely to succeed. The failure to terminate the relationship will deny the child the stability and permanency to which he and she is entitled, and has too long been denied. It is in [J.G.'s] and [B.G.'s] best interest to have permanency, not perpetual foster care and uncertainty in his and her life.

50. The court further finds by clear and convincing evidence that the DCS has a satisfactory plan for the care and treatment of [J.G.] and [B.G.], which plan is to place each child for adoption.

*Appellant's Appendix* at 47-51 (citations omitted). Gibbs now appeals from the termination of her parental rights. Additional facts will be provided below as necessary.

While parents have a traditional right, protected by the Fourteenth Amendment of the United States Constitution, to establish a home and raise their children, the interests of parents are not absolute and must be subordinated to the children's best interests. *In re D.D.*, 804 N.E.2d 258 (Ind. Ct. App. 2004), *trans. denied*. Courts can order the involuntary termination of parental rights when parents are unable or unwilling to meet their parental responsibilities. *Id.* The goal in terminating parental rights is not to punish parents but to protect children. *Id.*

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 (Ind. 2005). We consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* We will not set aside a trial court's order to terminate parental rights unless it is clearly erroneous. *In re A.H.*, 832 N.E.2d 563 (Ind. Ct. App. 2005).

Ind. Code Ann. § 31-35-2-4(b)(2) (West, PREMISE through 2006 2<sup>nd</sup> Regular Sess.) provides that a petition to terminate a parent-child relationship involving a CHINS must allege that:

(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 Ind. Code § 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) 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.

The State is required to establish these allegations by clear and convincing evidence. *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232 (Ind. 1992). "Clear and convincing evidence need not reveal that 'the continued custody of the parents is wholly inadequate for the child's very survival.'" *Bester v. Lake County Office of Family & Children*, 839 N.E.2d at 148 (quoting *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d at 1233). Rather, clear and convincing evidence that the child's emotional and physical development are threatened is sufficient to establish that termination is in the child's best interests. See *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143.

In the instant case, Gibbs challenges the trial court's findings only with regard to I.C. § 31-35-2-4(b)(2)(B) and (b)(2)(C). In other words, she does not challenge whether

the children have been removed for a sufficient period of time or whether there is a satisfactory plan for their care and treatment. We will address each of the challenged elements in turn.

We initially find that there is abundant evidence in the record to support the trial court's determination that a reasonable probability existed that the conditions resulting in J.G. and B.G.'s removal or the reasons for continued placement outside her home were unlikely to be remedied. In determining whether the conditions that led to a child's placement outside the parent's home will likely be remedied, the trial court should assess the parent's ability to care for the child as of the date of the termination proceeding and take into account any evidence of changed conditions. *See In re A.H.*, 832 N.E.2d 563; *In re K.S.*, 750 N.E.2d 832 (Ind. Ct. App. 2001). The trial court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. *In re A.H.*, 832 N.E.2d 563.

As recognized by the trial court, Gibbs made improvements with regard to housing and employment. She also regularly visited with her children and participated in family educator services. Over the four years that her children had been removed, however, the record clearly reveals that Gibbs has not developed the skills needed to properly and safely parent J.G. and B.G.

These children both have extreme behavioral disorders and require a parent with "very strong parenting skills". *Transcript* at 117. As Tonya Aleshire, the children's mental health counselor explained, parenting skills are "intensely important" to children such as J.G. and B.G, who require a safe and nurturing environment with structure,

routine, and boundaries. *Id.* at 116. It is also vital that the children continue with their various therapies and strictly comply with their medication regimens.

At the last day of the termination hearing, Gibbs admitted she has a limited understanding of the children's special needs, though she seemed to blame others for this. We further observe that throughout these proceedings, Gibbs has displayed an unwillingness or inability to adequately attend to her own medical and mental health needs, even though that often meant defying court orders. In particular, she has taken herself off prescribed medications against doctors' orders, has not had a required MRI, and has not consistently attended individual counseling sessions. These facts are not promising indicators of Gibbs's ability to comply with the children's demanding medical and mental health needs.

Furthermore, there appeared to be a consensus among the witnesses for the DCS that Gibbs's parenting skills had not improved since J.G. and B.G. were removed from her care. While there can be no doubt that Gibbs loves J.G. and B.G. and has cooperated in many ways with service providers, the unfortunate reality is that she does not have the skills necessary to parent them safely and effectively over the long term.

Gibbs has five children and has custody of none of them. She has a long history of substantiated neglect with the DCS. In fact, another incident of neglect was substantiated during the pendency of this case in November 2004, when she struck N.W. across the face during a visit and caused significant bruising. Further, there is evidence in the record that J.G. has been molested on more than one occasion while in Gibbs's care, with

the most recent alleged incident involving Roberts in April 2005.<sup>5</sup> Gibbs's lack of supervision also allowed J.G. the opportunity to sexually touch her younger brother during a New Year's party on or about December 31, 2004.

Gibbs's failure in her recent attempt at parenting S.G. also speaks volumes. The record reveals that S.G.'s special needs are not as serious as those of J.G. and B.G., yet she was unable to control his behavior. Gibbs did not ensure that S.G. regularly attended counseling and failed to fully cooperate with the school in attempting to deal with his poor grades, spotty attendance, and incorrigible behavior. According to Meyer, the family's case manager, S.G.'s emotional well-being deteriorated almost immediately in his mother's care. Once he was removed in May 2005, however, and placed in foster care, S.G. dramatically improved, both emotionally and academically.

Finally, a review of the observation reports from the supervised visits supports a finding that Gibbs does not consistently or effectively discipline her children. Instead, she plays with them like a friend and often leaves it to the observer to step in and discipline her children, even N.W. There are also indications that she has difficulty interacting with her children on an emotional or personal level.

In sum, there is ample evidence to support the trial court's findings that Gibbs is "not capable of providing for her children's needs on a consistent basis as a full-time caregiver" and "unlikely to ever adequately care and provide for [J.G.] and [B.G.] consistently as a custodial parent." *Appellant's Appendix* at 47, 48. Thus, while it may

---

<sup>5</sup> Gibbs further indicated that one of her other children, N.W., might have been molested by her uncle, a convicted murder, in April 2006, during a weekend in which she had visitation with the child.

be the case that mother is unable, as opposed to unwilling, to properly supervise and parent her children, the trial court's determination that this is unlikely to change to the degree that Gibbs will be able to "provide [J.G.] and [B.G.] with the nurturing, stable, and appropriate care and environment the children require on a long-term basis" is not clearly erroneous. *Id.* at 50.

Because of our determination above, we need not reach the issue of whether there is a reasonable probability that the continuation of the parent-child relationships poses a threat to the well being of the children. *See In re L.V.N.*, 799 N.E.2d 63 (Ind. Ct. App. 2003) (noting that I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive and, therefore, only one of the two requirements of subparagraph (B) need to be established by clear and convincing evidence).

Therefore, we turn to whether there is sufficient evidence that termination is in the best interest of J.G. and B.G. In this regard, Gibbs seems to imply that the DCS was required to show that her custody of the children would be wholly inadequate for their very survival. Our Supreme Court, however, has made clear that this is not the standard. *See Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143; *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232. Rather, to establish that termination is in the children's best interests it is sufficient to show that their emotional and physical development are threatened. *See Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143.

Here, the DCS caseworker and the CASA both opined that termination was in the best interest of J.G. and B.G. As set forth in detail above, J.G. and B.G. are special needs



children with many medical and behavioral issues and, after nearly four years in this case, Gibbs has not demonstrated the ability to properly and safely care for children with such extreme needs. The children need stability and permanency now and need not wait several more years for the unlikely possibility that Gibbs may develop the needed parenting skills. The evidence sufficiently supported the trial court's decision to terminate Gibbs's parental rights with respect to J.G. and B.G.

Judgment affirmed.

BAKER, C.J., and CRONE, J., concur.