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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIPS)
OF K.L.B., a child, and ROGER M. BACHYNSKI)
and ELIZABETH I. WARD, parents.)
)
ROGER M. BACHYNSKI and)
ELIZABETH I. WARD,)
Appellants,)
vs.) No. 79A04-0703-JV-171
TIPPECANOE COUNTY DEPARTMENT)
OF CHILD SERVICES,)
Appellee.)

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta H. Rush, Judge
Cause No. 79D03-0610-JT-246 and 79D03-0610-JT-247

August 7, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Roger M. Bachynski (“Father”) and Elizabeth I. Ward (“Mother”) each appeal an order terminating their parental rights to K.L.B. We affirm.

Issue

Father and Mother raise the same issue on appeal: whether the Tippecanoe County Department of Child Services (“DCS”) established, by clear and convincing evidence, the requisite statutory elements to support the involuntary termination of their parental rights.

Facts and Procedural History

K.L.B. was born on October 27, 2005. Less than a month later, DCS began receiving reports regarding K.L.B. and the fact that her parents “were staying in homeless shelters and unable to give [K.L.B.] a stable home.” Father’s Appendix at 162. DCS investigated, took K.L.B. into protective custody, and placed her in a foster home. In addition, DCS alleged that K.L.B. was a Child in Need of Services (“CHINS”). On January 24, 2006, a juvenile court found K.L.B. to be a CHINS and ordered her parents to take certain actions, including among other things orders to:

- “Obtain and maintain a legal and stable source of income (which may include public assistance) adequate to support all the household members,”
- “Obtain and maintain suitable housing . . . ,”
- Participate in home-based services, and
- Complete parenting classes with Deborah Roth.

Id. at 159. Additionally, the juvenile court ordered Mother to participate in individual counseling with Alpine Clinic. Meanwhile, Father was ordered to complete a drug or alcohol

rehabilitation program and remain drug free.

On December 14, 2006, DCS petitioned to terminate the parental rights of Mother and Father. After a hearing, the trial court terminated the parental rights of both Mother and Father, making all of the specific findings required by statute.¹ The parents filed separately notices of appeal and appellant briefs.

Discussion and Decision

A. Standard of Review

This Court will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). 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. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn from that evidence. Id.

B. Requirements for Involuntary Termination of Parental Rights

The Fourteenth Amendment of the Federal Constitution protects the traditional right of parents to establish a home and raise their children. Bester v. Lake County Office of Family and Children, 839 N.E.2d 143, 147 (Ind. 2005) (citing Pierce v. Soc'y of Sisters, 268 U.S. 510 (1925) and Meyer v. Nebraska, 262 U.S. 390 (1923)). Nonetheless, the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. Id. The purpose of terminating parental rights is not to punish the parents, but to protect their children. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App.

1999), trans. denied, cert. denied, 534 U.S. 1161 (2002).

Indiana Code Section 31-35-2-4(b)(2) establishes the elements that the DCS must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

- (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 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; 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 trial court must subordinate the interests of a parent to those of the child when evaluating the circumstances surrounding the termination. In re A.A.C., 682 N.E.2d at 544. Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. Id. The trial court need not wait to terminate the parent-child relationship until the child is irreversibly harmed such that his or her physical, mental, and social development is permanently injured. Id.

¹ See discussion *infra*.

C. Analysis

Neither parent challenges the trial court's determinations pursuant to Indiana Code Section 31-35-2-4(b)(2)(A) (removal from the parent) or (D) (satisfactory plan). However, Mother and Father each challenge the trial court's determinations relating to Indiana Code Section 31-35-2-4(b)(2)(B) (conditions will not be remedied or relationship poses a threat to child's well-being) and (C) (best interests of the child).

1. Evidence regarding Father

On appeal, Father argues that the trial court clearly erred in making its findings. He testified, however, to the following. Father has struggled most of his life with a fairly serious drug problem. Father had convictions for operating while intoxicated, possessing cocaine, theft, auto theft, trespassing, and "a whole rap sheet." Father's App. at 26. When K.L.B. was removed from his care, he was struggling with addictions to cocaine and marijuana. He understood the trial court's order that he complete intensive outpatient counseling. However, he missed every appointment with Alpine Clinic for substance-abuse counseling and was kicked out of a second program. He did not complete any drug programs available to him, though ordered to do so.

From January to June of 2006, Father had a job and an apartment. He paid one month's rent and was evicted for owing \$2400 to his landlord. During that time, he was using "a good chunk" of that money to satisfy his cocaine habit. Id. at 20. From June to September of 2006, he was incarcerated based upon two warrants: one in a criminal case and one for contempt for failure to appear in the instant case. From the end of September through October of 2006, Father lived with three women, including Mother, and was kicked out of a

shelter. He admitted lying to a DCS employee that he was residing at a homeless shelter, when, in fact, he was living with a woman.

In 2006, Father worked for at least four different entities. At the time of the termination hearing, Father did not have a job. He was not pursuing his GED. He was living with Mother, a fact jeopardizing support she was receiving from the U.S. Department of Housing and Urban Development (“HUD”). He last used cocaine in September of 2006. Finally, he admitted that he had not remedied any of the reasons K.L.B. had been removed from the home.

2. Evidence regarding Mother

Mother asserts that the trial court clearly erred in its findings. Specifically, she argues, among other things, that “[t]he strength of the [DCS] case was the [F]ather’s drug use.” Mother’s Brief at 8.

Psychologist Jeff Vanderwater-Piercy conducted a psychological evaluation of Mother, recommending that she “increas[e] self-assertion and set[] limits with others, particularly in her relationship with [Father].” Mother’s App. at 182. Alpine Clinic counselor, Gloria Souder, concluded that Mother had no substance-abuse issues, but recommended that Mother receive “individual therapy to help her to learn and deal with basic living skills and this would also include helping her to learn to be more discerning of others and whether they are trying to use her or not.” Id. at 187. Souder added that if Father “continues to use he should not be permitted to live with [Mother and K.L.B.]” Id. DCS family case manager, Blake Jones, submitted a written Court Summary in the CHINS proceeding, commenting on Mother’s and Father’s relationship as follows:

[Mother] allowed [Father] to move in with her only a couple of days after the last court hearing . . . [Mother] stated that if [Father] ever started using drugs again that she would kick him out. She has learned on two occasions since then that he tested positive for cocaine and she has allowed him to remain with her. He has admitted to cheating on her with [two other women] in the last several months and she states that she continues to have unprotected sex with [Father]. [Mother's therapist] stated that she warned [Mother] of the dangers to her unborn child as well as herself from such actions.

Id. at 191.

The trial court specifically ordered Mother to complete parenting classes with Deborah Roth. Roth, however, terminated her consultations with Mother because of Mother's inconsistent attendance. After DCS asked her to resume her services with Mother, Mother attended four of six scheduled appointments with Roth. Kristine Ping, Mother's therapist, testified that Mother met with Ping six times over six months, but they were supposed to be meeting weekly.

Mother quit three jobs in 2006 and was unemployed at the time of the termination hearing. In June or July of 2006, she became pregnant by a third party. She was incarcerated from August 4, 2006 to October 20, 2006, apparently for contempt in the instant case. Three days after her incarceration, and contrary to her lease, her application to HUD, and court order, Father once again was residing with Mother. She acknowledges that Father has been dishonest, even after his incarceration in 2006.

3. Evidence Relating to Both Parents

In summarizing evidence relevant to both parents, Jones noted the continuous turnover both parents experienced in employment. Further, Jones testified,

I think it's a cycle with them and I think that it's going to be something that will continue be ongoing [sic] and that's where our primary concerns stem from is that if [K.L.B.] were placed back in their home there's nothing saying that next week she would have somewhere to stay.

Father's App. at 132 (emphasis added). Similarly, court-appointed special advocate Deborah Robbins recommended that Mother's and Father's parental rights to K.L.B. should be terminated.

Contrary to court order, neither parent secured stable housing or stable income. Neither completed nor took particular advantage of the array of court-ordered services. While the record is not entirely clear, it appears that both were incarcerated for contempt as a result of failing to appear in the course of these proceedings. Father continues to struggle with drug addiction, admitting to cocaine use as late as September of 2006. Meanwhile, contrary to court order and the recommendations of two professionals, Mother has failed to extricate herself from her relationship with Father. Her allowing Father to reside with her jeopardized the housing and government-provided housing support that she enjoyed at the time of the termination hearing. Given the evidence presented, we conclude that the trial court did not clearly err in finding (a) that there was a reasonable probability that the conditions that led to K.L.B.'s removal would not be remedied, (b) that the continuation of the parent-child relationships posed a threat to K.L.B.'s well-being, and (c) that termination of both parent-child relationships was in K.L.B.'s best interest.

Conclusion

The DCS established by clear and convincing evidence the requisite statutory elements to support the involuntary termination of Father's and Mother's parental rights to

K.L.B.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.