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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF PARENT-CHILD)
RELATIONSHIP OF A.A. AND T.A.,)
MINOR CHILDREN, AND THEIR MOTHER,)
SHANTIA ARTIS,)
)
SHANTIA ARTIS,)
)
Appellant-Respondent,)
)
vs.)
)
MARION COUNTY OFFICE OF FAMILY)
AND CHILDREN,)
)
Appellee-Petitioner,)
)
CHILD ADVOCATES, INC.,)
)
Co-Appellee-Guardian ad Litem.)

No. 49A02-0612-JV-1166

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Victoria Ransberger, Judge Pro-Tempore
Cause No. 49D09-0603-JT-10532

August 7, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, Shantia Artis (Mother), appeals the trial court's involuntary termination of her parental rights to her minor children, T.A. and A.A.

We affirm.

ISSUE

Mother raises one issue on appeal, which we restate as follows: Whether the evidence was sufficient to support the trial court's termination of her parental rights to T.A. and A.A.

FACTS AND PROCEDURAL HISTORY

Mother is a biological parent to T.A., born March 24, 1999, and A.A., born May 3, 2004. The Marion County Department of Child Services (the MCDCS) became involved with Mother and her children because of an allegation that A.A. had unexplainable marks on her ankle and had not received any immunizations. On January 19, 2005, the MCDCS filed a Child in Need of Services (CHINS) petition based upon an investigation of the home in which Mother lived with T.A. and A.A. It was determined that the children were not being adequately fed; mother had lost her Hoosier HealthWise benefits for the children; and Mother had no money for food or utilities. Additionally, Mother was unemployed and on disability for a psychosis disorder. Mother admitted to the allegations of the petition.

On March 1, 2005, the MCDCS filed a Petition for the Involuntary Termination of the Parent-Child Relationship between Mother and her children. A trial took place on October 2, 2006, and November 14, 2006. Mother appeared for the first day of trial, but failed to appear for the second day despite (1) being provided notice by the trial court, (2) written notice from the MCDCS, and (3) her attorney's attempts to remind her of the trial date. On December 4, 2006, the trial court issued its Order Terminating Parental Rights of Mother, stating in pertinent part:

ORDER TERMINATING PARENTAL RIGHT OF MOTHER

* * *

6. Mother agreed to participate in services for the possible reunification with her children. [Mother] completed a parenting assessment with a drug/alcohol component and was to follow all of its recommendations[,] which included a psychological evaluation and parenting classes. She was referred for random drug screens, intensive out-patient drug treatment and home based counseling.
7. Mother failed to provide any [drug] screens in February, March or April 2006. There is an on-going concern whether [M]other's illegal drug use has been satisfactorily addressed through court-ordered services.
8. St. Vincent New Hope, the home based provider, closed the first service referral because [M]other was non-compliant. A second St. Vincent New Hope referral was made. This referral was closed by the provider because [M]other was non-compliant.
9. Children and [M]other were never reunified at any time during the CHINS proceedings.
10. The reason for removal of the children was not satisfactorily addressed in court-ordered services because [M]other was non-compliant.
11. Mother did not complete court-ordered services.

12. Mother was unable to demonstrate an improved ability to parent through court-ordered services.
13. Mother was last employed in 2001-2002. She stated that she is currently self-employed selling incense oils and other miscellaneous items on street corners. Mother receives SSI disability funds for a mental health disorder.
14. Although [M]other indicated that she is on medication for a psychosis disorder and currently takes [depakote] and haldol, she was orientated during her testimony, understood the trial proceedings and did well in expressing herself at the first trial setting. Mother indicated that she would otherwise be willing to sign consents for her children to be adopted by the paternal relative with whom they are placed, but simply did not want to lose her larger apartment. It is [M]other's understanding that her current apartment which is located relatively close to the foster home of the children will no longer be available to her if her rights are terminated or she signs consents because it is a larger apartment with extra bedrooms for the children. Mother does not want to move to another apartment in public housing if that means that she will have to live further away from her children.
15. Mother's illness with the attending mental health symptoms and her inability to support the children prevent her from parenting these children on an on-going basis. Mother's home based counselor was very diligent with [M]other and a strong advocate but could not recommend reunification with the children given [M]other's mental health problems which interfere with her ability to parent.
16. At one point, visits between [M]other and her children had progressed to being located in her home under supervision. However, this process could not continue because [M]other frequently was not at home when the children were brought over for the visits or would end the visits after only 30 minutes of a 2 hour visit. Mother just could not handle the time with her children even on a short-term basis. It is clear to the [c]ourt that Mother could not provide for these children on an on-going basis at this time or anytime in the foreseeable future.
17. The children are in a pre-adoptive home with their paternal grandmother and paternal aunt. This home meets the needs of these two children.

CONCLUSIONS OF LAW

1. The above-named children were each found to be a CHINS under an order of the Marion Superior Court, Juvenile Division.
2. The children have been removed from the care and custody of their mother under terms of a dispositional order of this same court for more than six (6) months from the date of that order.
3. The children have not been reunited with their mother at any time during the CHINS proceedings.
4. There is a reasonable probability that the conditions which resulted in the children's removal; namely, [Mother's] poor care of the children, will not be remedied.
5. There is a reasonable probability that the continuation of the parent-child relationship with this mother and these children poses a threat to the children's well-being; namely, [M]other's inability to show an improvement in her parenting ability[] presents safety concerns for the children's welfare.
6. Termination of the parent-child relationship between these two children and their mother is in each child's best interest.
7. The MCDACS plan for the care and custody of these minors is adoption. The children are now placed in a pre-adoptive relative care home. This home meets the needs of these children.

(Appellant's App. pp. 10-12).

Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Mother argues that the trial court improperly terminated her parental rights to T.A. and A.A., as there was insufficient evidence to terminate her parental rights. Specifically, she contends that the evidence is not clear to show the reasons for removal are reasonably unlikely to be remedied, or that the continuation of the parent-child relationship poses a threat to her children.

The Fourteenth Amendment to the United States Constitution shields private family matters, such as child rearing, from unwarranted state intrusion. *In re W.B.*, 772 N.E.2d 522, 528 (Ind. Ct. App. 2002). Accompanying a parent's right to raise their children unimpeded, however, is the corollary responsibility to act in the children's best interest. *Id.* Failure to do so legitimately triggers state action, not for the purpose of punishing the parent, but to ensure that each child's best interests prevail. *Id.* "Because the ultimate purpose of the law is to protect the child, the parent-child relationship will give way when it is no longer in the child's best interest to maintain this relationship." *Id.* (quoting *In re B.D.J.*, 728 N.E.2d 195, 200 (Ind. Ct. App. 2000)).

The involuntary termination of parental rights is the most extreme measure that a court can impose for parenting failures, as it severs all rights of the parent to their child(ren). *Id.* Therefore, termination is designed only as a last resort when all other reasonable efforts have failed. *Matter of D.G.*, 702 N.E.2d 777, 780 (Ind. Ct. App. 1998). Accordingly, although parental rights have a constitutional dimension, the law allows for their termination when parties are unable or unwilling to meet their responsibility as parents. *Matter of A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997).

We will not set aside a trial court's order to terminate parental rights unless it is clearly erroneous. *In re Involuntary Termination of Parent Child Relationship of A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). In determining whether the evidence is sufficient to support the judgment of termination, we neither reweigh the evidence nor judge the credibility of witnesses. *Id.* We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.*

To effect the involuntary termination of Mother's parental rights to her children, the MCDCS must have presented clear and convincing evidence establishing 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 [I.C.] § 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 officer of family and children for at least fifteen (15) months of the more recent twenty-two (22) months;

(B) there is reasonable probability that:

(i) the condition 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).

Additionally, in determining whether a reasonable probability exists that the reasons for removal will not be remedied, the trial court must judge the parent's fitness to care for the children at the time of the termination hearing, taking into consideration any evidence of changed conditions. *In re Termination of Parent-Child Relationship of D.D.*, 804 N.E.2d 258, 266 (Ind. Ct. App. 2004), *trans. denied*. A trial court must also

“evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation.” *Id.* A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, will support a finding that there exists no reasonable probability that the conditions will change in the future. *Matter of D.B.*, 561 N.E.2d 844, 848 (Ind. Ct. App. 1990).

In its Order terminating Mother’s relationship with T.A. and A.A., the trial court found both that there was a reasonable probability that the conditions leading to T.A. and A.A.’s removal would not be remedied, and that continuation of the parent-child relationship poses a threat to T.A. and A.A.’s well being. However, we point out that under I.C. § 31-35-2-4(b)(2), the trial court was required to make only one of these findings.

In our review of the record, we find ample evidence to support the finding that the conditions causing T.A. and A.A. to be placed outside of Mother’s care are unlikely to change. Mother has failed to comply with services. She was ordered to complete drug screens, but “failed to provide any screens in February, March, or April[] 2006.” (Appellant’s App. p. 11). Mother also failed to complete home-based counseling. She was given two referrals, the second on her own request, and both were closed because she was non-compliant. Mother showed a continued inability to care for her children during supervised visits. As the trial court noted:

At one point, visits between [M]other and her children had progressed to being located in her home However, this process could not continue because [M]other frequently was not home when the children were brought

over for the visits or would end the visits after only 30 minutes of a 2 hour visit. Mother just could not handle the time with her children even on a short-term basis. It is clear to the [c]ourt that Mother could not provide for these children on an on-going basis at this time or anytime in the foreseeable future.

(Appellant's App. pp. 11-12). Thus, we find the MCDCS presented sufficient evidence that the conditions leading to the children's removal will not be remedied.

With respect to whether the continuation of the parent-child relationship poses a threat to T.A. and A.A.'s well being, we also find the MCDCS presented sufficient evidence to conclude a threat exists. The children were removed from Mother's care because of an unexplainable mark on A.A.'s ankle, A.A.'s lack of immunizations, and inadequate food in the home. Subsequently, Mother failed to cooperate with services under the CHINS adjudication even though he admitted to the allegations in the CHINS petition. As of the termination trial, Mother addressed none of the MCDCS's concerns, and additional concerns surfaced, *i.e.* Mother's inability to complete two hour supervised visits with her children, and her failure to produce drug screens. Accordingly, we find MCDCS presented sufficient evidence to conclude a threat to the children's well being exists.

Lastly, Mother claims the trial court improperly based its decision to terminate her parental rights on her mental health diagnosis. As support, Mother only relies on the trial court's findings, which state:

14. Although [M]other indicated that she is on medication for a psychosis disorder and currently takes [depokate] and haldol, she was orientated during her testimony, understood the trial proceedings and did well in expressing herself at the first trial setting. . . .

15. Mother's illness with the attending mental health symptoms and her inability to support the children prevent her from parenting these children on an on-going basis. Mother's home based counselor was very diligent with mother and a strong advocate but could not recommend reunification with the children given [M]other's mental health problems which interfere with her ability to parent.

(Appellant's App. p. 11). However, pursuant to Ind. Appellate Rule 46(A)(8)(a) Mother provides no support for this argument. Regardless of Mother's mental health, our review of the record indicates T.A. and A.A. were not being appropriately cared for by their mother and the best interest of the children is our paramount concern. We, therefore, affirm the trial court's termination of Mother's parental rights.

CONCLUSION

Based on the foregoing, we conclude that the MCDCS presented sufficient evidence to terminate Mother's parental rights to T.A. and A.A.

Affirmed.

SHARPNACK, J., and FRIEDLANDER, J., concur.