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**IN THE  
COURT OF APPEALS OF INDIANA**

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In the Matter of the Involuntary Termination )  
of the Parent-Child Relationship of A.T. and )  
his Mother, Sherry Tobey, )  
)  
SHERRY TOBEY, )  
)  
Appellant-Respondent, )  
)  
vs. )  
)  
MARION COUNTY DEPARTMENT )  
OF CHILD SERVICES, )  
)  
Appellee-Petitioner, )  
)  
and )  
)  
CHILD ADVOCATES, INC., )  
)  
Co-Appellee-Guardian Ad Litem. )

No. 49A05-0703-JV-169

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Larry Bradley, Magistrate  
Cause No. 49D09-0609-JT-39771

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**October 19, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

STATEMENT OF THE CASE

Sherry Tobey (“Mother”) appeals the trial court’s order terminating her parental relationship with her son A.T.

We affirm.

ISSUE

Whether the evidence supports the termination of Mother’s parental relationship.

FACTS

A.T. was born July 14, 1995. Along with his sisters B.W. (born 5/12/05) and T.T. (born 4/1/00), A.T. was removed by the Marion County Department of Child Services (DCS) from Mother’s care and custody on March 1, 2005. DCS determined that the children were in need of services because Mother frequently left them in the care of their grandparents, who were often not aware of Mother’s whereabouts and were without financial assistance for their care, and whose multiple health problems rendered them unable to care for the children. Also, A.T. was receiving mental health care treatment, in which treatment Mother had failed to participate. The youngest sibling reported that A.T. had sexually abused her; yet neither was receiving counseling in that regard. DCS also found that the children had been exposed to physical violence by Mother and concluded that the overall circumstances evidenced endangerment of the children.

On March 2, 2005, DCS filed a petition alleging that the three siblings were Children in Need of Services (CHINS). On June 8, 2005, Mother signed an agreed entry – admitting *inter alia* that A.T. was a child in need of services – whereby she agreed to

complete services as ordered. She further agreed to maintain contact with her DCS case manager, advising of any change in her address. Mother was ordered to participate in individual counseling and in A.T.'s counseling, as well as to participate in other services.

Initially, A.T. was in Valle Vista for treatment. Subsequently, he was in a therapeutic foster home. In late June of 2006, A.T. was returned to Mother's care and custody. Home-based services were provided, but in early September of 2006, an incident resulted in A.T.'s removal and placement in the therapeutic foster home again. On September 23, 2006, a petition was filed by DCS seeking termination of Mother's parental relationship with A.T. At the court facilitation conference on December 11, 2006, at which Mother was present, trial was set for February 26, 2007.

On February 26, 2007, at the time set for trial, Mother was not present.<sup>1</sup> The trial court heard testimony from Charles Henderson, the DCS family case manager for A.T. and Mother.

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<sup>1</sup> In the Statement of the Case section of her brief, Mother makes a series of assertions that would appear to raise an issue about trial having gone forward in her absence. Yet the issue she presents and argues in her brief simply addresses the sufficiency of the evidence to support termination.

We first note that the Statement of the Case is to be a brief description of "the nature of the case, the course of the proceedings relevant to the issues presented for review, and the disposition of these issues by the trial court . . ." Ind. Appellate R. 46(A)(5). Thus, inasmuch as Mother does not present for our review the issue of whether the trial court erred in proceeding to conduct the trial, such assertions are irrelevant.

Second, as to the evidence in this regard, when the trial court opened the proceedings and Mother was not present, DCS agreed to allow Mother an additional thirty minutes "to show up," and the record suggests that this happened. Also, as noted, Mother was present when the date for trial was set. Moreover, counsel for DCS signed on January 11, 2006, and filed with the trial court a "notice of compliance" stating that the attached letter had been sent to Mother at her "last known address" on that date; the attached letter advised Mother of the date, time, and place of the trial. In the agreed entry signed by Mother, she was ordered to maintain contact with her DCS case manager and to specifically advise of any change in her current address. Accordingly, the inference is that Mother failed to comply with this requirement. Further, when asked by the trial court, Mother's counsel also advised that he had tried to reach Mother by telephone and left messages, to no avail, and had "sent letters to all the addresses" that

Henderson testified that with respect to complying with the trial court's order in the CHINS proceedings, Mother had failed to attend individual counseling and to follow through with counseling for A.T. When A.T. was at Valle Vista, Mother did "not follow through with . . . family therapy." (Tr. 14). When A.T. was returned to Mother's care in mid-2006, Mother "failed to follow through with" counseling for A.T. and for herself. *Id.* Henderson testified that in September of 2006, A.T. was removed from Mother's care for Mother's "failure to follow through with counseling" and "a fight" in the home. (Tr. 12). Specifically, the police were called because of a fight involving A.T., his older sister, his grandmother, and Mother; injuries to the sister, Mother, and possibly the grandmother resulted. At that time, Henderson testified, Mother stated that she was not able to take care of A.T. and "that she wanted [him] removed." (Tr. 14). Henderson further testified that since the September 2006 removal of A.T. from Mother's care, Mother "ha[d] failed to follow through with any[]" services ordered – including the continued counseling for A.T., in which she was invited to participate. *Id.*

Henderson also testified that A.T. had been diagnosed with attention deficient hyperactivity disorder (ADHD), post-traumatic stress disorder related to his own sexual molestation, and depression. He further testified that without consistent counseling, A.T. was "a very difficult to deal with child." (Tr. 13). Medication had been prescribed for

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he had for Mother, but "they came back." (Tr. 9). Counsel further stated that he had not heard from Mother since late 2006, although had provided her his "contact numbers." *Id.* Thus, although Mother was present when the trial was set for February 26, 2006, at the conference on December 11, 2006, she did not contact him to discuss preparation for trial.

Third, according to Mother's motion filed the day after trial, she "knew of the date for trial" and appeared, but when she arrived "the trial had concluded." (App. 39).

A.T.'s ADHD and depression, but Mother did not "follow through with making sure that A.T. got" the medication. *Id.* Henderson further testified that Mother "minimize[d] his issues and blame[d] him essentially for everything, for the kids being in" foster care. (Tr. 20). Henderson opined that it was in A.T.'s best interest that Mother's parental rights be terminated because Mother had shown "that she cannot effectively parent [A.T.]." *Id.* Henderson further testified that A.T. needed "a stable home where people can address his issues and where he can be a kid," and where he was not exposed to the constant "conflict" and occasional "violent behavior" that occurred in Mother's custody. *Id.*

Finally, Henderson testified that A.T. had resided in a therapeutic foster home for several months before his return to Mother's custody in June of 2006 and since his removal in September of 2006. There, A.T. had received his medication as ordered and the consistent counseling he needed. A.T. had bonded with the parents in that home, and they desired to adopt him. (Tr. 15). The guardian ad litem for A.T. testified that she agreed with the DCS's plan that A.T. be adopted.

The trial court made findings of fact consistent with the above evidence – that Mother had "failed to follow through in obtaining individual counseling and counseling with the child"; that she "failed to give the child prescription drugs for the ADHD and depression"; that she had "minimize[ed] the child's needs as well as blaming the child for his medical and psychiatric conditions"; and that after "an injurious confrontation," she had "requested the child be removed, admitting that she could not take care of him." (App. 9). The trial court concluded that there was "a reasonable probability that the conditions which resulted in the removal of the child, and . . . which require continued

placement outside the home, will not be remedied.” *Id.* It further determined that termination of the parental relationship was in the best interest of A.T. Accordingly, the trial court ordered Mother’s parental relationship with A.T. terminated.

### DECISION

Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibility. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied* (citing *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied*). The purpose of terminating parental rights is not to punish parents but to protect children. *Id.*

The trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *R.S.*, 774 N.E.2d at 930. Termination of the parent-child relationship is proper where the child’s emotional and physical development is threatened. *Id.* Moreover, the trial court need not wait until the child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* The parent’s habitual pattern of conduct is relevant to determine whether there is a substantial probability of future neglect or deprivation of the child. *Id.*

The appellate court will not set aside the trial court’s judgment terminating a parent-child relationship unless it is clearly erroneous. *Id.* at 929-30. When reviewing the sufficiency of the evidence to support the judgment of involuntary termination of the parent-child relationship, we neither reweigh the evidence nor judge the credibility of

witnesses. *Id.* at 930. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.*

When a county office of family and children seeks to terminate parental rights, the office must plead and prove in relevant part that:

- (A) The child has been removed from the parent for at least six (6) 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 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.

Ind. Code §§ 31-35-2-4(b)(2), 31-35-2-8(a).

Mother first asserts that the “evidence does not support the trial court’s finding[] that the conditions resulting in [A.T.]’s removal would not likely be remedied.” Mother’s Br. at 11. However, her arguments in this regard simply ask that we reweigh the evidence presented. This we do not do. *See R.S.*, 774 N.E.2d at 930. Moreover, as DCS notes, “[a] pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change.” *L.S.*, 717 N.E.2d at 219.

Evidence indicated that at the time of removal, A.T. was receiving mental health treatment but Mother was not participating in that treatment. Subsequent to removal, it is undisputed that Mother did not participate in individual counseling as ordered and that she failed to follow through with necessary counseling treatment for A.T. Further, it is

undisputed that Mother failed to provide A.T. with prescribed medication for his diagnosed ADHD and depression. This evidence supports the trial court's conclusion that Mother was unable to provide proper parenting for A.T., *i.e.*, that the neglect leading to his removal was not likely to be remedied. Also, testimony reflected that Mother had admitted being unable to care for A.T. and had requested his removal in September of 2006. Mother directs us to testimony suggesting that she might have retracted this position. However, even if she did, the record does not reflect that she then exerted any effort whatsoever toward participating in services and demonstrating her ability to provide appropriate parenting. Based upon the evidence presented, we do not find clearly erroneous the trial court's conclusion that it was reasonably probable that the conditions resulting in A.T.'s removal would not be remedied. *R.S.* at 930.

Mother also argues that the evidence "does not support the court's finding that termination of the parental relationship was in the best interests" of A.T. Mother's Br. at 14. Inasmuch as Mother once again simply seeks to have the evidence reweighed, we disagree.

The evidence established that A.T. had particular needs based upon his diagnosed conditions, needs that included a stable home, regular counseling and medication. In Mother's custody, these needs were not met, and Mother declined to exert efforts to demonstrate her ability to provide for regular counseling and medication needs. Further, in Mother's custody, A.T. was exposed to conflict and violent behavior, not the circumstances of a stable home. No evidence suggested that Mother had obtained a different setting for A.T.'s care in order to spare A.T. the exposure to these unhealthy



surroundings. Moreover, by the time of the hearing, A.T. had spent more than six months in a single therapeutic foster care home, where he had bonded with the foster parents and where his counseling and medication needs were met – circumstances supporting the inference of a stable home setting. Further, these foster parents desired to adopt A.T. Based upon the evidence before it, we do not find clearly erroneous the trial court’s conclusion that termination of Mother’s parental rights was in the best interest of A.T. *R.S.* at 930.

Affirmed.

MAY, J., and CRONE, J., concur.