

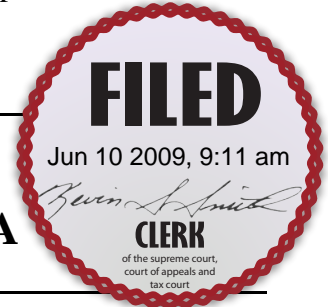
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ATTORNEY FOR APPELLANT:

DIANE RAE HURTT
Law Office of Diane Rae Hurtt, P.C.
Lafayette, Indiana

ATTORNEY FOR APPELLEE:

CRAIG JONES
Tippecanoe County Department of
Child Services
Lafayette, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF)
R.C., a minor child, and L.M.C., Her Mother,)
)
L.M.C.,)
)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
Appellee-Petitioner.)

No. 79A02-0812-JV-1087

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta H. Rush, Judge
The Honorable Faith A. Graham, Magistrate
79D03-0807-JT-68

June 10, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent L.M.C. (Mother) appeals the trial court's order terminating her parental relationship with R.C., her minor child. Mother argues that there is insufficient evidence supporting the trial court's order. Finding sufficient evidence, we affirm.

FACTS

Mother has three biological children: Z.R., born in 1991, B.S., born in 1999, and R.C., born December 8, 2006. M.C. (Father) is R.C.'s biological father. Before the underlying case began and before R.C. was born, Z.R. and B.S. were removed from Mother and declared to be Children in Need of Services (CHINS) in 2006 because of Mother's "extensive substance abuse." Appellant's App. p. 19. During that CHINS proceeding, Mother became pregnant with R.C., struggled to manage her bipolar disorder, was jailed for contempt, and tested positive for cocaine use during her pregnancy. Upon being released from jail, Mother sought treatment and attained sobriety. She was reunited with her children and on April 27, 2007, the CHINS cases were dismissed.

Two weeks later, on May 14, 2007, Tippecanoe County Department of Child Services (DCS) received a report that Mother was drinking and using cocaine, fifteen-year-old Z.R. was using marijuana, Mother's drug dealer was visiting or living in her home, and Mother was neglecting the children, including five-month-old R.C. During the course of DCS's investigation, Mother admitted using cocaine, Mother tested positive

for cocaine, and Z.R. tested positive for marijuana. On June 8, 2007, the children were removed from Mother's custody.¹

On June 12, 2007, DCS filed a petition alleging Z.R., B.S., and R.C. to be CHINS. Mother admitted the allegations in the petition and the children were all found to be CHINS. R.C. was placed with her maternal grandmother (Grandmother). Mother took part in all court-ordered services and made sufficient progress to begin a trial home visit in late December 2007. Within three weeks, she relapsed and began consuming alcohol. In March 2008, Mother became intoxicated and punched Z.R. in the face. Thereafter, the children were again removed from Mother's care.

Mother returned to treatment and had made significant progress by late spring 2008, but in June 2008 she left her transitional living program and began drinking again. Ten days later, a visit facilitator saw Mother in a bar with a drink and concluded that she was intoxicated because she was "staggering." Tr. p. 139. On July 2, 2008, Mother was intoxicated to the point of incoherence in her residence. On August 3, 2008, a probation officer saw her in a tavern in an intoxicated state. On August 5, 2008, Father and Z.R. were in Mother's home. Mother was in a back bedroom, intoxicated to the point that she was unresponsive, when Father stabbed Z.R. in the arm.

On July 15, 2008, DCS filed a petition to terminate the parent-child relationship of Mother, Father, and R.C. At the October 9, 2008, fact finding hearing, evidence of Mother's prior convictions—including intimidation, four operating while intoxicated convictions, and multiple convictions for public intoxication, battery, battery on law

¹ At that time, Father was incarcerated in Texas.

enforcement, and resisting law enforcement—was introduced. Additionally, Mother was adjudged a habitual traffic violator (HTV) and has since had her driver’s license suspended for life following a conviction for operating while HTV. At the time of the hearing, Mother was still on probation for that offense. She is unemployed and has been since 2003. Before the CHINS finding, Mother had been evicted three times, and as of the date of the termination hearing, was a defendant in a fourth eviction proceeding. During the last ten years, Mother has been through eight different treatment regimens for substance abuse. The trial court found that she “has been offered every available type of substance abuse treatment.” Appellant’s App. p. 22.

Additionally, it was revealed that although R.C. and Grandmother have a strong bond, Grandmother was charged with operating while intoxicated and leaving the scene of an accident in March 2008. Despite having a suspended license and despite a court order forbidding her to do so, she continued to drive with one or more of the children in her car. The night of August 5, 2008, it was Grandmother who drove Z.R. to Mother’s house, where the violent fight with Father ensued. Subsequently, Grandmother failed to seek immediate medical attention for Z.R., who required several stitches. Grandmother admitted that every child she has cared for has experienced significant criminal and/or substance abuse problems. Tr. p. 223. DCS recommended termination, and although R.C.’s court appointed special advocate (CASA) had initially favored guardianship of R.C. by Grandmother as a plan, by the time of the factfinding hearing, the CASA agreed that termination and adoption—by someone other than Grandmother—was in R.C.’s best interests.

On October 30, 2008, the trial court entered an order terminating the parental relationship of Mother, Father,² and R.C. The court found that

[a]lthough both parents love this child, neither has the current ability to meet the child's needs. It is not safe for [R.C.] to be in [the] home of Mother or Father at this time. Mother's long-standing history of neglect, alcohol and drug abuse, and instability continues today. . . . All imaginable services have been offered and nothing is singularly different in today's circumstances since the time of removal. To continue the parent-child relationships would be detrimental to the child. The child needs permanency now.

CONCLUSIONS OF LAW

1. There is a reasonable probability that the conditions that resulted in the removal of the child from the parents' care or the reasons for the continued placement outside the home will not be remedied. Neither parent has . . . demonstrate[d] the ability or willingness to make lasting changes from past behaviors. There is no reasonable probability that Mother or Father will be able to maintain sobriety or stability to care and provide adequately for this child.
2. The continuation of the parent-child relationship poses a threat to the well-being of the child. The child needs stability in her life. She needs parents with whom she can form a permanent and lasting bond to provide for her emotional and psychological as well as her physical well-being. Her well-being would be threatened by keeping her in a parent-child relationship with a Mother and Father whose own choices and actions have made them unable to meet the needs of this child.
3. The DCS has a satisfactory plan of adoption for the care and treatment of the child following termination of parental rights. . . .
4. For the foregoing reasons, it is in the best interests of [R.C.] that the parental rights of [Mother and Father] be terminated. Further efforts to reunify would have continued negative effects on the child.

Appellant's App. p. 22-23.³ Mother now appeals.

² Father is currently serving a thirteen-year sentence in the Department of Correction and is not taking part in this appeal.

DISCUSSION AND DECISION

I. Standard of Review

Mother's sole argument on appeal is that there is insufficient evidence supporting the trial court's decision to terminate her parental relationship with R.C. We 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). We neither reweigh the evidence nor judge the credibility of witnesses, and we will consider only the evidence that supports the trial court's decision and the reasonable inferences that may be drawn therefrom. Id. If the evidence and the inferences support the trial court's decision, we must affirm. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

We acknowledge that the involuntary termination of parental rights is the most extreme sanction a court can impose on a parent because termination severs all rights of a parent to his or her children. Id. Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. Id. The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Id. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities. Id.

³ The termination proceedings did not include Z.R., who was under guardianship with Grandmother, or B.S., who was in the custody of his father, at the time of the hearing.

II. Sufficiency of the Evidence

To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing the following elements:

- (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.

Ind. Code § 31-35-2-4(b)(2).

In construing this statute, this court has held that when determining whether certain conditions that led to the removal of the children will 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 evidence of changed conditions. In re D.J., 755 N.E.2d 679, 684 (Ind. Ct. App. 2001). A parent's habitual pattern of conduct must also be evaluated to determine the probability of future negative behavior. Id. The trial court need not wait until a child is irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship. Id.

Additionally, the trial court may consider the services offered as well as the parent's response to those services. Id. Parental rights may be terminated when parties are unable or unwilling to meet their responsibilities. Ferbert v. Marion County OFC, 743 N.E.2d 766, 776 (Ind. Ct. App. 2001). Also, when determining what is in the best interests of the children, the interests of the parents are subordinate to those of the child. Id. at 773. Thus, parental rights will be terminated when it is no longer in the child's best interests to maintain the relationship. In re B.D.J., 728 N.E.2d 195, 200 (Ind. Ct. App. 2000).

Mother first argues that DCS failed to prove by clear and convincing evidence that there is a reasonable probability that the conditions resulting in the removal of R.C. from the Mother's home will not be remedied. She emphasizes that she participated in all court-ordered services, occasionally self-reported when she relapsed, and was making progress on her sobriety at the time of the factfinding hearing. While all of that is true, and we do not doubt the sincerity of Mother's efforts, her historical patterns of behavior belie her contention that she will be able to maintain sobriety for any substantial length of time. In the past ten years, Mother has taken part in eight different substance abuse

programs, and the trial court found that she has been offered every available type of substance abuse treatment. Every time she has attained sobriety in those ten years, she has relapsed. She relapsed multiple times during the pendency of the CHINS proceedings, becoming intoxicated to the point of incoherence and being unresponsive. She punched her oldest son in the face while she was intoxicated, and she was passed out in a bedroom while Father stabbed Z.R. in the arm in her home. At the time of the factfinding hearing, the circumstances that led to R.C.'s initial removal from Mother's care were essentially the same, including Mother's unemployment and pending eviction proceedings. We find that this evidence clearly and convincingly establishes a reasonable probability that the conditions resulting in R.C.'s removal will not be remedied.⁴

Mother also argues that termination is not in R.C.'s best interests, emphasizing the evidence that she is a good parent when she is sober and again pointing out that she has made every effort to combat her addictions. That may be true, but the evidence supports a conclusion that Mother is not able to maintain sobriety for any substantial length of time. She has always relapsed quickly after achieving sobriety. Though no significant harm has yet come to R.C. as a result of Mother's substance abuse, we need not wait for that to occur before terminating the relationship. Mother's history of substance abuse, unemployment, and unstable housing establish that it is in R.C.'s best interests to terminate the relationship.

⁴ Though DCS need not also establish that the continuation of the parent-child relationship poses a threat to R.C.'s well being, we note that the above-described evidence also clearly and convincingly establishes this statutory element.

Finally, Mother contends that DCS has not established that there is a satisfactory plan for R.C.'s care and treatment. She argues that DCS should place R.C. to be adopted by Grandmother. Though we acknowledge the evidence of R.C.'s bond with Grandmother and Mother's desire to keep R.C. with her siblings, we also note the evidence in the record establishing Grandmother's shortcomings as a caregiver. Specifically, Grandmother was charged with operating while intoxicated and leaving the scene of an accident in March 2008, and despite having a suspended license and a court order forbidding her to do so, she continued to drive with one or more of the children in her vehicle. The night of August 5, 2008, Grandmother drove Z.R. to Mother's house, where Mother was passed out in a back room and Father eventually stabbed Z.R. in the arm. Grandmother delayed getting medical attention for Z.R., who required several stitches. Under these circumstances, we cannot find fault with the trial court's decision to accept DCS's plan of adoption for R.C. See In re L.B., 889 N.E.2d 326, 341 (Ind. Ct. App. 2008) (observing that adoption is generally a satisfactory plan when DCS seeks termination of parental rights). We also note that the statute does not require that DCS prove that it has the best plan for the child, only that it has a satisfactory plan. I.C. § 31-35-2-4(b)(2)(D). We find that DCS proved by clear and convincing evidence that there is a satisfactory plan for R.C.'s care and treatment, namely, adoption.

The judgment of the trial court is affirmed.

MAY, J., and BARNES, J., concur.