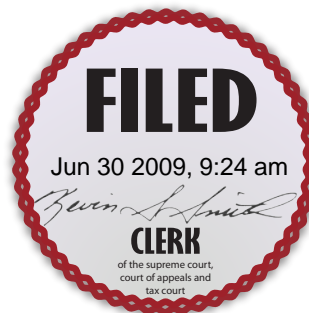


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF J.D.,)

B.D.,)
Appellant-Respondent,)

vs.)

No. 49A02-0812-JV-1107

MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner,)

and)

CHILD ADVOCATES, INC.,)

Co-Appellee (Guardian ad Litem).)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Larry Bradley, Judge
Cause No. 49D09-0807-JT-34149

June 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

B.D. (“Mother”) appeals the trial court’s involuntary termination of her parent-child relationship with J.D., her minor son. On appeal, Mother raises one issue, which we restate as whether sufficient evidence supports the trial court’s conclusions that the conditions resulting in J.D.’s removal from Mother’s custody will not be remedied and that continuation of the parent-child relationship poses a threat to J.D.’s well-being. Concluding sufficient evidence supports the trial court’s conclusions, we affirm.

Facts and Procedural History

On September 2, 2007, J.D. was removed from Mother’s care based on a Marion County Department of Child Services (“DCS”) case manager’s observations that J.D. lacked adequate nutrition, that Mother lacked an adequate source of income, and that the two had been living in Mother’s vehicle. On September 5, 2007, DCS filed a petition to have J.D. adjudicated a child in need of services (“CHINS”). The petition included the case manager’s observations, as well as allegations that Mother “failed to provide the child with necessary food, shelter, medical care, supervision and a safe, stable living environment free from neglect.” Petitioner’s Exhibit 3, at 4. At a hearing on October 18, 2007, Mother admitted to the allegations contained in an amended petition. Although the amended petition has not been included in the record, it appears, based on the testimony of another DCS case manager, that its allegations are similar to those in the original petition. See Transcript at 63 (DCS

case manager testifying that the amended petition was based on allegations that Mother lacked “safe and adequate housing, shelter, [and] food . . . for [J.D.] . . . [Mother] did not have a home at the time and . . . left [J.D.] with a relative with no food . . . I believe that was it”). Based on Mother’s admission, the trial court entered an order adjudicating J.D. a CHINS and ordering, among other things, that Mother secure and maintain a legal and stable source of income, that she obtain and maintain adequate housing, that she participate in and successfully complete home-based counseling, and that she participate in and successfully complete any other programs recommended by DCS.

Over the next thirteen months, Mother participated in and completed several DCS-sponsored services, including parenting classes, a parenting assessment, and a psychological evaluation. In other respects, however, Mother’s progress waned. Despite briefly obtaining employment at a warehouse in approximately August 2008, Mother was otherwise unemployed and failed to qualify for disability. Nor did Mother obtain and maintain adequate housing; initially she spent several months at her mother’s house, but had to leave when her mother was arrested. Later, Mother herself was arrested and charged with Class C felony forgery, Class D felony fraud, and two counts of Class D felony theft. As a result of this arrest, Mother was incarcerated at the Marion County Jail from May 14 to June 4, 2008. The fraud and one of the theft counts were dropped, but the forgery and other theft count are pending. Following her release, Mother lived in a homeless shelter for a month, then with her fiancé for several months, and finally again with her Mother. According to DCS case managers, however, neither of the latter two living arrangements was acceptable, as Mother’s

fiancé's home only had one bed and one of the people residing at the other house, her mother's boyfriend, had a criminal history, though the record does not disclose the precise nature of that history.

In addition to Mother's failures in obtaining a source of income and adequate housing, in March 2008, Dr. Mary Papandria, a psychologist, diagnosed her with major depressive disorder, post-traumatic stress disorder, and attention deficit hyperactivity disorder. Coupling these diagnoses with Mother's "borderline intellectual functioning" (Mother's IQ is 73), petitioner's exhibit 18, at 14, Dr. Papandria observed that although Mother is "marginally capable of making sound decisions regarding the welfare of her son," her disorders "may interfere with her ability to effectively parent her child, particularly during times of stress," *id.* Dr. Papandria also concluded, "It is doubtful that [Mother] will be able to effectively parent her child without intensive psychotherapy and psychotropic medications." *Id.* at 15. Although not disclosed to Dr. Papandria, Mother told one of the DCS case managers that she had an eight-year-old imaginary friend and that the friend convinced her to commit the crimes with which she had been charged.

Mother's failures to obtain employment and adequate housing, as well as Dr. Papandria's diagnoses, resulted in DCS filing a petition to involuntarily terminate Mother's parental rights to J.D. on June 30, 2008. On November 5, 2008, the trial court conducted a hearing on the petition, hearing testimony from Mother, the psychologist who evaluated her, and several DCS case managers, among others. Based on this evidence, on November 17, 2008, the trial court entered findings of fact and conclusions of law terminating Mother's

parental rights to J.D. Mother now appeals.

Discussion and Decision

I. Standard of Review

In reviewing the propriety of a trial court's decision to terminate parental rights, we neither reweigh evidence nor judge the credibility of witnesses. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). Instead, we consider the evidence most favorable to the judgment and the reasonable inferences that can be drawn from that evidence. In re J.W., 779 N.E.2d 954, 959 (Ind. Ct. App. 2002), trans. denied. When a trial court enters findings of fact and conclusions of law along with its judgment, we use a two-tiered review, first deciding if the evidence supports the findings and then deciding if the findings support the judgment. Doe v. Daviess County Div. of Children & Family Servs., 669 N.E.2d 192, 194 (Ind. Ct. App. 1996), trans. denied. We will set aside a finding or judgment only if it is clearly erroneous. In re J.W., 779 N.E.2d at 959. "A finding is clearly erroneous when there are no facts or inferences drawn therefrom which support it." In re D.G., 702 N.E.2d 777, 780 (Ind. Ct. App. 1998). A judgment is clearly erroneous if the conclusions of law are not supported by the findings of fact or the conclusions of law do not support the judgment. In re S.P.H., 806 N.E.2d 874, 879 (Ind. Ct. App. 2004).

II. Propriety of Trial Court's Termination Decision

Because involuntary termination of parental rights is the most extreme sanction a court can impose, "termination is intended as a last resort, available only when all other reasonable efforts have failed." In re T.F., 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), trans. denied.

Trial courts do not terminate parental rights to punish a parent, but to protect a child. In re A.N.J., 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). A parent's constitutional right to raise her child may be terminated if she is unwilling or unable to meet her parental responsibilities. In re T.F., 743 N.E.2d at 773. Accordingly, courts may subordinate the parent's rights to those of the child if the relationship threatens a child's emotional or physical development. In re R.S., 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), trans. denied.

To involuntarily terminate Mother's parental rights, DCS had to prove by clear and convincing evidence that either 1) the conditions that resulted in J.D.'s removal or the reasons for placement outside the home of the parent will not be remedied; or 2) the continuation of the parent-child relationship poses a threat to J.D.'s well-being. See Ind. Code § 31-35-2-4(b)(2)(B).¹ The trial court found that DCS had proven both of these provisions by clear and convincing evidence. We will discuss whether the evidence supports the trial court's findings in turn, but note initially that either a finding that conditions will not be remedied or that continuation of the parent-child relationship poses a threat to J.D.'s well being is sufficient; in other words, the trial court must find one, but not both, to involuntarily terminate Mother's parental rights. See In re L.V.N., 799 N.E.2d 63, 69 (Ind. Ct. App. 2003).

A. Remediation of Conditions

¹ DCS must prove other statutory requirements in addition to proving either of these, for example that termination is in the best interests of the child. See Ind. Code § 31-35-2-4(b)(2)(C). However, we need not discuss these other statutory requirements because Mother does not challenge any of them in this appeal.

When determining whether certain conditions that led to the removal of the child will be remedied, the trial court must judge the parent's fitness to care for the child 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), trans. denied. A parent's habitual patterns 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.

According to the CHINS petition, the conditions resulting in J.D.'s removal were that Mother "failed to provide the child with necessary food, shelter, medical care, supervision and a safe, stable living environment free from neglect."² Petitioner's Ex. 3, at 4. The trial court concluded there was a reasonable probability these conditions will not be remedied based on the following findings:

4. [Mother] has had an unstable housing history since the CHINS [proceeding] has been pending. Since September 2007, she has lived in four residences, two shelters and has been incarcerated. At the time of trial, [Mother] was living with a boyfriend in a one bedroom home and planned on moving back with her mother where she slept on a couch.
5. [Mother] has not obtained a legal source of income sufficient to provide for [J.D.'s] necessities. DCS verified that [Mother] worked during the month of August 2008. [Mother] admitted to being "let go" from jobs at least three times and being unemployed at the time of trial. She has applied for S.S.I. for a fourth time. It is clear that [Mother] remains dependent on others for her support and housing.

² We recognize that Mother admitted to the allegations in an amended CHINS petition and that the amended petition has not been included in the record. As mentioned above, however, the allegations in the amended petition appear substantially similar to those in the original petition.

...

11. A major barrier in remedying conditions is the fact that [Mother] has failed to follow up with mental health treatment and psychotropic medications. She has been diagnosed with Bi-Polar Disorder.³ [Mother] has admitted to auditory hallucinations in conversing with an imaginary friend.

12. At the time [of] trial in this matter, more than a year ha[d] elapsed since the filing of the CHINS proceeding and [Mother] has not adequately addressed her lack of stable housing, lack of adequate income, appropriate parenting skills, and mental health issues. There remains a reasonable probability that these conditions will not be remedied in the future.

Appellant's Appendix at 10. With respect to finding twelve in particular, there was ample evidence that Mother's housing situation was transient and largely dependent on others, that she had not obtained an adequate source of income, and that although she genuinely sought reunification with J.D., her progress in that regard was marginal. On this latter point, a therapist who conducted home-based counseling sessions testified that Mother had not made progress toward reunification in part because she "lacked stable support to assist her," tr. at 205, and was "very reluctant and resistant to any discussion on parenting . . . that contradicts what her thinking is already . . .," *id.* at 206. Similarly, one of the case managers opined that Mother "had difficulty meeting her own needs so she didn't really have the opportunity to show she can meet [J.D.'s] needs." *Id.* at 173.

Mother attempts to sidestep this evidence by characterizing the trial court's conclusion as one based on her mental and economic conditions alone. We acknowledge a trial court may not base its termination decision solely on a finding that a parent is either of limited mental faculties or destitute. See Egly v. Blackford County Dep't of Child Welfare, 592

³ Dr. Papandria diagnosed Mother with major depressive disorder, not bi-polar disorder. Indeed, Dr. Papandria stated in her report that Mother "does not appear to have a Bipolar Disorder, but rather Major Depressive Disorder." Petitioner's Ex. 18, at 14.

N.E.2d 1232, 1234 (Ind. 1992) (“Mental retardation of the parents, standing alone, is not a proper ground for terminating parental rights.”); cf. Tipton v. Marion County Dep’t of Pub. Welfare, 629 N.E.2d 1262, 1268 (Ind. Ct. App. 1994) (“Unless the father’s poverty causes him to neglect his child or exposes the child to danger such that removal from his care would be warranted, the fact that the father is of low or inconsistent income of itself does not show unfitness.”). The trial court’s findings here, however, are nothing of the sort. Instead, the findings suggest that Mother’s mental illnesses and destitute condition adversely affect her ability to parent and, more to the point, indicate there is a reasonable probability that the conditions resulting in J.D.’s removal will not be remedied.⁴ Accordingly, sufficient evidence supports the trial court’s conclusion in that regard.

B. Continuation of the Parent-Child Relationship

Having concluded sufficient evidence supports the trial court’s conclusion that there was a reasonable probability that the conditions resulting in J.D.’s removal will not be remedied, it follows that the trial court’s termination decision was not improper. See In re L.V.N., 799 N.E.2d at 69. Nevertheless, for the sake of completeness, we elect to address whether sufficient evidence supports the trial court’s conclusion that continuation of the parent-child relationship posed a threat to J.D.’s well-being. That conclusion appears to be based on the following finding:

13. The continuation of the parent-child relationship poses a threat to the well-

⁴ Although the trial court does not appear to have relied on it, we note Mother’s pending criminal charges are also relevant to the adequacy of her living arrangements (and, more generally, whether conditions will be remedied) because, by the time of the hearing, the possibility remained that she would serve time if convicted, and it goes without saying that Mother hardly can provide adequate care to J.D. if she is incarcerated.

being of [J.D.] [Mother] is not in a situation where she can adequately provide for [J.D.'s] basic necessities. Her ability to provide proper parenting skills is questionable. She continues to exhibit poor judgment as evidenced by past relationships, driving without insurance or a license, and having pending criminal charges. Dr. Papandria felt there was a concern that without [Mother] addressing her mental health issues, instability and cognitive defects would remain a problem which would adversely affect [J.D.'s] need for predictability and structure. Because of [Mother] presenting as empty and bland, and not dealing with emotions, she would not be a good parental role model for [J.D.] to learn how to appropriately cope with emotions and stress during his formative years.

Id. The evidence from the hearing supports this finding, particularly with respect to Mother's mental health issues. As mentioned above, Dr. Papandria concluded in her March 2008 report, "It is doubtful that [Mother] will be able to effectively parent her child without intensive psychotherapy and psychotropic medications." Petitioner's Ex. 18, at 15. By the time of the hearing in November 2008, however, Mother had not addressed these concerns. Coupling this evidence with the "poor judgment" mentioned by the trial court, in particular her pending criminal charges, it becomes clear sufficient evidence supports the trial court's conclusion that continuation of the parent-child relationship poses a threat to J.D.'s well-being.

Conclusion

Sufficient evidence supports the trial court's conclusions that the conditions resulting in J.D.'s removal from Mother's custody will not be remedied and that continuation of the parent-child relationship poses a threat to J.D.'s well-being.

Affirmed.

DARDEN, J., and BAILEY, J., concur.