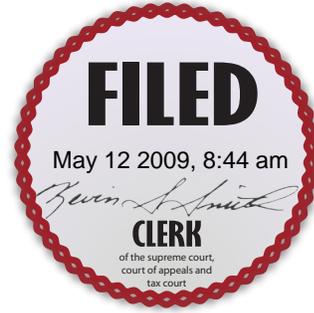


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

R.B.,)
)
Appellant-Respondent,)
)
vs.) No. 30A01-0812-JV-564
)
DEPARTMENT OF CHILD SERVICES,)
)
Appellee-Petitioner.)

APPEAL FROM THE HANCOCK SUPERIOR COURT
The Honorable Terry K. Snow, Judge
Cause No. 30D01-0808-JT-178

May 12, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

R.B. (“Mother”) appeals from the trial court’s termination of her parental rights with respect to her daughter A.B. She presents a single issue for our review, namely, whether the Hancock County Department of Child Services (“DCS”) presented sufficient evidence to sustain the termination of her parental rights.

We affirm.

FACTS AND PROCEDURAL HISTORY

Mother gave birth to A.B. on September 8, 2004. On May 22, 2005, Mother was arrested for resisting law enforcement, battery on a law enforcement officer, and neglect of a dependent. At the time of her arrest, Mother was intoxicated. The next day, the DCS filed a petition alleging that A.B. was a child in need of services (“CHINS”)

in that . . . her physical or mental health is seriously impaired or seriously endangered as a result of the inability, refusal or neglect of her parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education or supervision; and . . . her physical or mental health is seriously endangered due to injury by the act or omission of her parent, guardian or custodian[.]

Appellant’s App. at 272. The DCS placed A.B. in foster care. On August 19, 2005, the trial court adjudicated A.B. a CHINS, and the DCS continued A.B.’s foster care.

The DCS established a case plan for Mother, which required her to attain and maintain stable housing and employment; to complete programs at Gallahue Mental Health Center to address issues of domestic violence, anger management, and substance abuse and addiction; to submit to drug and alcohol screens; to satisfy the terms of her probation stemming from her May 2005 arrest; and to pay child support. In addition, the

trial court ordered Mother not to have anyone convicted of a felony causing death to be in the presence of A.B. and/or to be in her home. Mother did not comply with all of the terms of the case plan. In April 2006, Mother was arrested for violating the terms of her probation when she arrived at a supervised visitation with A.B. and was found to have beer in her car. Mother was sentenced to six months incarceration for that probation violation. In addition, Mother permitted a man convicted of manslaughter to live with her. On April 11, 2007, Mother was arrested for battery, and, at the time, her BAC was .19%. Then on April 26, Mother was arrested for public intoxication when she came to court intoxicated. On two occasions in April and September 2008, Mother refused to submit to alcohol screens.

On August 11, 2008, the DCS filed a petition to terminate Mother's parental rights with respect to A.B. Following a hearing on October 1, the trial court entered its order terminating Mother's parental rights with respect to A.B. and made findings and conclusions. Mother now appeals.

DISCUSSION AND DECISION

Mother contends that the evidence is insufficient to support the involuntary termination of her parental rights. Initially, we note that the purpose of terminating parental rights is not to punish parents, but to protect the children. Weldishofer v. Dearborn County Div. of Family & Children (In re J.W.), 779 N.E.2d 954, 959 (Ind. Ct. App. 2002), trans. denied. "Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their responsibilities as parents. This includes situations not only where the child is

in immediate danger of losing his life, but also where the child's emotional and physical development are threatened." Id.

In reviewing a decision to terminate a parent-child relationship, this court will not set aside the judgment unless it is clearly erroneous. Everhart v. Scott County Office of Family & Children, 779 N.E.2d 1225, 1232 (Ind. Ct. App. 2002), trans. denied. Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences to support them. Id. When reviewing the sufficiency of the evidence, this court neither reweighs the evidence nor judges the credibility of the witnesses. Id.

To support a petition to terminate parental rights, the DCS must show, among other things, that 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.

Ind. Code § 31-35-2-4(b)(2)(B). The DCS must also show that termination is in the best interest of the child and that there exists a satisfactory plan for the care and treatment of the child. Ind. Code § 31-35-2-4(b)(2)(C), (D). These factors must be established by clear and convincing evidence. Ind. Code § 31-34-12-2.

In interpreting Indiana Code Section 31-35-2-4, this court has held that the trial court should judge a parent's fitness to care for his or her child as of the time of the termination hearing, taking into consideration evidence of changed conditions. J.K.C. v. Fountain County Dep't of Pub. Welfare, 470 N.E.2d 88, 92 (Ind. Ct. App. 1984). However, recognizing the permanent effect of termination, the trial court must also

evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. Id. To be sure, the trial court need not wait until the child is irreversibly influenced by a deficient lifestyle such that the child's physical, mental and social growth is permanently impaired before terminating the parent-child relationship. Id. at 93.

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 re D.B., 561 N.E.2d 844, 848 (Ind. Ct. App. 1990). Where there are only temporary improvements and the pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve. In re D.L.W., 485 N.E.2d 139, 143 (Ind. Ct. App. 1985). When the evidence shows that the child's emotional and physical development is threatened, termination of the parent-child relationship is appropriate. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

Mother's sole contention on appeal is that the evidence is insufficient to show that there is a reasonable probability that the conditions that resulted in A.B.'s removal from her home will not be remedied, that the continuation of the parent-child relationship poses a threat to A.B.'s well-being, or that termination is in A.B.'s best interest.¹ But the

¹ Mother also contends, without supporting cogent argument, that the DCS failed to provide adequate services to Mother to help her overcome her alcoholism. Waiver notwithstanding, Mother's contention must fail. It is well settled that a parent may not sit idly by without asserting a need or desire for services and then successfully argue that she was denied services to assist her with her parenting. In re B.D.J., 728 N.E.2d 195, 201 (Ind. Ct. App. 2000). Here, Mother does not make any contention or

DCS presented evidence that Mother: violated the terms of her probation and was incarcerated for six months; permitted a man convicted of manslaughter to reside with her until February 2008; repeatedly used alcohol in violation of the terms of her probation; lost her job at Tim's Bakery due to alcohol abuse; consumed multiple cans of beer during a supervised visitation with A.B. in September 2008; twice refused to submit to alcohol screens; has failed to maintain steady housing for a minimum of 180 days; and has failed to maintain steady employment for a minimum of 180 days. And both the DCS case manager and CASA testified that they believed that termination is in A.B.'s best interest.

Mother merely asks that we reweigh the evidence, which we will not do. The evidence is sufficient to support the trial court's conclusions both that there is a reasonable probability that the conditions that resulted in the child's removal will not be remedied and that a continuation of the relationship between Mother and A.B. poses a threat to the child's well-being. And there is also clear and convincing evidence that termination is in the best interest of the child and that there exists a satisfactory plan for the care and treatment of the child. We conclude that the DCS presented sufficient evidence to support the trial court's termination of Mother's parental rights.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.

direct us to any evidence that she sought additional services from DCS. Therefore, she cannot now complain.