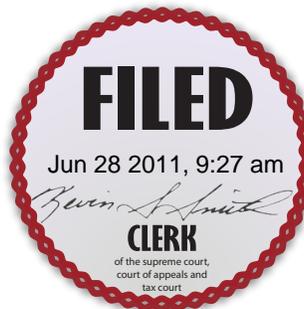


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

MARK SMALL
Indianapolis, Indiana

ATTORNEYS FOR APPELLEES:

KENNETH R. BRUCE
Miami County Department of Child Services
Peru, Indiana

ROBERT J. HENKE
Department of Child Services
Central Administration
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE)
INVOLUNTARY TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP)
of B.D.,)
)
A.D.)
)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner.)

No. 52A05-1012-JT-803

APPEAL FROM THE MIAMI SUPERIOR COURT
The Honorable Christopher M. Goff, Special Judge
Cause No. 52D02-1002-JT-6

June 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

A.D. (“Mother”) appeals the trial court’s termination of the parent-child relationship with her daughter, B.D. Mother raises one issue on appeal, which we restate as whether sufficient evidence was presented to support the trial court’s termination of her parental rights. Concluding that sufficient evidence was presented, we affirm.

Facts and Procedural History

In accordance with our standard of review, we consider only the evidence most favorable to the judgment and the reasonable inferences to be drawn therefrom. B.D. was born to Mother in February 2009, and was immediately removed from Mother’s custody and placed in licensed foster care because there were traces of cannabinoids and THC-COOH in B.D.’s body, and an inspection of Mother’s home revealed severely unsanitary conditions that would have endangered B.D. The Department of Child Services (“DCS”) filed a petition alleging B.D. to be a Child in Need of Services (“CHINS”) on February 18, 2009, which the trial court granted on May 5, 2009, based on Mother’s admitted drug use during pregnancy, the discovery of drugs in B.D.’s system upon birth, and the harmful conditions of Mother’s home. At a dispositional hearing on July 9, 2009, Mother was ordered to participate in

various services and take several actions, including supervised visitation with B.D., home-based services, counseling services to include substance abuse, submit to random drug screens, cooperate in establishing the paternity of B.D., maintain her home to at least a minimum condition suitable for an infant, improve her personal hygiene and undergo a medical check-up at the Health Department, and submit to an HIV test and sign appropriate releases so DCS may obtain the results.

In February 2010, DCS filed a petition for involuntary termination of Mother's parental rights to B.D., alleging Mother largely failed to participate in these various services.

Following a hearing, the trial court granted DCS's petition and entered the following findings of fact and conclusions of law:

14. Mother did not comply with the CHINS court's dispositional decree or complete any of the services DCS offered to Mother.

15. The CHINS court found in each of the four hearings following the July 9 dispositional hearing, that Mother was not in compliance with the child's case plan. . . . At the hearing on June 15, 2010, the CHINS court ruled that reasonable efforts were no longer required and that DCS may discontinue providing services to Mother. . . .

16. DCS arranged for Mother to have supervised visitation with her daughter three times per week. The visits were supervised by two different agencies. Four County Counseling Center supervised visits twice per week; White's Residential and Family Services supervised one hour per week.

17. Cheryl Oden from White's Residential supervised visits from March 5, 2009, until early June 2009 when Child was taken to Riley Hospital for evaluation. The visits never resumed after that time because Mother did not comply with requirements imposed by the CHINS court before Mother could resume visitation with Child. The Child had been born with HIV antibodies which heightened concern for health. When Mother showed for visitation with open sores and chronic coughing Mother was to go to the Health Department for a checkup and HIV test before she could resume visiting with Child. Mother did not comply and as a result has not seen Child since June 2009.

18. Cheryl Oden also worked with Mother on parenting one hour per week. Oden had previously worked with Mother on parenting in 2004 and 2005.

Mother had not improved her parenting between then and February 2009, when Oden again began working with Mother. Mother's parenting skills also did not improve measurably by September 2009, when Mother discontinued meeting with Oden.

19. Mother also has a substance abuse problem that she has not treated.

20. Mother's self reporting to service providers regarding her substance abuse has varied but her most recent self report during a substance abuse intake at Northeastern Center in Lagrange [sic] County was that she was then using marijuana daily and either was using opiates daily or in the very recent past had used opiates daily. At that time in January 2010, Ronald Chupp diagnosed Mother as having opiate and cannabis dependence. He referred Mother to the Intensive Outpatient Program (IOP). The IOP is a seventy-two hour program consisting of group and individual sessions. Mother only attended one group session and three individual sessions, a total of only three of the seventy-two required program hours.

21. Mother did not complete any of the therapy she was ordered to do.

22. Mother was first referred to Four County Counseling Center for therapy with Michelle Reeve. Reeve performed an intake interview with Mother on March 11, 2009, after which she determined that Mother needed not only substance abuse counseling but mental health counseling. Mother's first session with Reeve was on March 18, 2009 and the last time Mother was seen was on July 16, 2009. Mother cancelled the scheduled session in August and did not show for the scheduled session in September. In all, Reeve saw Mother six sessions before Mother ceased therapy with Reeve.

23. Reeve and Mother agreed on the goals of the therapy. Through the therapy with Reeve, Mother would identify negative thinking and behavior that led to neglect of a dependent and work with therapist to develop positive coping skills to enhance her functioning. Mother did not make progress. Instead, Mother remained in a victim mode where everything, including smoking marijuana in the first place, was the fault of the DCS, the judges or the hospital; it was never Mother's fault. Mother would not accept any responsibility for what was going on in her life. She also continued to make selfish decisions and placed her dog higher in importance than her infant child. Mother will not change unless she sees a problem with her behavior and wants to change it.

24. In December 2009 Chris Webber of Solutions Counseling began working with Mother under a referral by DCS for home-based therapy to help Mother fulfill the case plan to achieve reunification with her Child. Webber, a master's level therapist and licensed mental health and also addictions counselor, had six sessions with Mother before Mother ended the therapy. Webber was concerned for Mother when she ended the therapy because she was depressed, she was not making good decisions for her own safety, and she

had a history of exposure to violence, sexual abuse, and drug abuse. Mother still needed treatment when she stopped sessions with Webber in January 2010. Mother would not address issues that her therapists considered necessary to achieve the goals of the sessions.

26 [sic]. Mother' [sic] home conditions when Child was removed in February 2009 were not fit for the Child. Animal feces were in almost every room of the house, including Mother's room where Mother had a baby bed. Large urine stains were throughout the house and under the baby bed in Mother's room there was urine soaked newspaper. Old animal excrement was ground into the flooring. All surfaces in the home, including the kitchen counters, were covered with long time grime and filth. There were holes in the walls and ceilings with exposed insulation.

27. Mother moved from this residence in Peru, Indiana to a residence in Lagrange [sic] County in the fall of 2009. On September 27, 2010, a Lagrange [sic] County Deputy went to Mother's residence in Lagrange [sic] County to serve an arrest warrant on Mother for animal cruelty charges. The home was not fit for a child to live in. Animal feces were found throughout the home. Dishes in the kitchen sink had mold growing on them. These home conditions were quite similar to those found over eighteen months earlier when DCS removed Child in February 2009. Mother had not addressed this problem and not met the CHINS court requirement to maintain her home to at least minimum standards.

28. Mother makes poor choices about who she brings in to her home. The man living with her at the time of her arrest in September 2010 was also arrested on animal cruelty charges by the same Lagrange [sic] County Deputy. Mother had met this person on the internet, supposedly married him on the internet, and only met him in person when he came to live with her. This individual refused to cooperate with DCS's request for a background check. Mother also refused to name the Child's father, saying he was mean and she did not want him in the Child's life.

29. Mother also has not cooperated with the DCS or the CASA over the life of the CHINS case. Mother would not be at home or would not open the door if she was home when DCS or CASA would arrive at the home for scheduled home visits.

30. Mother has either refused to participate or only minimally participated in the court ordered services that DCS and its service providers recommended. These services were intended to address Mother's needs, especially Mother's parenting skills, home making skills, substance abuse problem and ability to provide the necessary stability and safety for the child. Mother has not changed, and there is not an historical basis to say that Mother is reasonably likely to change.

31. It is unlikely Mother will meaningfully pursue the therapy she needs to bring about the change necessary to make appropriate choices for the well-being of Child. Mother was referred by DCS to individual therapy two times, and Mother did not make progress before Mother ended the counseling sessions.

32. DCS and the service providers all made reasonable efforts to assist Mother in achieving the goals of the Dispositional Decree in the CHINS case.

33. There is not a reasonable probability the conditions for removal or the reasons for continued placement out of the home will be remedied.

34. DCS also proved that termination is in the best interests of the Child and DCS has a satisfactory plan for the care and treatment of the Child.

35. Child deserves permanency and termination of the parental rights, together with implementation of the plan for the care and treatment of Child, namely adoption, will provide for permanency.

36. Termination will also serve to provide Child with stability.

37. Termination is also in the best interests of Child because it will serve to provide a safe, stable and structured environment that the Child needs.

39. Clear and convincing evidence has been presented during the contested fact-finding hearing for this Court to conclude that the parental rights of Father^[1] and Mother with respect to Child should be terminated.

Appellant's Appendix at 14-17.

Mother now appeals.

Discussion and Decision

We have long held a highly deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). When reviewing the termination of the parent-child relationship, we neither reweigh the evidence nor judge the credibility of the witnesses. In re G.Y., 904 N.E.2d 1257, 1260 (Ind. 2009). We consider only the evidence most favorable to the judgment and the reasonable inferences to be drawn therefrom. Id. Where, as here, the trial court entered findings of fact and

¹ Father is not a party to this appeal.

conclusions of law, we apply a two-tiered standard of review: first we determine whether the evidence supports the findings, and second we determine whether the findings support the judgment. Id. We will set aside the trial court’s judgment only if it is clearly erroneous. Id.

To terminate one’s parental rights, the State must allege and prove by clear and convincing evidence, among other things, that termination of the parent-child relationship is in the best interests of the child and 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)²; G.Y., 904 N.E.2d at 1260 (referring to the clear and convincing evidence standard). Termination of parental rights is not undertaken to punish parents, but to protect their children. Matter of A.N.J., 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). Accordingly, parental interests are “subordinated to” their children’s interests. G.Y., 904 N.E.2d at 1259.

Mother first asserts she wants B.D. home, they had no opportunity to bond because B.D. was taken from Mother upon birth, Mother was not comfortable visiting B.D. in DCS’s offices, and Mother’s receipt of supplemental security income and food stamps is adequate to support Mother and B.D. While these facts may have been relevant to the trial court’s decision, our appellate standard of review requires us to consider only the evidence and reasonable inferences most favorable to the judgment, and even if true, these facts cannot

² The statute as quoted above was in effect when DCS filed its petition to terminate Mother’s parental rights, but the statute was amended slightly, effective in March 2010, prior to the trial court terminating Mother’s rights. Because the proof is sufficient to sustain the trial court’s judgment under either version, we

establish error in the trial court's findings because the trial court did not make a finding on these facts.

Second, Mother argues that some of the trial court's findings are no longer correct or should no longer prevent her from continuing her parent-child relationship with B.D. Specifically, Mother states that today her home is safe for B.D., she no longer owns any animals, and her personal hygiene was problematic only during her pregnancy. However, Adam Fisel, a Deputy Sheriff, testified that when he served an arrest warrant upon Mother at her home less than one month before the trial court hearing, he observed her home, a "single wide trailer," to be in disarray and unsuitable for an infant:

I saw . . . what appeared to be coffee grounds, uh, dog feces all over the floor, grounded into the carpets including the back bedroom. Um, dog feces in the, uh, the, I guess what I would call the spare bathroom. Um, numerous items, like I said, all over. It appeared there were stuff growing from the kitchen on the dishes in the sink. Um, moss, what have ya.

Transcript at 81.

This testimony and the testimony of others that every inspection of Mother's previous homes exposed similarly filthy conditions, supports the trial court's finding that the dangerously unsanitary conditions of Mother's home, which was a primary reason for B.D.'s removal, is unlikely to be remedied. As to their conflicting testimony, we refuse to assess credibility of witnesses or reweigh the evidence, and consider the evidence most favorable to the judgment. Mother's personal hygiene is a related issue, but neither her allegedly improved personal hygiene nor the removal of animals from her home would necessarily negate the lack of cleanliness necessary to safely house an infant.

Third, Mother points out that she completed a parenting and nurturing program in 2004 so, she argues, she need not complete a similar program now; she should not have been required to attend the drug and alcohol program because she did not feel like she belonged (in part, because she contends she did not use illegal substances in 2009 or 2010); and she quit home-based counseling because one of the therapists offended her by suggesting that Mother takes better care of her animals than of B.D. We take issue with Mother's disobedience of the trial court's orders. While Mother may believe that she knows better than the trial court and therefore need not abide by its orders, the laws of Indiana bestow the trial court with authority to issue orders on these matters for the protection of children.

To address Mother's challenges to the substance of the trial court's orders, we are directed to the testimonies of several witnesses, which demonstrate that Mother was in dire need of guidance as a parent. And although Mother may not believe she belonged in the drug and alcohol program, she was in serious need of that type of assistance as well. Contrary to her testimony, other parts of the record indicate that Mother did, in fact, use illegal drugs consistently in 2009 and 2010. Finally, although Mother may have been offended by a therapist's single comment, taking offense does not justify her failure to continue therapy that, yet again, the record indicates was absolutely necessary. We also find irrelevant Mother's contention that the court-appointed special advocate ("CASA") was biased because the same CASA sought termination of Mother's parental rights to other children in 2004. The appropriate means of raising the issue of bias was during cross-examination, for the fact-finder's consideration.

In sum, the evidence supports the trial court's findings that Mother challenges. Mother also challenges the trial court's conclusions that termination is in B.D.'s best interests, the reasons for B.D.'s removal are unlikely to be remedied, and that there is a reasonable probability that continuation of the parent-child relationship poses a threat to the well-being of B.D. Based on the findings discussed above and other findings by the trial court that Mother does not challenge, we conclude that the findings support these conclusions by the trial court, which in turn support its judgment terminating the parent-child relationship between Mother and B.D.

Conclusion

Sufficient evidence supports the termination of the parent-child relationship between Mother and B.D., and the judgment is affirmed.

Affirmed.

NAJAM, J., and CRONE, J., concur.