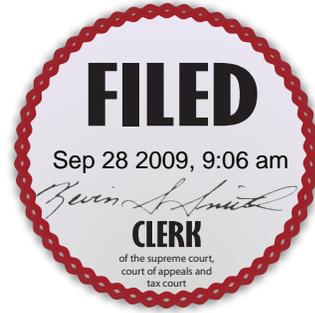


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ATTORNEY FOR APPELLANT:

ATTORNEY FOR APPELLEE:

RONALD E. MCSHURLEY
Public Defender's Office
Muncie, Indiana

JAMES E. MOORE
Department of Child Services
Muncie, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

A.P.,)
)
Appellant-Respondent,)
)
vs.) No. 18A05-0903-JV-124
)
INDIANA DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner.)

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Richard A. Dailey, Judge
The Honorable Brian M. Pierce, Master Commissioner
Cause Nos. 18C02-0809-JT-68 and 18C02-0809-JT-69

September 28, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

A.P. (“Mother”) appeals from the trial court’s judgment terminating her parental rights with respect to her children, T.P. and S.P. (“the Children”). Mother presents the following issue for our review, namely, whether the evidence is sufficient to sustain the termination of her parental rights.

We affirm.

FACTS AND PROCEDURAL HISTORY

Mother has two daughters, T.P, born March 24, 1998, and S.P., born November 6, 2002. The Children were placed outside Mother’s care on April 25, 2007, and the Delaware County Department of Child Services (“DCS”) filed petitions alleging the children to be children in need of services (“CHINS”).¹ Mother admitted that the Children were CHINS, and the court so adjudicated them at a hearing on May 29, 2007.

In the CHINS cases, Mother was evaluated by Dr. Paul M. Spangler, Ph.D., on May 30, 2007. In his report, Dr. Spangler determined that Mother “qualifies for a diagnosis of Mild Mental Retardation[;]” that she “appears to also have a mental disorder[;]” and that she exhibited certain symptoms that “cannot be attributed to low intellectual functioning” such as “tangential thought processes, paranoid themes, mild stereotypies, impaired social behaviors, affective flattening, poverty of content of speech, and possible hallucinations.” Exhibits at 17-18. Dr. Spangler also concluded that, “[a]t her level of intellectual functioning [Mother] will require ongoing supervision and support in the home to be able to safely parent.” Exhibits at 17.

¹ The parties have not included copies of the CHINS petitions in the record on appeal.

In May 2007, Wendy McDonald of the Lykins Counseling Clinic was assigned to provide individual counseling for T.P. In January 2008, McDonald sent a letter to Mother, inviting her to come to T.P.'s counseling sessions. Mother attended two sessions with T.P., but McDonald reported that, despite being redirected, Mother "monopolized the sessions with her own stories" Transcript at 26. McDonald offered to have individual sessions with Mother. Mother did not make any appointments for herself, nor did she attend any more of T.P.'s sessions.

Throughout the course of the CHINS cases, Mother had supervised visitation with the children. Danielle Farrelly of Kid's Peace in Muncie supervised Mother's visitations with the Children from May 2007 through December 2007. The visitations were initially one hour per week, but Farrelly increased them to two-hour sessions to allow Mother more time to work on her parenting skills. Mother did not show any improvement as a result of the longer visitations, and the Children "did not feel like participating" for that length of time. As a result, Farrelly decreased the visitations to one hour per week in October 2007.

Overall, Farrelly observed that T.P. played a parental role during visitations. She also found that the conversation between Mother and T.P. "was never appropriate. It was usually a more adult conversation than what [T.P.] needed to hear and converse [sic] about." Transcript at 43. For example, Mother told T.P. that she would commit suicide if she did not get the Children back, she spoke of her boyfriends to T.P., and she used racial slurs, including referring to Farrelly with racial slurs when Mother was upset with

Farrelly. Farrelly saw “very little progress with [Mother’s] parenting skills and her parenting through the year when [Farrelly] did the visitation.” Id. at 35.

Althea Hart with Meridian Services also supervised Mother’s visitations from May through October 2007. Hart observed a “lack of affecting during the visits[.]” Id. at 47. T.P. asked Mother if she missed the Children, but Mother “never really hugged or kissed” them. Id. at 48. When Hart encouraged Mother to show affection to the Children, Mother replied that “she wasn’t shown that as a child from her mom” so why should she have to do that. Id. Hart also found that the conversations between Mother and the Children were not age-appropriate. By way of example, she noted that Mother told T.P. that a cousin had been jailed “because the boyfriend was jumping on her or beating her up or something like that.” Id. Finally, Hart noticed that T.P. took on the role of parent during visitation, directing play and behavior during the visitation, redirecting S.P.’s behaviors, and tending to S.P.’s needs.

Mother was also a client of Renee Harbert, a behavioral clinician with Meridian Services. Harbert also supervised visitations and counseled Mother privately about how to engage the Children. But Hart saw no improvement in Mother over the course of the visitations. For the first time in twenty years of supervising visitations, in October 2007, Hart refused to supervise Mother’s visitation with the Children:

A: . . . [E]thically my concern was that the children were being harmed by the continued visitation. They were so upset during and after the visits and the visits just went so poorly, I was very concerned for the mental health, mental and emotional health of these children.

* * *

I would observe physically [Mother] keeping a distance from the children even if [S.P.] would crawl onto her lap, [Mother] then would not touch her. She would drop her arms to her side and there was not that, that cuddling, that nurturing sense, that physically[-]

Q [DCS counsel]: Let me, let me go on if there's something else but, why, why does that concern you? In a general sense for a child to, for that to happen? What is the concern for the child?

A: The concern for the child is the child is reaching out to the mother and the mother is not responding in a nurturing way. And to me I felt like the child was needing that and that's why she crawled up onto her mother's knee.

* * *

Q: . . . [W]as there anything else about the visits that made you[,] besides the lack of affection, that made you decide that it was necessary to refuse to continue [to] supervise visits the way they were going?

A: I noticed that [T.P.] would become very defensive. [Mother] was very upset about the children being in foster care and would say bad things about the foster mother who the children were[,] you know, cared about very much. She would say bad things about her in their presence. And even make threats, she threaten[ed] to whip the children with a belt during one visit[.] [S]he threatened it if the foster mother let, the girls drown or took them on a plane and got them hurt on vacation. She would come after them. Things that seemed threatening and the children were alarmed and defensive with this.

Q: So she would say these things to the children?

A: Yes.

Q: Okay. And as a, as a social worker and [in] your experience, what is the concern with that, for the, as to the well[-]being of the children?

A: The children's emotions were already split. They were always afraid that their mother, it would appear to me that they were always afraid that their mother was . . .

Q: Well let me, let me[-]if you take it out of the context [of a] specific situation, say this sort of thing. Do you have an, what is your concern as a social worker to this type of language being addressed to a child?

A: Well children's activities need to be child[-]oriented and not adult[-]oriented and they shouldn't be related to threats or harm or splitting their emotions between two different care givers.

Q: And why is that?

A: Well I would, I would think that it's confusing. It also damages attachment which creates other mental health issues through adulthood. And it, it was made difficult for the children. [S.P.] usually regressed in her behavior and seemed younger during the visits than what she really was. And it did the opposite for [T.P.] [T.P.] would become defensive and argumentative and actually she was the one who parented [S.P.] and would clean her face up if she would [get] a mess or reminded her to clean up her toys or whatever.

Transcript at 66-70.

Hart also created and taught remedial parenting classes, beginning in August 2007. Mother attended eleven such classes, but she missed "about a third" of the classes or came "horribly late[.]" Transcript at 60. When in class, Mother tended to "daze off on her own" or "make comments to herself to the sky, to the ceiling[.]" Id. Harbert said that Mother "didn't have a real group participation mentality." Id. The classes ended because there were not enough active participants who had not yet graduated the class. Harbert saw "no progress" in Mother in the parenting class and believed that Mother "was not getting everything she needed" from the classes. Transcript at 61-62. As a result, Harbert asked for the Connections team² at Meridian Services to assist with Mother.

Shonet Martin, a behavioral clinician and a member of the Connections Team at Meridian Services, attempted to work with Mother from February through December 2008. Martin recommended that Mother attend group sessions with other challenged

² The Connections Team "is for clients who have dual diagnos[e]s with MR or developmental disease, disability." Transcript at 73.

women whose children had been removed, but Mother refused. She attempted to visit Mother's home several times, but Mother was either out or did not answer the door. In November or December 2008, Mother called Martin twenty times in a single day, distraught and threatening to commit suicide. Martin offered crisis intervention and a bed in a sub-acute facility, but Mother again refused. Mother also did not participate in creating a case management plan. Of the services Martin offered, Mother accepted only bus passes and rides to the food bank.

On September 12, 2008, DCS filed petitions to terminate Mother's parental rights to the Children. The trial court held a joint hearing on the petitions on January 9, 2009. At the hearing, Karen Zabel, the Children's Court Appointed Special Advocate ("CASA"), testified that the Children's appearance and behavior and T.P.'s school performance had improved after their removal from Mother's care. A teacher had reported that T.P., when she was living with Mother, had not worn clothes that fit and that T.P.'s appearance was sometimes unkempt when she arrived at school. The CASA reported that she had spoken with Mother during an interview that lasted several hours. The CASA testified that she was

a little bit alarmed by the number of times [Mother] mentioned that she would kill herself if she didn't get her children back. It was not in the you know, teens or twenties. It was probably seventy or eighty times. Also she did threaten to, to kill the person that she believes initiated the report with DCS. And when I asked her why her children were removed, she said because some white cracker was running her mouth. She didn't have any real concept as to why her kids were removed from her home. And when I asked her about the parenting classes that she'd been through and how those had gone and what she thought she would do differently if the girls were returned to her, she said and I wrote this down, she said I'm gonna [sic] pick up right where I left off like none of this mess ever happened.

Transcript at 102. The CASA also testified that she had spoken with T.P.: “when I talked to her about what she wanted, she said that you know, she would like maybe to see her mother from time to time. But that she never ever, and she actually said, never ever, wants to live with her mother again.” Id. at 100.

On February 2, 2009, the trial court issued its Findings of Fact, Conclusions of Law and Order Terminating the Parent/Child Relationship of a Child in Need of Services in T.P.’s and S.P.’s cases. In those orders the court found, in part:

5. That [Mother] is functioning intellectually within the Moderate to Mild range of Mental Retardation and she would need ongoing supervision and in-home support to be able to safely parent.
6. That [Mother] may also have a mental disorder.
7. That [Mother] has been provided ample opportunity to complete reunification services ordered by this court and has failed to complete those services.
8. That [Mother] had supervised visitation with the child.
9. That during the visits [Mother] demonstrated a lack of affection and nurturing with the child required for a healthy parent-child relationship.
10. That during the visits [Mother] would go out of her way to keep a physical distance and [sic] from the child and her sibling and from showing affection.
11. That [Mother] repeatedly expressed to visit supervisor Althea Hart that [Mother’s] mother had never shown [Mother] affection so she did not believe that she needed to show affection to her children.
12. That during the visits [Mother] made statements to the child, her sibling, and the visit supervisors that were inappropriate for children, including using racial slurs, statements about suicide, family members being incarcerated, her boyfriends, disparaging and threatening the foster mother, and blaming [T.P.] for causing [DCS’] involvement with the family.

13. That during the visits, [T.P.] took the role of parent by redirecting her younger sibling and instructing [Mother] regarding how to play games.^{3]}
14. That during the visits the child and her sibling would ask the visit supervisor, rather than [Mother], [f]or permission to do or to have things.
15. That [Mother] was resistant to suggestions and guidance from the visit supervisors regarding her parenting skills and the family dynamics, often getting visibly angry at their mention.
16. That [Mother] made little to no progress in improving her parenting skills over the life of the CHINS case.
17. That Behavioral Clinician, Rene Harbert, refused to continue to supervise visits between [Mother] and her children based on her concerns for the mental and emotional health of the children.
18. That in 20 years of supervising family visitation, Ms. Harbert had never refused to supervise a family's visit.
19. That visits at one point were increased from one to two hours in duration in an effort to [make] progress.
20. That the visits did not progress beyond two supervised hours and were, in fact, returned to one hour because [Mother] was unable to engage the children for two hours.
21. That service provider, Danielle Farrelly, kept visits at two hours longer than she did for other clients as an accommodation for [Mother's] apparent mental challenges.
22. That [Mother] was offered parenting classes to assist in improving her parenting skills and interactions with the child and her sibling.
23. That a remedial parenting class was developed for [Mother] and other similarly challenged parents.
24. That the accommodations of this remedial class included the course materials being read aloud by the instructor, a home support mentor being encouraged, and one-on-one, in-home assistance being offered.

³ In the termination order entered in S.P.'s case, this paragraph reads: "That during the visits, the child generally kept to herself and took direction from her sibling rather than from [Mother]." Appellant's App. at 80.

25. That in addition to the one-on-one assistance offered by the parenting class instructor, Rene Harbert, service provider Althea Hart also offered to assist [Mother] i[n] getting through her parenting packet and to ensure that she understood the materials.
26. [That Mother] similarly rejected Ms. Hart's offer of assistance.
27. That, while [Mother] attended most of the class sessions, she did not take advantage of the one-on-one assistance, made no progress in her parenting skills and did not complete the parenting class.
28. That as accommodation for [Mother], she was referred for services with the Connections group at Meridian Services, which is designed to specifically to [sic] aid those parents with mental challenges.
29. That [Mother] was not cooperative with the Connections counselor, Shonet Martin.
30. That Ms. Martin offered [Mother] individual parenting help because of [Mother's] struggles in the parenting class and [Mother] refused.
31. That [Mother] would sometimes refuse to answer the door for scheduled appointments with Ms. Martin.
32. That Ms. Martin recommended a women's group for [Mother] in order for her to connect with other women going through similar situations and [Mother] refused.
33. That after one weekend of [Mother's] repeated calls to Ms. Martin expressing suicidal ideations, Ms. Martin recommended crisis intervention services for [Mother], which she refused.
34. That each time her treatment plan was to be reviewed, [Mother] refused to work with Ms. Martin to review and modify her treatment plan.
35. That while [Mother] was receptive to mechanical assistance offered by Ms. Martin, such as providing bus passes and transportation to food banks, she was categorically unreceptive to any efforts to improve her parenting skills.

36. That Wendy McDonald, the individual counselor for [T.P.], invited [Mother] to attend sessions with [T.P.] in an effort to progress [sic] the parent-child relationship.^[4]

37. That [Mother] attended two such sessions which were unproductive because, despite Ms. McDonald's repeated attempts to redirect the conversation, [Mother] dominated the discussion with her own personal issues.

38. That Ms. McDonald offered to see [Mother] individually to assist her with her personal issues but [Mother] did not accept the offer.

39. That at no time during the CHINS case was any service provider in a position to, nor did they, recommend returning the child or her sibling to [Mother's] care.

40. That between May 23, 2007[,] and the time of the factfinding hearing, the child has made significant improvements in her school attendance, grades, confidence and interactions with others.^[5]

41. That the child needs a safe, stable, secure and permanent environment in order to thrive. [Mother] has shown neither the inclination nor the ability to provide the child with such an environment.

42. That, since the child has been placed in foster care, the child has shown systematic and consistent improvement in her development.

43. That the CASA agrees that it is in the best interest of the child to terminate the parental rights of [Mother].

44. That, to the CASA, [Mother] threatened suicide and to kill the person who reported her to the Department of Child Services and that if she got her kids back she would pick up and go on like the CHINS case never happened.

45. That based on the foregoing, there is a reasonable probability that the conditions that resulted in the child's removal will not be remedied.

⁴ In the termination order entered in S.P.'s case, this paragraph reads: "That Wendy McDonald, the individual counselor for [T.P.], invited [Mother] to attend sessions with [T.P.] in an effort to progress [sic] the parent-child relationship." Appellant's App. at 81.

⁵ The termination order entered in S.P.'s case does not include this finding, and the numbering of the remaining findings is affected accordingly.

46. That based on the foregoing, there is a reasonable probability that the continuation of the parent/child relationship herein poses a threat to the well[-]being of the child.

47. [That] [t]ermination of the parent/child relationship is in the best interest of the child.

48. [That] [t]he Indiana DCS has a satisfactory plan for the care and treatment of the child, which includes adoption by the foster care providers.

49. [That] [t]he Indiana DCS has proven their petition herein by clear and convincing evidence.

Appellant's App. at 31-34. Based on those findings, the court terminated Mother's parental rights to T.P. and S.P. Mother now appeals.

DISCUSSION AND DECISION

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, 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). 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. We pause to note that Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, a trial court need only find by clear and convincing evidence that one of the two requirements of subsection (B) have been met in order to terminate a parent-child relationship. See R.W. v. Marion County Dep't of Child Servs., 892 N.E.2d 239, 245 (Ind. Ct. App. 2008).

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. Matter of 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. Matter of 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).

Here, Mother contends that DCS did not show either (1) that the conditions that resulted in the Children's removal or the reasons for placement outside the parent's home would not be remedied or (2) that continuation of the parent-child relationships poses a threat to the well-being of the Children. But Mother has not included in the record on appeal the CHINS petitions or other documentation detailing the conditions that resulted in the Children's removal or the reason for placement outside of her home. Indeed, the record on appeal is devoid of any pleadings or orders entered in the CHINS proceedings. Without such documentation in the record, we cannot determine whether the conditions that resulted in the Children's removal or the placement outside of Mother's home have

been remedied. Therefore, Mother has waived her argument on those points. But because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, we consider Mother's argument that DCS did not show by clear and convincing evidence that continuation of the parent-child relationship poses a threat to the Children.

Mother's argument reads, in full:

To grant the DCS's petitions to terminate [Mother's] parental rights, they [sic] must present clear and convincing evidence to establish each and every element of Ind. Coe 31-35-2-4(b)(2), Matter of L.D., D.S., and A.S. 717 N.E.2d 204 (1999) Ind. App., at 206. This would include providing [sic] that there is a reasonable probability that the conditions that resulted in the children's removal will not be remedied; or the continuation of the parent-child relationship poses a threat to the well-being of the children, and termination is in the best interests of the children. I.C. 34-35-2-4 [sic]. It is clear from a reading of the entire record the DCS attempting to prove these elements by establishing that [Mother] could or would no[t] provide adequate protection, housing and care for her children, and that she had failed to progress in counseling and accept other services which were offered.

[Mother] would submit that the Trial court failed to consider numerous important factors favorable to her argument that her parental rights should not be terminated. There is no evidence in the record that [Mother] abused her children, and little evidence that she neglected her children in any way. Further, the evidence was undisputed that [Mother] did not have any drug issues which affected her ability to parent. (Transcript of Evidence, pg. 22). In addition, [Mother] visited her children on a regular basis after they were removed from her care. (Transcript of Evidence, pg. 39). [Mother] was able to maintain a house for her children and pay her bills, and her house was described as neat and clean. (Transcript of Evidence, pgs. 51-52). [Mother] feels it is also important to point out that prior to her children being removed from her care in this case, she had no prior involvement with the DCS.

[Mother] is aware that in determining whether the [t]rial court's decision is supported by clear and convincing evidence this Court will not reweigh the evidence nor judge the credibility of any of the witnesses. [In re D.B., 561 N.E.2d at 847]. However, [Mother] feels that the trial court gave no weight to the positive aspects pointed out above. She would further argue that the strongest evidence against her was that some

providers felt that she was not the “perfect” parent when it came time to visit with her children.

Appellant’s Brief at 15-16.

Mother’s argument that the trial court “gave no weight” to certain evidence amounts to a request that we reweigh the evidence, which we cannot do. See Everhart, 779 N.E.2d at 1232. Further, the evidence is undisputed that the service providers found Mother’s parenting skills to be lacking, that her skills did not improve, that she refused the services offered to improve her parenting skills, that she was not affectionate with the Children, that the Children were negatively affected by visitations with Mother, that T.P. did not “ever” want to live with Mother again, that the Children’s behaviors and performance improved after being removed from Mother’s care, and that Mother had no intention of changing her ways if the Children were returned to her. And those facts support the trial court’s conclusion that termination was in the Children’s best interests. As a result, we cannot say that the trial court abused its discretion when it terminated Mother’s parental rights to T.P. and S.P.

Affirmed.

KIRSCH, J., and BARNES, J., concur.