

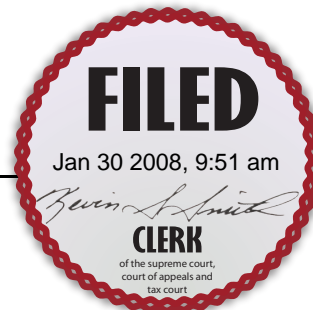
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**IN THE
COURT OF APPEALS OF INDIANA**

In the Matter of the Involuntary Termination of the)
Parent-Child Relationship of A.G.; K.G.; A.R.; and)
Z.N., Minor Children, and Their Mother)
Debra Gillard)

DEBRA GILLARD,)

Appellant-Respondent,)

vs.)

No. 49A02-0704-JV-332

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 Moores, Judge
The Honorable Larry Bradley, Magistrate
Cause No. 49D09-0610-JT-44428

January 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARNACK, Judge

Debra Gillard (“Mother”) appeals the trial court’s involuntary termination of her parental rights. Mother raises one issue, which we revise and restate as whether the trial court’s order terminating her parental rights to A.G., A.R., Z.N., and K.G. is clearly erroneous. We affirm.

The relevant facts follow. Mother is the parent of A.G., born July 13, 1994, A.R., born April 26, 1996, and Z.N., born November 12, 2001, and the adoptive mother of K.G., born May 24, 1996 (collectively, the “Children”).¹ Mother is also the parent of A.L., born August 31, 1989, and Z.G., born August 18, 2006, neither of whom was subject to the termination proceedings. On September 2, 2005, the Marion County Department of Child Services (“MCDCS”) filed a petition alleging that the Children were children in need of services (“CHINS”). The petition alleged that Mother had failed to provide the Children with a safe, sanitary living environment, noting that their house was in a “filthy, deplorable condition with crawling roaches, a plugged sink, and piles of trash and dirty laundry” with “more trash and empty beer bottles” in the front yard. Exhibit 1. The petition also alleged that “truancy [was] a problem for at least one of the children,”

¹ Antonio Robertson is the father of A.G. and A.R. and Cesar Nunez is the alleged father of Z.N. Neither is a party in this appeal.

that Mother had been uncooperative with service providers, and that A.L. had claimed that Mother “drinks to excess.” Id.

Mother admitted the allegations of the CHINS petition, and the trial court found the Children to be in need of services. After a dispositional hearing on September 29, 2005, the trial court ordered removal of the Children and A.L. from Mother and made them wards of the MCDCS. The court ordered Mother to: (1) secure and maintain a legal and stable source of income; (2) obtain and maintain suitable housing; (3) participate in home based counseling; (4) complete parenting classes; (5) complete drug and alcohol assessments and recommendations for intensive out-patient or in-patient treatment; (6) establish paternity as to A.G., A.R., K.G., A.L., and Z.N.; (7) visit the children on a consistent and regular basis; and (8) forward her AAP subsidy to the MCDCS for K.G.

On May 30, 2006, the MCDCS filed a verified petition for rule to show cause alleging that Mother had failed to comply with the trial court’s orders, failed to engage in the required services, and had been discharged from intensive out-patient treatment because of poor attendance and numerous positive drug screens. On October 31, 2006, the MCDCS filed a petition to terminate Mother’s parental rights to the Children. On March 15, 2007, the trial court held a hearing on the MCDCS’s petition to terminate Mother’s parental rights, after which it issued the following findings of fact and conclusions thereon:

FINDINGS OF FACT

By clear and convincing evidence, the Court now finds:

* * * * *

3. A Petition Alleging Child in Need of Services was filed on September 2, 2005 on which date Mother admitted allegation of truancy, deplorable [sic] housing conditions including insect infestation and excessive drinking. [Nunez] was unavailable.
4. The children were removed from Mother's care in the CHINS Dispositional Decree dated September 29, 2005.

* * * * *

7. Mother was Court ordered, under a Participation Decree dated September 29, 2005, to obtain and maintain suitable housing, participate in a drug and alcohol assessment and follow recommendations, complete parenting classes and secure a legal and stable source of income. Mother was also to consistently visit with her children, maintain weekly contact with her DCS case manager, establish paternity and complete home based counseling.
8. Case manager Mary Engle explained services to Mother on many occasions at CHINS court appearances and telephonically.
9. Mother's contact with her case manager was sporadic and inconsistent.
10. A referral for drug and alcohol assessment and parenting assessment was made on September 2, 2005. Both were completed on September 22, 2005.
11. On September 2, 2005 a referral for family group counseling was made. The referral was closed due to non-performance.
12. On September 2, 2005 a referral was made to Mosaic Recovery for a series of urine screens. The referral was closed unsuccessfully in December, 2005 for missed screens.
13. A referral was made to CASI on September 16, 2005 which was closed for non-participation in November, 2005.
14. A referral was made to Harbor Light for drug treatment. The referral was closed thirty days later due to non-contact by Mother.
15. A referral to Harbor Light was made on November 16, 2005 for detoxification. Mother attended, but left after three days and did not complete the program.
16. Mother was referred for home based counseling on September 20, 2005 which was closed as unsuccessful in December, 2005.
17. A referral for intensive outpatient treatment was made to CASI on December 16, 2005 but was closed February 13, 2006. Inpatient services had been recommended due to positive drug screens.
18. A psychological evaluation was requested on December 19, 2005 and was completed in February, 2006.

19. Additional referrals were made to Harbor Light for inpatient services and detoxification. The referrals were made on February 14, 2006, March 22, 2006, and June 2, 2006. These referrals were closed due to no contact by Mother.
20. On August 16, 2006 Mother participated in a two week inpatient program at Harbor Light. A follow up Level II intensive outpatient program for drug abuse and depression was recommended. A referral to Gallahue for a 24 week intensive outpatient program was made on September 12, 2006, but never started by Mother.
21. Mother started outpatient services at Gallahue. She began attending a partial hospitalization program in January, 2007 as a result of a positive drug screen.
22. Mother is still in ongoing services and three days prior to this trial admitted herself to Beacon House, a half-way house service.
23. Between September, 2005 and February 7, 2007 Mother has had at least thirteen positive drug screens and many missed screens.
24. Mother's last positive drug screen was on February 7, 2007.
25. Mother has a diagnosis of depression and does not take her medications as prescribed.
26. Mother receives less than Seven Hundred Dollars monthly from Social Security Supplemental Income. She has no other stable source of income and last worked one month at Popeye's Chicken, which employment was prior to having her children removed.
27. Mother has continuously maintained the home on Churchman Avenue for four years. There is a lot of traffic of friends and relatives in and around the residence. Mother is looking for a new home because she does not feel safe and is uncomfortable there since the children were taken away.
28. Mother is currently staying at the Beacon half-way house.
29. Visitation was suspended by the Court due to three consecutive missed visitations. Mother has not seen the children since April, 2006.

* * * * *

31. Home based counseling cannot be referred until Mother overcomes her drug and alcohol problems. Home based counseling would be on a high level due to Mother's history of substance abuse and the girls [A.R.] and [K.G.] being victims of sexual molestation.
32. Mother was also ordered to complete a psycho-sexual assessment due to being molested as a child. She did not complete this.
33. [A.R.] was molested while in care of her Mother. [K.G.] was molested prior to Mother having adopted her. Both girls suffer from

emotional trauma due to molestation including Post Traumatic Stress Disorder. [K.G.] has also been diagnosed with mild mental retardation. Special parenting skills are needed when dealing with the girls. Mother severely lacks these skills.

34. [A.G.] is currently at Resolute due to emotional problems and perpetrating sexual molestation. He is progressing but still has issues which cannot be handled by Mother's [sic] due to a lack of insight and parenting skills.
35. [Mother] loves her children. She has been participating in services at a greater level for the past four to six weeks.
36. Mother's response to the vast referral of services since September, 2005 has been minimal at best. Even if successful in substance abuse treatment at her current placement, there is a long road of services to be completed prior to reunification.
37. [K.G.], [A.R.] and [Z.N.] are doing well in their pre-adoptive foster home. [K.G.] and [A.R.] are provided continuing counseling and therapy for their emotional problems. Their therapeutic foster parents are trained to provide for the special needs of the children.
38. Permanency in the safe, loving environment where [K.G.], [Z.N.], and [A.R.] have been residing is in their best interests. [A.G.'s] current care plan at Resolute, with future placement as needed, is in his best interests due to his severe problems.

CONCLUSIONS OF LAW

1. [A.G.], [A.R.], [Z.N.] and [K.G.] have been removed from [Mother] for at least six (6) months under a CHINS Dispositional Decree, Cause Number 49D090509JC34626-34630.

* * * * *

3. There is a reasonable probability that the conditions that resulted in the placement of the children outside the home will not be remedied.
4. Termination is in the best interests of the children.
5. Continuation of the parent-child relationship poses a threat to the well being of the children.
6. There is a satisfactory plan for the care and treatment of the children.
7. If any of the foregoing Conclusions of Law should be more properly designated Findings of Fact, or Findings of Fact should be more properly designated as Conclusions of Law, then they are so designated.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the parent-child relationship between [A.G.], [A.R.], [K.G.] and [Z.N.] and their Mother . . . is hereby terminated.

* * * * *

Appellant's Appendix at 9-12.

The sole issue is whether the trial court's termination of Mother's parental rights is clearly erroneous. The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005).

However, these parental interests are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights.

Id. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id. The purpose of terminating parental rights is not to punish parents, but to protect children. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), reh'g denied, trans. denied.

When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. Bester, 839 N.E.2d at 147. We will consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. Id. Here, the trial court made findings in granting the termination of Mother's

parental rights. When reviewing findings of fact and conclusions thereon entered in a case involving a termination of parental rights, we apply a two-tiered standard of review.

Id. First, we determine whether the evidence supports the findings. Id. Then, we determine whether the findings support the judgment. Id. The trial court's judgment will

be set aside only if they are clearly erroneous. Id. “A judgment is clearly erroneous if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment.” Id. (citation and internal quotations omitted).

Ind. Code § 31-35-2-8(a) (2004) provides that “if the court finds that the allegations in a petition described in [Ind. Code § 31-35-2-4] are true, the court shall terminate the parent-child relationship.” Ind. Code § 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege that:

- (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 Ind. Code § 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.

The State must establish these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992); Doe v. Daviess County Div. of Children & Family Services, 669 N.E.2d 192, 194 (Ind. Ct. App. 1996), trans. denied.

Mother challenges the trial court's findings under subsection (B). Specifically, Mother argues that "the facts do not support the trial court's conclusions that conditions resulting in [the Children's] removal from their mother's home would not be remedied or that continuation of the parent-child relationship posed a threat to the children's well being." Appellant's Brief at 20. In support of her argument, Mother notes that she completed a parenting assessment, was making "great progress" in addressing her mental health and substance abuse issues, had, despite the trial court's finding to the contrary, completed a psycho-sexual evaluation, and had taken K.G. to counseling for sexual abuse that occurred before Mother adopted her. Id. at 15.

At trial, the MCDCS called several witnesses who characterized Mother's involvement in counseling and treatment as sporadic, or "start and stop." Transcript at 141. Mother's MCDCS case manager testified that Mother's participation in the services offered her was "minimal" and noted a "pattern of relapse" in her drug abuse. Transcript at 122. Since September 2005, Mother has failed thirteen drug screens and skipped numerous others. She once skipped five drug screens in a row. Mother herself testified that, after the Children had been removed, she abused drugs while pregnant with Z.G. and had even tested positive for drug use just five weeks before the trial. Mother's family

case manager with the MCDCS testified regarding the phases of Mother's treatment as follows:

Based on the recommendations of her parenting assessment, phase I is that [Mother] address her substance use or abuse and not move on to stage II or phase II until that is addressed. Based on my experience with families, it's very difficult to teach parenting skills to someone who has a substance abuse problem, an active substance abuse problem. And because [Mother] has not addressed the goal of phase I, and we continue to make referrals and those continue to be canceled, then we've not been able to move to phase II and refer additional services which are needed.

Transcript at 124. Although Mother fulfilled some requirements imposed by the trial court, we conclude that she merely asks us to reweigh the evidence, which we cannot do. See Bester, 839 N.E.2d at 147. The record contains evidence to support the trial court's findings, and we cannot say that its conclusions that the conditions resulting in the Children's removal would not be remedied and that continuation of the parent-child relationship posed a threat to the Children's well being are clearly erroneous. See Prince v. Dep't of Child Services, 861 N.E.2d 1223, 1231 (Ind. Ct. App. 2007) (holding that the trial court did not err when it concluded that the circumstances resulting in the children's removal had not changed in light of mother's past failure to maintain sobriety and her admission that she failed to take full advantage of the services offered her).

We decide this case on its merits following a remand to determine whether the Judge of the Marion County Superior Court, Juvenile Division, had, in fact, approved the magistrate's proposed disposition as required for there to be an order terminating the parental relationship. See Gillard v. MCDCS, No. 49A02-0704-JV-332, slip op. at 2

(Ind. Ct. App. December 26, 2007). As the response of the trial court, which we appreciate, made clear, the trial court judge did approve the magistrate's proposed order.

The response also showed that the approval occurred on April 5, 2007, some eight days after March 29, 2007, the date the Magistrate's proposed order was filed. The parties apparently accepted the document filed on March 29 as the order from which an appeal could be taken. However, the order approved by the trial court judge on April 5 is the order from which an appeal can be taken. See Ind. Code § 33-23-5-9(a) (“[A] magistrate shall report findings in an evidentiary hearing, a trial, or a jury's verdict to the court. The court shall enter the final order.”).

We understand that the Marion County Superior Court, Juvenile Division, is addressing the problem posed by the current system. Again, we appreciate its efforts.

It will be in the best interest of both courts and the parties if it is clear on the record that the magistrate's proposed disposition is just that until such time as it is approved by the trial court judge and that it is the approved order that effects the termination and is appealable.

For the foregoing reasons, we affirm the trial court's involuntary termination of Mother's parental rights to A.G., A.R., Z.N., and K.G.

Affirmed.

RILEY, J. and FRIEDLANDER, J. concur