NOT DESIGNATED FOR PUBLICATION

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2010 CJ 1955**

**STATE OF LOUISIANA,**
**IN THE INTEREST OF G.B., R.B., D.B., AND H. "HT" M., JR.**

**Judgment Rendered:** FEB 1 1 2011

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On Appeal from the 32nd Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
Docket No. 08-MJS-005849

Honorable George J. Larke, Jr., Judge Presiding

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**BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.**

**McCLENDON, J.**

A mother challenges a district court judgment terminating her parental rights. For the reasons that follow, we affirm.

## FACTS AND PROCEDURAL HISTORY

On February 18, 2008, A.C.J. brought her son, H. "HT" M., Jr. (HT), who suffers from sickle cell anemia, to the hospital five days after he had suffered a stroke. Based upon alleged continued medical neglect thereafter, on May 13, 2008, the State of Louisiana, Department of Social Services, Office of Community Services (sometimes referred to as "OCS" or "the State"), filed a petition seeking to adjudicate all four of A.C.J.'s children, HT, GB, RB, and DB, as children in need of care. In addition to the allegations related to HT, OCS also alleged that A.C.J. had missed previous medical appointments for all of her children and had failed to renew the children's Medicare cards.[1]

At a hearing on May 22, 2008, A.C.J. stipulated that her children were in need of care without admitting the allegations contained in the petition, and the court signed a judgment accordingly. The court further ordered A.C.J. to comply with an OCS case plan. On June 27, 2008, a court appointed special advocate (CASA) was appointed to represent and advocate the best interests of the children.

OCS subsequently developed a case plan, which A.C.J. reviewed and agreed to at a family team conference on November 18, 2008. The case plan required A.C.J. to, among other things, obtain safe and stable housing, pay parental contributions of $100.00 per month, attend and participate in a psychological evaluation, be evaluated by the Office of Addictive Disorders, attend domestic violence counseling, participate in anger management classes, and attend parenting classes.[2]

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[1] Although not alleged in the petition, OCS also asserted that A.C.J. had a filthy home, and the children's clothes were piled all over the home and stunk. The children also had carious teeth as result of poor dental care and hygiene.

[2] The case plan of reunification was later approved by the court at a review hearing on December 5, 2008.

At a December 5, 2008 review hearing, OCS and CASA submitted reports to the trial court. The OCS report, dated November 21, 2008, indicated that A.C.J. "has not been stable this reporting period." She had recently been released from an approximate two-month incarceration on August 1, 2008 and "has had more than five different addresses in a six-month period." OCS also noted that A.C.J. "has not cooperated with the agency or complied with any part of her case plan" and that A.C.J. has "cursed at, hung up on, and yelled at" the OCS case manager. Although A.C.J. had been employed at various times, she "has not paid any parental contributions" for the children. She had also not attended anger management or domestic violence classes. OCS indicated that it believed A.C.J. could not meet the children's medical needs and had not taken responsibility for the medical neglect regarding her children. After noting A.C.J.'s failure to comply with the case management plan, the trial court indicated that it would allow A.C.J. additional time to progress on her case plan and to "straighten [her] life up with the help that's being provided."

A family team conference was held on May 5, 2009, and the OCS case plan's goal changed from reunification to adoption. In its May 27, 2009 report to the court, OCS noted that although A.C.J. had a stable home for most of the reporting period, she indicated that "she would not want her children living with her in that home." The report also indicated that Dr. Scuddy Fontenelle, III diagnosed A.C.J. with adjustment disorder, symptoms of anxiety and depression, and probable post traumatic stress disorder. At the time the May 5, 2009 report was generated, OCS indicated that A.C.J.'s whereabouts were "unknown." OCS also noted that A.C.J. had not shown up for any appointments with the Office of Addictive Disorders. However, A.C.J. had made an appointment with Terrebonne Mental Health, but could not be seen for three months. Although A.C.J. had interim employment during the reporting period, she had not paid any parental contributions. Moreover, A.C.J. had started parenting classes in March 2009, but missed two classes due to gallbladder surgery. OCS attempted to contact A.C.J.

with regards to scheduling makeup classes, but OCS was unable to "get in touch with [A.C.J.] to inform her of the dates."

CASA recommended that the OCS case plan be changed to adoption. In its June 2, 2009 report to the court, CASA indicated that its contact with A.C.J. had been limited. Further, CASA noted that A.C.J. had "not paid any parental contributions for her children's stay in care" and that she continues "to live a transient lifestyle." CASA also noted that it was concerned about A.C.J.'s anger issues and that its paramount concern for the children was their safety.

At the June 5, 2009 hearing, the trial court approved the case plan of adoption. However, the trial judge further informed A.C.J.:

> [If] you want your kids it's your duty to...do whatever is necessary to do, not wait on the case workers to tell you anything. You understand the burden—at some point in time it switches to you to say hey, look, I want to keep my kids, and I've got to do it right, and I had better make sure I appease this case worker and tell her what she requires so she can report back to the Court.

The next family team conference was held on November 3, 2009. An OCS report dated November 30, 2009 and a CASA report dated December 10, 2009 were submitted in connection with the review hearing scheduled for December 11, 2009. The OCS report indicated that A.C.J.'s housing was unstable, that A.C.J. had not completed the parenting classes, not attended anger management or domestic violence classes, and had not made an appointment with the Office of Addictive Disorders. Additionally, the CASA report noted that she had not paid any parental contributions for her children. The court then rendered judgment continuing custody with the State and scheduled another permanency hearing. The court instructed A.C.J. to "get in compliance with your case plan if you want to get your kids back."

On June 2, 2010, the State filed a petition to terminate parental rights.[3] The trial on the petition to terminate parental rights was held on August 31, 2010. The only documentation in the record regarding A.C.J.'s progress between

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[3] We note that the petition to terminate parental rights also has an additional file-stamp date of "May 28, 2010" on the document; however, whether the petition was filed on May 28, 2010 or June 2, 2010 is immaterial.

the December 11, 2009 hearing and the hearing on the petition to terminate parental rights is an OCS report dated May 28, 2010. The report indicated that A.C.J. relocated to Orleans Parish in December 2009, and continues to reside in the metro area. A.C.J. completed the Office of Addictive Disorders assessment on April 22, 2010, and "there was no substance abuse indicated." A.C.J. had also been referred to a six-week parenting program through the Volunteers of America. Although she had completed the intake process, she missed her first appointment, but was able to attend a rescheduled appointment.

Following a hearing on August 31, 2010, the trial court rendered judgment terminating A.C.J.'s parental rights, basing its decision on LSA-Ch.C. art. 1015(5). A.C.J. has appealed, asserting in her sole assignment of error that the trial court's factual finding that there was no reasonable expectation of reformation by A.C.J. was manifestly erroneous or clearly wrong.

## DISCUSSION

In **State in the Interest of J.A.**, 99-2905 (La. 1/12/00), 752 So.2d 806, the court addressed the concerns present in all cases of involuntary termination of parental rights:

> In any case to involuntarily terminate parental rights, there are two private interests involved: those of the parents and those of the child. The parents have a natural, fundamental liberty interest to the continuing companionship, care, custody and management of their children warranting great deference and vigilant protection under the law, and due process requires that a fundamentally fair procedure be followed when the state seeks to terminate the parent-child legal relationship. However, the child has a profound interest, often at odds with those of his parents, in terminating parental rights that prevent adoption and inhibit establishing secure, stable, long-term, and continuous relationships found in a home with proper parental care. In balancing these interests, the courts of this state have consistently found the interest of the child to be paramount over that of the parent.
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> The State's *parens patriae* power allows intervention in the parent-child relationship only under serious circumstances, such as where the State seeks the permanent severance of that relationship in an involuntary termination proceeding. The fundamental purpose of involuntary termination proceedings is to provide the greatest possible protection to a child whose parents are unwilling or unable to provide adequate care for his physical, emotional, and mental health needs and adequate rearing by providing an expeditious judicial process for the termination of all parental rights and responsibilities and to achieve permanency and stability for the

> child. The focus of an involuntary termination proceeding is not whether the parent should be deprived of custody, but whether it would be in the best interest of the child for all legal relations with the parents to be terminated. As such, the primary concern of the courts and the State remains to secure the best interest for the child, including termination of parental rights if justifiable grounds exist and are proven. (citations omitted.)

**State in the Interest of J.A.**, 99-2905 at pp. 7-9, 752 So.2d at 810-811.

Title X of the Louisiana Children's Code governs the involuntary termination of parental rights. **State ex rel. A.T.**, 06-0501, p. 4 (La. 7/6/06), 936 So2d 79, 82. Article 1015 of the Children's Code provides the specific statutory grounds by which a court may involuntarily terminate the rights and privileges of parents. **State ex rel. A.T.**, 06-0501 at p. 5, 936 So2d at 82. Relevant to this case, parental rights may be terminated on the following ground:

> Unless sooner permitted by the court, at least one year has elapsed since a child was removed from the parent's custody pursuant to a court order; there has been no substantial parental compliance with a case plan for services which has been previously filed by the department and approved by the court as necessary for the safe return of the child; and despite earlier intervention, there is no reasonable expectation of significant improvement in the parent's condition or conduct in the near future, considering the child's age and his need for a safe, stable, and permanent home.

LSA-Ch.C. art. 1015(5). In order to terminate parental rights, the court must find that the State has established at least one of the statutory grounds by clear and convincing evidence. LSA-Ch.C. art. 1035(A). Further, even upon finding that the State has met its evidentiary burden, a court still must not terminate parental rights unless it determines that to do so is in the child's best interests. LSA-Ch.C. Art. 1039(B). **State ex rel. A.T.**, 06-0501 at p. 5, 936 So2d. 82.

In this case, A.C.J. does not dispute her lack of substantial compliance with the case management plan,[4] but contends that there was no clear and

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[4] Louisiana Children's Article 1036(C) provides:

> Under Article 1015(5), lack of parental compliance with a case plan may be evidenced by one or more of the following:
>
> (1) The parent's failure to attend court-approved scheduled visitations with the child.
>
> (2) The parent's failure to communicate with the child.

convincing evidence produced to show that there is no reasonable expectation of significant improvement in her condition or conduct in the near future, considering the ages of her children and their need for a safe, stable, and permanent home. Lack of any reasonable expectation of significant improvement in the parent's conduct in the near future may be evidenced by one or more of the following:

> (1) Any physical or mental illness, mental deficiency, substance abuse, or chemical dependency that renders the parent unable or incapable of exercising parental responsibilities without exposing the child to a substantial risk of serious harm, based upon expert opinion or based upon an established pattern of behavior.
>
> (2) A pattern of repeated incarceration of the parent that has rendered the parent unable to care for the immediate and continuing physical or emotional needs of the child for extended periods of time.
>
> (3) Any other condition or conduct that reasonably indicates that the parent is unable or unwilling to provide an adequate permanent home for the child, based upon expert opinion or based upon an established pattern of behavior.

LSA-Ch.C. art. 1036(D).

A.C.J. submits that there was no evidence submitted under LSA-Ch.C. art. 1036(D)(1) of "[a]ny physical or mental illness, mental deficiency, substance abuse, or chemical dependency that renders [A.C.J.] unable or incapable of exercising parental responsibilities without exposing the child to a substantial risk of serious harm, based upon expert opinion or based upon an established pattern of behavior." A.C.J. avers that Dr. Fontenelle's diagnosis, as reported by OCS, does not indicate any cause for concern. Additionally, A.C.J. avers that the

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(3) The parent's failure to keep the department apprised of the parent's whereabouts and significant changes affecting the parent's ability to comply with the case plan for services.

(4) The parent's failure to contribute to the costs of the child's foster care, if ordered to do so by the court when approving the case plan.

(5) The parent's repeated failure to comply with the required program of treatment and rehabilitation services provided in the case plan.

(6) The parent's lack of substantial improvement in redressing the problems preventing reunification.

(7) The persistence of conditions that led to removal or similar potentially harmful conditions.

only evidence of medical neglect came from the testimony of Twenica Singleton, a family services worker for OCS, at the June 25, 2008, hearing.[5] A.C.J. avers that the only other significant "pattern of behavior" might be her failure to complete anger management and domestic violence classes, but asserts this is not the type of pattern addressed in Paragraph(D)(1) of Article 1036.

A.C.J. contends that LSA-Ch.C. art. 1036(D)(2) has no application because her sole period of incarceration was approximately a two-month period from June to August 1, 2008. A.C.J. maintains that this leaves only Paragraph (D)(3) of Article 1036, which provides that lack of any reasonable expectation of significant improvement may be shown for "[a]ny other condition or conduct that reasonably indicates that the parent is unable or unwilling to provide an adequate permanent home for the child[ren]."

A.C.J. avers that evaluation of this element of proof of lack of any reasonable expectation of significant improvement in the parent's conduct in the near future as defined in LSA-Ch.C. art. 1036(D) requires review of the State's provision of rehabilitation services provided to the parent. A.C.J. contends that in this case, the State failed to provide adequate transportation services and failed to make verbal referrals for services such as housing to a parent who had no reliable transportation or steady income, who lost her home, and who struggled after two hurricanes and invasive surgery. A.C.J. concludes that the State failed to discharge its duty prior to terminating the parent's parental rights, particularly where the termination of parental rights occurred just as she was beginning to make significant progress.

In this regard, the State contends that A.C.J. incorrectly shifts the responsibility for making changes to it. The State avers that parents' obligations to their children are as significant as the obligation the State owes to the parents. <u>See</u> LSA-Ch.C. art. 682(B).

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[5] At the hearing, Ms. Singleton testified that HT "missed the last two blood transfusions," even though transportation had been arranged through OCS, and that A.C.J. had not properly filled HT's medications.

Although we recognize that parents owe such obligations, this fact does not relieve the State of its obligations to the parents. The Louisiana Supreme Court, in reviewing the identical statutory language, has stated that termination of parental rights under LSA-Ch.C. art. 1015(5) may only be ordered "after affirmative efforts have been attempted by the state to reunite the family by providing rehabilitative services, if needed, to the parent." **State ex. rel A.T.**, 06-0501 at pp. 9-10, 936 So.2d at 85 [citing Lucy S. McGough and Kerry Triche, **Louisiana Children's Code Handbook**, p. 522 (2006)[6]]. The State, however, clearly has no duty to make constant, repeated efforts to involve a parent who has shown no interest in having her family reunited. **State in the Interest of Jones**, 567 So.2d 664, 670 (La.App. 4 Cir. 1990).[7] Accordingly, in determining whether there is no reasonable expectation of significant improvement in the parent's condition or conduct in the near future, courts should consider all relevant factors, including whether rehabilitative services, if needed, were provided to the parent and the parent's willingness to participate in those services.

In **State ex rel. A.T.**, the Louisiana Supreme Court found that "the trial court's order terminating parental rights under La. Ch. C. art. 1015(5) was erroneous because the record reflects that OCS never undertook reasonable efforts at reunification after the children were taken into state custody." 06-0501 at p. 10, 936 So.2d at 85. By contrast, in the instant case, the record supports a finding that OCS undertook reasonable efforts to assist A.C.J. with reunification. For instance, OCS attempted to provide transportation services for A.C.J. and HT through Medicaid, but A.C.J. failed to bring HT to several of his medical appointments. OCS also referred A.C.J. to parenting, domestic violence, and anger management classes, as well as provided her a referral to address her mental health concerns. Although OCS was experiencing transportation

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[6] We note that these comments remain unchanged in the most recent version of the Louisiana Children's Code Handbook.

[7] We recognize that **Jones** was decided under the prior law pursuant to LSA-R.S. 13:1601(D)(4), which required the State to take "every reasonable effort under the circumstances to reunite the child with his parents."

problems for a period of time, OCS made transportation available to A.C.J. to most of her classes and for most of her visits with her children. Additionally, OCS provided A.C.J. with bus tokens so that she could attend her mental health appointments. Despite the hurricanes during this time period, the OCS office was only closed for about a week.

There was also testimony presented that A.C.J. had moved multiple times since her children had been in the State's custody. Although A.C.J. had remained in one place since October 9, 2009 through the date of trial, Rebecca Pitre, a foster care worker assigned to this matter, expressed concern as to whether A.C.J. and her husband would be able to continue to afford living in their one-bedroom apartment. Also, although A.C.J. opined that the apartment was sufficient to accommodate her four children, A.C.J.'s husband disagreed. However, A.C.J.'s husband also opined that it would be no problem for him, A.C.J., and the children to move to a larger home owned by his family.

Moreover, A.C.J. asserted that she had "a housing paper that Orleans Parish want[ed] to give me a four-bedroom house...[b]ut [OCS] don't want to work with [me]." Deborah Johnson, the Jefferson Parish case manager in this matter, indicated that she could refer A.C.J. to a Section 8 program, but that A.C.J. would have to take the steps necessary to fill out any form or application.[8] Ms. Johnson also testified that A.C.J. never presented any housing form or application that required any information from O.C.S.

We recognize that permanent termination of the legal relationship existing between natural parents and children is one of the most drastic actions the State can take against its citizens. **State ex rel. A.T.**, 06-0501 at p. 4, 936 So2d at

[8] We note that when children are taken into the State's custody due to lack of suitable housing, the State must make reasonable efforts to at least direct parents toward appropriate agencies that may be able to assist them to obtain adequate housing. See **State ex rel. A.T.**, 06-0501 at p. 11 n.8, 936 So.2d at 86 n.8. In this case, although it appears that OCS never specifically directed A.C.J. to the appropriate agencies to assist her in obtaining housing, we note that the failure to obtain suitable housing was not the reason the children were taken into the State's custody and was not the sole impediment to reunification. Contrast **State ex rel. A.T.**, wherein OCS admitted "that no rehabilitative services were offered to [the children's mother] to assist her in obtaining suitable housing after the children were taken into custody..., yet this was the main, if not sole, impediment to reunification cited continuously by OCS." 06-0501 at pp. 10-11, 936 So.2d at 86.

82. However, the primary concern of the courts and the State remains to determine and insure the best interest of the child, which includes termination of parental rights if justifiable statutory grounds exist and are proven by the State. **Id.**

In terminating A.C.J.'s parental rights, the trial court reasoned:

> I know you've had some tough times. But, again, I think you were given a chance. You were given guidance at the beginning. You were given six months. You were arrested, put in jail. I think that delayed you a little bit; but it was only a two-month period. There was a—[Hurricane] Gustav. I think y'all failed to mention Hurricane Ike also came in there between that because that would be another excuse. But they're all excuses.
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> You came here today and testified about applying for, getting a new place to stay. The letterhead is dated '09, a year ago. You haven't done nothing until now. [Your new husband] testified about having a home in Mississippi. Y'all still haven't moved there. So now whether you're going to get the Section 8 housing or some kind of—I don't know what the truth of it is. I think this was all done just to make it look like you were doing something. But the problem is you waited too long.
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> These kids—[t]he Court cannot—I get to the best interests of the kids. And by convincing evidence, I think the State has established that these kids are blossoming. They're doing great. And for me to take them out of the place where they are now and put them back with y'all would be detrimental to me, and I don't think this Court could live with that.

After considering the foregoing in light of the entirety of the record, we are unable to conclude that the trial court was manifestly erroneous in finding that there was no reasonable expectation of significant improvement in A.C.J.'s conduct in the future and that it was in the best interest of the children to terminate A.C.J.'s parental rights. See **State ex rel. S.D.P. v. K.P.**, 44,165, pp. 10-11 (La.App. 2 Cir. 1/14/09), 1 So.3d 808, 814.

## CONCLUSION

For the above reasons, the trial court's judgment terminating A.C.J.'s parental rights is affirmed. Costs of this appeal are assessed against appellant, A.C.J.

**AFFIRMED.**