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IN THE
COURT OF APPEALS OF INDIANA

ESTHER WILHOITE, and BRIAN WILHOITE, Appellants-Respondents, vs. MADISON COUNTY OFFICE OF FAMILY AND CHILDREN, Appellee-Petitioner.	)))))))))))	No. 48A02-0604-JV-285

APPEAL FROM THE MADISON SUPERIOR COURT, DIVISION II
The Honorable Jack L. Brinkman, Judge
Cause Nos. 48D02-0411-JT-00424, 48D02-0411-JT-0425, and 48D02-0411-JT-00426

September 29, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Judge

Appellants, Brian and Esther Ann Wilhoite, challenge the trial court's order terminating their parental rights. Upon appeal, they argue that the evidence presented by the Madison County Division of Family and Children Services ("DFCS") was insufficient to support the trial court's order terminating their parental rights.

We affirm.

Esther Ann Wilhoite ("Mother") is the mother of N.W., C.T., and L.W. (collectively "the Children"), ages ten, eight, and six respectively.[1] Brian Wilhoite ("Father") is the biological father of L.W. and step-father of N.W.[2] and C.T.

On December 11, 2001, the DFCS received a report alleging that the home the Children were living in was unsanitary, that the Children were suffering from untreated head lice, and that L.W. was always kept in a high chair. A visit to the home confirmed the conditions as described in the report, except that L.W. was in a bed, not in a highchair. Additional concerns of the DFCS were that the Children were overdue for their immunizations and that Mother had had previous involvement with the DFCS because of abuse and neglect of N.W. and C.T.[3] Based upon the forgoing, on February

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[1] These are the current ages of the children. N.W. was born on March 1, 1996; C.T. was born on February 1, 1998; and L.W. was born on June 8, 2000.

[2] In the CHINS petition, N.W. was identified as N.B., initials identifying him by his biological father's surname. At some point, this child's name was legally changed to reflect Father's surname. There is nothing in the record, however, which indicates that Father legally adopted N.W. In the decree terminating Mother's parental rights, the trial court referred to the child as N.W. Herein, we will refer to this child as N.W.

[3] The record indicates that in 1997, criminal charges were filed against Mother and her former boyfriend due to abuse of N.W. Mother's charges stemmed from her failure to protect N.W. and the fact that she did not seek medical treatment for N.W. The charges against Mother were later dismissed. The record further reflects that C.T. was detained at birth by Child Protection Services. At issue at that time was Mother's ability and willingness to care for C.T.

14, 2002, the DFCS filed a petition alleging that the Children were children in need of services ("CHINS"). A dispositional decree on the CHINS petition was entered on June 27, 2002, which provided that the Children would remain in the home "as long as the parents provide a clean, safe home for them." Appendix at 26. The decree further provided that failure to provide a clean, safe environment would result in the Children being placed in foster care.

Following the CHINS disposition, Gregory Adams, a caseworker with the DFCS assigned to the Wilhoite family, requested Mother and Father to spend at least one hour a week on hygiene in the home. Mr. Adams observed that when Mother and Father made an effort, conditions in the home would improve; however, the improved conditions would quickly deteriorate. With regard to the head lice suffered by the Children, Mr. Adams encouraged Mother and Father to seek treatment through the Madison County Health Department. As further support for the family, Mr. Adams referred Mother and Father to the Any Child Program, which is a home-based parenting education family support program.

Rachel Rollins, a family preservation case manager with the Any Child Program, visited the home in July 2002, at which time she observed holes in the floor and walls, cat litter and animal feces on the floor, broken glass window panes on the porch, a dog chained close to the front door, items of trash strewn about, and that the home was infested with cockroaches. Ms. Rollins was also led to believe that there were electrical and plumbing problems with the home. Ms. Rollins offered Mother and Father assistance with relocation, which they declined. She then referred Mother and Father to numerous

agencies for, among other things, assistance in obtaining food and immunizations for the Children. Mother and Father, however, contacted only the township trustee one time and did not follow up on the other referrals, claiming that they did not have time. Further, Ms. Rollins scheduled regular home visits, several of which Mother and Father failed because they were not home or had to cut the visits short. Although Ms. Rollins acknowledged that Mother and Father would at times make improvements, she also noted that Mother and Father were inconsistent in maintaining the home in a clean and livable condition.

With regard to the infestation of cockroaches, Ms. Rollins testified that she provided Mother and Father with foggers and a gel, which helped with but did not eliminate the roaches. Ms. Rollins also noted that in October 2002, the gas service to the home had been shut off and remained disconnected as of December 2003, when she ended her services to Mother and Father. While working with the family, Ms. Rollins learned that the Children suffered from head lice. At one point, C.T. had open sores on her head as a result of scratching because of head lice. Ms. Rollins also learned that Mother and Father were canceling, failing to appear for, and rescheduling medical appointments for the Children. Given that Mother and Father were unable to sustain any significant progress in maintaining the home in a clean and livable condition and that they showed no initiative in seeking medical treatment for the Children, Ms. Rollins recommended removal of the Children from the home.

On December 12, 2003, the DFCS filed a petition to modify the dispositional decree seeking to remove the Children from the home. The DFCS maintained that

conditions of the home had "seriously deteriorated," specifically noting that the home was infested with cockroaches, piles of wet laundry were on the floor, spoiled food was on the counters, and the children slept in dirty beds. Appendix at 29. The DFCS further alleged that N.W. and C.T. had repeatedly been sent to school with inadequate and dirty clothing,[4] that the Children suffered from head lice, that the Children alleged that they did not have enough food to eat, and that Mother and Father had ceased cooperating with the services provided. On January 15, 2004, the court entered an order modifying the dispositional decree and removing the Children from Mother's and Father's care. The Children have continuously been placed out of the care of Mother and Father since the January 15 order modifying the dispositional decree.[5]

Following their removal from Mother's and Father's care, the Children were treated for what Mr. Adams described as "one of the worst cases [of head lice] [he] had seen." Transcript at 80. To prevent reinfestation, Mother and Father were asked to get clearance from the Madison County Health Department before they visited the Children. It took Mother and Father four months to get clearance because they complained that they were being discriminated against by the Health Department and they did not think they had to follow the Health Department's recommendations.

Mr. Adams also referred Mother and Father to family counseling with Dr. John Ehrmann, Jr., a clinical child and family psychologist at the Christian Youth Home where

[4] Mr. Adams testified that he had been called to the school four to five times during the fall of 2003 upon complaints of N.W. and C.T. being inadequately dressed and "extremely dirty and smelly." Transcript at 70.

[5] N.W. was placed at the Christian Youth Home in Fortville, Indiana. C.T. and L.W. were placed in a foster home.

N.W. was placed. Dr. Ehrmann testified that he only met with Mother and Father on two occasions, the first meeting occurring in December 2004, nearly a year after N.W. was placed in the Home. During the meeting, Father communicated to Dr. Ehrmann that they felt victimized by the system and that they were angry that the Children had been removed. Counseling with Dr. Ehrmann did not continue on a regular basis.[6] In fact, Dr. Ehrmann did not meet with Mother and Father again until March 2005. During this meeting, Dr. Ehrmann testified that Mother and Father were cooperative, agreeing to participate in psychological testing and clinical interviews.[7]

With regard to N.W., Dr. Ehrmann testified that he had worked with N.W. in a counseling capacity. Dr. Ehrmann further testified that although Mother and Father had informed him that they would try to visit N.W. two to three times a month and call N.W. several times a week, such did not occur on a regular basis. In fact, Mr. Adams estimated that Mother and Father visited N.W. only thirty percent of the time that they could have.[8] Dr. Ehrmann did note, however, that when Mother and Father would visit, N.W.'s behavior would deteriorate and that it would take "a good week or more to get him back into a routine again." Transcript at 44. Based upon his interactions with Mother and Father and N.W., Dr. Ehrmann recommended termination of parental rights.

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[6] Dr. Ehrmann testified that attempts were made to set up counseling sessions with Mother and Father, although he could provide no details as to the efforts made. Father, however, testified that they did not know that they were supposed to attend counseling.

[7] The results of the intellectual tests indicated that both Mother and Father had below average IQs. The results of a personality test administered by Dr. Ehrmann indicated that both Mother and Father made conscious efforts to distort the outcome of their tests.

[8] Mother and Father testified that they were unable to visit N.W. because of issues with transportation.

Mr. Adams also offered the Wilhoites the services of Brenda Lightfoot, a homemaker with the DFCS. Ms. Lightfoot received the referral in December 2003 and began working with the family in January 2004. She continued offering her services to Mother and Father until six weeks prior to the July fact-finding hearing at which she testified. Ms. Lightfoot described the condition of the home at the time she started working with Mother and Father as "deplorable, . . . very bad." Transcript at 121. Ms. Lightfoot noted that Mother and Father had kittens, cats, a dog, and a bird in the home. Of particular concern to Ms. Lightfoot were the cleanliness problems posed by the bird, in light of her observations on several occasions of bedding for the bird all over the floor. To assist Mother and Father, Ms. Lightfoot would set goals for them. She noted that Mother and Father would make improvements, only to take two steps backward. She testified that this cycle continued throughout the period that she worked with Mother and Father and that at times, the home was not safe for children.

In trying to make Mother and Father aware that they needed to comply with her recommendations and the services offered, Ms. Lightfoot posed a hypothetical, asking them what they would do if they were told to get rid of the cats so the Children could come home. Father responded immediately that he would get rid of the cats. Mother, however, responded that she did not know what she would do and that she would have to think about it "because the cats [were] like [her] family too." Transcript at 125.

At some point, Mother and Father moved from the home where they lived when the Children were removed. They moved into a new home which they were renting. Ms. Lightfoot visited Mother's and Father's new home and noted that structurally the home

was in better condition but that Mother and Father did not consistently keep it clean. Ms. Lightfoot testified that as of the time she discontinued her services, Mother and Father still had issues regarding housekeeping and personal hygiene.

In May 2004, Kim Pherson, then a parent assessor with the Children's Bureau of Indianapolis, was asked to complete a parenting assessment of Mother and Father. During visits with the Children, Ms. Pherson observed that Father had little interest in interacting with C.T. and L.W. and that Mother came across as immature and lacking in patience when interacting with N.W. Ms. Pherson noted that Mother and Father were resistant to offered services and could not recognize that the problems resulted from choices they made. Ms. Pherson further noted that Mother and Father were unwilling to make changes, that they had a hard time accepting responsibility, and that they lacked priority in that they were unable to place the Children's needs above their own. During a home visit to Mother's and Father's first home, Ms. Pherson observed that the house was in disarray, that there were ants and cockroaches in the kitchen, and that the house smelled of garbage. Based upon what she had observed, Ms. Pherson concluded that the prognosis for reunification with the children was poor.

On November 3, 2004, the DFCS filed its petitions to terminate parental rights. Counsel was appointed to represent Mother and Father, and Jody Evers, a Court Appointed Special Advocate ("CASA"), was appointed to represent the interests of the Children. Fact-finding hearings on the petitions were held on June 1, July 26, and October 11, 2005. During the hearings, the CASA's report, in addition to the evidence recounted above, was submitted to the court. The CASA, after reviewing various records

and reports and making her own observations, recommended that, based upon the lack of efficient cooperation and compliance with services, Mother's and Father's parental rights be terminated. Thereafter, on November 30, 2005, the trial court entered judgments terminating Mother's parental rights to N.W., C.T., and L.W., and Father's parental rights to L.W.

Upon appeal, Mother and Father argue that the evidence presented to the court was insufficient to support the court's order terminating parental rights. Specifically, Mother and Father argue that the DFCS failed to prove that the conditions which resulted in the removal of the Children would not be remedied or that termination was in the best interests of the Children. Mother and Father maintain that they are currently living in a home which they claim is clean and free of bugs. Mother and Father assert that they have remedied the conditions which resulted in removal of the Children and that they have the current ability to provide a safe and healthy environment for them. (Br-15) Mother and Father excuse their failure to attend counseling, claiming that they did not know they were supposed to continue counseling and that they had issues regarding transportation. Transportation issues also served as their reason for not visiting N.W. on a regular basis.

This court has long had a highly deferential standard of review in cases concerning termination of parental rights. Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not set aside the trial court's judgment terminating parental rights unless it is clearly erroneous. Id. We neither reweigh evidence nor judge witness credibility,

and we consider only the evidence most favorable to the judgment along with reasonable inferences to be drawn therefrom. Id.

To involuntarily terminate a parent-child relationship, the DFCS must establish the following elements:

> "(A) . . .
> (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
> * * *
> (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." Ind. Code § 31-35-2-4(b)(2) (Burns Code Ed. Repl. 2003).

These elements must be proved by clear and convincing evidence. Ind. Code § 31-34-12-2 (Burns Code Ed. Repl. 2003). When evaluating the circumstances surrounding the termination of a parent-child relationship, the court should subordinate the parent's interests to those of the children. In re N.B., 731 N.E.2d 492, 494 (Ind. Ct. App. 2000), trans. denied. The trial court need not wait until the children are irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. Id. In determining whether the conditions that led to the children's removal are likely to be remedied, the trial court must assess the parent's ability to care for the children as of the date of the termination proceeding and take into account any evidence of changed conditions. K.S., 750 N.E.2d at 837. However, the trial court should also take into account the parent's habitual patterns of

conduct as a means of determining the probability of future detrimental behavior, as well as the services offered by the DFCS to the parent and the parent's response to those services. Id.

Here, the theme that exudes from the testimony presented by the DFCS is that Mother and Father have demonstrated time after time that they are unable or unwilling to provide a clean and safe environment for the Children. As summarized by the CASA in her report to the court, the Children had been subjected to filthy living conditions, including roaches, several infestations of head lice, and the noxious odor of animal urine and feces. The home was nearly overrun with various animals, at least some of which Mother held in virtually the same esteem as her Children. While Mother and Father claim that they have moved into a bug-free home, other than ants in the kitchen, they nevertheless have failed to demonstrate their ability to consistently maintain the home in a clean and safe condition. Again, as noted in the CASA's report to the court, as recently as October 10, 2005, a visit to the home revealed an overpowering odor of animal waste, an overflowing cat litter box, and cat feces on the floor. Further, during that visit, the CASA was refused admittance into the Children's rooms because Mother and Father had not had time to clean.

With regard to the relationship between Mother and Father and the Children, the CASA reported that it was obvious that the Children love their parents and would like to be with them, but noted that such was not possible given the current conditions of the home. The CASA also reported that based upon her observations during visitation, Mother and Father showed a lack of interest in the Children and that their participation

was strained. Other evidence in the record demonstrated that N.W.'s behavior would deteriorate following visits with Mother and Father. Further, since their removal from Mother's and Father's care, the Children have been cured of head lice and are thriving in their current placements.

Having reviewed the record, we conclude that Mother and Father have been provided with more than ample time, counseling, and services with no significant results. Throughout the proceedings, Mother and Father were resistant to services, were minimally compliant with the services used, failed to accept responsibility for the conditions in the home and condition of the Children, and failed to consistently maintain their home in a clean and safe condition. Although Mother and Father would at times make improvements, the improved conditions would quickly deteriorate. Mother's and Father's move to a new home, which for the time being does not appear to be infested with roaches, is simply another "improvement" made by Mother and Father, which, based upon their habitual patterns of conduct, seems unlikely to be sustained. See In re W.B., 772 N.E.2d 522, 534-35 (Ind. Ct. App. 2002) (finding that short-term improvements made by Parents were insufficient to outweigh Parents' habitual patterns of conduct). Mother's and Father's inability to maintain a safe, clean environment for the Children poses risks to the mental and physical well-being of the Children. Given the circumstances of this case, we cannot conclude that the trial court's conclusions that there is a reasonable probability that the conditions which resulted in removal of the Children would not be remedied and that termination is in the best interests of the Children are clearly erroneous.

The judgment of the trial court is affirmed.

ROBB, J., and BARNES, J., concur.