

In the Interest of T.M., 2014 WL 6092408

- Decided November 17, 2014
- Opinion: Miller, J.
- Concurring Opinion: Doyle, P.J. and Dillard, J.

Posture:

Mother appeals the juvenile court's order terminating her parental rights on the basis of sufficiency of the evidence. The mother also alleged denial of her right to counsel and error in denying her motion for a new trial.

Issue(s):

Did the juvenile court abuse its discretion when it ordered termination of parental rights of T.M.'s mother when there was no clear and convincing evidence of parental misconduct or instability?

Holding:

Reversed. The evidence showing that the mother was presently unfit and the child's deprivation was likely to continue did not satisfy the clear and convincing standard.

Facts:

DFCS initially became involved with the family as a result of the mother's overdose on ibuprofen pills in March 2011 while she was pregnant with T.M. In June, when T.M. was born prematurely, DFCS filed a petition for custody. The juvenile court found T.M. to be deprived and granted DFCS custody through June 2013.

The permanency plan established a goal of reunification, concurrent with the termination of parental rights and adoption. Notwithstanding the mother's progress toward completion of the plan, including meeting with caseworkers, obtaining SSI for her mental illness disability, completing parenting classes, seeking part-time employment, applying for housing assistance and honoring her visitation schedule, DFCS filed a petition to terminate her parental rights. The petition alleged that the mother failed to maintain stable housing and income, failed to comply with her established mental health treatment plan and failed to regularly visit and bond with T.M.. The evidence presented at trial, however, showed that the mother had been living at the same residence with her youngest child and the child's father for more than five months and that the youngest child's father was employed. The mother and youngest child's father had dated for about one year and were planning to get married.

Reasoning:

O.C.G.A § 15-11-94(a) provides that in order to terminate a parent's rights there must be clear and convincing evidence of parental misconduct or ability showing that (1) the child is deprived; (2) that lack of proper parental care or control is the cause of deprivation; (3) that the cause of deprivation is likely to continue or will not likely be remedied; and (4) that continued deprivation is likely to cause serious physical, mental, emotional, or moral harm to the child. O.C.G.A § 15-11-94(b)(4)(A) also provides that the juvenile court must consider whether termination of parental rights would be in the best interest of the

child, considering the child's physical, mental, emotional, and moral condition and needs, including the need for a secure, stable home.

Although the juvenile court is authorized to consider the mother's past conduct, evidence of past unfitness alone is insufficient to support the termination of parental rights. The evidence of the mother's failure to maintain stable housing, adhere to her medication schedule, and maintain employment did not clearly and convincingly show that the mother is presently unfit and that T.M.'s deprivation is likely to continue. The mother had maintained stable housing with the youngest child and that child's father, had obtained a source of income through SSI and income from her youngest child's father, and had obtained part-time employment. The mother also met or substantially completed most of her other case plan goals. In addition, DFCS had dismissed its deprivation petition involving the mother's youngest child shortly after filing the termination of parental rights petition based on the fact that the mother had resumed her medications and was adequately providing for that child.

The court did need to address the remaining criteria for termination of parental rights, including whether T.M.'s deprivation is likely to cause harm or whether termination of her mother's parental rights was in her best interests. However, it did note that approximately one week after the termination order was entered, it was amended to reflect that T.M.'s foster home is not a potential adoptive resource and therefore, the evidence did not clearly and convincingly show that termination was in T.M.'s best interests.

The mother's remaining contentions were not addressed.