

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 46925

In the Interest of: Jane Doe I, A Child)	
<u>Under Eighteen (18) Years of Age.</u>)	
IDAHO DEPARTMENT OF HEALTH)	
AND WELFARE,)	Filed: July 9, 2019
)	
Petitioner-Respondent,)	Karel A. Lehrman, Clerk
)	
v.)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
JANE DOE (2019-10),)	BE CITED AS AUTHORITY
)	
Respondent-Appellant.)	
)	

Appeal from the Magistrate Division of the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. Thomas D. Kershaw, Magistrate.

Order terminating parental rights, affirmed.

Marilyn B. Paul, Twin Falls County Public Defender; Laura Z. O’Connell, Deputy Public Defender, Twin Falls, for appellant.

Hon. Lawrence G. Wasden, Attorney General; James T. Baird, Deputy Attorney General, Boise, for respondent.

BRAILSFORD, Judge

Jane Doe (Mother) appeals from the magistrate’s order terminating Mother’s parental rights to her daughter (Daughter). Mother argues the magistrate erred in concluding that Mother neglected Daughter and that termination of Mother’s parental rights is in Daughter’s best interests. We affirm.

I.

FACTUAL AND PROCEDURAL BACKGROUND

Mother has an extensive history of drug use beginning around 1999 and resulting in multiple arrests and convictions in Idaho and California. Daughter was born on March 17, 2011. In 2012, Mother was arrested and convicted of a felony drug charge. While Mother was

incarcerated, Daughter stayed with her paternal aunt. The aunt gained guardianship of Daughter and they moved to Washington.

After Mother was released from incarceration, she began living with Cheryl, a friend from church. Mother eventually regained custody of Daughter. Mother and Daughter lived with Cheryl until August 2017, when Mother got her own housing. Thereafter, Cheryl continued to help care for Daughter, and at one point, Daughter stayed with Cheryl for several weeks because Mother was evicted from her housing.

After Mother and Daughter moved out of Cheryl's home, the Department of Health and Welfare (Department) received numerous referrals concerning Daughter. In December 2017, the Department received a referral expressing concerns of unstable housing and drug use in Mother's home. At that time, Mother admitted to using drugs, and Daughter tested positive for methamphetamine. As a result, Daughter was placed in the Department's custody, which then placed Daughter in foster care with Cheryl, who became Daughter's foster mother.

In January 2018, the magistrate adopted a case plan for Mother. In August 2018, the Department filed a petition to terminate Mother's parental rights. In March 2019, a termination hearing was held at which Mother, Cheryl, Daughter's guardian ad litem, and two Department employees testified. On March 21, 2019, the magistrate issued a written decision terminating Mother's parental rights. The magistrate concluded that Mother had neglected Daughter and that termination is in Daughter's best interests.

II.

STANDARD OF REVIEW

A parent has a fundamental liberty interest in maintaining a relationship with his or her child. *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Doe v. State*, 137 Idaho 758, 760, 53 P.3d 341, 343 (2002). This interest is protected by the Fourteenth Amendment to the United States Constitution. *State v. Doe*, 144 Idaho 839, 842, 172 P.3d 1114, 1117 (2007). Implicit in the Termination of Parent and Child Relationship Act is the philosophy that, wherever possible, family life should be strengthened and preserved. Idaho Code § 16-2001(2). Therefore, the requisites of due process must be met when terminating the parent-child relationship. *State v. Doe*, 143 Idaho 383, 386, 146 P.3d 649, 652 (2006). Due process requires the grounds for terminating a parent-child relationship be proved by clear and convincing evidence. *Id.* Because a fundamental liberty interest is at stake, the United States Supreme Court has determined a court

may terminate a parent-child relationship only if that decision is supported by clear and convincing evidence. *Santosky v. Kramer*, 455 U.S. 745, 769 (1982); *see also* I.C. § 16-2009; *In re Doe*, 146 Idaho 759, 761-62, 203 P.3d 689, 691-92 (2009); *Doe*, 143 Idaho at 386, 146 P.3d at 652.

On appeal from a decision terminating parental rights, this Court examines whether the decision is supported by substantial and competent evidence, which means such evidence as a reasonable mind might accept as adequate to support a conclusion. *Doe v. Doe*, 148 Idaho 243, 245-46, 220 P.3d 1062, 1064-65 (2009). The appellate court will indulge all reasonable inferences in support of the trial court's judgment when reviewing an order that parental rights be terminated. *Id.* The Idaho Supreme Court has also stated the substantial evidence test requires a greater quantum of evidence in cases where the trial court's finding must be supported by clear and convincing evidence than in cases where a mere preponderance is required. *Doe v. Doe*, 143 Idaho 343, 346, 144 P.3d 597, 600 (2006). Clear and convincing evidence is generally understood to be evidence indicating the thing to be proved is highly probable or reasonably certain. *In re Doe*, 143 Idaho 188, 191, 141 P.3d 1057, 1060 (2006). Further, the magistrate's decision must be supported by objectively supportable grounds. *Doe*, 143 Idaho at 346, 144 P.3d at 600.

III. ANALYSIS

A. Substantial and Competent Evidence Supports Finding of Neglect

Implicit in the Termination of Parent and Child Relationship Act is the philosophy that, wherever possible, family life should be strengthened and preserved. I.C. § 16-2001(2). Idaho Code Section 16-2005 permits a party to petition the court for termination of the parent-child relationship when it is in the child's best interests and any one of the following five factors exist: (a) abandonment; (b) neglect or abuse; (c) lack of a biological relationship between the child and a presumptive parent; (d) the parent is unable to discharge parental responsibilities for a prolonged period that will be injurious to the health, morals, or well-being of the child; or (e) the parent is incarcerated and will remain incarcerated for a substantial period of time. Each statutory ground is an independent basis for termination. *Doe*, 144 Idaho at 842, 172 P.3d at 1117.

Idaho Code Section 16-2002(3)(a) defines “neglect” as any conduct included in I.C. § 16-1602(31). Section 16-1602(31)(a) provides, in pertinent part, that a child is neglected when the child is without proper parental care and control, or subsistence, medical or other care or control necessary for his or her well-being because of the conduct or omission of his or her parents, guardian, or other custodian or their neglect or refusal to provide them. Neglect also exists where the parent has failed to comply with the court’s orders or the case plan in a Child Protective Act case and the Department has had temporary or legal custody of the child for fifteen of the most recent twenty-two months and reunification has not been accomplished by the last day of the fifteenth month in which the child has been in the temporary or legal custody of the Department. I.C. § 16-2002(3)(b).

Mother argues the magistrate erred in concluding Mother neglected Daughter. We disagree. Substantial and competent evidence supports the magistrate’s finding of neglect. Mother has had problems with drug use for nearly twenty years. For significant periods of time, Mother has been unable to provide financial support for herself and Daughter. Mother has rarely been employed or had stable housing of her own. When not incarcerated, Mother relied on Daughter’s aunt or Cheryl to care for Daughter for significant periods of time. Based on these and other facts the magistrate found, substantial and competent evidence supports the magistrate’s conclusion that Mother has neglected Daughter within the meaning of I.C. § 16-1602(31)(a), which provides a child without proper parental care and control is neglected.

Substantial and competent evidence also supports the magistrate’s alternative conclusion that Mother neglected Daughter under I.C. § 16-2002(3)(b) because Daughter has been in the Department’s custody for more than fifteen of the last twenty-two months and Mother has failed to comply with the case plan. *See, e.g., Idaho Dep’t of Health & Welfare v. Doe (2012-06)*, 154 Idaho 175, 181-82, 296 P.3d 381, 387-88 (2013) (noting finding of neglect under either I.C. § 16-2002(3)(a) or I.C. § 16-2002(3)(b) supports termination). Daughter was placed in the Department’s care on December 1, 2017, and remained in foster care at the time of the termination hearing fifteen months later. During this time, Mother failed to comply with nearly all of the case plan’s major requirements. She did not successfully complete substance abuse treatment and either failed to submit to random drug testing or tested positive for drugs when she did submit to testing. She has failed to maintain safe, stable, and sanitary housing and has apparently lived in numerous different residences. Mother failed to notify the Department of

changes to her housing and employment. She has been inconsistent in her visitation with Daughter while she was in foster care, and Mother missed a significant number of scheduled visits due to her frequent untimeliness. Finally, she has not provided financially for Daughter. Accordingly, Mother has failed to comply with the case plan.

On appeal, Mother does not directly address the case plan. Rather, she argues generally that she has “dealt with” her “major issues” that caused her to lose custody of Daughter. Mother identifies these issues as her “drug use and her lack of a stable home.” She contends she has resolved these issues by “residing in the same house for six months” since “November 2018,” “working consistently,” “paying her rent [and] other expenses,” “participating in drug treatment,” and undergoing drug testing. Mother’s argument, however, ignores both her lengthy history of being unable to provide proper parental care for Daughter and her failure to complete the case plan successfully. The evidence clearly shows Mother failed to successfully complete drug treatment, as required by the case plan. While Mother participated briefly in a treatment program, she did not successfully complete it. Mother also failed to undergo reliable drug testing. Although Mother claims her employer randomly tests her for drug use, there is no verification in the record of this testing, its reliability, or the results--with the exception of her employer’s unsworn statement about a single test. Further, Mother provided only minimal evidence of her income in the few months before the termination hearing. Notably, Mother never provided financially for Daughter while Daughter was in the Department’s custody. For these reasons, Mother’s contention that she has adequately resolved all of her issues to avoid termination of her parental rights is without merit.

B. Termination Is in Daughter’s Best Interests

Once a statutory ground for termination has been established, the trial court must next determine whether it is in the best interests of the child to terminate the parent-child relationship. *In re Aragon*, 120 Idaho 606, 611, 818 P.2d 310, 315 (1991). When determining whether termination is in the child’s best interests, the trial court may consider the parent’s history with substance abuse, the stability and permanency of the home, the unemployment of the parent, the financial contribution of the parent to the child’s care after the child is placed in protective custody, the improvement of the child while in foster care, the parent’s efforts to improve his or her situation, and the parent’s continuing problems with the law. *In re Doe*, 159 Idaho 192, 198, 358 P.3d 77, 83 (2015); *In re Doe*, 156 Idaho 103, 111, 320 P.3d 1262, 1270 (2014). A finding

that it is in the best interests of the child to terminate parental rights must still be made upon objective grounds. *In re Doe*, 152 Idaho 953, 956-57, 277 P.3d 400, 403-04 (Ct. App. 2012).

Mother argues the magistrate erred in concluding that termination of her parental rights is in Daughter's best interests. Again, we disagree. The magistrate properly considered and found numerous factors supporting the conclusion that the termination of Mother's parental rights serves Daughter's best interests. These factors include, for example, that when Daughter was in Mother's custody, Daughter tested positive for methamphetamine; Mother made almost no progress under the case plan; there is no reliable drug testing; Mother made minimal effort to inform the Department about employment and income; and she had not completed drug treatment. Meanwhile, Daughter has done well in foster care and, as her guardian ad litem testified, needs a "forever home." Cheryl also testified Daughter needs a stable, permanent home, and both Department employees testified that termination is in Daughter's best interests.

Mother asserts termination of her parental rights is not in the Daughter's best interests because Mother and Daughter have a "close emotional bond." While the magistrate acknowledged this bond, "a child may not live on parental affection alone." *State ex rel. Child v. Clouse*, 93 Idaho 893, 896, 477 P.2d 834, 837 (1970). "In addition to love and affection and the satisfaction of [her] physical needs, a child requires moral guidance and training to allow [her] to grow into a well-adjusted, normal adult." *Id.* Neither Mother's bond with Daughter nor Mother's recent efforts to maintain housing and employment overcome the substantial and competent evidence that termination of Mother's parental rights is in Daughter's best interests.

IV.

CONCLUSION

Substantial and competent evidence supports the magistrate's conclusions that Mother neglected Daughter and that termination of Mother's parental rights is in Daughter's best interests. Accordingly, we affirm the magistrate's order terminating Mother's parental rights.

Judge HUSKEY and Judge LORELLO CONCUR.