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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF A.F.,	)	
	)	
A.F., Father,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 45A03-0907-JV-349
	)	
INDIANA DEPARTMENT OF CHILD SERVICES, and LAKE COUNTY COURT APPOINTED SPECIAL ADVOCATE,	)	
	)	
Appellees-Petitioners.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Senior Judge
Cause No. 45D06-0807-JT-382

January 26, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

A.F. Sr. ("Father") appeals the involuntary termination of his parental rights to his daughter A.F., claiming there is insufficient evidence to support the juvenile court's judgment. We affirm.

Facts and Procedural History

Father is the biological father of A.F., born on December 12, 1992.[1] The facts most favorable to the judgment reveal that in April 2007 the local Lake County office of the Indiana Department of Child Services ("LCDCS") received a referral that A.F. had run away from home. At the time of A.F.'s disappearance, Father was A.F.'s sole care provider.

A.F. was apprehended by Gary Police Officers on or about April 23, 2007, at which time A.F. told authorities she was sexually active, believed she was pregnant, and her Father was "a crack head." Ex. Vol. 1, State's Ex. 2. A hearing was held the following day, after which the juvenile court issued a detention order finding probable cause to believe A.F. was a child in need of services ("CHINS"), authorizing LCDCS to file a CHINS petition, and granting LCDCS temporary custody and wardship of A.F.

A hearing on the CHINS petition was held in July 2007. During the hearing, Father admitted to the allegations contained in the CHINS petition. The juvenile court adjudicated

[1] The juvenile court terminated the parental rights of A.F.'s biological mother, Rhada S.-F., in its March 2009 termination order. Mother does not participate in this appeal. Consequently, we limit our recitation of the facts solely to those pertinent to Father's appeal.

A.F. a CHINS, and the matter proceeded to disposition. The court thereafter issued an order formally removing A.F. from Father's care and custody and directing Father to participate in a variety of services in order to achieve reunification with A.F. These services included individual and family counseling, random drug screens, and supervised visitation.[2]

Although Father completed some services offered through the CHINS case involving A.F.'s younger brother, such as parenting classes and a drug and alcohol evaluation, Father refused to engage in any services with respect to A.F.'s case. Specifically, Father refused to submit to random drug screens administered through Metropolitan Oasis and was unsuccessfully discharged from the program. In addition, Father failed to attend any of the scheduled supervised visits with A.F. or to participate in individual and family therapy.

On July 23, 2008, LCDCS filed a petition seeking the involuntary termination of Father's parental rights to A.F. A two-day evidentiary hearing on the termination petition commenced on October 21, 2008. Father did not appear for the first day of trial, but did attend the second day of trial which was held on March 17, 2009. At the conclusion of the evidentiary hearing, the juvenile court took the matter under advisement. On March 26, 2009, the court issued a judgment terminating Father's parental rights to A.F. Father now appeals.

[2] Apart from the random drug screens, the services ordered by the court were substantially the same as those previously ordered for Father in a separate, on-going CHINS matter pertaining to A.F.'s younger brother, An.F. An.F. is not subject to this appeal.

Discussion and Decision

I. Standard of Review

We begin our review by acknowledging this court has long had a highly deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. In re D.D., 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. Id. Moreover, in deference to the juvenile court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied, cert. denied, 534 U.S. 1161 (2002).

Here, in terminating Father's parental rights, the juvenile court entered specific findings of fact. When a juvenile court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. Id. "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the juvenile court's decision, we must affirm. L.S., 717 N.E.2d at 208.

"The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. A juvenile court must subordinate the interests of the parent to those of the child, however, when evaluating the circumstances surrounding a termination. K.S., 750 N.E.2d at 837. In addition, although parental rights should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. Id. at 836-37.

"The State's burden of proof in termination of parental rights cases is one of 'clear and convincing evidence.'" In re G.Y., 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code § 31-37-14-2). Moreover, in order to terminate a parent-child relationship, the State is required to allege and prove, among other things, that:

> (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 . . . .

Ind. Code § 31-35-2-4(b)(2)(B). Father challenges the sufficiency of the evidence supporting the juvenile court's findings as to subsection 2(B) of this statute.

II. Remedy of Conditions

Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. It therefore requires the juvenile court to find only one of the two requirements of subsection 2(B) has been established by clear and convincing evidence. See L.S., 717 N.E.2d at 209. Although

the juvenile court found both prongs of subsection 2(B) had been satisfied under the facts of this case, we only consider whether clear and convincing evidence supports the juvenile court's finding that there is a reasonable probability the conditions resulting in A.F.'s removal or continued placement outside the family home will not be remedied. See Ind. Code § 31-35-2-4(b)(2)(B)(i).

In making such a determination, a juvenile court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. However, the court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." Id. Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. A.F. v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. The juvenile court may also properly consider the services offered to the parent by the county department of child services, and the parent's response to those services, as evidence of whether conditions will be remedied. Id. Moreover, a county department of child services (here, LCDCS) is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

Although Father correctly acknowledges the "onus of the case plan and the success thereof" does not rest "solely in the hands of the [LCDCS]," he nevertheless claims his non-participation in court-ordered services was attributable to the service providers' failure to "effectively communicate to him that which was expected of him." Appellant's Brief at 6. Father also asserts that LCDCS "rested its entire case against Father upon inferences, that when carefully considered, were wholly unreasonable and could not logically support termination of Father's parental rights." Id. at 7. We disagree.

The law concerning termination of parental rights does not require the Indiana Department of Child Services ("DCS") to offer services to a parent to correct deficiencies in the parent's ability to care for his or her child. Rather, while DCS, via its local offices, routinely offers services to assist parents in regaining custody of their children, "termination of parental rights may occur independently of [these services], as long as the elements of Indiana Code section 31-35-2-4 are proven by clear and convincing evidence." In re B.D.J., 728 N.E.2d 195, 201 (Ind. Ct. App. 2000). Moreover, a parent may not "sit idly by without asserting a need or desire for services and then successfully argue that he was denied services to assist him with his parenting." Id.

Here, in determining there is a reasonable probability the conditions resulting in A.F.'s removal and continued placement outside of Father's care will not be remedied, the juvenile court specifically found as follows:

> The Court further finds there is a reasonable probability that the conditions that resulted in removal or reason for placement outside the home of the parents will not be remedied and that continuation of the parent-child relationship poses a threat to [A.F.'s] well-being in that [A.F.] was removed from her

> mother by Illinois authorities due to neglect and placed with [F]ather. While in her father's care, [A.F.] ran away from [Father] and refused to return home alleging that [F]ather was using drugs and neglecting her. Further, the Court ordered [F]ather . . . to participate in the case plan which involved parenting classes, visitation, substance abuse evaluation, random drug screens for six months and supervised visits. The Court finds [Father] had thirteen scheduled visits[,] none of which did he appear for. The Court will further find that [Father] stopped going for services even though he tested negative for drugs in the beginning. . . . [A]nd, in fact, didn't avail himself to any services offered by the [LCDCS].

Appellant's Appendix at 2. A thorough review of the record leaves us convinced that clear and convincing evidence supports the juvenile court's findings set forth above, which in turn support the court's ultimate decision to terminate Father's parental rights to A.F.

Testimony from various caseworkers and service providers during the termination hearing makes clear that despite approximately two years and a variety of services available to him, Father failed to successfully complete a single dispositional goal. Moreover, due to his refusal to participate in court-ordered services or to communicate with caseworkers and service providers, the record is simply devoid of any evidence that, as of the time of the termination hearing, Father was willing or capable of providing A.F. with a safe and stable home environment.

During the termination hearings, LCDCS caseworkers Samantha Misch and Roshanta Ollie both recommended termination of Father's parental rights to A.F. In so doing, Misch and Ollie testified Father had never contacted LCDCS regarding A.F.'s case, nor had Father participated in any court-ordered services despite being informed of these referrals. Misch further testified that although she had made arrangements for family therapy through The Villages, Father simply "wouldn't participate." Transcript at 9. Misch and Ollie also

confirmed that Father failed to submit to random drug screens. When asked whether she would have "ongoing concerns over whether or not there would be stability and the proper supervision that is required" if A.F. were returned to Father, Misch answered in the affirmative. Id. at 76.

With regard to visitation, Misch and Ollie each testified Father failed to attend all thirteen of the scheduled supervised visits with A.F. at Metropolitan Oasis before his visitation privileges were suspended for non-participation in November 2007. Father confirmed his lack of contact with A.F. when he admitted during cross-examination that, other than at court hearings, he had not had any contact with A.F. since 2007, other than once in December 2008 when A.F. telephoned Father on her birthday. We have previously explained that failure to exercise the right to visit one's child "demonstrates a lack of commitment to complete the actions necessary to preserve [the] parent-child relationship." Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) (quotation omitted), trans. denied.

As stated earlier, a juvenile court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. D.D., 804 N.E.2d at 266. In the present case, Father has demonstrated a persistent unwillingness to take the actions necessary to demonstrate he is capable of providing A.F. with the safe, stable, and nurturing home environment she needs. For approximately two years, Father has refused to participate in a single court-ordered service or supervised visit

with A.F. Moreover, apart from Father's own self-serving and unsubstantiated testimony, the record is void of any evidence suggesting Father has taken any steps to remedy the conditions that resulted in A.F.'s removal and continued placement outside his care. As this court observed in Matter of D.T., 547 N.E.2d 278, 286 (Ind. Ct. App. 1989), trans. denied, "[C]hildren continue to grow up quickly; their physical, mental, and emotional development cannot be put on hold while their recalcitrant parent fails to improve the conditions that led to their being harmed and that would harm them further."

Based on the foregoing, we conclude LCDCS presented clear and convincing evidence to support the juvenile court's determination that there is a reasonable probability the conditions leading to A.F.'s removal or continued placement outside Father's care will not be remedied. The juvenile court had the responsibility of judging Father's credibility and of weighing his testimony against the abundant evidence demonstrating Father's habitual pattern of neglectful conduct and continued inability to demonstrate he can provide A.F. with a safe and stable home environment. It is clear from the language of the judgment that the juvenile court gave more weight to evidence of the latter, rather than the former, which it was permitted to do. See Bergman v. Knox County Office of Family & Children, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding trial court was permitted to and in fact gave more weight to abundant evidence of mother's pattern of conduct in neglecting her children during several years prior to termination hearing than to mother's testimony she had changed her life to better accommodate children's needs). Father's arguments on appeal amount to an invitation to reweigh the evidence, and this we may not do. D.D., 804 N.E.2d at 264.

Conclusion

A thorough review of the record leaves us convinced that the juvenile court's judgment is supported by clear and convincing evidence. Accordingly, we find no error.

Affirmed.

BAKER, C.J. and BAILEY, J., concur.