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ATTORNEY FOR APPELLANT:

ADAM C. SQUILLER

Squiller Law Office
Auburn, Indiana

ATTORNEY FOR APPELLEE
INDIANA DEPARTMENT OF
CHILD SERVICES:

WENDY J. GENSCHE

Albion, Indiana

ATTORNEY FOR APPELLEE
INDIANA DEPARTMENT OF
CHILD SERVICES, CENTRAL
ADMINISTRATION:

ROBERT J. HENKE

Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN RE: THE TERMINATION OF THE)
PARENT-CHILD RELATIONSHIP OF)
W.C. AND J.C. (Minor Children))
)
D.C. (Father),)
)
Appellant-Respondent,)
)
vs.)
)
THE INDIANA DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner.)
)

No. 57A03-1006-JT-350

February 24, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

D.C. (“Father”) appeals the involuntary termination of his parental rights to his children, W.C. and J.C. Concluding that the Indiana Department of Child Services, local office in Noble County (“NCDCS”), presented clear and convincing evidence to support the trial court’s judgment, we affirm.

Facts and Procedural History

Father is the biological father of fourteen children, including twins W.C. and J.C. The twins were born in May 2004 and are the only children subject to the underlying termination order.¹ In May 2007, NCDCS detained the twins, along with six of their siblings, due to lack of supervision and significant sanitary issues in the family home. At the time of the children’s removal, Father was incarcerated on a domestic battery conviction stemming from an incident involving Mother in 2006. The children were later

¹ The twins’ biological mother, R.C. (“Mother”), has six biological children. Mother’s parental rights to W.C. and J.C. were also involuntarily terminated. Because Mother does not participate in this appeal, we limit our recitation of the facts to those pertinent solely to Father’s appeal of the termination of his parental rights to W.C. and J.C.

adjudicated children in need of services (“CHINS”), both parents were offered services, and the CHINS case was dismissed in early August 2007.²

Approximately three weeks later, NCDCS filed new petitions alleging W.C. and J.C. were CHINS after substantiating new allegations of lack of supervision, medical neglect because the children were not being properly treated for MRSA, and inappropriate discipline. At the time of the children’s removal, Father remained incarcerated on the domestic battery conviction. Father later admitted to the allegations in the CHINS petitions during a hearing in December 2007, and the children were adjudicated CHINS.

A dispositional hearing was held in February 2008, after which the trial court issued an order formally removing the twins from Father’s care and adjudicating them wards of NCDCS. The trial court’s dispositional order also directed Father to participate in and successfully complete a variety of tasks and services in order to achieve reunification with the children. Specifically, Father was ordered to, among other things: (1) complete parenting classes to increase his parenting skills and learn appropriate discipline for the children; (2) submit to a substance abuse evaluation and follow any resulting recommendations; (3) provide proof of attendance in at least two self-help substance abuse group meetings per week; (4) pay child support while the children remained in the care of NCDCS; and (5) exercise unsupervised visitation with the children, with physical custody returning to Father in three weeks unless NCDCS reported concerns about Father’s residence.

² This was not NCDCS’s first encounter with this family, as NCDCS had received multiple referrals for neglect and/or abuse involving Father and Mother since 2002.

In March 2008, both W.C. and J.C. were ordered returned to Father's custody for a trial home visit. Several weeks later, however, NCDSCS filed a petition requesting the emergency removal of the twins from Father's care after he reportedly became intoxicated and committed a violent assault against a visitor in the family home and in the presence of the twins. At the time of the twins' removal, Father was covered in blood, as was the kitchen, and empty containers of alcohol were strewn about the home. Due to this incident, Father was convicted of battery resulting in serious bodily injury, was sentenced to two years of incarceration with six years suspended, and was released on probation in April 2009. Meanwhile, NCDSCS filed a petition seeking the involuntary termination of Father's parental rights to the twins in October 2008.

After his release from incarceration, Father submitted to a court-ordered psychological examination in May 2009. Based on this evaluation, Father was referred for individual therapy to deal with his emotional management issues. It was also recommended that Father participate in ongoing substance abuse treatment and that reunification be suspended until such time as Father could demonstrate a commitment to learning to control his behaviors. Father failed to attend any follow-up appointments, never participated in individual therapy, and refused substance abuse treatment. Father also failed to regularly visit the twins.

Following a series of continuances and Father's motion for change of judge, involuntary termination petitions were re-filed in January 2010. A two-day evidentiary hearing on the termination petitions was eventually held in April 2010. At the time of the termination hearing, Father reported he was self-employed and living with his girlfriend.

In addition, NCDCS presented evidence of Father's habitual involvement with NCDCS, lengthy criminal history, long-term alcohol abuse, unresolved anger management and mental health issues, failure to visit the twins since October 2009, and current inability to provide W.C. and J.C. a safe and stable home environment.

At the conclusion of the termination hearing, the trial court took the matter under advisement. On June 11, 2010, the trial court issued its judgment terminating Father's parental rights to W.C. and J.C. Father now appeals.

Discussion and Decision

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 neither reweigh the evidence nor judge witness credibility. *In re D.D.*, 804 N.E.2d 258, 265 (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 trial court's unique position to assess the evidence, we will set aside a 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*.

Here, in terminating Father's parental rights, the trial court entered specific findings and conclusions. When a trial court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. 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 trial 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*. These parental interests, however, are not absolute and must be subordinated to the child’s interests when determining the proper disposition of a petition to terminate parental rights. *Id.* In addition, although the right to raise one’s own child 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. *K.S.*, 750 N.E.2d at 836.

In Indiana, before an involuntary termination of parental rights may occur, the State is required to allege and prove, among other things:

- (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; [and]
- (C) termination is in the best interests of the child

Ind. Code § 31-35-2-4(b) (2008).³ “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). If the juvenile court finds the allegations in a petition described in section 4 of this chapter are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a). Father challenges the sufficiency of the evidence supporting the trial court’s findings as to subsections (b)(2)(B) and (C) of the termination statute cited above. *See id.* § 31-35-2-4(b)(2).

We begin our review by observing that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, a trial court need find only one of the two requirements of subsection (b)(2)(B) has been established by clear and convincing evidence to properly terminate parental rights. *See L.S.*, 717 N.E.2d at 209. Because we find it to be dispositive under the facts of this case, we only consider whether NCDACS established, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in the twins’ removal or continued placement outside of Father’s care will not be remedied. *See* Ind. Code § 31-35-2-4(b)(2)(B)(i).

Father challenges the trial court’s finding that the conditions resulting in removal of the children would not be remedied on the basis that the children were not living with him at the time they were originally taken into custody and thus the allegations in the CHINS petitions were “directed at Mother and not at Father.” Appellant’s Br. p. 9. He further asserts that the reason the twins could not be placed with Father, namely, his

³ Indiana Code section 31-35-2-4 was amended by Pub. L. No. 21-2010, § 8 (effective Mar. 12, 2010). The changes to the statute became effective after the filing of the termination petition involved herein and are not applicable to this case.

incarceration, “had already been remedied at the time of the [termination] hearing.” *Id.* at 11. Father therefore contends the evidence supporting the trial court’s finding is insufficient.

A trial 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*. The trial 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 Cnty. Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. Moreover, a county department of child services is not required to provide evidence ruling out all possibilities of change; rather, it need only establish 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). Finally, we have previously explained that Indiana’s termination statute makes clear that “it is not just the basis for the initial removal of the child that may be considered for purposes of determining whether a parent’s rights should be terminated, but also those bases resulting in the continued placement outside of the home.” *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*.

In determining there is a reasonable probability that the conditions leading to W.C.’s and J.C.’s removal and/or continued placement outside Father’s care will not be

remedied, the trial court made several pertinent findings regarding Father's past and present inability to provide the children with a safe and stable home environment. The trial court also noted Father's "extensive criminal history," including "an alcohol related offense in 1997, battery charges in 1998, invasion of privacy and resisting law enforcement in 2003, domestic battery in 2006, D felony battery also in 2006, battery on a police officer in 2007, and battery resulting in serious bodily injury in 2008." Appellant's App. p. 19. In addition, trial court found Father had been "on and off Probation for twelve years" and was facing reinstatement of a six-year sentence that had been previously suspended due to a recent violation of probation. *Id.*

Although the trial court acknowledged in its findings that Father "participated in some services during his incarceration" by completing a "Thinking for a Change" program in August 2007, the trial court further found that Father never participated in the recommended individual therapy program to deal with his "emotional management" issues, failed to complete a substance abuse program, never provided any financial support for his children since their removal, and failed to visit with the children on a regular basis even after his release from incarceration. Moreover, the trial court noted that the forensic therapist reports admitted into evidence indicated:

Father's violent behaviors likely reflect serious issues involving mismanagement of repressed emotions, a significant substance abuse problem, finding perceived positive emotional reinforcement in violent actions, and the development of anti-social personality traits regarding refusal to accept responsibility for his behaviors. If the process is not contained, [Father] will seek to continue to use violence as an acceptable tool for coping with his emotions. This will place himself and those around him at risk of danger.

Id. at 17. A thorough review of the record reveals that these findings and conclusions are supported by abundant evidence.

Testimony from various caseworkers and service providers makes clear that despite a wealth of services available to Father, he has refused to engage in services, and his circumstances have remained largely unchanged. At the time of the termination hearing, Father was living with a girlfriend, had failed to complete a majority of the trial court's dispositional orders including substance abuse treatment and individual therapy, had not visited with the children since October 2009, and had recently pled guilty to violating the terms of his probation and thus was facing up to six years of incarceration.

During the termination hearing, NCDACS case manager Sue Olds-Browning confirmed that Father failed to pay any child support for W.C. and J.C., never participated in a parenting program, and refused to participate in a court-ordered substance abuse program and weekly self-help groups. Olds-Browning also informed the trial court that Father refused to participate in individual counseling and that his visitation with the children had been inconsistent. When asked if she believed Father would ever improve the conditions that resulted in the children's removal, Olds-Browning answered in the negative, explaining that the current case involving W.C. and J.C. had been open "for over two years" yet Father had failed to comply with the trial court's orders regarding reunification services, his housing situation remained unstable, and he continued to have a history of violence in the home. Tr. p. 42-43. Similarly, court-appointed special advocate ("CASA") Myrlee Gray informed the trial court that Father's last visit with W.C. and J.C. had been in October 2009, that Father's "drinking and

violence” had not changed, and although Father had been “out of jail for a year,” he had “done nothing to move forward.” *Id.* at 346.

Father’s own testimony lends further support to the trial court’s findings. Father confirmed during the termination hearing that he began drinking alcohol at age six, and that although he is an alcoholic, he continues to consume alcohol “more regularly than” most people, approximately “every two or three days[,] something like that.” *Id.* at 512. Father also informed the trial court that he was a “habitual traffic violator,” that his driver’s license had been “suspended for life twice” for “DWI’s,” and that he had recently admitted to violating the terms of his probation and was facing up to six years of incarceration. *Id.* at 555-56. Finally, Father acknowledged that he admitted to the allegations of the CHINS petitions at the beginning of the underlying proceedings, failed to participate in and/or complete a number of the trial court’s dispositional goals, and physically beat a visitor in the family home while the twins were present thereby necessitating the twins’ removal from his care in April 2008.

Based on the foregoing, we conclude that NCDCS presented clear and convincing evidence to support the trial court’s findings and ultimate determination that there is a reasonable probability the conditions resulting in W.C.’s and J.C.’s removal and continued placement outside Father’s care will not be remedied. Father’s arguments to the contrary amount to an invitation to reweigh the evidence, which we may not do. *See D.D.*, 804 N.E.2d at 264. We next consider Father’s assertion that NCDCS failed to prove that termination of his parental rights is in the twins’ best interests.

In determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Indiana Department of Child Services and look to the totality of the evidence. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the trial court must subordinate the interests of the parent to those of the child. *Id.* A trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* at 199. Moreover, we have previously held that the recommendations of both the case manager and child advocate to terminate parental rights, coupled with evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

In addition to the specific findings previously cited, the trial court found that, during the CHINS case, Father had been present for several of the home-based counseling sessions with Mother and that service providers reported Father had "yelled at the children a lot," and that the children "seemed afraid of him." Appellant's App. p. 18. The court also found W.C. and J.C. had "witnessed family violence and other acts of violence in their home." *Id.* at 19. Regarding the children's emotional well-being, the trial court noted both W.C. and J.C. suffer with "Adjustment Disorder, unspecified" and consequently, W.C. has "difficulty in controlling his emotions, disruptive behavior, and physical and verbal aggression" while J.C., who has also been diagnosed with Disruptive Behavior Disorder, manifests these diagnoses through "caretaking behaviors,

oppositional behaviors, disruptive behavior, and physical and verbal aggression.” *Id.*

The trial court further found:

66. The children’s therapist described the children’s need for permanency and stability in order to recover from past trauma.

67. [W.C.] and [J.C.] were described as extremely physically and verbally aggressive when they first came into foster care.

68. The children require continuity in their environment and permanence in their psychological attachments. This can be best accomplished in the home where they have been residing.

69. Upon review of the credible evidence and all thirty-two exhibits, the Court concludes that the children would be endangered psychologically to be returned to either or both parents either occasionally or permanently. These children cannot wait for their parents to assume appropriate parental responsibility[.] These children need appropriate and loving parents *now*.

70. The CASA in this case recommends termination of parental rights.

Id. These findings, too, are supported by the evidence. The record reveals that when W.C. and J.C. were removed from the family home they displayed defiant and disruptive behaviors as well as physical and verbal aggression. They would “bite,” “pinch,” “scratch,” and “swear” at the foster parents and were emotionally “out of control.” Tr. p. 458. Similarly, after returning from the trial home visit with Father in April 2008, the children appeared “visibly shaken” as a result of witnessing Father brutally attack and beat the visitor in the family home, and it took the children “three or four months” to recover emotionally. *Id.* at 468.

In recommending termination of Father’s parental rights, case manager Olds-Browning testified that the children needed permanency and that her “major concern” was Father’s ongoing issues with “violence” and “alcohol.” *Id.* at 101. CASA Gray

likewise recommended termination of Father's rights. In so doing, Gray informed the court that "there's been no parental relationship" between Father and the children and that she was concerned with this lack of attachment and bonding. *Id.* at 327. Gray also testified that the children feel "safe" in their current pre-adoptive foster home, that they have lived with their foster family for approximately half of their lives, and that they need parents "now." *Id.* at 324, 335. Finally, Gray acknowledged that delaying the termination proceedings even three or four months could endanger the children "psychologically" and would "keep the kids in turmoil." *Id.* at 335.

Based on the totality of the evidence, including Father's failure to complete and/or benefit from a majority of the trial court's dispositional orders, significant history of alcohol abuse, current inability to provide the children with a safe and stable home environment, and pending criminal charges, coupled with the testimony from Olds-Browning and Gray recommending termination of Father's parental rights, we conclude that clear and convincing evidence supports the trial court's determination that termination of Father's parental rights is in W.C.'s and J.C.'s best interests.

This Court will reverse a termination of parental rights "only upon a showing of 'clear error'— that which leaves us with a definite and firm conviction that a mistake has been made." *In re A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting *Egley v. Blackford Cnty. Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Affirmed.

BAKER, J., and BARNES, J., concur.