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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF J.M., a Minor Child, and)
)
B.M., the Child's Parent,)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD SERVICES,)
Appellee-Petitioner.)

No. 32A01-1008-JT-455

APPEAL FROM THE HENDRICKS CIRCUIT COURT
The Honorable Jeffrey V. Boles, Judge
Cause No. 32C01-1003-JT-9

March 25, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

B.M. (“Father”) appeals an order terminating his parental rights to J.M., upon the petition of the Hendricks County Department of Child Services (“the DCS”). We affirm.

Issue

Father presents a single issue for appeal: Whether the DCS established, by clear and convincing evidence, a reasonable probability that the conditions resulting in J.M.’s removal will not be remedied.

Facts and Procedural History

Father and C.L. (“Mother”) were married and had four children together. J.M., the eldest, was born on September 19, 2006. J.M. was removed from the custody of his parents on January 21, 2009, contemporaneous with a traffic stop. The initiating officer discovered that Mother, the driver, was intoxicated and J.M. was in the vehicle. Father was a passenger in the vehicle and had passed out from alcohol and drug use.

On January 29, 2009, the parents admitted that J.M. was a Child in Need of Services (“CHINS”). The juvenile court entered a dispositional order and both parents were required to participate in services. Mother subsequently agreed to the termination of her parental rights.¹ After his release from jail for public intoxication, Father was twice more incarcerated during the pendency of the CHINS proceedings. He was charged with battering Mother while she was pregnant with her youngest child,² and subsequently charged with violating the

¹ She is not an active party to this appeal.

² The youngest child was the subject of a parental rights termination petition in Marion County. The two middle children, twins, were placed in the care of their maternal grandmother in Florida.

terms of his home detention placement. Father provided drug screen samples upon request; however, several of those tests were positive for drug use. He was discharged from a substance abuse program for non-compliance.

On March 23, 2010, the DCS petitioned to terminate Father's parental rights. The juvenile court conducted an evidentiary hearing on July 22, 2010. The parental relationship between Father and J.M. was terminated on July 29, 2010. Father now appeals.

Discussion and Decision

A. Standard of Review

Our standard of review is highly deferential in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). This Court will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, we neither reweigh the evidence nor judge the credibility of the witnesses. Id. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id.

B. Requirements for Involuntary 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. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). The purpose of terminating parental rights is not to punish the parents, but to

protect their children. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied.

Indiana Code Section 31-35-2-4(b)(2) sets out the elements that the DCS must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

(A) That one (1) of the following is true:

- (i) The child has been removed from the parent for at least six (6) months under a dispositional decree.
- (ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made.
- (iii) The child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(B) That one (1) of the following is true:

- (i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.
- (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.
- (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services;

(C) that termination is in the best interests of the child; and

(D) that there is a satisfactory plan for the care and treatment of the child.

If the 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). 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. 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.

C. Analysis

Father challenges only the trial court’s determination relating to Indiana Code Section 31-35-2-4(b)(i) (probability of conditions being remedied). Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, and therefore the trial court needed to find that only one of the three requirements of subsection (b)(2)(B) had been established by clear and convincing evidence. 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 the DCS established, by clear and convincing evidence, that there is a reasonable probability that the conditions resulting in J.M.’s removal will not be remedied. See Ind. Code § 31-35-2-4(b)(2)(B)(i).

As of the termination hearing, Father was incarcerated in a Department of Correction facility for violating the terms of his home detention placement. His expected release date was October of 2010. Caseworker Amber Overbey testified regarding Father’s visitation with J.M. when Father was not incarcerated. Overbey testified that Father had missed five visitations with J.M. between January 2010 and March 2010. She also disclosed that Father

had six positive drug screens between May 2009 and March 2010, Father had been arrested for domestic battery upon Mother, and Father had been unsuccessfully discharged from a substance abuse program.

The DCS also presented evidence that Father had failed to reimburse DCS for services to J.M. During the entirety of the CHINS proceedings, Father had paid \$10 for J.M.'s benefit. Father testified that he did not provide child support for his children in Florida. J.M.'s guardian ad litem recommended termination of parental rights based upon the failed drug screens, domestic violence, and failure to complete alcohol and drug classes.

Father does not dispute the evidence that he battered Mother during her last pregnancy, chronically used alcohol and drugs, failed several drug screens, failed to maintain regular employment and pay child support, was incarcerated on multiple occasions, was unsuccessfully discharged from a substance abuse program, and was unable to provide care for his children other than J.M. Rather, he argues that the juvenile court failed to assess his ability to care for J.M. as of the date of the termination hearing. He claims to have taken some short term classes during his incarceration, albeit without documentation. He also contends that he has secured post-release employment and will be able to live with his mother.

He directs our attention to a case in which a panel of this Court (with one Judge dissenting) held that the involuntary termination of the parental rights of an incarcerated parent was not warranted. See Rowlett v. Vanderburgh County OFC, 841 N.E.2d 615 (2006), trans. denied. The father had participated in nearly 1,100 hours of individual and

group services, had secured post-release construction employment, had been accepted at the University of Evansville, and planned to live with his aunt. See id. at 622. The Rowlett Court determined that the OFC's evidence "d[id] not accurately reflect Father's status and ability to care for his children as of the time of the termination hearing." Id. at 621. Moreover, as to the consideration of the best interests of the children, the Court observed that the children, placed with their maternal grandmother, were not "in a temporary arrangement pending termination of parental rights" and "continuation of the CHINS wardship will have little, if any, impact upon them." Id. at 623.

Here, in contrast, J.M. has been in non-relative foster care since his removal from Mother's and Father's care. Father has not asserted that he has secured post-release employment sufficient to provide for J.M. He has been able to pay \$10 toward J.M.'s support during the CHINS proceedings and pays nothing for his two children in his mother-in-law's care. Also, unlike the parent in Rowlett, Father has a history of domestic violence and it does not appear that he has successfully completed any services with regard to addressing domestic violence issues.

In essence, it appears that Father is merely asking that we reweigh the evidence and accord greater weight to his testimony of his recent efforts and future aspirations. We will not do so. See In re A.A.C., 682 N.E.2d at 544. The DCS presented clear and convincing evidence from which the juvenile court could conclude that there is a reasonable probability that the conditions that led to J.M.'s removal from Father's care will not be remedied.

Conclusion

The DCS established by clear and convincing evidence the requisite elements to support the termination of Father's parental rights.

Affirmed.

FRIEDLANDER, J., and BROWN, J., concur.