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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT/CHILD RELATIONSHIP)
OF J.C. & A.C. (Minor Children),)

ORMOND CREWS, (Father),)

Appellant-Respondent,)

vs.)

No. 32A01-0809-JV-434

INDIANA DEPARTMENT OF CHILD)
SERVICES,)

Appellee-Petitioner.)

APPEAL FROM THE HENDRICKS CIRCUIT COURT
The Honorable J.V. Boles, Judge
Cause Nos. 32C01-0802-JT-34 & 32C01-0802-JT-35

March 27, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Ormond Crews (“Father”) appeals the termination of his parental rights to his daughters, J.C. and A.C. Father argues that there is insufficient evidence to support the termination of his parental rights. Concluding that the evidence is sufficient to support the termination of Father’s parental rights, we affirm the decision of the trial court.

Facts and Procedural History^{1 2}

Father and Alexis Crews (“Mother”) are the parents of J.C., born on February 14, 1997, and A.C., born on February 23, 1999. In April 2000, Mother was diagnosed with breast and lymph cancer. She died on November 8, 2000.

Hendricks County Department of Child Services’ (“DCS”) first contact with Father was in 2001. DCS received a report that on occasion Father was intoxicated when he picked up J.C. and A.C. from daycare and that he had failed to pick up J.C. and A.C. from daycare on August 28, 2001. When DCS investigated, Father admitted that he had been too intoxicated on August 28, 2001, to pick up J.C. and A.C. He also informed DCS that he had had substance abuse problems in the past. At that time, DCS left J.C.

¹ We note that Father’s Statement of Facts in his Appellant’s Brief contains argument. We remind Father that the Statement of Facts should be devoid of argument. *Ramsey v. Review Bd. of Ind. Dep’t of Workforce Dev.*, 789 N.E.2d 486, 488 (Ind. Ct. App. 2003). Additionally, the Statement of Facts should be presented in accordance with the standard of review appropriate to the judgment, which in this case requires that the facts be presented in a light most favorable to the judgment. *See* Ind. Appellate Rule 46(A)(6)(b).

² In his Appellant’s Appendix, Father reproduced virtually the entire five-hundred-page Transcript of his termination of parental rights hearing. We have previously stated that this practice is a waste of paper and unnecessarily bloats the record. *Steve Silveus Ins., Inc. v. Goshert*, 873 N.E.2d 165, 172 (Ind. Ct. App. 2007). Furthermore, this practice is contrary to the Indiana Rules of Appellate Procedure. Under Indiana Rule of Appellate Procedure 50(A)(2)(d), the Appellant may include in her Appendix “the portion of the Transcript that contains the rationale of decision and any colloquy related thereto, if and to the extent the brief challenges any oral ruling or statement of decision” Additionally, the Appellant may include “brief portions of the Transcript, that are important to a consideration of the issues raised on appeal.” App. R. 50(A)(2)(g).

and A.C. in Father's care because Father was participating in substance abuse treatment at Fairbanks Hospital, had begun seeing a grief counselor, and planned to attend Alcoholics Anonymous ("AA") and Narcotics Anonymous meetings.

On August 2, 2002, Father attempted to pick up J.C. and A.C. from daycare while intoxicated. Employees of the daycare contacted the police, who arrived a short time later and arrested Father. Father was charged with a number of crimes, including operating a vehicle while intoxicated, attempted neglect of a dependent, and public intoxication. Father ultimately pled guilty to attempted neglect of a dependent on October 28, 2002. The trial court placed Father on probation and ordered him to complete an alcohol and substance abuse evaluation and a parenting assessment.

DCS removed J.C. and A.C. from Father's care on August 2, 2002. DCS conducted an investigation in which it learned from J.C. that Father often left the children home alone overnight and that he sometimes forgot to feed them. DCS filed a petition alleging that J.C. and A.C. were children in need of services ("CHINS"), and at a hearing on August 15, 2002, Father admitted that J.C. and A.C. were CHINS. The juvenile court entered an Agreed Dispositional Order on September 12, 2002. Under this order, Father was required to remain drug and alcohol free, submit to drug testing, complete a drug and alcohol evaluation and a psychological evaluation, and participate in home-based counseling. Father complied with the terms of the Agreed Dispositional Order, and J.C. and A.C. were returned to his care in early 2003. The CHINS case was dismissed in May 2003.

In January 2004, Father was arrested and charged with operating a vehicle while intoxicated. Thereafter, the State filed a notice of probation violation. On March 24, 2004, Father boarded J.C.'s school bus intoxicated. As a result of this incident, J.C. and A.C. were removed from Father's care, and DCS initiated an investigation. Inside Father's home, DCS found evidence that Father was still consuming alcohol. DCS also discovered that over the past eleven months, J.C. had missed forty-nine days of school. On April 7, 2004, DCS filed a petition alleging that J.C. and A.C. were CHINS.

On April 12, 2004, Father admitted that he had violated his probation and pled guilty to operating a vehicle while intoxicated as a class A misdemeanor. The trial court ordered Father to be placed on home detention for approximately one year. DCS returned J.C. and A.C. to Father's care that same day.

On May 18, 2004, the juvenile court issued an Agreed Dispositional Order. In the order, the juvenile court found that J.C. and A.C. were CHINS but determined that they should remain in Father's care. Father was ordered to remain drug and alcohol free and to submit to random drug and alcohol testing.

At the beginning of September 2004, Father tested positive for alcohol. As a result, J.C. and A.C. were removed from his care on September 4, 2004, and the State filed a notice of probation violation on September 7, 2004. On November 1, 2004, the trial court found that Father had violated his probation and sentenced him to seventy-three days of home detention.

J.C. and A.C. remained in foster care until August 4, 2005. At that time, they were returned to Father's care for a trial home visit. On August 17, 2005, Father failed to

pick up J.C. and A.C. from daycare. The children were again removed from Father's custody and placed in foster care, where they remained until the conclusion of the termination proceedings.

On August 18, 2005, the State filed a notice of probation violation, apparently, in part, because Father left the State of Indiana. When Father returned to Indiana, he was arrested. On November 21, 2005, the trial court found that Father had violated his probation and sentenced him to serve 361 days in the Hendricks County Jail.

On September 29, 2005, DCS filed a petition to terminate Father's parental rights. The juvenile court held hearings on the petition on January 10, 2006, February 3, 2006, and February 23, 2006. At the time of the hearings, Father was incarcerated but was scheduled to be released in early March 2006. Relying on this Court's opinion in *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615 (Ind. Ct. App. 2006), *trans. denied*, the juvenile court denied DCS' petition to terminate Father's parental rights on March 17, 2006. The juvenile court ordered DCS "to immediately provide a written plan of reunification subject to the approval of the Guardian Ad Litem and [Father] must strictly comply with all terms and conditions of the approved plan." Appellant's App. Vol. III p. 597.

In June 2006, after Father was released from jail, DCS, Father, and the guardian ad litem ("GAL") Suzanne X. Conger entered into a written Plan of Reunification, which they filed with the juvenile court on June 20, 2006. The juvenile court adopted the Plan of Reunification on June 26, 2006, and entered it as an Amended Dispositional Order. Under the June 26, 2006, order, Father was required to do the following:

5. [Father] will cooperate with the [DCS], which includes accepting case manager supervision and services.

6. [Father] will cooperate fully with the GAL.

8. [Father] shall attend a minimum of 3 Alcoholics Anonymous meetings each week He must provide written proof of attendance to the Family Case Manager and GAL on Friday of each week. [Father] shall obtain a sponsor for his alcohol addiction and shall provide the sponsor's name, address and telephone number to FCM for verification of his status.

10. [Father] shall remain drug and alcohol free.

11. [Father] shall maintain uninterrupted full time employment so that he can afford to support himself and his children. He must satisfactorily maintain his job for a continuous period of 6 months prior to consideration being given to reunifying the children with [Father].

12. [Father] shall maintain suitable housing for himself and his children. The home must remain clean and safe for all residing within.

14. [Father] shall notify the case manager of any and all changes in his living situation within twenty-four (24) hours of the change. He shall maintain weekly contact with the Family Case Manager.

22. [Father] shall attend and be punctual for all scheduled visitation with his children

25. [Father] is responsible for total cost of placement of his children As of May 8, 2006, the Placement Reimbursement is \$30,716.00. [Father] has paid \$2,730.00 on October 1, 2002, leaving a current balance of \$27,986.00. Placement reimbursement was ordered to be paid at a rate of \$80 per week previously; beginning May 5, 2006 placement reimbursement shall be paid in the amount of \$25.00 per week, Friday of each week.

29. **Failure to timely obey** . . . the Court's decrees and orders, including each and every provision of this Plan of Reunification and Amended Dispositional Order, may also lead to the "Termination of the Parent-Child Relationship" that [Father] has with [J.C. and A.C.].

Id. Vol. VI p. 1312-16.

In July 2006, Father moved to Memphis, Tennessee. Father is an avionics technician. From mid-August 2006 until December 2006, Father worked for Mesaba Airlines in Memphis. After he lost his job at Mesaba Airlines, Father moved to Wallops Island, Virginia, to work for HG Arrow building a concept jet. Father worked for HG Arrow from February or March 2007 until July 2007. He voluntarily left his employment with HG Arrow because the company wanted him to relocate to California. In August 2007, Father moved to North Carolina and began working for Tempco Aviation. After working for Tempco for roughly nine months, Father voluntarily left his employment because his hours had been cut, and thus, he was not making enough money.

Between June 2006 and May 2008, Father did not maintain contact with DCS or inform DCS about his various moves and changes in employment. Father did not provide weekly verification to DCS that he was attending AA meetings. Father also failed to make payments for the cost of placement of J.C. and A.C. in foster care. Father did sporadically visit J.C. and A.C. and speak with them on the telephone. Father, though, did not attend all scheduled visitations and was sometimes late to the visitations he did attend.

Due to his failure to comply with the terms of the June 26, 2006, order, the juvenile court found Father in contempt on November 16, 2006. The court reminded Father that he was to strictly comply with the provisions of the June 26, 2006, order.

On February 12, 2008, DCS filed a petition to terminate Father's parental rights. In May 2008, the juvenile court held hearings on the petition. During the hearings, Father testified that within the last three weeks he had moved to Arkansas and was

currently unemployed. Father also admitted that he had not strictly complied with the terms of the June 26, 2006, order.

On June 19, 2008, the juvenile court issued an order granting DCS' petition to terminate Father's parental rights to J.C. and A.C. In the order, the juvenile court made the following relevant findings of fact and conclusions of law:

FINDINGS OF FACT

12. Despite a number of Orders from the Court ordering [Father] to comply with the terms of the June 26, 2006 Order, [Father] has failed to comply with many of the terms of the June 26, 2006 Order.

13. [Father] has failed to comply with the terms contained on page 2, paragraph 12 of the June 26, 200[6] Order which requires him to maintain suitable housing for himself and his children. The court finds it quite disconcerting that [Father] chose to move from the State of Indiana in July 2006, mere days after he entered the June 20, 2006 Plan of Reunification thereby thwarting his ability to comply with the terms, or even maintain routine contact with his minor children. Since the Order denying termination on March 28, 2006, [Father] has moved eleven times, from the State of Indiana to the State of Tennessee to the State of Virginia to the State of North Carolina and now to the State of Arkansas, with his most recent move occurring only three weeks prior to this termination hearing.

14. [Father] has failed to comply with the terms contained on page 2, paragraph 11 of the June 26, 200[6] Order which requires him to maintain uninterrupted full time employment and maintain his job for a continuous period of six months. Since execution of the Plan, [Father] has held and lost numerous jobs. In fact, just three weeks prior to this hearing, [Father] left his employment without having another job and moved to another state. [Father] gave up a job that at least paid some money to move to a state where he is making no income and is currently unemployed. [Father] has demonstrated instability and inability to provide for his family.

15. [Father] has failed to comply with the terms contained on page 2, paragraph 14 of the June 26, 200[6] Order which requires him to notify the case manager of any and all changes in his living situation within twenty-four hours of the change and to maintain weekly contact with DCS. [Father] himself testified that he moved residences at least three weeks ago and only notified the current case manager of this change in his living

condition mere minutes before the beginning of this hearing. Additionally, all three casemanagers [sic] who have been assigned to [Father's] case testified to extended periods of no communication with [Father].

16. [Father] has failed to comply with the terms contained on page 2 paragraph 8 of the June 26, 200[6] Order which requires him to attend a minimum of 3 Alcoholics Anonymous meetings each week and provide written proof of attendance to the casemanager [sic] and the guardian ad litem. [Father's] attendance to the AA meetings was sporadic and the written proof was rare [Father] testified that he goes to meetings as he feels he needs and admits he has not complied with the 3 meetings per week since the creation of the Plan. [Father] has failed to comply with the terms contained on page 2, paragraph 8 which requires him to "provide the [AA] sponsor's name, address and telephone number to FCM for verification of his status.["]

17.

[Father] has only sporadically visited his children and not complied with paragraph 22 on page 3 of the June 26, 2006 Order. He did not visit his children at all from June 2007 until November 2007, and visitation began then only after he was made aware that DCS was filing to terminate his parental rights. Since then, [F]ather has cancelled visits and no-showed on a few visits. [Father] has also not exercised all of his telephone visitations that he has had scheduled either, and [J.C.] chose not to participate in the May 7, 2008 telephone visit for that reason.

18. The children's behavior worsens around the times of the visits. [J.C.] experiences bed-wetting immediately after the visits. Additionally, both children begin to experience anxiety and start lying and hiding things around visit times.

[Father] is required to pay \$25.00 per week toward placement reimbursement for his children pursuant to paragraph 25, page 4 of the June 26, 2006 Order. Despite this requirement, [Father] has made only a few payments to DCS As of April 2008[,] he owes \$47,078.00 in placement reimbursement to [DCS].

21. All three family casemanagers [sic], the DCS director, the children's counselors and the guardian ad litem all believe based on their experience and interaction with the children that termination of the parent-child relationship is in the best interest of the children.

23. The evidence clearly and convincingly shows that there is a reasonable probability that continuation of the parent-child relationship poses a threat to the well-being of the children.

24. The evidence clearly and convincingly shows that termination of the parent/child relationship is in the best interest of the child[ren].

CONCLUSIONS OF LAW

3. [Father] is unable to provide stability or permanency for his children. His numerous moves and inability and unwillingness to maintain employment demonstrate a lack of commitment to his children.

4. [Father] . . . is presently unemployed and living in a new state in which he has only resided for three weeks. As the Court found in *In re A.L.H.* and *In re B.D.J.*, a parent's historical inability to provide adequate housing, stability and supervision coupled with a current inability to provide the same will support a finding that continuation of the parent-child relationship is contrary to the child's best interest. See *In re A.L.H.*, 774 N.E.2d 896 (Ind. Ct. App. 2002) and *In re B.D.J.*, 728 N.E.2d 195 (Ind. Ct. App. 2003), *trans. denied*.

5. No one has denied that [Father] loves his children or that the children love him. But the love of a parent is not enough [Father's] personal choices and selfish decisions have caused repeated harm to his daughters which his love cannot overcome. Continuation of the parent-child relationship will only cause further harm and pose a threat to the well-being of the children.

Appellant's App. Vol. I pp. 21-27. On July 18, 2008, Father filed a motion to correct errors, which the juvenile court denied on August 19, 2008. Father now appeals.

Discussion and Decision

Father raises one issue on appeal. He contends that the evidence is insufficient to support the termination of his parental rights to J.C. and A.C. He specifically argues that DCS failed to meet its burden of proving that the continuation of the parent-child relationship posed a threat to J.C.'s and A.C.'s well-being and that termination of the parent-child relationship was in J.C.'s and A.C.'s best interests.

I. Standard of Review

Under the Fourteenth Amendment to the United States Constitution, parents have the right to establish a home and raise their children. *In re B.D.J.*, 728 N.E.2d 195, 199 (Ind. Ct. App. 2000). However, the law allows for the termination of these rights when an individual is unable or unwilling to fulfill his or her responsibilities as a parent. *Id.* at 199-200. This policy balances a parent's constitutional rights to the custody of their children with the State's limited authority to interfere with this right. *Id.* at 200. "Because the ultimate purpose of the law is to protect the child, the parent-child relationship will give way when it is no longer in the child's interest to maintain this relationship." *Id.*

In reviewing termination proceedings on appeal, this Court will not reweigh the evidence or assess the credibility of the witnesses. *In re L.B.*, 889 N.E.2d 326, 336 (Ind. Ct. App. 2008). We only consider the evidence that supports the juvenile court's decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the juvenile court includes findings of fact and conclusions thereon in its order terminating parental rights, our standard of review is two-tiered. *Id.* First, we must determine whether the evidence supports the findings, and, second, whether the findings support the legal conclusions. *Id.*

In deference to the juvenile court's unique position to assess the evidence, we will not set aside the court's findings and judgment unless they are clearly erroneous. *Id.* A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d

874, 879 (Ind. Ct. App. 2004). A judgment is clearly erroneous only if the legal conclusions made by the juvenile court are not supported by its findings of fact, or the conclusions do not support the judgment. *Id.*

Indiana Code § 31-35-2-4(b) provides that in order to terminate a parent-child relationship, the State must prove:

(A) one (1) of the following exists:

(i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

(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;

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

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

Indiana Code § 31-34-12-2 further provides that the State must establish the elements of Indiana Code § 31-35-2-4 by clear and convincing evidence.

II. Continuation of Parent-Child Relationship Poses a Threat to Children's Well-Being

Father argues that DCS did not prove by clear and convincing evidence that the continuation of his parent-child relationship with J.C. and A.C. posed a threat to the children's well-being.³ Here, the record reveals that between June 2006 and May 2008, Father moved eleven times and lived in five different states: Indiana, Tennessee,

³ The juvenile court found that continuation of the parent-child relationship posed a threat to J.C.'s and A.C.'s well-being but made no finding with regard to whether the conditions that resulted in J.C.'s and A.C.'s removal from Father's care would not be remedied. A finding concerning whether the conditions that resulted in removal would not be remedied was unnecessary because Indiana Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, and therefore, the trial court only had to find one of the two requirements of subsection (B) by clear and convincing evidence. *In re L.S.*, 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), *trans. denied.*

Virginia, North Carolina, and Arkansas. During this period, Father did not maintain continuous full-time employment and held at least three different jobs. Father worked for Masaba Airlines in Tennessee for approximately four and a half months before he was laid off. After being unemployed for roughly two months, Father moved to Virginia and worked for HG Arrow for about five or six months. Father voluntarily resigned from his employment with HG Arrow because he did not want to relocate to California. Father then moved to North Carolina and worked for Tempco Aviation for nine months. Father ultimately voluntarily left this job because he was not receiving sufficient hours. Father's numerous moves and changes in employment indicate that he is unable to provide the stability and permanence J.C. and A.C. need.

Under the June 26, 2006, order, Father was required to make weekly payments of \$25 for the cost of placement of J.C. and A.C. in foster care. Father failed to make all of the required payments. Additionally, at the time of the termination hearing, Father was unemployed. In his brief, Father admits that "[h]e cannot support his children today, barely feeding himself." Appellant's Br. p. 12. This evidence indicates that Father is unable to provide for J.C.'s and A.C.'s basic needs.

One of the persistent problems facing Father throughout these proceedings has been his alcohol addiction. The June 26, 2006, order required Father to attend three AA meetings each week and provide DCS with written proof of his attendance. Father did not comply with this requirement and admitted during the termination hearing that he does not attend three AA meetings per week. Without evidence that Father was attending AA meetings, it is not clear that Father has taken the necessary steps to address his

alcohol addiction. In the past, Father's problems with alcohol have endangered J.C.'s and A.C.'s well-being. Father has previously attempted to pick up J.C. and A.C. from daycare while intoxicated. Because of his alcohol addiction, Father left J.C. and A.C. home alone overnight and sometimes forgot to feed them. Father's alcohol addiction also led to J.C.'s poor school attendance in 2004. The lack of certainty regarding the status of Father's alcohol addiction poses a looming threat to J.C.'s and A.C.'s well-being.

Father has also not regularly visited J.C. and A.C. Between June 2007 and November 2007, Father had no visits with J.C. and A.C. Father only reinitiated contact with his children after DCS informed him that it would be seeking termination of his parental rights. Father has cancelled or been late to a number of visitations. When Father did participate in visitations, it negatively impacted J.C.'s and A.C.'s behavior, causing them to lie, hide their personal belongings, and wet the bed.

Based on this evidence, we conclude that sufficient evidence was presented by DCS to support the juvenile court's conclusion that the continuation of the parent-child relationship posed a threat to J.C.'s and A.C.'s well-being.

III. Termination is in the Best Interests of the Children

Father next argues that there was insufficient evidence to show that termination of the parent-child relationship was in J.C.'s and A.C.'s best interests. In determining what is in the best interests of a child, the trial court is required to look at the totality of the evidence. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1253 (Ind. Ct. App. 2002), *trans. denied*. "In doing so, the trial court must subordinate the interests of the parents to those of the children involved." *Id.* "A parent's historical

inability to provide adequate housing, stability and supervision coupled with a current inability to provide the same will support a finding that termination of the parent-child relationship is in the child's best interests." *Castro v. State Office of Family & Children*, 842 N.E.2d 367, 374 (Ind. Ct. App. 2006), *trans. denied*.

In his brief, Father all but concedes that termination of his parental rights is in J.C.'s and A.C.'s best interests. He states:

[Father] does not suggest reunification is ripe. [Father] has not found steady work, is not in avionics, does not own a home, has not repaid the State for placement, is not documenting AA meetings, is not telling the authorities where he is. His search for work fails now. He cannot support his children today, barely feeding himself.

Appellant's Br. p. 12.

The evidence in the record supports the conclusion that termination of Father's parental rights is in J.C.'s and A.C.'s best interests. Between June 2006 and May 2008, Father moved eleven times between five different states and was unable to maintain continuous full-time employment, holding at least three different jobs. Father admits that he is currently unemployed, does not own his own home, has not attended three AA meetings per week as he was required to do under the June 26, 2006, order, and is unable to support his children at this time. The record further indicates that Father's visits with J.C. and A.C. negatively impacted their behavior, causing them to lie and wet the bed. This evidence indicates that Father has both an historical and current inability to provide adequate housing, stability, and supervision to J.C. and A.C. Additionally, the juvenile court found that all three family case managers, the Hendricks County DCS Director, the children's counselors, and the GAL all believed that it was in J.C.'s and A.C.'s best

interests to terminate the parent-child relationship. Therefore, we conclude that the juvenile court's determination that termination of Father's parental rights is in J.C.'s and A.C.'s best interests is supported by clear and convincing evidence.

Because sufficient evidence was presented to support the trial court's conclusion that the continuation of the parent-child relationship posed a threat to J.C.'s and A.C.'s well-being and that termination of the parent-child relationship was in J.C.'s and A.C.'s best interests, the juvenile court's judgment terminating Father's parental rights is supported by clear and convincing evidence.

Affirmed.

RILEY, J., and DARDEN, J., concur.