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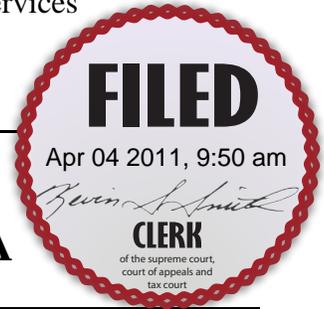
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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP)
OF :)
)
K.F., R.F., S.F., J.F., & B.F.,)
)
and)
)
E.C.F.,)
)
Appellant- Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee- Petitioner,)

No. 71A03-1008-JT-608

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Michael Scopelitis, Judge
Cause No. 71J01-0812-JT-00232
71J01-0812-JT-00234
71J01-0812-JT-00235

April 4, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

E.C.F. (“Father”) appeals the voluntary termination of his parental rights to his children, K.F., R.F., S.F., J.F., and B.F. Father raises one issue on appeal, which we restate as whether the trial court erred when it accepted Father’s signed statement voluntarily relinquishing his parental rights. Concluding Father’s consent was not obtained under duress and the trial court properly terminated Father’s parental rights, we affirm.

Facts and Procedural History

Father is the biological father of K.F., R.F., S.F., J.F., and B.F. The present case commenced in 2007, when the Department of Child Services (“DCS”) learned of allegations that Father had sexually molested his two step-daughters. Subsequently, DCS petitioned the trial court, alleging K.F., R.F., S.F., J.F., and B.F. were Children in Need of Services (“CHINS”). Father denied DCS’s material allegations.

In 2008, a CHINS fact-finding hearing was held. At the conclusion of the CHINS hearing, the trial court granted DCS’s petition finding K.F., R.F., S.F., J.F., and B.F.

needed care, treatment, or rehabilitation that would not be received absent coercive intervention by the court. As a result of the CHINS hearing, Father was ordered to submit to random drug testing, complete parenting classes, maintain consistent contact with DCS, complete sex offender counseling, and complete a batterer's intervention program. Three months into Father's required program, the trial court found Father had failed to adhere to the requirements of the program. The trial court then approved DCS's plan to file a petition for involuntary termination of Father's parental rights.

The termination of parental rights process began in January 2009, when DCS filed a petition for the involuntary termination of Father's parental rights as to K.F., R.F., S.F., J.F., and B.F.¹ Father initially opposed this petition. In March 2009, an order for a Court Appointed Special Advocate ("CASA") was entered. Soon after the CASA order, a guardian ad litem was appointed to represent the interests of K.F., R.F., S.F., J.F., and B.F.² On June 29, 2010, Father agreed to voluntarily terminate his parental rights to K.F., R.F., S.F., J.F., and B.F.

At a hearing on July 1, 2010, Father signed a written agreement voluntarily consenting to termination of his parental rights. At this time, and with his attorney present, Father testified he was voluntarily terminating his parental rights of his own free will. Additionally, Father stated he was voluntarily terminating his parental rights because it was in the "best interests" of his children. Transcript at 184. The trial court

¹ DCS filed an involuntary termination of parental rights petition as to both Father and the mother of the children. However, only Father is appealing in this case, so we have limited our recitation of the facts to those pertinent to Father.

² The guardian ad litem was also appointed to represent two of Father's additional children, D.F and G.F., neither of whom are subject to the order Father is appealing.

accepted Father's voluntary termination of parental rights and entered a corresponding order.³ Father now appeals that order.

Discussion and Decision

I. Standard of Review

We begin our review by acknowledging that 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 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 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.

II. Voluntary Termination of the Parent-Child Relationship

"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. However, parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. K.S., 750 N.E.2d at 836. The voluntary termination of a parent-child relationship is controlled by statute. Youngblood v. Jefferson County Div. of Family & Children, 838 N.E.2d 1164, 1168 (Ind. Ct. App. 2005), trans. denied. In order for a trial

³As part of this order, the involuntary termination of parental rights petition was dismissed as to the mother of the children. The mother was ordered to start individual therapy in hopes of someday reuniting with her children.

court to accept a parent's voluntary consent to the termination of parental rights, Indiana Code section 31-35-1-6 provides in relevant part that:

(a) [T]he parents must give their consent in open court unless the court makes findings of fact upon the record that:

(1) the parents gave their consent in writing before a person authorized by law to take acknowledgments; and

(2) the parents were:

(A) advised in accordance with section 12 of this chapter; and

(B) advised that if they choose to appear in open court, the only issue before the court is whether their consent was voluntary.

(b) If:

(1) the court finds the conditions under subsection (a)(1) and (a)(2) have been met; and

(2) a parent appears in open court;

a court may consider only the issue of whether the parent's consent was voluntary.

(Emphasis added.) Thus, under this statute, when a parent executes a written consent for the voluntary termination of his parental rights and appears in open court to acknowledge his consent to the termination, that consent will be deemed valid. Youngblood, 838 N.E.2d at 1169. Indiana Code section 31-35-1-12 provides, in pertinent part, that for purposes of section 6 quoted above, the parents must be advised that “their consent is permanent and cannot be revoked or set aside unless it was obtained by fraud or duress or unless the parent is incompetent” and that they “will receive notice of the hearing . . . at which the court will decide if their consent was voluntary and the parents may appear at the hearing and allege that the consent was not voluntary.” Ind. Code § 31-35-1-12(1) & (8).

We have previously determined that a parent's ability to withdraw consent to the termination of his or her parental rights is “extremely limited.” Youngblood, 838 N.E.2d at 1169. We limit the ability for a parent to withdraw his consent out of consideration for

the children involved in these matters. In Matter of Snyder, 418 N.E.2d 1171, 1180 (Ind. Ct. App. 1981), we stated:

If a natural parent were allowed to arbitrarily withdraw his or her voluntary relinquishment of parental rights, then adoption of the child would be discouraged. Few prospective parents would want to start the lengthy process of adoption when there is a possibility that the natural parent would withdraw his or her relinquishment of parental rights, thus ending the adoption proceedings. A ruling allowing the arbitrary withdrawal of a voluntary relinquishment of parental rights would subject every adoptive parent and child to the possibility of a most cruel and emotional turmoil, and because of this fact it would make adoptive parents the ready prey of possible unscrupulous parents.

(Quotation and citation omitted.) Therefore, a parent who executes a voluntary relinquishment of parental rights is “bound by the consequences of such action, unless the relinquishment was procured by fraud, undue influence, duress, or other consent-vitiating factors.” In re M.R., 728 N.E.2d 204, 209 (Ind. Ct. App. 2000) (citation omitted), trans. denied. If there is “any competent evidence of probative value that: (1) fraud or duress was present when the written consent was given; or (2) a parent was incompetent[,] the trial court shall dismiss the petition or continue the proceeding.” Youngblood, 838 N.E.2d at 1169 (quoting Ind. Code § 31-35-1-7(c)) (alterations omitted).

In the present case, Father argues his decision to voluntarily terminate his parental rights was made under duress applied by DCS, and therefore, should not have been accepted by the trial court. “In order to avoid a contract on the basis of duress, there must be an actual or threatened violence [or] restraint of a man’s person contrary to law, to compel him to enter into a contract or [to] discharge one.” Youngblood, 838 N.E.2d at 1170 (quotation and citation omitted). In deciding whether a person signed a document

under duress, “the ultimate fact to be determined is whether or not the purported victim was deprived of the free exercise of his own will.” Id. (quotation and citation omitted).

As proof his consent was given under duress, Father points to vague testimony he gave at the July 1 hearing, such as, “[DCS] persistently pursued and attacked and caused so much stress I’ve come to realize it’s not going to be in my best interests to keep fighting them.” Tr. at 210. Father also accused DCS of falsifying documents and perjury during the July 1 hearing. However, these vague statements do not show he was compelled by actual or threatened violence to terminate his parental rights against his free will. To the contrary, Father, who was represented by counsel and was properly advised of his rights in accordance with Indiana law, affirmed the voluntary nature of his termination in the following colloquy during the July 1 hearing:

Q: Now, you looked at some documents and went over them with your attorney today, is that correct?

A: Yes.

Q: And they’re in front of me and we’ll show the judge in a minute but one is entitled voluntary relinquishment of parental rights and the other is just notice to parents of the effects of such a document. Did you go over both of those with your attorney today?

A: Yes.

Q: Do you understand everything on these documents?

A: Yes, I do.

Q: And you signed these documents?

A: Yes, I did.

Q: And that was your own free, voluntary act, despite – you had some concerns but you did agree to sign these voluntarily?

A: It’s in the best interests of my children and my wife.

Q: And that’s exactly why you did it, for the best interests of your children, correct?

A: Yeah.

...

Q: Did anyone make any promises or threats to you to make you sign these documents?

A: No.

Id. at 183-85. At another point in the July 1 hearing Father stated, “Continuing to fight with CPS is everybody’s been hurt. They have lied, they have cheated, they have attacked my family members, but I’ve still got to be a parent . . . and walk away. It’s the only best interest for my wife and my children.” Id. at 178. Based on the foregoing, there is ample evidence to allow the trial court to conclude Father’s voluntary termination of parental rights was given of his own free will. Father’s argument is essentially an invitation for us to reweigh the evidence presented at the July 1 hearing. This we will not do.

We cannot say the trial court committed clear error when it accepted Father’s consent to the voluntary termination of his parental rights. Father voluntarily signed the consent forms after consulting with his attorney. Thereafter, Father affirmed his decision to relinquish his paternal rights to the children in open court after being properly advised of his rights in accordance with Indiana law. Additionally, Father’s testimony does not indicate DCS obtained Father’s consent through actual or threatened violence.

Conclusion

The trial court’s order accepting Father’s consent and terminating his parental rights is affirmed.

Affirmed.

RILEY, J., and BROWN, J., concur.