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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE TERMINATION OF THE)
PARENT-CHILD RELATIONSHIP OF)
T.M., D.B., M.M. and F.M., Minor Children,)
)
W. M., Father,)
)
Appellants-Respondents,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
Appellee-Petitioner.)

No. 02A03-0812-JV-599

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Charles F. Pratt, Judge
The Honorable Lori K. Morgan, Magistrate
Cause Nos. 02D07-0710-JT-201, 202, 203, 204

April 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

W. M. ("Father") argues the evidence was insufficient to support the termination of his parental rights. We affirm.

FACTS AND PROCEDURAL HISTORY

Father's marriage to N. B. ("Mother") produced four children: T.M., M.M., D.B., and F.M. In the spring of 2006, Mother and the children moved from Mississippi to Ft. Wayne, Indiana, without telling Father where she was going. Mother and the children lived in the back part of a drug-dealer's house. When the drug-dealer was arrested, Mother and the children were evicted and became homeless. DCS became involved with the family in June of 2006. The children were determined to be in need of services in August of 2006. Because Mother had not identified Father to DCS, and because Father did not know where Mother had taken the children, Father did not learn of the proceedings until October 2006.

On January 16, 2007, the trial court entered a dispositional order that required Father to:

1. Refrain from all criminal activity;
2. Maintain clean, safe, and appropriate housing at all times;
3. Notify the Department of Child Services within forty-eight (48) hours of all changes in household composition, housing and employment;
4. Cooperate with all caseworkers by attending all case conferences as directed; maintaining contact, and accepting announced and unannounced home visits;
5. Immediately provide the caseworkers with accurate information regarding paternity, finances, insurance, and family history; and
6. Immediately provide the caseworkers with signed and current consents of release and exchange of information.
7. Provide your children with clean, appropriate clothing at all times.

In addition, you shall successfully complete and benefit from the following programs, services and/or other requirements in a timely manner:

8. Obtain suitable employment and maintain said employment.
9. Obtain a psychological evaluation (to include P.A.I.) at a licensed agency as directed and follow the recommendations.
10. Enroll in parenting classes at an appropriate agency as directed, attend all sessions, and successfully complete the program.
11. Commence proceedings to establish paternity for [D.] by meeting with the IV-D Prosecutor and fully cooperate with the IV-D staff to establish paternity.
12. Cooperate with an approved agency should the children be [placed in] your care. Establish and consistently enforce appropriate rules of your home.
13. Insure the children receive proper medical care if placed in his custody.

(Appellant's App. at 252.)

DCS filed a petition to terminate Father's rights on October 11, 2007. After a hearing held over three days, the court terminated Father's rights.

DISCUSSION AND DECISION

We are highly deferential when reviewing termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We do not reweigh evidence or judge the credibility of witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied sub nom. Peterson v. Marion County OFC*, 822 N.E.2d 970 (Ind. 2004). Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.* In deference to the juvenile 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 sub nom. Swope v. Noble County Office of Family & Children 735 N.E.2d 226 (Ind. 2000), *cert. denied* 534 U.S. 1161 (2002).

A petition to terminate a parent-child relationship must allege:

- (A) [o]ne (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.

Ind. Code § 31-35-2-4(b)(2). The State must establish each of these allegations by clear and convincing evidence. *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992). Father challenges the trial court's conclusions on parts (B) and (C) of that statute.

1. Conditions

When determining whether there is a reasonable probability the conditions justifying a child's removal and continued placement outside the home will not be remedied, the juvenile court must judge a parent's fitness to care for his or her children 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 sub nom. Timm v. Office of Family & Children*, 753 N.E.2d 12 (Ind. 2001). 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 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 sub nom. Faver v. Marion County Office of Family & Children* 774 N.E.2d 515 (Ind. 2002). A department of child services is not obliged to rule out all possibilities of change; it need establish only a reasonable probability a parent’s behavior will not change. *See In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

The trial court found:

Evidence presented at the hearing on the Petition for Termination of the Parent/Child Relationship revealed that at the time of the initiation of the CHINS proceedings in the underlying CHINS cause, the father had not visited the child [sic] nor paid support or provided for the basic necessities of a suitable home for raising of said child [sic].

The Court finds that the father’s lack of involvement in the child’s [sic] life and failure to provide materially or financially for the children’s [sic] well being which condition existed at the time of the initiation of the CHINS proceedings in the underlying CHINS cause continued to exist at the time of the Termination Hearing.

Accordingly, the Court finds that the Department of Child Services has proven by clear and convincing evidence that the allegation [sic] of the Petition are true in that there is a reasonable probability that the conditions that resulted in the children’s [sic] removal and the reasons for placement outside the father’s home will not be remedied, and/or that continuation of the parent/child relationship poses a threat to the well being of the children.

(Appellant's App. at 267.)

Between October of 2006, when Father found out where the children were, and the final hearing date in July of 2008, Father visited the children only once, when he was in Indiana for a hearing. He sent letters to them only once in those twenty-one months.¹ These facts support the finding Father was not involved in the children's lives.

Neither did the court err in finding Father still could not provide for the children. In the twenty-one months of proceedings, Father sent gift cards to the children once, with \$10 or \$20 allotted for each child.² In February of 2008, Father reported he was unemployed. In March of 2008, Father claimed he was employed and had acquired a home that was appropriate for the children. However further testimony called that into question. Father admitted he did not have beds for all of his children. Father testified his girlfriend was living with him, but her children were not because she was involved with Mississippi's version of the DCS. If his girlfriend's children were allowed to visit, they would need bedding for two additional children.

The evidence supports the finding there was a reasonable probability the circumstances causing continued placement outside the Father's home would not be remedied.

2. Best Interest

In determining what is in the best interest of the child, the trial court must look beyond the factors identified by the Department of Child Services to the totality of the

¹ Father also forwarded letters from other family members to the children on one occasion.

² Father was not ordered to pay child support during the proceedings.

evidence. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the court must subordinate the interests of the parent to those of the children. *Id.* The recommendations of a caseworker and guardian ad litem (“GAL”) that parental rights be terminated support a finding that termination is in the child’s best interest. *Id.*

The trial court found:

Evidence presented at the hearing on the Petition for Termination of the Parent/Child Relationship revealed that at the time of the initiation of the CHINS proceedings in the underlying CHINS cause, the father had not visited the children nor paid support or provided for the basic necessities of a suitable home for the raising of the children.

The Court finds that the Department of Child Services has proven that the mother and father’s lack of involvement in the childrens’[sic] lives and failure to provide materially or financially for the childrens’[sic] well being which existed at the time of the initiation of the CHINS proceedings in the underlying CHINS cause continued to exist at the time of the Termination Hearing.

Accordingly, the Court finds that the Department of Child Services has proven by clear and convincing evidence that termination of the parent-child relationship is in the best interests of the children in that . . . the father . . . [has] shown over the course of the related CHIINS cause, and in the fact of a treatment plan or plans, and numerous specific services made available and/or provided, that said parent[] continue[s] to be unable, refuse or neglect to provide for the basic necessities of a suitable home for the raising of the children.

(Appellee’s App. at 267-68.)

The GAL testified why she believed it was in the children’s best interest to terminate Father’s rights:

There's has [sic] been unstable housing, being that I believe there has been testimony and [evidence] in our records that indicates that there has been at least four different addresses that you have lived at in this approximately 21 month period. That you have also had a lack of contact with your children, uh, you're, well, you and [Mother] were involved in, involved with Department of Child Services there in Mississippi and some of the same issues are still present that was [sic] present back in 2002, with your prior involvement with Mississippi's Department of Child Services. So it doesn't appear that a whole lot has changed or improved.

(Tr. at 159.) She noted his three-bedroom house would be inadequate for Father, his girlfriend, her children, and his four children. She questioned whether he had "true concern" for his children because he testified he was willing to move to Ft. Wayne to be reunited with the children, but he had not done so during the proceedings. (*Id.* at 160.) That testimony supports the finding termination was in the children's best interest.

Because the evidence supports the two challenged findings, we affirm the termination of Father's parental rights.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.