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**IN THE
COURT OF APPEALS OF INDIANA**

J.D.V.,)
)
Appellant-Respondent,)
)
vs.) No. 71A04-1010-JT-630
)
INDIANA DEPARTMENT OF CHILD SERVICES,)
)
Appellee-Petitioner.)

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
The Honorable Barbara J. Johnston, Magistrate
Cause Nos. 71J01-0910-JT-189 and 71J01-0910-JT-190

April 12, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

J.D.V. (“Father”) appeals the involuntary termination of his parental rights to his children, claiming there is insufficient evidence to support the trial court’s termination order. Concluding the Indiana Department of Child Services, St. Joseph County (“SJCDCS”) presented clear and convincing evidence to support the trial court’s judgment terminating Father’s parental rights, we affirm.

FACTS AND PROCEDURAL HISTORY

Father is the biological father of J.V., born in December 1999, and E.C., born in March 2003. The facts most favorable to the trial court’s judgment reveal that in November 2008, SJCDCS took both children into emergency protective custody after being notified that the children’s mother, S.C. (“Mother”), had been arrested for a probation violation after being evicted from the YWCA for consuming alcohol and engaging in “huffing practices.” State’s Ex. 1 (Verified CHINS petition) at 1. At the time of the children’s removal from Mother’s care, Father was incarcerated on a burglary conviction and, thus, unavailable to care for the children.¹

In December 2008, J.V. and E.C. were adjudicated children in need of services (“CHINS”). Following a hearing in February 2009, the trial court issued a dispositional order formally removing J.V. and E.C. from Father’s custody and making the children wards of SJCDCS. The trial court’s dispositional order further directed Father to successfully complete a variety of tasks and services designed to facilitate his reunification with the children, including: (1) remain drug free and submit to random

¹ Mother’s parental rights to J.V. and E.C. were terminated in July 2010. Mother does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Father’s appeal.

drug screen requests; (2) participate in both individual and family counseling; (3) obtain and maintain a stable source of income; (4) visit the children on a regular basis; and (5) maintain consistent contact with SJCDCS and notify the Department within 48 hours of any change of address or phone number.

Father remained incarcerated until November 23, 2009. Approximately one month prior to his release from incarceration, SJCDCS family case manager Melissa Mensah (“Mensah”) sent Father a letter advising him of the actions he would need to take in order to be reunited with his children. Mensah also included copies of the trial court’s previous CHINS orders so that Father “knew what to expect when he got out of jail.” Transcript p. 20. In addition, on the day Father was released from incarceration, there was a permanency hearing during which SJCDCS changed its permanency plan from reunification with Mother, to termination of Mother’s parental rights and reunification with Father.

On December 9, 2009, Mensah met with Father in person to review the trial court’s orders. Mensah also expressed her concerns that Father still had not participated in any of SJCDCS’s referrals for services made approximately one week earlier, including referrals for substance abuse treatment and monitoring, individual and family counseling, and supervised visits with the children. On December 12, 2009, Father was arrested for burglary after he became intoxicated and entered a home without the homeowner’s permission. The charges were later reduced to residential entry and eventually dropped. Father’s parole for the 2006 burglary conviction, however, was

revoked because he had violated the terms of his parole by consuming alcohol. Father was re-incarcerated in January 2010.

SJCDCS filed petitions under separate cause numbers seeking the involuntary termination of Father's parental rights to each child in March 2010. A consolidated evidentiary hearing on the termination petitions was held in September 2010. During the termination hearing, SJCDCS presented evidence that Father was currently incarcerated, and that he had failed to successfully complete every one of the trial court's dispositional goals. In addition, Father had also neglected to participate in any reunification services, apart from visitation during his brief release from incarceration between December 2009 and January 2010. Evidence further revealed Father has a lengthy and substantial history of criminal activity, including twelve felony and misdemeanor convictions during the preceding ten years, that Father has been incarcerated for the majority of the children's lives, and that the children were happy and thriving in the care of their maternal grandparents.

Father's own testimony during the termination hearing confirmed that: (1) Father had "been in trouble with the law since [he] was a teenager;" (2) he pleaded guilty to various criminal acts over the years including burglary, theft, battery, resisting law enforcement, possession of a legend drug, and driving while suspended; (3) he had been informed of "what [he] had to do to be reunited with [his] children," but nevertheless failed to participate in any reunification services, other than supervised visits with the children while on parole; and (4) the services he completed while incarcerated, including parenting classes and a substance abuse program, were completed prior to the children's

detention in November 2008. Id. at 72, 79, 81. Finally, Father acknowledged that J.V. and E.C. were living with their maternal grandparents and older sibling in a “safe and loving environment,” and that the grandparents “are good people.” Id. at 89-90.

At the conclusion of the termination hearing, the trial court took the matter under advisement. On September 30, 2010, the court entered its judgment terminating Father’s parental rights to J.V. and E.C. Father now appeals.

DISCUSSION AND DECISION

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 a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. 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 that are most favorable to the judgment. Id. Moreover, in deference to the trial court’s unique position to assess the evidence, we will set aside the court’s 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. A judgment is clearly erroneous only if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment thereon. Bester, 839 N.E.2d at 147. Thus, if the evidence and inferences support the trial court’s decision, we must affirm. L.S., 717 N.E.2d at 208.

A parent’s interest in the care, custody, and control of his or her children is arguably one of the oldest of our fundamental liberty interests. Bester, 839 N.E.2d at

147. Hence, “[t]he 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.

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

- (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.
- * * *
- (C) that termination is in the best interests of the child;
- (D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2)(B) - (D) (2010). Moreover, “[t]he 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 (2008)).

Father acknowledges in his Appellant’s Brief that he “cannot say that [the trial court’s] findings are not supported by the record[,] which must be shown to effectively claim an erroneous decision.” Appellant’s Br. p. 8. He further admits the trial court

“correctly looked at [his] present ability to raise his children” in arriving at its decision to terminate the parent-child relationships. Id. Father does challenge the court’s weighing and evaluation of the evidence, however, claiming the trial court “could have” denied SJCDCS’s petition for involuntary termination of parental rights and allowed reunification between Father and the children to occur. Id. at 9.

“Where a party challenges only the judgment as contrary to law and does not challenge the specific findings as unsupported by the evidence,” this Court “does not look to the evidence, but only to the findings to determine whether they support the judgment.” Smith v. Miller Builders, Inc., 741 N.E.2d 731, 734 (Ind. Ct. App. 2000). In addition, our Supreme Court has recently reiterated that “on appeal, it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by the appellant [here, Father] before there is a basis for reversal.” Best v. Best, 941 N.E.2d 499, 503 (Ind. 2011). Moreover, Indiana Code Section 31-35-2-8(a) states that if the trial court finds that the allegations of the termination petition are true, the court shall terminate the parent-child relationship. See id.

Here, in its judgment terminating Father’s parental rights to J.V. and E.C., the trial court made multiple findings and conclusions regarding Father’s lengthy history of criminal activity and repeated incarcerations, as well as his current inability to care for the children. In so doing, the court noted Father was unavailable to care for J.V. and E.C. when the children were initially removed from Mother’s care in 2008, and that he was again incarcerated and unavailable to care for the children at the time of the termination

hearing in 2010. The court also found Father’s “time in prison and/or jails in the State of Indiana surpasses any amount of time he spent with the children,” and that “[al]though [F]ather was referred for services while out of jail, he failed to even begin them due to being rearrested.” Amended Order to Terminate Parent-Child Relationship at 2. As for Father’s ability to properly parent the children, the trial court found Father’s “complete lack of understanding the trauma his children have suffered is best illustrated in his statement during the termination hearing: ‘As soon as I have a job, everything else will fall into place.’” Id. The trial court also observed that J.V. and E.C. are “doing well both in school and in the home of their maternal grandparents.” Id.

Based on these and other findings, the trial court ordered that the parent-child relationships between Father and the children be terminated, concluding as follows:

Father has remained in prison all but nineteen (19) days. The court looks to his current situation—a person who is locked up—and considers also, as is allowed, his past. Father has been in and out of prison during these children’s lives. The court has to recognize that this pattern is likely to continue. Even if Father was completely rehabilitated and able to find employment, time has passed, the children have grown, developed a closeness and bond with grandparents, and established themselves in a community. The court does not believe Father can remedy the conditions that brought his children into the system effectively enough to parent them.

* * *

[T]ermination is in the best interests of the children[:]

The court must weigh what is best for the children. These children have been unable to rely on either parent. Children require stability, consistency, and above all, parent(s) they can trust and know are there for them. The maternal grandparents have proven their ability to care for [E.C.] and [J.V.]. Termination of [F]ather’s rights is necessary for permanency.

Id. at 3. Father has failed to assert and/or establish that any of the trial court’s specific findings are unsupported by the evidence. To the contrary, Father acknowledges that the court’s findings are supported by the evidence, including his own testimony during the termination hearing. Thus, Father’s arguments on appeal amount to an invitation to reweigh the evidence, and this we may not do. D.D., 804 N.E.2d at 265.

This court will reverse a trial court’s termination order only upon a showing of “clear error” – that which leaves us with a definite and firm conviction that a mistake has been made. A.J. v. Marion County Office of Family & Children, 881 N.E.2d 706, 716 (Ind. Ct. App. 2008), trans. denied. Here, the trial court made ample findings to support its ultimate decision to terminate Father’s parental rights to J.V. and E.C., and Father has failed to establish that the court’s findings are not supported by the evidence. We therefore find no error. See e.g., Kirk v. Kirk, 770 N.E.2d 304, 307 (Ind. 2002) (explaining that, on appeal, it is not enough to show the evidence might support some other conclusion, rather, the evidence must positively require the conclusion contended for by the appellant before there is a basis for reversal).

Affirmed.

ROBB, C.J., and CRONE, J., concur.