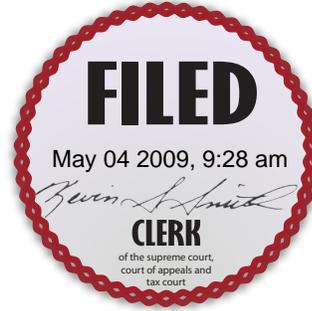


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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF)
D.B., B.B., J.B., and A.B., Minor Children,)

Jo.B., Father,)
Appellant-Respondent,)

vs.)

No. 52A05-0901-JV-27

MIAMI COUNTY DEPARTMENT OF)
CHILD SERVICES,)
Appellee-Petitioner.)

APPEAL FROM THE MIAMI SUPERIOR COURT
The Honorable William C. Menges, Jr., Special Judge
Cause Nos. 52C01-0708-JT-7, 52C01-0708-JT-8,
52C01-0708-JT-9, and 52C01-0708-JT-10

May 4, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Jody B. (“Father”) appeals the involuntary termination of his parental rights to his children, D.B., B.B., J.B., and A.B. (collectively “the children”), claiming there is insufficient evidence to support the trial court’s judgment. Concluding that the trial court’s judgment terminating Father’s parental rights is supported by clear and convincing evidence, we affirm.

Facts and Procedural History

Father is the biological father of D.B., born on October 11, 2000, B.B., born on March 11, 2002, J.B., born on January 4, 2004, and A.B., born on June 22, 2005.¹ The facts most favorable to the trial court’s judgment reveal that on or about October 9, 2005, at approximately 3:05 a.m., the children were taken into emergency protective custody by the Miami County Department of Child Services (“MCDCS”) after the MCDCS had been contacted by the local Sherriff’s Department. The Sherriff’s Department contacted the MCDCS after it investigated a report that the children were at home with Mother, who was intoxicated and unable to care for them. Upon arriving at the family residence, Deputy Gary Glassburn knocked on the door and yelled several times in an attempt to contact anyone who might be inside the home. Deputy Glassburn also had Central Dispatch telephone the residence in an attempt to make contact with anyone inside the residence. After approximately thirty minutes, Mother’s neighbor, Mathew Cain, approached Deputy Glassburn and told the officer that Mother had been drinking alcoholic beverages earlier the same evening. Based on all these circumstances, Deputy

¹ The children’s biological mother’s, Jessie B. (“Mother”), parental rights were also involuntarily terminated by the trial court. However, Mother does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Father’s appeal.

Glassburn entered the residence through a door that had been left ajar. Upon entering the home, Deputy Glassburn observed an infant (later determined to be A.B.) in a car seat on the edge of the sofa. The other three children were found sleeping with Mother on a mattress in a back bedroom.

After several minutes, Deputy Glassburn was eventually able to awaken Mother. Mother, however, was barely able to walk and at one point in time stumbled directly into a wall. In addition, while trying to change one of the children's dirty diapers, Mother shoved the child backwards in a very hard manner. A breathalyzer test revealed that Mother's blood alcohol content was .17%.

The children were taken into protective custody and Mother was later charged and convicted of four counts of neglect of a dependent. The MCDCS was unable to place the children with Father because he was living in his car at the time. Although Father and Mother were married, Father was no longer allowed to live in the family home, or to have contact with Mother, due to a protective order issued against him for committing battery against Mother. Consequently, the children were placed in foster care.

On October 11, 2005, a detention hearing was held. Following the hearing, the trial court determined there was probable cause to believe that the children were in need of services ("CHINS") and ordered the children to remain in foster care. The MCDCS filed separate petitions alleging the children were CHINS on October 25, 2005, and an initial hearing on the CHINS petitions was held the same day. Father initially denied the allegations of the CHINS petitions; however, during a status hearing held on November

15, 2005, Father informed the court that he wished to enter an admission to the pending CHINS allegations.

A dispositional hearing was held on December 13, 2005, and in its Dispositional Order issued the following day, the trial court ordered Father to participate in a variety of services in order to achieve reunification with the children. Specifically, Father was ordered to, among other things, (1) complete anger management classes, (2) participate in home-based family preservation services provided by Cheryl Oden of Family Center Services and follow all resulting recommendations of the home-based provider, including parenting instruction and relationship counseling (3) successfully complete a substance abuse Intensive Outpatient Program (“IOP”) through Four County Counseling Center and follow all resulting recommendations, (4) remain drug and alcohol-free, (5) participate in every visitation opportunity as recommended by the MCDCS, and (6) maintain contact with the MCDCS and inform MCDCS of any residence, employment, or contact information change. The dispositional order also indicated that it appeared that “inappropriate parenting skills” had permitted at least two of the children “to be exposed to adult sexual behavior that the siblings are now reenacting” in their foster home. Ex. 8, p. 3. Both parents were advised that “fail[ure] to make substantial progress in altering their otherwise inappropriate parenting skills” could result in the trial court authorizing the MCDCS to seek involuntary termination of their respective parental rights. *Id.* at 4. Meanwhile, on November 13, 2005, Father was arrested for operating a vehicle while intoxicated. Father pled guilty to this charge on January 9, 2006.

In early 2006, Father and Mother were actively participating in services, such as parenting classes, and were residing together while attempting to reconcile their relationship problems. Due to their cooperation and compliance with court-ordered services, the children were returned to the family home, and to the care of Father and Mother, following a review hearing held on March 28, 2006. Soon thereafter, however, both parents' participation in services began to deteriorate. Specifically, Father was not consistent in following the budget Oden had helped him establish, and he refused to complete marriage counseling "homework." Tr. p. 94. Father also failed to complete the Nurturing Program for Parents and Children, attending only two of the fifteen classes.

In May 2005, Father was arrested on new charges of operating a vehicle while intoxicated. On August 24, 2006, Father pleaded guilty to the new charges and was sentenced to 180 days incarceration in the Cass County Jail and to 185 days of probation. Upon his release, Father did not return to live in the family residence and discontinued participating in marital counseling. Father did, however, reinitiate visitation with the children.

Because of a continuing deterioration of the conditions in the family home following Father's second arrest for operating a vehicle while intoxicated, the children were returned to foster care on October 18, 2006. After his release from jail, Father was referred to the Nurturing Program for Parents and Children a second time. Father eventually completed the program in 2007. Father also participated in supervised visitation with the children, but his participation in weekly visits had become sporadic. For example, in April 2007, Father visited with the children three times. Father did not

show for any of the scheduled visits with the children in May 2007, and he attended only three visits in June 2007. In July 2007, Father again did not visit with the children, even though Oden had informed him that, if he provided Oden with his work schedule, he would be allowed to reschedule one of the missed July visits because she had accidentally forgotten to schedule a supervisor to oversee one of the visits that was scheduled while Oden was on vacation. Father failed to contact Oden to schedule the make-up visit and did not have any further contact with the MCDCS until August 20, 2007.

On August 15, 2007, the trial court entered an order authorizing the MCDCS to file petitions for the involuntary termination of Father's parental rights to the children. On September 19, 2007, the trial court granted a joint motion filed by the MCDCS and the Miami County CASA (Court-Appointed Special Advocate) Program requesting that Father's visitation with the children be suspended because said visitation was no longer in the children's best interests.

A fact-finding hearing on the involuntary termination petition was eventually held on July 7, 2008. At the conclusion of the hearing, the trial court took the matter under advisement. On October 22, 2008, the trial court entered a judgment terminating Father's parental rights to D.B., B.B., J.B., and A.B. Father now appeals.

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). Thus, when reviewing the 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.

In the present case, the trial court's judgment terminating Father's parental rights to the children contained specific findings and conclusions. Where a trial court enters specific findings of fact, we must first determine whether the evidence supports the findings, and second we determine whether the findings support the judgment. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). We will not set aside the trial court's judgment terminating parental rights unless it is clearly erroneous. Rowlett v. Vanderburgh County Office of Family & Children, 841 N.E.2d 615, 620 (Ind. Ct. App. 2006), trans. denied. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. D.D., 804 N.E.2d at 265. 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. Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996).

Discussion and Decision

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. Bester, 839 N.E.2d at 147. 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. Id. However, these parental interests are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. In re M.B.,

666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. Parental rights may therefore be terminated when the parents are unable or unwilling to meet their parental responsibilities. K.S., 750 N.E.2d at 836.

In order to terminate a parent-child relationship, the State is required to allege, among other things, that:

- (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;

Ind. Code § 31-35-2-4(b)(2)(B) (1998 & Supp. 2007); see also Ind. Code § 31-35-2-8 (1998).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); see also Ind. Code § 31-37-14-2 (1998).

Father asserts on appeal that the trial court's judgment is not supported by sufficient evidence. Specifically, Father argues the MDCDCS failed to prove, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in the children's removal will not be remedied and that continuation of the parent-child relationship poses a threat to the children's well-being.

Initially, we note that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, a trial court need only find one of the two requirements of subsection (B) have been satisfied when ordering the involuntary termination of parental rights. See

² Additional conditions not at issue in this case are also required to be alleged and proved before the involuntary termination of parental rights may occur. See Ind. Code § 31-35-2-4(b)(2)(B).

In re L.S., 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), trans. denied. Here, the trial court found that the MCDCS established the first subsection of Indiana Code section 31-35-2-4(b)(2)(B) by clear and convincing evidence.

When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will or will not be remedied, the trial 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. 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. Pursuant to this rule, 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. In addition, a county Department of Child Service (here, the MCDCS) is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In terminating Father's parental rights to D.B., B.B., J.B., and A.B., the trial court specifically found that Father had failed to complete a number of court-ordered dispositional goals and services, including maintaining stable employment and following the established budget. In addition, the trial court took note of Father's criminal history, history of alcohol abuse, and made the following pertinent findings and conclusions:

18. Cheryl Oden, of Family Centered Services[,] provided the parents with the following services:
- A. Assisted them with establishing budgets to address their financial problems, however, [Father] was unable to maintain stable employment . . . ;
 - B. Assisted them in attempting to resolve their marital conflicts, but they did not follow through with the materials and activities;
 - C. Provided them with parenting instructions, during some periods of time, they were successfully and consistently followed, and during others, they were not[.]
- * * *
- 23.
- * * *
- E. [Father] has done well during supervised visitations, and has made some progress, but has not demonstrated that he [is] able to provide a safe, appropriate[,] and stable living environment for the minor children.
- * * *
27. [Father] attended ten (10) of twelve (12) sessions of the Nurturing Program for Parents and Children, and successfully completed the program.
- * * *
29. On September 19, 2007, the Court granted a motion by DCS and CASA to suspend visitation in the underlying CHINS cases. . . .
- A. [Father] has not exercised visitation with the children since June of 2007. . . . Both parents had opportunities to visit during that time, but failed to take advantage of the opportunities.
- * * *
30. [D.B., B.B., and J.B.] have been in therapy with Lynn Baker, and each child has made significant progress in therapy.
31. [D.B., B.B., and J.B.] would regress if they were to have contact with [Father]. . . .
32. If [D.B., B.B. and J.B.] were to have contact with [Father][,] . . . it is likely they would experience emotional and behavioral problems, including, but not limited to, sexualized behaviors, temper rages, and/or depression.
- * * *
34. That because of his tender age, [A.B.] has not required therapy due to the adverse consequences of his contact with his parents, but, in the event such contact were to be re-established[,] it is likely that he would be required to undergo treatment in order to live a relatively normal life.

* * *

39. There is a reasonable probability that the conditions that resulted in the children's removal and the reasons for placement outside the parents' home will not be remedied.

Appellant's App. pp. 84-92. The evidence most favorable to the trial court's judgment supports these findings, which in turn supports the trial court's ultimate decision to terminate Father's parental rights to the children.

The evidence clearly shows that when the children were initially removed from the family home, Father, who was living in his car, could not provide the children with safe and suitable housing. Thus, the MCDCS was prevented from placing the children in Father's care. The reason for the children's continued placement outside of Father's care was his continuing lack of stable housing and employment. At the time of the termination hearing, these conditions had not improved. Moreover, a thorough review of the record reveals that, despite a wealth of services available to him, Father failed to successfully accomplish a majority of the dispositional goals by the time of the termination hearing.

Although Father obtained employment during the CHINS case with various companies including Tyson, Wal-Mart, and Brown's Concrete, he was unable to maintain stable employment, in part due to his becoming incarcerated. When asked during the termination hearing whether Father had proven he was capable of maintaining employment, Oden replied, "Capable of being employed, yes. Maintaining employment, no." Id. at 116. Father's Appellant's Brief is silent, and the record is unclear, as to whether Father was employed at the time of the termination hearing.

Also significant is Father's inability to secure and maintain stable housing. MCDCS case manager Cassie Bault testified that, from the time she was assigned to the case in 2005 until November 2006, Father reported living in five different residences. In April 2007, Father informed Oden that he was renting a home at 283 West 3rd Street. He later admitted, however, that he was actually living with his girlfriend at a different location on West 2nd Street. At the termination hearing, Father's current MCDCS case manager, Amanda Keys, testified that she "[did] not know" where Father was currently living, that his last reported residence was the home he shared with his girlfriend on West 2nd Street, but that the MCDCS had "received reports that he is no longer living at that address." Id. at 156. In addition, Oden acknowledged that she had concerns regarding Father's ability to maintain a household "on his own, independent of assistance from anyone else[.]" Id. at 115.

With regard to visitation, although Father initially exercised regular visitation with the children, by April 2007, Father's participation in weekly visits had become sporadic. On more than one occasion, Father went an entire month without attending scheduled visits. By the time of the termination hearing, Father's visitation privileges had been suspended as detrimental to the emotional health and welfare of the children. This Court has previously stated that the failure to exercise the right to visit one's child demonstrates a "lack of commitment to complete the actions necessary to preserve the parent-child relationship." Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied.

Finally, Bault informed the trial court that, although Father did complete a substance abuse IOP in February 2006, he was later arrested for driving while under the influence in May of the same year. Bault then explained, “[Father] had complied (with court-orders) . . . , but also had been arrested for DUI (sic) and . . . so while I think that there was a compliance, I don’t think that there was a true change in behavior . . . an application of what was being provided to him to real life situation[s]. Tr. pp. 54-55. When asked to describe any barriers that prevented her from recommending placement of the children with Father while she was involved in the case, Bault stated, “[M]ost typically, just [Father] not having a place that was suitable . . . not having a job to be able to support the children[,] and not having transportation to be able to get the children . . . to their appointments . . . because of the children’s special needs.” Id. at 47.

“A pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, supports a finding that there exists no reasonable probability that the conditions will change.” Lang, 861 N.E.2d at 372. Moreover, as previously explained, a trial court must judge a parent’s fitness to care for his or her children *at the time of the termination hearing*, taking into consideration the parent’s *habitual patterns of conduct* to determine the probability of future neglect or deprivation of the children. D.D., 804 N.E.2d at 266. Here, the trial court was responsible for judging Father’s credibility and for weighing his testimony of improved conditions against the evidence demonstrating Father’s habitual pattern of criminal conduct, chronic unemployment, and continuous failure to provide a safe and stable home environment for the children. It is clear from the language of the judgment

that the trial court considered the evidence of the former, but gave more weight to the evidence of the latter, which it was entitled to do. See Bergman v. Knox County Office of Family & Children, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding that trial court was permitted to and in fact gave more weight to abundant evidence of mother's pattern of conduct in neglecting her children during several years prior to termination hearing than to mother's testimony that she had changed her life to better accommodate children's needs). 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; see also In re L.V.N., 799 N.E.2d 63, 68-71 (Ind. Ct. App. 2003) (concluding that mother's argument that conditions had changed and that she was now drug-free constituted an impermissible invitation to reweigh the evidence).

For all these reasons, we conclude the MCDCS presented clear and convincing evidence that there is a reasonable probability the conditions resulting in the children's removal and continued placement outside of Father's care will not be remedied.

Conclusion

A thorough review of the record leaves us convinced that the trial court's judgment terminating Father's parental rights to D.B., B.B., J.B., and A.B. is supported by clear and convincing evidence. Father has failed to make any significant improvement in his ability to care for his children despite having received approximately three years of extensive services designed to facilitate reunification. It is unfair to ask the children to continue to wait until Father is willing and able to obtain, and benefit from, the help that he needs. See In re Campbell, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (stating that

court was unwilling to put children “on a shelf” until their mother was capable of caring for them).

We 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. We find no such error here. Accordingly, the trial court’s judgment terminating Father’s parental rights to D.B., B.B., J.B., and A.B. is hereby affirmed.

Affirmed.

RILEY, J., and KIRSCH, J., concur.