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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE TERMINATION OF THE)
PARENT-CHILD RELATIONSHIP OF K.S.T.,)
K.M.P.T. AND K.K.T., Minor Children,)

R.T., Father,)
Appellant-Respondent,)

vs.)

No. 48A05-0810-JV-636

MADISON COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner.)

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Jack L. Brinkman, Judge
Cause Nos. 48D02-0802-JT-74, 48D02-0802-JT-75, 48D02-0802-JT-76

May 14, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

R.T. (“Father”) appeals the termination of his parental rights. He asserts the evidence does not support the judgment and he should have been given additional time to rehabilitate himself. As the evidence supports the court’s finding continuation of the parent-child relationship posed a threat to the well-being of the children, we affirm.

FACTS AND PROCEDURAL HISTORY

Father and K.J.C. (“Mother”) had a relationship that produced three daughters: K.S.T. was born March 28, 1999; K.M.P.T. was born March 31, 2000; and K.K.T. was born June 12, 2004. In December of 2005, the Madison County Department of Child Services (“DCS”) received a report that the girls were living in unsafe and unsanitary conditions. DCS substantiated that allegation and filed a CHINS petition. Father admitted the allegations on December 29, 2005.

After a hearing on February 2, 2006, the children were declared CHINS. The court kept the children in the home with Father and Mother. The court ordered Father to maintain employment, maintain stable housing, cooperate with home-based services, complete anger management classes, and obtain a substance abuse evaluation and follow any treatment recommendations. Father failed to accomplish most of those requirements.

On November 26, 2006, Father drove his car while intoxicated with the children in the car. He was arrested, and the children were taken into custody. In March of 2007, the girls were placed with a paternal uncle and aunt. Father had supervised visitation.

Due to his arrest, Father was receiving drug and alcohol intervention through the drug court. During his intensive outpatient treatment program, Father tested positive for

cocaine. A few weeks after Father completed his intensive outpatient program, and while Father was engaged in the court's relapse prevention program, a drug court employee caught Father drinking alcohol in a restaurant. Thus, in November of 2007, Father's participation in the drug court program was terminated and he was sent to jail to serve his sentence.

On February 22, 2008, DCS petitioned to terminate Father's parental rights. Father was released from jail on August 25, 2008. The court held the final hearing on the termination petition on September 2, 2008. The court's written order terminated parental rights without any specific findings:

2. There is a reasonable probability that the conditions that resulted in the children's removal from their parents will not be remedied.
3. There is a reasonable probability that continuation of the parent-child relationship poses a threat to the well-being of the children.

(App. at 22.) However, at the end of the termination hearing, the court announced findings on the record, including this one:

Regarding the respondent Father uh, it's more difficult um, [Father] is certainly a good person but the evidence shown [sic] that he's not been a good parent and the fundamental reason for that is this scourge of alcohol and, and, and, substance abuse and it is certainly a tough nut to crack. Now he's put him self [sic] in a position now where he has completed some programs. He does uh, has served some incarceration[.] [H]e's on a period of parole and is trying to put his life back together. Um, the issue then becomes should an additional period of time be granted to see if that works out? Uh, and if so how does that effect the children and this kinda brings us back to Ms. Moorman's testimony. Cause her testimony almost went well, I think did go to even the second prong. To where in, in her professional opinion even if the court were to consider to give [Father] another opportunity she felt the continuation of the parental [sic] child relationship actually posed a threat to the children's well being. Uh, that's

a prong we don't get to very often in these types of circumstances and again I think that just demonstrates uh, what the children have lived through and again I don't think [Father] is a bad person. We can't undo the past but it seems [sic] clear that the ramifications of what the children lived through and this is manifested through the two older children. And I think it's logical to uh, uh, to um, believe um, that there is an effect on the youngest child as well um. But, I in the court[']s opinion it's just to[o] late to try and put this back together again. Uh, so I believe the Department has meet [sic] it's [sic] burden regarding the Father as well.

(Tr. at 111-12.)

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 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 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 findings under part (B) of that statute. Because Ind. Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, the juvenile court needed to find by clear and convincing evidence only one of the two alternative requirements of part (B). *See L.S.*, 717 N.E.2d at 209. Where, as here, the juvenile court found both, we may affirm if the evidence supports either. *See In re B.J.*, 879 N.E.2d 7, 22 n.4 (Ind. Ct. App. 2008), *trans. denied sub nom. Watkins/Johnson v. Marion County DCS*, 891 N.E.2d 42 (Ind. 2008). Because the trial court's oral findings support its ultimate finding there is a reasonable probability that continuation of the parent-child relationship was a threat to the girls' well-being, we review that finding first.

Father's brother, who is the girls' foster parent, testified the oldest daughter gets upset and anxious when they go to Anderson, because she does not want to run into one of her parents. (Tr. at 83.) Jan Moorman, who was a therapist for the older two girls, also testified the girls are "very scared of seeing either one of their parents" and "they don't want to see either one of them." (*Id.* at 73.) The report of the court-appointed

special advocate indicates the older two girls are “especially afraid” of Father because he “has repeatedly been violent, intoxicated, and high in front of them.” (App. at 20.) Moorman testified continuation of the parent-child relationship would be detrimental to them:

Actually it’s one of the most unusual cases I’ve seen in a long time because these girls both of them, really seem [sic] to have no caring no longing at this point for their parents that just lets me know as a clinician that their trust has been so violated. They don’t want to look at them usually, usually even you know with older children um, there is come caring some bond, some hope that the parent will do the right thing and stand up for the children. I don’t have that from [the older two girls] either one. They are terrified of reunification.

(Tr. at 75.) Moorman believed returning the girls to the custody and care of their parents would “absolutely” have a negative impact on the girls, (*id.* at 72), as evidenced by the oldest girl’s statement she would take her sisters and run away if they were returned to their parents. The record supports the finding continuation of the parent-child relationship threatened the girls’ well-being.

In his reply brief, Father calls into question Moorman’s conclusions:

A full review of Moorman’s testimony (Tr. pp. 69-78) conveys a strong impression that her efforts were principally directed toward developing support for the proposition that it would be detrimental to the girls’ well-being if [Father’s] parental rights were not immediately terminated, and helping integrate them into their prospective adoptive family. There seems to have been little, if any, attempt made to resolve their relationship issues with [Father]

(Appellant’s Reply Br. at 2.)¹

¹ If Father is attempting to challenge the admissibility of Moorman’s testimony, Father waived any such argument because he did not challenge her testimony at trial. See *Augspurger v. Hudson*, 802 N.E.2d

We remind Father that, on appeal, we may not reassess the credibility of witnesses. *See In re D.D.*, 804 N.E.2d at 264. Further, we disagree with Father's characterization of Moorman's testimony. Moorman was not asked whether she had worked with the girls to resolve their issues with Father, and we decline to infer from the absence of such testimony that she had not done so. Moorman testified she strongly believed continuation of the parent-child relationship would be detrimental to the girls. She testified she formed that opinion based on what the girls were telling her about their experiences while living with Father. Nothing about her testimony supports Father's suggestion Moorman spent her time with the girls fishing for evidence to support a pre-determined conclusion prejudicial to Father. If Father had such concerns, he could have addressed them when he cross-examined Moorman.

Finally, Father asserts he should have been given additional time to complete services and work toward reunification with his daughters, because his situation is similar to that in *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615 (Ind. Ct. App. 2006), *trans. denied* 855 N.E.2d 1006 (Ind. 2006). We disagree. While incarcerated, Rowlett maintained a relationship with his children by calling them on the telephone and sending them cards. *Id.* at 622. Rowlett's children sent him pictures, were happy to talk to him, expressed their love for him, and asked when he would come home. *Id.* Father, on the other hand, had not visited with his daughters in the seven months before the final hearing, (Tr. at 26), and the record indicates at least two of his daughters

503, 509 n.4 (Ind. Ct. App. 2004) (admission of evidence waived where argument not raised in trial court).

do not want to have contact with him. Their therapist testified the girls' behavior "would regress" if the termination process were continued to give Father an opportunity to reunify with them. (*Id.* at 75.) Father's situation is distinguishable from *Rowlett*.

Affirmed.

BAKER, C.J., and BARNES, J., concur.