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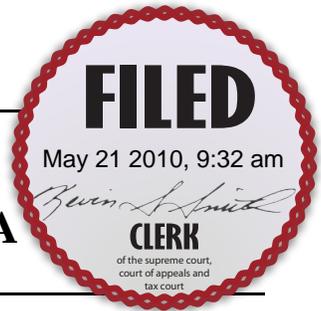
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**IN THE
COURT OF APPEALS OF INDIANA**



In the Matter of the Termination of the)
Parent-Child Relationship of D.N. and S.N.,)
Minor Children, and G.N., Their Father,)
)
G.N.,)
)
Appellant-Respondent,)
)
vs.)
)
STATE OF INDIANA, DEPARTMENT OF)
CHILD SERVICES, OFFICE IN MARION)
COUNTY,)
)
Appellee-Petitioner,)
)
and)
)
CHILD ADVOCATES, INC.)
)
Co-Appellee-Guardian Ad Litem.)

No. 49A04-0910-JV-597

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Larry Bradley, Magistrate
Cause Nos. 49D09-0904-JT-16306 and 49D09-0904-JT-16307

May 21, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

G.N. (“Father”) appeals the involuntary termination of his parental rights to his children, D.N. and S.N. Father challenges the sufficiency of the evidence supporting the juvenile court’s termination orders.

We affirm.

FACTS AND PROCEDURAL HISTORY

Father is the biological father of D.N., born on August 22, 2002, and S.N., born on August 24, 2004.¹ The facts most favorable to the juvenile court’s judgment reveal that in February 2008, the Marion County Department of Child Services (“MCDCS”) took D.N. and S.N. into emergency protective custody after the children’s biological mother, A.N. (“Mother”), who has a history of substance abuse, overdosed on Xanax and was discovered unresponsive in the family home.² Father, who was sole legal custodian of the children at the time due to a prior child in need of services (“CHINS”) case involving

¹ The children’s biological mother voluntarily relinquished her parental rights and does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Father’s appeal.

² At the time Mother was discovered unresponsive, S.N. was visiting with her paternal great-aunt and was not at home.

both Mother and Father, had left the children in Mother's care because he had been arrested and incarcerated on a parole violation and was not expected to be released for approximately three months.

The following day, MCDCS filed a petition alleging the children were CHINS, and an initial hearing was held the same day. Mother admitted to the allegations of the petition, and the children were adjudicated CHINS. The juvenile court proceeded to disposition and thereafter issued an order making the children wards of MCDCS. The juvenile court also directed that the children remain in their current relative foster care placements. Thus, D.N. remained with his maternal great-grandmother, who also had custody of D.N.'s half-brother, and S.N. remained with her paternal great-aunt.

In May 2008, Father appeared in court, with counsel, and tendered an Agreed Entry, which the juvenile court accepted and incorporated as the court's dispositional order pertaining to Father. Pursuant to the Agreed Entry, Father admitted D.N. and S.N. were CHINS and agreed to participate in and successfully complete a variety of services in order to achieve reunification with the children. Specifically, the Agreed Entry directed Father to, among other things: (1) complete a drug and alcohol assessment and follow all recommended treatment plans; (2) submit to random drug screens; (3) participate in a parenting assessment and follow all resulting recommendations; (4) successfully complete home-based counseling; (5) comply with the terms of any probation or parole stemming from his criminal sentence; (6) exercise regular visitation with the children; (7) secure and maintain a legal source of income sufficient to support all household members; (8) reimburse MCDCS for living expense incurred on behalf of

the children; (9) obtain and maintain suitable housing; and (10) maintain bi-weekly contact with MCDCS and provide caseworkers with any changes of address, phone number, employment, and/or changes in household composition within five days. In addition, Father acknowledged in the Agreed Entry (1) that he understood his “failure to timely obey the Court’s . . . orders, including each and every provision of [the] Agreed Entry . . . may lead to the . . . [t]ermination” of his parental rights to D.N. and S.N., and (2) that he would “complete all of these services successfully within six (6) months” of the date the Agreed Entry was accepted by the juvenile court. *Appellant’s App.* at 30-31 (emphasis omitted).

Father initially participated in and completed many of the court-ordered services, including a drug and alcohol assessment and recommended intensive out-patient treatment program, random drug screens, parenting education, and supervised visitation with the children. Father never obtained suitable housing, however, and never secured stable employment, despite the continuous support of home-based counseling services. Father also failed to reimburse MCDCS for any of the expenses it incurred on behalf of the children and repeatedly refused to provide MCDCS with his most current living arrangements. In addition, Father deliberately deceived MCDCS by failing to notify his caseworker that he had been evicted from his friend’s home while continuing to participate in home-based counseling sessions and supervised visitations at the residence as if he were still living there for approximately two months.

MCDCS filed a petition to involuntarily terminate Father’s parental rights to the children in April 2009. A fact-finding hearing on the termination petition was held on

September 2, 2009. On September 8, 2009, the juvenile court issued its judgment terminating Father's parental rights to D.N. and S.N. Father now appeals.

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 a termination of parental rights case, 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 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*.

Here, in terminating Father's parental rights, the juvenile court entered specific findings and conclusions. When a juvenile court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Id.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Quillen v.*

Quillen, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court's decision, we must affirm. *L.S.*, 717 N.E.2d at 208.

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*. 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, 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; [and]
- (C) termination is in the best interests of the child[.]

Ind. Code § 31-35-2-4(b)(2) (2008). 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 challenges the sufficiency of the evidence supporting the juvenile court's findings

as to subsections (b)(2)(B) and (b)(2)(C) of the termination statute cited above. *See* Ind. Code § 31-35-2-4(b)(2). We shall first consider Father’s contention that MCDCS failed to present sufficient evidence to support the juvenile court’s determination that there is a reasonable probability the conditions resulting in the children’s continued placement outside Father’s care will not be remedied.

II. Remedy of Conditions

Father claims on appeal that he “successfully completed all of his services” pursuant to the terms of the Agreed Entry, except that he “failed to secure and maintain a stable source of income adequate to support” his family and failed to “maintain suitable housing.” *Appellant’s Br.* at 12 (internal quotation marks omitted). Father therefore contends his parental rights were impermissibly terminated “merely because he [is] poor.” *Id.*

We pause to note that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, MCDCS was required to establish, by clear and convincing evidence, only one of the two requirements of subsection (b)(2)(B). *See L.S.*, 717 N.E.2d at 209. In its termination order, the juvenile court found both prongs of subsection (b)(2)(B) had been satisfied. Because we find the issue to be dispositive in the present case, however, we need only consider whether sufficient evidence supports the juvenile court’s determination that there is a reasonable probability the conditions justifying D.N.’s and S.N.’s removal or continued placement outside Father’s care will not be remedied.

In making such a determination, a juvenile court must judge a parent’s fitness to care for his or her child 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 juvenile 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*. The juvenile court may also properly consider the services offered to the parent by a county department of child services, and the parent’s response to those services, as evidence of whether conditions will be remedied. *Id.* Finally, we point out that a county department of child services (here, MCDCS) is not required to provide evidence ruling 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 its judgment terminating Father’s parental rights to D.N. and S.N., the juvenile court recognized that Father had completed several court-ordered services including a parenting evaluation, a drug and alcohol assessment, and an intensive outpatient substance abuse treatment program, as well as regularly attended supervised visits with the children. Notwithstanding these accomplishments, however, the juvenile court found that despite nearly one year of home-based counseling services specifically designed to aid Father in obtaining stable housing and adequate employment, Father was never

successful in achieving these significant reunification goals. Specifically, the court found as follows:

8. The goal of appropriate housing was never achieved. [Father] has resided in various places since the beginning of the CHINS case in February 2008, never having a lease of his own. He lived rent[-]free with Dennis Fox for a period of time from the Fall of 2008 until the Spring of 2009 in return for mowing grass, shoveling snow[,] and finishing a basement room. Mr. Fox also provided [Father] with some money, food[,] and work[] boots. After an incident resulting in water damage to Mr. Fox's home, [Father] no longer lived there with the exception of using the home surreptitiously for home[-]based counseling services and visitation.
9. Since living at the Fox residence, [Father] has stayed with various friends without providing [MCDCS] with an adequate address or phone contact.

* * *

11. [Father] has a history of unemployment and currently does "scrapping" with a friend, which entails walking streets and alleys salvaging things to sell. His last stable job with a paycheck lasted two years, and ended approximately five years ago.
12. The major barriers to reunification[,] [namely,] . . . adequate housing and employment[,] w[ere] stressed to [Father] throughout the CHINS case by the family case manager, service providers, and in seven child and family team meetings. Although [Father] maintained he would do what was needed to get his children back, family case manager Cooper felt that [Father] lacked the initiative to follow through in obtaining employment, rendering the efforts of [MCDCS] unsuccessful.
13. There is a reasonable probability that the conditions that resulted in the removal and continued placement of the children outside the home will not be remedied by [F]ather. [Father] has failed to obtain employment [and] to provide housing and necessities for his children. Given his history of lack of gainful employment, and his lack of initiative and effort to obtain employment during the one and one-half year CHINS proceeding when tantamount to reunification, it is not reasonable to find that [Father] will overcome this barrier.

Appellant's App. at 17-18. The evidence most favorable to the juvenile court's judgment supports these findings, which in turn support the court's conclusion that there is a reasonable probability that the conditions resulting in the children's removal from Father's care will not be remedied, in light of Father's "lack of effort and initiative," as well as the court's ultimate decision to terminate Father's parental rights to D.N. and S.N. *Id.* at 19.

Testimony from various caseworkers during the termination hearing makes clear that, since Father's release from incarceration in May 2008, he has failed to complete a number of the juvenile court's dispositional goals despite a wealth of services available to him. By the time of the termination hearing, Father remained unemployed, did not have stable independent housing, had failed to reimburse MCDCS for any of its expenses incurred on behalf of the children's, and continued to refuse to provide caseworkers and service providers with accurate and current housing and contact information. "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 v. Starke County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*.

In recommending termination of Father's parental rights to D.N. and S.N., MCDCS family case manager Lisa Cooper confirmed that Father had failed to provide any financial support for D.N. and S.N. throughout the underlying proceedings and that he continued to be unemployed and without stable housing at the time of the termination

hearing. Cooper also informed the juvenile court that MCDCS had given Father “hundreds” of bus vouchers to assist with Father’s transportation needs, as well as had approved a plan for Father to receive two months’ rent, provided that Father supply MCDCS with proof of sufficient income to pay his future rent obligations. *Transcript* at 91. Father never provided MCDCS with proof of income. In addition, Cooper testified that she and other service providers had repeatedly explained to Father the importance of Father being able to “stand on his own and provide fully for the children.” *Id.* at 86. Cooper further testified, however, that she had made clear Father did not need “a certain type of employment,” and that his source of income could even be public assistance, so long as MCDCS could “verify that [Father] would be able to provide for his children.” *Id.*

When asked what MCDCS’s “major concerns” were regarding returning the children to Father’s care at that time, Cooper answered, “Lack of adequate housing, lack of income, [and] most significant at this time is [Father’s] dishonesty about some critical issues that make us concerned about [his] respect for laws [and] for his responsibilities as a parent and as a provider.” *Id.* at 93. Cooper went on to clarify that in April 2009 MCDCS was preparing to return the children to Father’s care, as he had seemingly obtained stable housing at the Fox residence and was continuing to have weekly supervised visits and home-based counseling sessions there, when she received a telephone call and learned that Father had been evicted from the Fox residence approximately two months earlier. Cooper testified that this new information had “shocked” the “entire child and family team” and had “caused the case to stop at a dead

halt.” *Id.* at 95. Finally, when asked whether she felt Father should be given additional time to complete court-ordered services in this case, Cooper replied, “No I don’t.” *Id.* at 104. Cooper went on to state that the case had been open for “a very long time,” and that she believed MCDCS had “provided all services possible” to Father. *Id.* at 104-05.

Home-based counselor Adrienne Brown, acknowledged that although Father had been successful in working on parenting skills and participating in regular visitation with the children, Father still had not “managed to secure a job.” *Id.* at 69. When asked what she thought Father’s “major barriers to gaining employment” were, Brown made reference to the economy and further stated Father “wasn’t as diligent at seeking employment as I thought he should’ve been for trying to prepare for his kids.” *Id.* at 69-70. Similarly, Guardian ad Litem (“GAL”) Adrienne Reed confirmed Father’s current lack of “safe and appropriate” housing at the time of the termination hearing. *Id.* at 127.

Based on the foregoing, we conclude that the juvenile court’s findings are supported by clear and convincing evidence. As previously explained, a juvenile court must judge a parent’s fitness to care for his or her child 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 child. *D.D.*, 804 N.E.2d at 266. Moreover, “the time for parents to rehabilitate themselves is during the CHINS process, prior to the filing of the termination petition.” *Prince v. Dep’t of Child Servs.*, 861 N.E.2d 1223, 1230 (Ind. Ct. App. 2007). Although we acknowledge Father’s completion of several court-ordered services, at the time of the termination hearing Father remained

unable to demonstrate he was capable of providing D.N. and S.N. with a consistently safe and stable home environment.

It is clear from the language of the judgment itself that the juvenile court considered Father's efforts at self-improvement, but ultimately gave more weight to the evidence of Father's habitual pattern of neglectful conduct and lack of initiative, which the court was permitted to do. *See Bergman v. Knox County Office of Family & Children*, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding 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 before termination hearing than to mother's testimony she had changed her life to better accommodate children's needs). Father's arguments on appeal, emphasizing the services he completed instead of the evidence cited by the juvenile court in its termination order, amount to an invitation to reweigh the evidence, which we may not do. *D.D.*, 804 N.E.2d at 265.

III. Best Interests

We next consider Father's assertion that MCDCS failed to prove that termination of his parental rights is in the children's best interests. Specifically, Father claims the evidence "clearly demonstrates that termination of the parent-child relationship is not in the best interests of the minor children as the children are experiencing adjustment disorder brought on by their love of their biological family and their desire to be reunited" *Appellant's Br.* at 19.

We are mindful that, in determining what is in the best interests of a child, the juvenile court is required to look beyond the factors identified by the Department of

Child Services and look to the totality of the evidence. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the juvenile court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* Moreover, we have previously held that the recommendations of both the case manager and child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

In addition to the findings previously cited, the juvenile court made several additional pertinent findings in determining that termination of Father's parental rights is in D.N.'s and S.N.'s best interests, including the following:

15. [D.N.] has resided with his maternal great-grandmother . . . for the last one and one-half years. [D.N.] is bonded with his half-sibling who also resides at the residence. [D.N.] is a happy child who is improving in his schooling.
16. [S.N.] has been living with her paternal great-aunt . . . since the CHINS matter was filed, and was often with [the great-aunt] before that. [S.N.] is in counseling for anger issues and speech therapy. [S.N.] is also a happy child and has developed friends while placed with [her great-aunt].
17. [Father] still visits his children and the children are bonded with him. The children do have issues resulting from not understanding the separation.
18. Ms. Williams and Ms. Rusie are not willing to just become guardian over the child in each of their care but are wishing to adopt. Both caregivers have known [Father] and do not feel he can support his children. Ms. Williams and Ms. Rusie have expressed to Guardian

ad Litem Reed that they are willing to allow the children to have contact with both parents. The children have contact with each other.

19. Termination of the parent-child relationship is in the best interests of [D.N.] and [S.N.]. Termination, [and] allowing for the opportunity for adoption, would provide the children with a stable and permanent home, outside the Juvenile Court system, where their needs will be met. . . . Adoption by the relative care givers[,] who will allow the children access to their parents[,] is in the children's best interests.

* * *

21. The children's Guardian ad Litem agrees with this plan and feels it is in the best interests of [D.N.] and [S.N.], and would not be fair to them to drag the matter out through the system.

Appellant's App. at 18-19. These findings, too, are supported by the evidence.

In recommending termination of Father's parental rights and adoption of the children by their respective relative foster parents, family case manager Cooper informed the juvenile court that she felt adoption, rather than a guardianship, was the best plan for achieving a "stable and permanent home for the children . . . free from abuse [and] neglect." *Tr.* at 96. Cooper further testified that D.N. is "extremely at home" and "comfortable" in the home of his maternal great-grandmother, as "exhibited by [his] smiling, [his] pride in his bedroom . . . [and his] grade papers from school." *Id.* at 98. Cooper also stated D.N. is "extremely bonded" to his half-brother, who also resides with the great-grandmother, and that there is "always food" and never any "safety concerns" at the relative foster home. *Id.* Regarding S.N., Cooper reported that S.N. was "very affectionate" and bonded with her great-aunt and great-uncle, calls them "grandma and grandpa," and "runs up and hugs them" during Cooper's observation visits. *Id.* at 99.

Although Cooper acknowledged that Father loves both children, when asked whether she believed that termination of Father's parental rights is in both children's best interests despite this fact, Cooper responded, "Yes. I do." *Id.* at 100.

GAL Reed confirmed that both children were doing well and were happy in their relative placements. Reed testified D.N. is "very happy" and "very bonded" with his caregivers and half-brother, and that D.N.'s behaviors at school have "improved greatly." *Id.* at 122. Similarly, Reed reported S.N. is a "happy, bubbly, talkative, spunky little girl" who has a "very affectionate" and "very loving" relationship with her relative foster parents. *Id.* at 122-23. Although Reed testified that the children remained very attached to Father and indicated that some sort of future contact with Father would be very appropriate, she nevertheless informed the court that she felt it would be in the best interests of the children to remain in their current foster placement, either by way of adoption or guardianship. When asked whether she believed the foster parents would continue to allow Father to have contact with the children, Reed answered in the affirmative. Both foster families likewise indicated that they would continue to allow Father to have contact with the children, so long as it remained in the children's best interests. Finally, when asked whether she was present for and understood the in-court discussion regarding adoption and why MCDCS believes adoption is in the children's best interests, Reed answered in the affirmative. When further questioned, "And do you think that those reasons make sense for these children?" Reed replied, "I do, yes." *Id.* at 128.

Based on the totality of the evidence, including Father's lack of initiative in seeking employment, his failure to obtain stable housing, and his current inability to provide the children with basic life necessities, coupled with the testimony from Cooper and Reed recommending termination, we conclude that there is sufficient evidence to support the juvenile court's determination that termination of Father's parental rights is in D.N.'s and S.N.'s best interests. *See, e.g., In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding that testimony of court-appointed advocate and family case manager, coupled with evidence that conditions resulting in continued placement outside home will not be remedied, is sufficient to prove by clear and convincing evidence termination is in child's best interests), *trans. denied*.

Conclusion

It is true that poverty, in and of itself, is not a proper basis for the termination of parental rights. Nevertheless, this court has previously explained that although a parent's low or inconsistent income does not, standing alone, prove unfitness, "if the poverty causes [a parent] to neglect the needs of his [or her] children or [to] expose his [or her] children to danger, then the children's removal is warranted." *In re B.D.J.*, 728 N.E.2d 195, 202 (Ind. Ct. App. 2000). Certainly, poverty can be a crushing burden. Poverty cannot, however, "excuse child neglect or abuse. Nor can it excuse the total lack of an attempt to remedy the situation to meet even the most minimal of standards of acceptable child care." *Id.* (internal quotation omitted). Here, it is clear that the juvenile court did not base its termination decision merely on the fact that Father is poor. Rather, it was Father's lack of initiative and chronic inability to demonstrate that he is willing and able

to provide the children with a safe and stable home environment that formed the basis of the juvenile court's decision. Accordingly, we find no error.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.