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FILED
Jun 02 2010, 9:40 am
CLERK
of the supreme court, court of appeals and tax court

IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF C.S., A CHILD ALLEGED TO BE IN NEED OF SERVICES	)	
C.A.J., Parent,	)	
Appellant-Respondent,	)	
vs.	)	No. 46A03-0910-JV-465
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE LAPORTE CIRCUIT COURT
The Honorable Thomas J. Alevizos, Judge
The Honorable Nancy L. Gettinger, Magistrate
Cause No. 46C01-0804-JC-41

June 2, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, C.A.J., appeals the trial court's denial of his petition to modify the dispositional decree placing his biological son, C.S., in foster care, and the permanency plan approving the goal of termination of parental rights.

We affirm.

ISSUES

C.A.J. presents two issues for our review, which we restate as follows:

(1) Whether the trial court erred when it denied his petition to modify the dispositional decree to have C.S. placed with C.S.'s paternal grandmother; and

(2) Whether the trial court erred by approving a permanency plan that found the most appropriate and consistent plan in the best interests of the child to be the termination of parental rights and adoption.

FACTS AND PROCEDURAL HISTORY

C.S. was born on April 12, 2008. At the time of his birth, C.S. had cocaine and heroin in his system. C.A.J. visited with C.S. at the hospital, but was arrested two days later and incarcerated in the State of Michigan on drug and weapons charges. C.A.J. had some uncertainty as to whether C.S. was his child, and did not assert paternity over C.S. at the time of his birth. On April 15, 2008, the Department of Child Services, Division of LaPorte County (DCS), filed a petition alleging C.S. to be a Child in Need of Services (CHINS). The trial court found probable cause to believe C.S. was a CHINS and released C.S. to his mother's care upon the requirements that she undergo drug treatment and reside at her

mother's home, C.S.'s maternal grandmother. On May 14, 2008, the trial court found C.S. to be a CHINS based upon his mother's admissions, but a denial was entered on behalf of C.A.J. who was not present at the hearing. The next day, C.S. was removed from the home due his mother's failure to comply with the drug treatment requirement and placed with unrelated foster parents. On June 11, 2008 and August 13, 2008, the trial court held hearings regarding requirements for mother in the CHINS proceedings. C.A.J. was not present at these hearings.

On August 15, 2008, a DCS Family Case Manager sent a letter to C.A.J. enclosed with the trial court's most recent Order. C.A.J. received this letter, thought it was a request for child support and did not respond to it. In November 2008, a Court Appointed Special Advocate (CASA) volunteer sent C.A.J. photographs of C.S. On December 1, 2008, the DCS received a letter from C.A.J. which stated in part, "now[,] looking at the photo you sent[, C.S.] seem[s] to be mine. I'm attach[ed] to him and will do whatever it take[s] to be in his life . . . ." (Respondent's Exhibit p. 3). In January 2009, a paternity test was administered and it was determined that C.A.J. is C.S.'s biological father.

On March 16, 2009, a hearing was held wherein C.A.J. was not present, but was represented by counsel. C.A.J. filed a petition to intervene on behalf of the paternal grandparents, requesting that C.S. be placed in their care. On May 22, 2009, a fact finding hearing was held, and C.S. was found to be a CHINS "as it pertains to [C.A.J.]" (Transcript p. 43). On June 15, 2009, a hearing was held and C.A.J. moved for C.S.'s paternal grandparents to have visitation which was denied by the trial court. On July 31, 2009, the

trial court held a consolidated hearing considering a proposed permanency plan from the DCS and the petition seeking to place C.S. in the care of his paternal grandparents. On August 3, 2009, the trial court issued its Order, including the issuance of its permanency plan, which stated in pertinent part:

> [C.A.J.], due to his incarceration involving illegal substances, has had no contact with [C.S.] since shortly after his birth, [] nor has he paid child support for the child since his birth. [C.A.J.] cannot establish with certainty a date when he would be able to provide a safe, stable and secure home for [C.S.]
>
> * * *
>
> [C.S.] has been in foster care for almost all of his life. Research has demonstrated the detrimental effects of long-term substitute care for children. Foster care is meant to be temporary. [C.S.], particularly because he has suffered the ill effects of his mother's pre-natal substance abuse, requires stability and deserves permanency.
>
> [T]he child's CASA, whose role it is to speak up for the best interests of the child, recommends termination of the parent-child relationship and adoption. *See* [Ind. Code §] 31-9-2-28.
>
> [] Of the permanency planning options available, [this c]ourt finds that it's most appropriate and consistent with the best interest of the child that the overall goal be termination of parental rights. If in fact termination of parental rights is granted, [C.S.] should then be placed for adoption.
>
> [] Based on the foregoing findings[,] the court concludes that DCS has made reasonable efforts to finalize a permanency plan.
>
> [] The procedural safeguards used by DCS to protect parental rights have been examined by the [c]ourt and are found to be sufficient.
>
> [] Jurisdiction of this court shall continue in that the objectives of the [d]isposition [d]ecree have not yet been accomplished and continuance of the [d]ecree with or without modification is necessary and it is in the child's best interest for the court to maintain jurisdiction over the child.
>
> * * *

> [C.J.] has petitioned this court to modify the current dispositional decree to provide that [C.S.] be removed from his current foster home and be placed in relative care in the care of his mother, [C.S.'s] paternal grandmother.
>
> * * *
>
> [] The [c]ourt is mindful [] that[,] at the time of disposition, a juvenile court should consider placement with a suitable and willing blood relative caretaker, including a grandparent, an aunt, and uncle, or an adult sibling, before considering other out-of-home placements for the child. I.C. [§] 31-34-19-7. At the time of the initial disposition in this cause, [C.A.J.'s] paternity of [C.S.] was not clear and his relatives were not considered as viable placements at that time.
>
> [C.S.] has been in the same foster home most of his life. He appears to have bonded with his foster parents, referring to his foster mother as "Mama."
>
> [C.S.'s] foster parents have provided excellent care for his many needs, including vigilant adherence to his medication regiment, treatment for congenital herpes, seizures that he experienced early in his life and the developmental delays for which they are getting services through First Steps.
>
> [] The length of time that [C.S.] has been placed in foster care with the same foster parents weighs in favor of not disrupting his placement at this time. []
>
> [] The DCS has presented well-grounded reasons for the placement recommendation it is currently making, that is continued placement in foster care.
>
> [] Absent compelling evidence that his current placement is not in his best interest, the [c]ourt will not modify its current disposition decree.

(Appellant's App. pp. 9-11). On September 2, 2009, C.A.J. filed a motion to correct error, which the trial court denied on September 14, 2009.

C.A.J. now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Placement of C.S.*

C.A.J. contends that the trial court committed clear error by denying the petition to modify the dispositional decree. Specifically, C.A.J. contends that Indiana law favors placement of a CHINS with a willing relative, but the DCS and trial court did not adequately consider placement with C.S.'s paternal grandmother. *See* I.C. § 31-34-19-7.

Our standard of review of juvenile court dispositional decrees is governed by Indiana Trial Rule 52, which provides that "the court on appeal shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." *In re T.S.*, 906 N.E.2d 801, 804 (Ind. 2009). This review consists of a two-tiered analysis, considering first whether the evidence supports the findings and then whether the findings support the judgment. *Id*.

> Findings are clearly erroneous when there are no facts or inferences drawn therefrom that support them. A judgment is clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the resulting judgment. The appellate court should not reweigh the evidence or judge the credibility of witnesses, but should view the evidence and its reasonable inferences most favorably to the judgment.

Id. (internal citations omitted).

Indiana Code section 31-34-19-6(1)(A) requires the juvenile court to enter a disposition decree that is the least restrictive and most family like. *In re N.E.*, 919 N.E.2d 102, 108 (Ind. 2010). If a trial court determines in a disposition decree that an out-of-home placement is required, "the court shall consider whether the child should be placed with the

child's suitable and willing blood or adoptive caretaker, including a grandparent . . . before considering other out-of-home placements for the child." I.C. § 31-34-19-7. However, the juvenile court must accept the recommendation of the DCS unless the trial court determines that the recommendation is either: (1) unreasonable, based on the fact and circumstances of the case; or (2) contrary to the welfare and best interests of the child." I.C. § 31-34-19-6.1.

C.S. was placed with the foster parents several months before C.A.J. made any attempt to establish paternity. Therefore, at the time of C.S.'s placement with his foster family, C.A.J.'s mother was not legally C.S.'s paternal grandmother and there was no requirement that the trial court consider such placement. By the time that C.A.J. first petitioned for C.S. to be removed from his foster family and placed with the paternal grandparents, C.S. had been living with his foster family for approximately ten months. C.S.'s foster parents had diligently cared for C.S. and his challenging health problems, and C.S. had bonded with his foster parents. The DCS recommended that C.S. remain with his foster parents; therefore, the trial court would have had to find that either the recommendation was unreasonable or that it was contrary to the welfare and best interests of C.S. to stay with his foster parents. *See* I.C. § 31-34-19-6.1. We conclude that the juvenile court did not commit clear error by denying C.A.J.'s petition to have C.S. placed with his paternal grandmother.

II. *Permanency Plan for Termination*

C.A.J. also argues that "the evidence and inferences therefrom [do] not support the juvenile court's determination that [C.A.J.'s parental rights] should be terminated." (Appellant's Br. p. 13 (formatting altered)). However, we note that the juvenile court has not

yet terminated C.A.J.'s parental rights, but rather approved the DCS's permanency plan with the "overall goal [to] be termination of parental rights." (Appellant's App. p. 9). In *In re K.F.*, 797 N.E.2d 310, 312 (Ind. Ct. App. 2003), we were presented with an appeal of a permanency plan that recommended proceedings to terminate parental rights. We noted that "the permanency plan approved by the trial court does not itself terminate parental rights." *Id*. at 314. We explained that the permanency plan is not a "final judgment" pursuant to Indiana Appellate Rule 2(H), and that the parents were not prejudiced by the permanency plan, which did not determine whether termination of parental rights was proper. *Id*. at 314-15. Therefore, we concluded that we did not have jurisdiction to consider the parents' appeal and dismissed the appeal. *Id*. at 315. Likewise, C.A.J.'s appeal of a goal of the permanency plan, specifically that being the termination of C.A.J.'s parental rights, is not ripe for our review.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not commit clear error by denying C.A.J.'s petition to modify the disposition decree so that C.S. could be placed with the paternal grandparents, and that we cannot consider whether the goal of terminating of C.A.J.'s parental rights is proper because that issue is not ripe for our review.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.