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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF M.L.:	)	
	)	
C.L.	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 49A04-0812-JV-734
	)	
MARION COUNTY DEPARTMENT OF CHILD SERVICES,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
Danielle Gaughan, Magistrate
Cause No. 49D09-0807-JT-29344

June 11, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Respondent C.L. ("Father") appeals an order terminating his parental rights to M.L. upon the petition of the Appellee-Petitioner Marion County Department of Child Services ("the DCS"). We affirm.

Issue

Father presents a single issue for review: Whether the DCS established, by clear and convincing evidence, the requisite statutory elements to support the termination of his parental rights.

Facts and Procedural History

On June 6, 2007, M.L. was born to Father and T.M. ("Mother"). At that time, M.L. and Mother each tested positive for cocaine; Mother admitted that she had smoked marijuana during her pregnancy and that she last smoked a marijuana blunt presumably laced with cocaine.

On June 11, 2007, the DCS filed a petition alleging that M.L. was a Child in Need of Services because his parents were unable or unwilling to provide necessities, supervision, and treatment, and further alleging that Mother tested positive for cocaine at M.L.'s birth. On October 1, 2007, Father admitted to the allegations of the CHINS petition and a dispositional decree was entered. Father was ordered to complete substance abuse treatment and parenting classes, and to obtain suitable housing and a legal, reliable source of income.

On July 1, 2008, the DCS petitioned to terminate Mother's and Father's parental rights

to M.L. Mother agreed to the termination of her parental rights.[1] On November 17, 2008, the trial court heard evidence and entered an order terminating Father's parental rights to M.L. Father now appeals.

Discussion and Decision

A. Standard of Review

This court will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, this Court neither reweighs the evidence nor judges the credibility of the witnesses. Id. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id.

B. Requirements for Involuntary Termination of Parental Rights

Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied. The purpose of terminating parental rights is not to punish the parents, but to protect their children. Id.

Indiana Code Section 31-35-2-4(b) sets out the elements that the DCS must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

(A) One (1) of the following exists:

[1] Mother is not an active party to this appeal.

(i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
(ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
(iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(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.

The trial court must subordinate the interests of a parent to those of the child when evaluating the circumstances surrounding the termination. In re A.A.C., 682 N.E.2d at 544. Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. Id. The trial court need not wait to terminate the parent-child relationship until the child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired. Id.

C. Analysis

Father does not challenge the trial court's determinations pursuant to Indiana Code Section 31-35-2-4(b)(2)(A) (removal from the parent) or (D) (satisfactory plan). However,

he challenges the trial court's determinations relating to Indiana Code Section 31-35-2-4(b)(2)(B) (conditions will not be remedied or relationship poses a threat to child's well-being) and (C) (best interests of the child).

It is well-settled that a parent's habitual pattern of conduct is relevant to determine whether there is a substantial probability of future neglect or deprivation of the child. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). Among the circumstances that a trial court may properly consider are a parent's criminal history, drug and alcohol abuse, historical failure to provide support, and lack of adequate housing and employment. McBride v. Monroe County Office of Family and Children, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). The DCS is not required to rule out all possibilities of change; rather, it need establish "only that there is a reasonable probability that the parent's behavior will not change." In re Kay. L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

At the termination hearing, evidence was presented that Father became homeless after leaving the apartment that he shared with Mother. Father testified that he was unable to complete parenting classes because he "was on the street" and "everything's just crashing down." (Tr. 12.) Caseworker Elizabeth Black testified that Father had participated in some reunification services, but did not complete any of them. While homeless, Father refused admission to Pathways, a transitional facility offering drug treatment. His visitation with M.L. was minimal.

Father has had a limited and sporadic employment history. He has criminal convictions including a 2003 conviction for battery, as a Class D felony, two 2004

convictions for criminal confinement, as Class D felonies, a 2008 conviction for burglary, as a Class B felony, and a 2008 conviction for resisting law enforcement as a Class A misdemeanor. As of the termination hearing, Father was incarcerated for the Class B felony conviction, with a scheduled release date of December 2012 and a possible early release date in 2010. Father testified that he was unable to care for M.L., but would like Mother to have custody.

M.L.'s guardian ad litem, Elizabeth Clark, testified that she had visited M.L. since his early infancy.[2] She explained that M.L. was born "addicted to drugs," necessitating constant attention from M.L.'s foster mother. (Tr. 43.) In Clark's opinion, M.L. went through "an adjustment period" from which he emerged "calm and happy." (Tr. 43.) M.L. exhibited bonding behaviors toward his foster parents, foster siblings, and an older biological sibling in the same foster home.

Father argues that he "participated in some DCS programs before he was incarcerated, and he has made efforts to complete DOC programs and obtain his G.E.D.," and accordingly, "it is not in M.L.'s best interests to be separated from his biological father who has taken steps to improving his life." Appellant's Brief at 8, 12. However, we may not reweigh the evidence, as Father urges, to find that he has taken adequate measures to provide M.L. with a stable and drug-free home.

Accordingly, the DCS presented clear and convincing evidence that the conditions leading to M.L.'s removal would not, in reasonable probability, be remedied and that

[2] M.L. has remained in the same foster family, and the foster parents hope to adopt him.

termination of Father's parental rights was in the best interests of M.L.

Conclusion

The DCS established by clear and convincing evidence the requisite elements to support the termination of Father's parental rights to M.L.

Affirmed.

DARDEN, J., and ROBB, J., concur.