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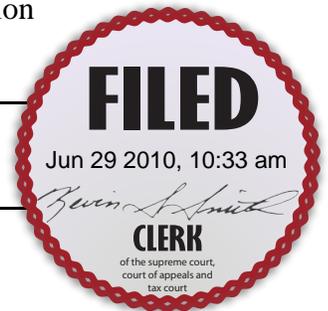
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**IN THE
COURT OF APPEALS OF INDIANA**



IN RE: THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF L.C. AND G.C)
)
G.C.,)
Appellant-Respondent,)
vs.)
MARION COUNTY DEPARTMENT OF CHILD)
SERVICES,)
Appellee-Petitioner,)
and)
CHILD ADVOCATES, INC.,)
Co-Appellee-Guardian ad Litem,)

No. 49A02-0912-JV-1253

APPEAL FROM THE MARION SUPERIOR COURT
JUVENILE DIVISION

The Honorable Marilyn A. Moores, Judge
The Honorable Danielle Gaughan, Magistrate
Cause Nos. 49D09-0903-JT-11449 and 49D09-0903-JT-11450

June 29, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, G.C. (Father), appeals the termination of his parental rights.

We affirm.

ISSUE

Father presents one issue for our review, which we restate as: Whether the findings of the juvenile court support its judgment terminating his parental rights.

FACTS AND PROCEDURAL HISTORY¹

Father and C.K. (Mother) are the biological parents of L.C., born August 16, 2006, and G.C., born July 16, 2007. In August of 2006, L.C. was first removed from her home and placed with relative foster parents when C.K. tested positive for cocaine at L.C.'s birth. In September of 2007, L.C. was reunited with Father and Mother. On December 26, 2007, both L.C. and G.C. were removed from their parents care and placed with L.C.'s previous foster parents because of a physical altercation between Father and Mother, which not only resulted in injuries to both Father and Mother, but to L.C. as well. On January 2, 2008, the Department of Child Services, Division of Marion County (DCS), filed a petition alleging L.C. and G.C. to be Children in Need of Services (CHINS).

¹ We note that the Father has only included the last page of the juvenile court's eleven-page Order terminating Father's parental rights in his Appellant's Brief. By doing so, Father has omitted the findings of facts made by the juvenile court. Indiana Appellate Rule 46(A)(1) requires that Appellant's include "any written opinion, memorandum of decision or findings of fact and conclusions thereon relating to the issues raised on appeal." Father's inclusion of only the last page of the juvenile court's Order does not satisfy App. R. 46(A)(10). We also note that the font size and margins of the Appellee's Brief are abnormal, and do not satisfy the requirements of App. R. 43(D) and (G). However, because of our desire to expedite resolutions of child cases, we will accept and review the briefs as submitted.

Father erratically participated with services provided by the DCS. On March 11, 2009, the DCS filed a petition to terminate Father and Mother's parental rights due to a lack of progress towards reunification with L.C. and G.C. The juvenile court conducted a trial of the petition to terminate Father's parental rights over the course of five separate days: July 20, August 18, August 24, August 31, and September 1, 2010. Prior to the first day of trial, Mother consented to the termination of her parental rights.

After hearing the evidence, the juvenile court made extensive findings, which included the following:

20. Bruce Joray [(Joray)] from St. Vincent's New Hope was [Father's] home based counselor. [] Joray received the referral in June 2008, at which time, [Mother and Father] were together as a couple. After approximately a month the couple separated and [] Joray worked exclusively with [Father].

* * *

24. [Father's] behavior during his home based counseling sessions was erratic. At some sessions, he was receptive and accepting of feedback from [] Joray. Other times he was angry and upset, would use profanity directed at [] Joray, and would ask [] Joray to leave his home.

25. Based on [Father's] behavior, [] Joray had concerns that [Father] was under the influence of drugs or experiencing withdrawal.

26. After an appointment where [Father] asked [] Joray to leave his home, there was a team meeting to discuss [Father's] attitude. [Father] was very remorseful and seemed to want to work on services. Shortly thereafter, [Father] was incarcerated in August. Once released, he and [] Joray reconnected and had a good meeting. During the meeting after that, however, [Father] was very upset and agitated and used profanity.

27. At a home-based counseling session with [] Joray on February 27, 2009, [Father] was writhing in pain and unable to meet with [] Joray. His house was a mess with upturned furniture, and several piles of electrical cords in the

room. He refused any help or to be taken to the hospital. [] Joray recommended a mobile drug screen for the March 3, 2009 appointment.

28. During the March 3, 2009 appointment with [] Joray, [Father] was hostile toward [] Joray and nervous about the drug screen. [Father] came up with excuses why he could not do the drug screen and then ran around the house, in and out of his bedroom and down into the basement before producing a screen.

* * *

35. On June 23, 2008, a referral was made for drug screens for [Father.]

* * *

38. [Father] did not appear each week for drug screens. His attendance was erratic. Listed below are the dates of the scheduled urine screens and whether or not [Father] appeared to be tested.

July 15, 2008	Appeared
August 1, 2008	Appeared
August 9, 2008	Failed to appear
August 13, 2008	Failed to appear
August 22, 2008	Failed to appear
August 29, 2008	Failed to appear
September 4, 2008	Failed to appear

39. There was no contact between [Father] and [the drug screen provider] until September 24, 2008. At that time [Father] informed them that he had been incarcerated.

40. [Father] did not appear for his next scheduled screen after he had contact with [the drug screen provider.] He did appear for the next scheduled screen on October 24, 2008. Listed below are the next urine screens scheduled and whether or not [Father] appeared to be tested.

October 29, 2008	Failed to appear
November 6, 2008	Appeared
November 12, 2008	Appeared
November 16, 2008	Failed to appear
November 26, 2008	Failed to appear
December 3, 2008	Appeared

December 8, 2008	Failed to appear
December 19, 2008	Failed to appear
December 22, 2008	Failed to appear
January 2, 2009	Appeared
January 8, 2009	Appeared
January 16, 2009	Appeared

41. [Father] was incarcerated regarding a domestic incident involving him and [Mother] from August 13, 2008 to September 19, 2008. ([Father] was found not guilty at a trial regarding the domestic incident on September 19, 2008). Four of the urine screens that he missed occurred during this time. There were seven other urine screens that he missed during times he was not incarcerated.

* * *

43. During the time that Joene Bryant was the DCS case manager on this case [Father] was living in a house owned by his mother and never provided DCS with proof of stable legal income.

* * *

46. [] Joray supervised several visits in [Father's] home. [Father] missed some visits because of his incarceration []. In October of 2008, [Father] went to the first two weekly visits and then missed the second two weekly visits because he was angry at [] Joray. During [four] of the visits that [] Joray supervised, [Father] fell asleep. [Father] was often unprepared for visits, with no baby wipes and the house was cluttered and not ready for young children. At the end of one visit, the police came and arrested [Father] on a warrant resulting from a domestic dispute with [Mother] [Father] was taken into custody in front of [L.C.] and [G.C.] and the children were upset.

* * *

48. On March 12, 2009 the CHINS court ordered that [Father's] visitation be supervised after a hearing because of [Father's] erratic behavior during home based counseling. The CHINS court noted that [Father] appeared "very agitated" and that he "stormed out of the courtroom" and slammed the door.

* * *

52. At the time of the termination of parental rights trial, an Order for Protection was in effect prohibiting [Father] from having contact with [Mother] until July 2010.

53. In violation of the [O]rder [Father] made several phone calls to [Mother] and left messages on her voicemail. These voicemails were left in the weeks preceding the termination of parental rights trial, during July 2009.

54. At times the voicemails were pleading and begging and [Father] repeatedly said, "I love you" and asked [Mother] to call him. In one voicemail he promised to go to rehab and in another he was angry stating, "I love you still. I want you. You don't want me. You want some other f[***]. You f[***]ing robbed me blind. I still love you; this is f[***]ing b[***]s[***]." Soon thereafter he begged [Mother] not to be mad at him stating "I'm sick. But I'm getting better though." After that he left another message that escalated to inaudible screaming and only the word "ho" could be understood. A final message said, "I'm not going to leave no [sic] more messages 'cause you'll bring them to court."

55. At times during the messages [Father's] speech was slurred and impossible to understand. The tone of the messages shifted from begging and pleading to rage from message to message and sometimes within the same message.

56. [L.C.] and [G.C.] have been removed from the care of Father [] for at least 6 months under a Child in Need of Services Disposition Decree[[]].

57. There is a reasonable probability that the conditions that resulted in the removal of [L.C.] and [G.C.] or the reasons for continued placement outside the home of Father [] will not be remedied. The children were removed from the care of [Father] and [Mother] because of a domestic dispute between them. [Father] has failed to demonstrate the ability to provide his children with consistency and a stable home environment. [Father] has made some effort to participate in services but overall he has been uncooperative with service providers. He went to some drug screens but missed several times, even when he was not incarcerated. The original referral for domestic counseling was made on February 13, 2008 and [Father] did not complete the program until March 4 of 2009. His home-based counselor and DCS were not aware that he had completed the domestic violence counseling. Further, in spite of presenting a certificate of completion for domestic violence counseling, he exhibited abusive and erratic behavior in his repeated voicemails to [Mother] (that were in violation of an Order for Protection) just weeks before the first

day of the termination of parental rights trial. His speech was slurred at times to the point of being difficult to understand. Clearly, [Father] has the same anger control issues that he had at the time the CHINS petition was filed. His behavior during home based counseling was also erratic with him sometimes being cooperative and other times being oppositional and volatile. [Father's] pattern of uncooperative and erratic behavior and inconsistent participation in services shows no overall progress.

58. Continuation of the parent-child relationship between Father [] and his children [] poses a threat to the well-being of the children. [Father] has not demonstrated the ability to provide his children with a stable home free from domestic disputes and his erratic behavior poses a threat to the emotional well-being of [L.C.] and [G.C.].

59. Termination of the parent-child relationship is in the best interests of the children. [L.C.] and [G.C.] are placed in relative foster care[]. The children are thriving in their placement and are very bonded to their foster parents. The children call their foster parents "mommy" and "daddy." [The foster parents] love [L.C.] and [G.C.] very much. The children have been in this placement since the time of removal and [L.C.] was also placed with them the first year of her life, under the first CHINS petition. [The foster parents] provide [L.C.] and [G.C.] with a loving and stable home where all of their physical and emotional needs are being met.

60. There exists a satisfactory plan for the care and treatment of the children, that being adoption.

61. The Guardian ad Litem is in agreement that termination of the parent-child relationship is in the best interests of the children and that adoption is an appropriate plan.

(Appellant's App. pp. 35-42). Relying on these findings and conclusions, the juvenile court terminated Father's parental rights on November 20, 2009.

Father now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Father contends that the findings by the juvenile court do not justify the extreme measure of the termination of his parental rights. Specifically, Father contends that the DCS did not prove by clear and convincing evidence any of the alternatives required under Indiana Code section 31-35-2-4(b)(2)(B), that being:

- (i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.
- (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.
- (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services;

Father also contends that the findings of fact by the juvenile court do not support a conclusion that "termination is in the best interests of the child," which is an additional allegation that must be proved by clear and convincing evidence. I.C. § 31-35-2-4(b)(2)(C).

The Fourteenth Amendment of the United States Constitution protects the traditional right of parents to establish a home and raise their children. *Bester v. Lake County Office of Family and Children*, 839 N.E.2d 143, 147 (Ind. 2005). Our supreme court has acknowledged that the parent-child relationship is "one of the most valued relationships in our culture." *Id.* (quoting *Neal v. DeKalb County Div. of Family and Children*, 796 N.E.2d 280, 285 (Ind. 2003)). That being said, parental interests are not absolute and must be subordinated to the child's interest in determining the proper disposition of a petition to terminate parental rights. *Id.*

We have long applied a highly deferential standard of review in cases concerning the termination of parental rights. *R.W., Sr. v. Marion County Dep't of Child Servs.*, 892 N.E.2d 239, 244 (Ind. Ct. App. 2008).

When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. Moreover, in deference to the juvenile court's unique position to assess the evidence, we will set aside its judgment terminating a parent-child relationship only if it is clearly erroneous. If the evidence and inferences support the juvenile court's decision, we must affirm.

Id. (citations omitted).

Where, as here, the trial court has entered findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester*, 839 N.E.2d at 147. First, we determine whether the evidence supports the findings, and second we determine whether the findings support the judgment. *Id.* As we have noted above, Father contends that the juvenile court's findings do not support the judgment. Father does not contend that the evidence does not support the findings. Therefore, we will address only the second step of our two-tiered analysis.

Father's inability to control his anger during a domestic dispute was the reason that the children were placed outside of the home. "To determine whether there is a reasonable probability that the conditions which resulted in the removal of the children will not be remedied, the trial court should judge a parent's fitness to care for his children at the time of the termination hearing." *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. "[A] pattern of unwillingness to deal with parenting problems and to cooperate with those

providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change.” *Lang v. Starke County Office of Family and Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. The DCS is not required to rule out every possibility of change; rather, the DCS must establish only that there is a reasonable possibility that the parent’s behavior will not change. *In re Kay L.*, 867 N.E.2d 236, 239 (Ind. Ct. App. 2007).

Moreover, “[d]ue to the permanent effect of termination, the trial court also must evaluate the parent’s habitual patterns of conduct 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). When making its determination, the trial court may consider the services offered by the DCS to the parent and the parent’s response to those services. *Id.*

The juvenile court’s findings addressed both Father’s habitual pattern of conduct and his response to the services provided by the DCS. The juvenile court found that Father’s behavior with Joray, the counselor providing Father with home based services, was repeatedly erratic and at times hostile. Multiple times, Father asked Joray to leave his home. Father skipped supervised visits with his children because he was angry with Joray. Father’s behavior of writhing in pain and having upturned furniture at the February 27, 2009 visit caused Joray to recommend a mobile drug screen for the March 3, 2009 home visit. When confronted with that drug screen, Father exhibited hostile behavior and attempted to avoid the drug screen: he ran around the house, in and out of rooms, before producing a urine sample. Thereafter, Father’s attendance at drug screens was sporadic with Father missing

more appointments than he kept. Although some of his skipped appointments can be attributed to his incarceration, most cannot. Altogether, the juvenile court could reasonably infer from these findings that Father was either attempting to conceal his continuing drug use or that he did not take the drug screens seriously and is emotionally unstable.

At the trial, the juvenile court was able to listen to examples of Father's erratic behavior directly through the recordings that Mother made of the voicemail messages which Father had left for her. As the juvenile court noted, these voicemails were in contravention of a protective order against Father, demonstrating Father's lack of respect for the rule of law. Furthermore, the recordings demonstrated Father's emotional instability shortly before the termination hearing. The juvenile court found that the "tone of the messages shifted from begging and pleading to rage from message to message and sometimes within the same message." (Appellant's App. p. 40). Father also offered to go to "rehab" and exhibited slurred speech, both of which supported an inference that Father was engaged in some form of drug abuse, especially when combined with Father's erratic mood swings. (Appellant's App. p. 40). From these messages, the juvenile court found that "[c]learly, [Father] has the same anger control issues that he had at the time the CHINS petition was filed." (Appellant's App. p. 41).

In sum, the findings of the juvenile court support its conclusion that the condition which resulted in the removal of the children from Father's home would not be remedied. Furthermore, because that condition was Father's threat to the well-being of the children due to his inability to control his anger, it follows that the juvenile court's findings also support

its conclusions that the continuation of the parent-child relationship poses a threat to the well-being of the children. The juvenile court need not wait until the children are irreversibly harmed such that their physical, mental and social development is permanently impaired before terminating the parent-child relationship. *In re A.A.C.*, 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). Therefore, based on the findings above, we find that the juvenile court's conclusion that the continuation of the parent-child relationship posed a threat to the well-being of L.C. and G.C. is supported by its findings.

Finally, the juvenile court concluded that the termination of the parent-child relationship was in the best interests of the children. "In determining what is in the best interests of a child, the court is required to look beyond the factors identified by DCS and look to the totality of the evidence." *In re G.H.*, 906 N.E.2d 248, 253-54 (Ind. Ct. App. 2009). Here, in addition to the findings of Father's anger control issues, the juvenile court also concluded that the children were thriving in the relative foster care, and had bonded with their foster parents. Also, the juvenile court found that Father had never produced evidence of stable and legally acquired income. In sum, we conclude that the juvenile court's conclusion that termination of the parent-child relationship was in the best interests of the children was supported by the juvenile court's findings.

CONCLUSION

Based on the foregoing, we conclude that the juvenile court's findings supported its conclusions that the reasons for placement of the children outside of the home will not be

remedied, the continuation of Father's relationship with the children poses a threat to their well-being, and that termination was in the best interests of the children.

Affirmed.

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