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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF C.A., D.A., and E.K., minor children, and C.A., their Father,	)	
C.A.,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A02-0901-JV-38
KNOX COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner,	)	
and	)	
CHILD ADVOCATES, INC.,	)	

Appellee-Guardian Ad Litem.)

APPEAL FROM THE MARION SUPERIOR COURT, JUVENILE DIVISION
The Honorable Marilyn Moores, Judge
The Honorable Danielle Gaughan, Commissioner
No. 49D09-0802-JT-6440

July 8, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent C.A. ("Father"), appeals the juvenile court's judgment terminating his parental rights with regard to his three children, C.A., D.A., and E.K. Specifically, Father argues that the juvenile court abused its discretion in denying his motion to continue the termination proceeding until his criminal case was resolved. Father also argues that appellee-petitioner Indiana Department of Child Services (DCS) failed to provide sufficient evidence to terminate his parental rights. Finding no error, we affirm the judgment of the juvenile court.

FACTS

Father is the biological father of C.A., born on October 7, 2000, D.A., born on August 2, 2002, and E.K, born on September 16, 2003. On August 6, 2006, S.K. ("Mother") gave birth to D.K. At D.K.'s birth, Mother tested positive for cocaine, marijuana, and barbiturates. D.K. tested positive for cocaine. DCS initiated Child in Need of Services (CHINS) petitions for all four children that same day, and the children

were placed in relative care.[1] At that time, Father was incarcerated on charges of dealing in cocaine. On August 26, 2006, the court held a fact-finding hearing and the children were determined to be CHINS. On May 10, 2007, the children were removed from relative care and placed in foster care.

In August 2007, Father was released from incarceration and placed on parole. Shortly thereafter, Father contacted the children's DCS case manager about regaining custody of his children. The case manager informed Father that he needed to complete a parenting assessment, an intensive outpatient drug treatment program (IOP), and home-based counseling. On November 2, 2007, the DCS moved for unsupervised visitation and an in-home trial visitation. Father had completed IOP and provided five negative drug screens. The children's case manager had previously made a referral for home-based counseling in September 2007, and waived the parenting assessment as Father had completed a similar program while incarcerated. The motion was granted on November 9, 2007.

On December 15, 2007, the children were transitioned into Father's home. At that time, Father was living with his sister ("Aunt") and Aunt's four children. Between December 15, 2007, and January 28, 2008, Father and Aunt had a disagreement and Father subsequently requested to move his children to his girlfriend's home. The DCS granted permission after reviewing the girlfriend's home. On January 28, 2008, Father was arrested for robbery, carrying a handgun without a license, and criminal recklessness.

[1] Both the CHINS petition and the instant termination petition include D.K. During the course of the proceedings, however, it was established that C.A. is not the biological father of D.K. A separate hearing was held, at a later date, regarding the parent-child relationship of D.K and her mother.

Following Father's arrest, the children were returned to Aunt's home. A week later, Aunt contacted the children's case manager and the children were returned to their foster mother.

On February 11, 2008, the DCS filed a Petition for the Involuntary Termination of the Parent-Child Relationship. On October 24, 2008, a fact-finding hearing was held and Father moved to continue the case until his criminal charges were resolved. The court denied this motion. At the hearing, the court heard testimony from Mother, the children's foster mother, the case manager, and the Guardian ad Litem (GAL). All four witnesses indicated that the children required stability and permanency and that this would most likely be achieved if the foster mother adopted them.

Specifically, at the hearing, Mother testified that during the eight years she had known Father, he had been incarcerated eighty-five percent of the time. Additionally, Mother testified that, in her opinion, Father had not participated in the children's lives for any extended period of time or in any significant manner. In Mother's opinion, it would not be in the best interests of the children to be placed permanently with Father.

The foster mother testified to a significant decline in the children's behavior and school attendance and performance during the six weeks they were with Father. Additionally, she expressed a desire to adopt the children.

At the hearing, the case manager testified that she had submitted an affidavit to close the CHINS case prior to Father's arrest. She also indicated, however, that even if Father was acquitted of the criminal charges, he would still need to establish housing, find a job to support himself and the children, complete home-based counseling, and

complete further drug treatment, prior to reunification. At best, Father could complete these requirements in three to six months. According to the case manager, it would not be in the best interests of the children to reunify with Father and, in her opinion, the best placement for the children would be adoption by the foster mother.

The GAL then testified that in her opinion, which was based on past experiences with the children, foster mother, and Father, the children's best interests would not be served by permanent placement with Father.

On November 24, 2008, the juvenile court entered findings of fact and conclusions of law in its order terminating Father's parental rights to C.A., D.A., and E.K. Father now appeals.

DISCUSSION AND DECISION

I. Denial of Motion for Continuance

Father first argues that the juvenile court abused its discretion when it denied his motion to continue the hearing until his criminal charges had been resolved. Specifically, Father argues that he was denied his right to due process and due course of law under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, section 12 of the Indiana Constitution.

The decision to grant or deny a motion to continue rests within the sound discretion of the juvenile court. Parmeter v. Cass County Dep't of Child Servs., 878 N.E.2d 444, 449 (Ind. 2007). We will not disturb the grant or denial of a continuance absent a showing of clear and prejudicial abuse of that discretion. Id.

In his brief, Father relies heavily on Rowlett v. Vanderburgh County Office of Family & Children for support of his argument. 841 N.E.2d 615 (Ind. Ct. App. 2006). In Rowlett, this court reversed the juvenile court's involuntary termination of the parent-child relationship when the father's motion to continue the proceeding until after he was released from incarceration was denied. Id. at 620. His definitive release date was to occur a mere six weeks after the termination fact-finding hearing was scheduled to take place. Id. at 619. He had expressed a desire for time to complete the steps for reunification with his children, had participated in numerous programs while incarcerated, and had already secured employment and future education to commence upon release from incarceration. Id. Under those circumstances, we found that the juvenile court should have granted the motion to continue the hearing.

Here, in contrast, Father has not made the same efforts. Father has exhibited a pattern of habitual illegal behavior, demonstrated by his extensive arrest record and numerous convictions. Furthermore, the father in Rowlett was to be released from incarceration six weeks following the scheduled hearing. At the time of the hearing in this case, Father had been incarcerated on charges and awaiting trial for nearly ten months. Moreover, as noted by the children's case manager, even if Father had been acquitted, he would have had to complete three to six months of reunification steps before being reunified with his children. Granting such an indefinite continuance places the children on the proverbial shelf at a time when they need stability and permanency. We find, therefore, that Father has failed to show good cause for granting a motion to continue.

II. Insufficient Evidence

Father argues that the DCS failed to establish the necessary requirements to terminate his parental rights. Specifically, Father argues that the DCS failed to prove by clear and convincing evidence that the conditions resulting in the children's removal would not be remedied or that the continuation of the parent-child relationship poses a threat to the well-being of the children. More specifically, Father argues that without a conviction on the criminal charges, the DCS lacked sufficient evidence to clearly and convincingly prove either of the above two requirements.

The traditional rights of parents to raise their children are protected by the Fourteenth Amendment to the United States Constitution. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005) (citing Pierce v. Soc'y of Sisters, 268 U.S. 510, 534-35 (1925); Meyer v. Nebraska, 262 U.S. 390, 399 (1923)). These parental rights, however, are not absolute and must be subordinated to the interests of the children when determining the proper disposition of a petition to terminate parental rights. Bester, 839 N.E.2d at 147. Therefore, when the parents are unable or unwilling to meet their parental responsibilities, parental rights may be terminated. In re D.D., 804 N.E.2d 258, 265 (Ind. Ct. App. 2004).

This court will neither reweigh the evidence nor judge witness credibility when reviewing the termination of parental rights. In re G.Y., 904 N.E.2d 1257, 1260 (Ind. 2009). We will only consider the evidence and reasonable inferences that are most favorable to the judgment. Id. Here, the juvenile court entered findings of fact and conclusions thereon in its order terminating Father's parental rights. Where the juvenile

court enters specific findings and conclusions, 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. This court will only set aside the juvenile court's judgment terminating the parent-child relationship where it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). A judgment is clearly erroneous when the evidence does not support the findings or the findings do not support the result. In re S.F., 883 N.E.2d 830, 834 (Ind. Ct. App. 2008).

In order to involuntarily terminate the parent-child relationship, the DCS must prove the following elements by clear and convincing evidence:

> (A) one (1) of the following exists:
>
> > (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) 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 interest 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).

Father argues that the juvenile court erred when it determined that the conditions that led to the removal of the children would not be remedied. Specifically, Father argues that the juvenile court lacked a significant piece of evidence by terminating his parental rights prior to a conviction on the criminal charges. When determining whether the conditions will be remedied, the juvenile court must judge the parent's fitness to care for the children at the time of the termination hearing, taking into consideration evidence of changed conditions. In re D.J., 755 N.E.2d 679, 684 (Ind. Ct. App. 2001). A parent's habitual patterns of conduct must also be evaluated to determine the probability of future negative behavior. Id.

Father has exhibited a habitual pattern of illegal behavior. Mother testified that in the eight years she had known Father, he had been incarcerated approximately eighty-five percent of the time. Petitioner's Exhibit 16 shows multiple arrests dating back to 1999, with convictions for theft and multiple instances of possession of various illegal and controlled substances. The most recent charges of robbery, carrying a handgun without a license, and criminal recklessness are only the latest in a decade-long string of arrests and convictions. Father's history displays an utter disregard for the legality of his actions. Further, incarceration has not deterred Father from continuing to run afoul of the law.

Moreover, Father had little or no relationship with his children prior to his arrest. While we recognize the efforts Father made to be reunited with his children upon his most recent release from incarceration, Father's ongoing relationship with the children is inconsistent at best. At the time of the hearing, Father had not demonstrated any attempts to establish a stable and appropriate life for the children upon his release from incarceration. See In re J.M., -- N.E.2d --, No. 02-S05-0904-JV-146, slip op. p. 7 (Ind. June 16, 2009) (noting that attempts to establish housing and employment while incarcerated weigh in the parent's favor). Mother testified that, historically, Father had rarely held a job or contributed to the support of the children. In fact, the longest period of Father's employment that she could recall was eight months. Furthermore, during the brief six weeks during which the children lived with Father, they lived in two different homes. Although the move was approved by the DCS, Father's inability to maintain a civil relationship with Aunt for less than six weeks foreshadows a transient future for the children. In light of this evidence, we cannot say that the juvenile court's conclusion that the conditions would not be remedied was clearly erroneous.

Father also argues that there was insufficient evidence to show that he was a threat to his children's well-being. Under Indiana Code section 31-35-2-4(b)(2)(B), the DCS is only required to show either that there exists a reasonable probability that the conditions will not be remedied or a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the children. As the juvenile court had sufficient evidence to determine that there was a reasonable probability that the conditions would not be remedied, the DCS was not required to prove that the

continuation of the parent-child relationship posed a threat to the well-being of the children. However, the juvenile court did conclude that the continuation of the parent-child relationship would pose a threat to the well-being of both children. Appellant's Br. 44. Given the evidence previously discussed, we cannot say that this determination was clearly erroneous. Therefore, we conclude that the juvenile court did not err by terminating the parental relationship of Father and his children.

The judgment of the juvenile court is affirmed.

MAY, J., and BARNES, J., concur.