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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF: J.P., Al.P., and An.P., (Minor Children), and D.P. (Father),	)	
Appellant,	)	
vs.	)	No. 82A04-1012-JT-807
THE INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Brett J. Niemeier, Judge
Cause Nos. 82D01-1007-JT-55, 56, and 57

July 13, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

D.P. ("Father") appeals the involuntary termination of the parent-child relationship with his three daughters, Al.P., An.P. and J.P. (collectively, "the Children").[1]

We affirm.

ISSUE

Whether there was clear and convincing evidence to support the termination of Father's parental rights to the Children.

FACTS

Father and Mother had three children, Al.P., born in July 2004, An.P., born in June 2005, and J.P., born in May 2006.[2] Father and Mother had their first interaction with the Vanderburgh County Department of Child Services ("DCS") in December 2005 when Al.P. was one year old, An.P. was six-months old, and Mother was pregnant with J.P. Mother tested positive for cocaine while she was being treated in the emergency room following a battery. Both Father and Mother reported that they had used cocaine. DCS removed Al.P and An.P. from the parents, placed them in foster care, and filed petitions alleging that the Children were children in need of services ("CHINS"). Father and

[1] S.W. ("Mother") voluntarily terminated her parental rights as to the Children. She is not involved in this appeal but will be discussed as necessary in the presentation of the facts.

[2] Father and Mother were not married. Father established paternity of the Children in September 2009.

Mother successfully participated in services, which included a CHINS drug court program, substance abuse treatment, random drug screens, and home-based services. Al.P. and An.P. were returned home in April 2006, and the CHINS case was closed in July 2006.

Two years later, on October 1, 2008, neither Mother nor Father picked up the Children from their daycare upon being informed that it was closing. After Mother was located, she reported that she had used methamphetamine, cocaine, and marijuana within the previous forty-eight hours. Father also reported using marijuana. As a result of this incident, on October 8, 2008, the DCS filed petitions alleging that the Children were CHINS and removed them from Father and Mother's home. The trial court determined the Children to be CHINS and ordered Father to, among other things, complete a substance abuse evaluation, participate in substance abuse treatment, submit to random drug screens, remain drug and alcohol free, participate in parenting classes, and have supervised visitation with the Children.

After Father and Mother initially participated in services, the Children were returned to them in January 2009. Mother, however, tested positive for cocaine soon thereafter, and she was ordered to leave the home, was placed in inpatient treatment, and had limited, supervised visitation with the Children. Meanwhile, the Children remained in the home with Father. Father, however, had difficulty adequately supervising the Children. While the Children were living with Father, Al.P., who was in kindergarten, missed nine days of school and was tardy nineteen times despite the fact that they lived

down the street from the school. Also, Father failed to take An.P., who had six cavities, to her scheduled dentist appointments. Several times, Father dropped the Children off at his sister's house and left them there for a few days. Father admitted to service providers that he had trouble taking care of the Children on his own. Father also had a positive alcohol screen in April 2009.

In June 2009, Mother was allowed to return to the home under compliance with her CHINS service plan. However, in September 2009, Mother again tested positive for cocaine after Father had reported to service providers that Mother was using drugs. Mother was ordered to leave the home and was then placed in jail for being in contempt of court due to her positive cocaine test and failure to comply with drug screens. Around this same time, Father established paternity and obtained full custody of the Children. Father told the court appointed special advocate ("CASA") that he was finished with Mother and did not want her around the Children. Father informed the CHINS court that he wanted to move with the Children to Oklahoma so they could live with his grandmother, who provided financial assistance to him. He moved to dismiss the CHINS cases, and the CHINS court, upon recommendation from the CASA, took the motion under advisement until Father had actually moved.

Father, however, did not move the Children to Oklahoma. Instead, when Mother was released from jail in October 2009, he allowed Mother to move back into their home. Upon her release from jail, Mother did not inform DCS of her whereabouts or comply with services. Father was aware that Mother was not allowed to be living in the house

with the Children and had signed a safety plan with DCS indicating the same. Nevertheless, he let Mother live in the house with the Children. When service providers made home visits, Mother hid in a closet. Father instructed the Children to lie to service providers about Mother living in the house and threatened to "whoop[]" them if they told the truth. (Tr. 89).

In November 2009, after one of the Children revealed to the DCS family case manager that "Mommy's hiding" in the house, (tr. 88), DCS filed a petition to change the Children's placement and remove them from Father's care. Father and Mother told the CHINS court that they wanted to remain together and participate in services as a couple. The CHINS court ordered them to, among other things, attend couples counseling, parenting classes, and supervised therapeutic visitation. DCS informed Father and Mother of the importance of complying with services and discussed with them the expectations that needed to be fulfilled in order to reunify with the Children. Father initially complied with services such as couples counseling and parenting classes, but he ultimately failed to complete the required classes.

Father and Mother began to have joint therapeutic visitation with the Children in the beginning of December 2009. Father missed some scheduled visits. When Father and Mother both attended the joint visits with the Children, the therapist had concerns about the instability of Father and Mother's relationship and their inability to provide a healthy environment for the visitations, and she was concerned that their behavior and comments in front of the Children were inappropriate. Father and Mother would belittle each other

and fight during joint visits. The therapist recommended that Father and Mother's visits occur separately. Although Father's visits with the Children were better when he visited by himself, the therapist still had concerns about Father's inappropriate comments to the Children such as threatening to "whoop" one of the Children during a visit. (Tr. 80).

On December 21, 2009, Father hit Mother after they both had gotten intoxicated. Father was arrested for domestic battery and ordered to have no contact with Mother. Two days later, upon the request of Mother, the no-contact order was rescinded.

In January 2010, Father moved the paternity court to set aside the order granting him full custody and had the custody order modified so that Mother and Father had joint custody of the Children. Father was trying to work out his relationship with Mother and indicated that he did not want to keep Mother away from the Children if she could stay sober. Father and Mother went to couple's counseling but did not successfully complete it. In February 2010, Father tested positive for drugs. He also quit a job because he was not allowed to smoke at the work facility.

On July 8, 2010, the DCS filed petitions to terminate Father and Mother's parental rights to the Children.[3] Mother voluntarily terminated her parental rights to the Children on September 1, 2010. The trial court held a termination hearing on September 9, 2010. At the time of the hearing, Father was unemployed and living with his sister, her husband, and their five children. When testifying, Father was unable to recall the birthdays of his three daughters. Father admitted that he was aware that he was not supposed to have

[3] DCS initially filed petitions to terminate Father and Mother's parental rights to the Children in February 2010 but later dismissed these petitions.

Mother live in the house with the Children but that he did not want to keep her from the Children. He also admitted that he told the Children to lie about Mother living in the house but that it "wasn't that bad of a lie." (Tr. 55). Additionally, Father admitted that he had tested positive for alcohol in 2009 and for an illegal drug in 2010 and testified that he would drink alcohol when he got stressed. Father testified that he had just broken up with Mother a few months before the hearing and that he wanted a chance to parent the Children without Mother around them.

Following the termination hearing, the trial court issued an order terminating Father's parental rights to the Children. The trial court's order included extensive findings and conclusions in support of its order to terminate Father's parental rights. Specifically, the trial court found, in relevant part:

> 15. Throughout the underlying CHINS matters, instability of the parents and their focus on their relationship with one another rather than on the children has been evident.
>
> 16. Even at trial it was evident that the father still did not understand the dangers of substance abuse, the emotional scarring to children that substance abuse and that environment causes, and how an unstable/unhealthy relationship between parents can affect children. The father was able to initially say the right things, specifically that he was through with the mother and he had learned his lesson. Of course, he had claimed this several times in the past and the court did not find him credible when he said it at that time. Later though in his testimony it became evident the court's initial impression was correct and that he was only saying the right thing and he would once again allow her to return to his home. The father stated that if the Mother would just do extensive treatment, that then they could be a family. The court believes the father would not even hold himself or the mother to this standard. The court is convinced beyond a reasonable doubt that if this court was out of the father's life tomorrow he would immediately allow the mother to return to

his home. The court believes, based upon the history presented, that the father believes that as long as the mother doesn't physically harm the children then her addiction is of little concern. The father's love for the mother is truly unconditional, unfortunately he puts his children at risk for this love. He has done this by allowing the mother to have sole custody of the children even when she is using drugs, by allowing the mother to live with him and the children when she is using drugs, and by risking this termination of his parental rights by continuing to allow the mother to be living with them even when it took the threat of physical harm to keep this relationship intact.

17. The mother is known to the father to be unstable and violent as a result of her addictions.

18. The mother is known to the father to use a highly addictive drug, methamphetamine, which causes violence and has been known to actually have parents severely beat and kill their children.

19. The mother is known to the father to use multiple illegal drugs[.]

20. The mother is known to the father to have been in and out of treatment on multiple occasions and has never been successful in staying clean for any lengthy period of time.

21. The mother is known to the father as a mother who would endanger the father's own parental rights so she can live with him.

22. Father's use of alcohol during the battery was not his only use of alcohol during the pending CHINS matter.

23. Father drinks alcohol due to stress.

24. Nothing is more stressful than raising kids, especially with a mother who is an addict.

25. The father has left a good job due to the stress related to not being able to smoke.

26. The father currently does not have his own home.

> 27. Even though the father appeared to be successful in stopping his use of cocaine and marijuana, it is evident he doesn't understand the harm of alcohol and drugs on people. After his treatment due to his cocaine use [in the previous chins case] he still used marijuana. After his treatment due to his marijuana use [in this case] he still uses alcohol. The father clearly doesn't understand the basic principles surrounding addictions even though he has had multiple treatments.
>
> 28. Father does not have stable employment at the time of trial, but was working through a temporary agency, since the Father quit his last stable employment.

(Father's App. at 55-57). The trial court concluded, in part, that there was a reasonable probability that continuation of the parent-child relationship posed a threat to the Children's well-being and ordered that Father's parental rights to the Children be terminated.

DECISION

Although parental rights are of a constitutional dimension, the law allows for termination of these rights when parties are unable or unwilling to meet their responsibility. *In re A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). The purpose of termination of parental rights is not to punish parents but to protect children. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

In reviewing the termination of parental rights, we will neither reweigh the evidence nor judge the credibility of witnesses. *In re I.A.*, 934 N.E.2d 1127, 1132 (Ind. 2010). We consider only the evidence most favorable to the judgment. *Id.* Where the trial court has entered findings of fact and conclusions of law, we apply a two-tiered standard of review. *Id.* We must determine whether the evidence supports the findings

and then whether the findings support the judgment. *Id.* We will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.* A judgment is clearly erroneous if the findings do not support the conclusions or the conclusions do not support the judgment. *Id.*

When DCS seeks to terminate parental rights, it must plead and prove, in relevant part:

> (B) that one (1) of the following is true:
>
> > (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 . . . .

Ind. Code § 31–35–2–4(b)(2).[4] These allegations must be established by clear and convincing evidence. *I.A.*, 934 N.E.2d at 1133. If the trial court finds the allegations in a petition described in section 4 of this chapter are true, the court shall terminate the parent-child relationship. I.C. § 31–35–2–8(a).

[4] Indiana Code section 31–35–2–4 was amended, effective March 12, 2010, to include subsection (iii) regarding two prior CHINS adjudications.

Father argues the DCS failed to prove that there was a reasonable probability that the continuation of the parent-child relationship posed a threat to the well-being of the Children.

The trial court should 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 M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996). "However, a parent's habitual patterns of conduct must also be considered to determine whether there is a substantial probability of future neglect or deprivation." *Id.* "[A] trial court does not need to wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship." *Castro v. Ind. Office of Family & Children*, 842 N.E.2d 367, 372 (Ind. Ct. App. 2006). When the evidence shows that the emotional and physical development of a child is threatened, termination of parental rights is appropriate. *Id.*

Father disputes the trial court's determination regarding a threat to the well-being of the Children by challenging some of the trial court's findings as not supported by the evidence.[5] These findings relate to Father's knowledge of Mother's drug use history and his willingness to put his love for Mother above the safety of the Children. Father does not argue that he had no knowledge of Mother's drug use; instead, he points to evidence that he had reported Mother to service providers when she was using drugs. He also contends that since Mother has voluntarily terminated her parental rights, he now realizes

[5] Father challenges the second portion of finding 16, as well as findings 18-21.

that Mother is not a fit parent and suggests the trial court should have given him some additional time to prove his fitness as a parent.

Father's arguments amount to merely a request to reweigh the evidence and accord greater weight to his testimony that he now realizes that Mother was not committed to parenting and that he would like to prove himself to be a fit parent without Mother. We will not do so. *See I.A.*, 934 N.E.2d at 1132. DCS presented clear and convincing evidence from which the juvenile court could conclude that there is a reasonable probability that continuation of the parent-child relationship posed a threat to the well-being of the Children.

During the termination hearing, various service providers testified about the unhealthy dynamics of Father and Mother's relationship and how it resulted in a negative environment for the Children. The DCS family case manager, Lindsay Grimes, testified that Father and Mother had a "very unsteady" relationship and often fought and that Father repeatedly stated that he was going to leave Mother but then always went back with her. (Tr. 87). She acknowledged that Father had reported when Mother was using drugs but indicated that they both would often call her to "tell on one another." (Tr. 87). She further testified that she had concerns about Father's ability to care for the Children. The family case manager also stated that, based on conversations she had with Father in the past and behaviors that he had displayed throughout the CHINS proceeding, she believed that the continuation of the parent-child relationship would pose a threat to the well being

of the Children. She testified that Father had been given numerous opportunities to provide a safe, stable environment for the Children but that he was unable to do so.

The CASA, Becca Parton, recommended that Father's parental rights be terminated. She reported that Father had been "unable to make the permanent changes needed to give the [C]hildren a safe, stable, nurturing, permanent home." (DCS App. 169). She testified that even if Father were permanently separated from Mother, she did not believe that Father was capable of providing the necessary care for the Children on his own. She testified that because Father had failed to show a consistent pattern of appropriate behavior around the Children, had a lack of history of complete sobriety, and had failed to make and keep gainful employment, she believed that the continuation of Father's parental rights would pose a "substantial" threat of emotional and mental harm to the Children. (Tr. 119). She testified that the Children were thriving in their foster care and that they did not want to go back to Father's house. She explained that "once [the Children] saw normality, they didn't want to go back to the lack of it." (Tr. 119).

Here, the record shows that Father made choices that did not put the well-being of the Children first. Although Father initially complied with services and was able to have the Children returned to his care, he did not follow through with those services or the safety plan implemented by DCS. Father took Mother back into his house knowing that he could lose the Children, and he did it anyway. Even after the Children were removed from his care in November 2009, Father drank alcohol, battered Mother, and had a positive drug screen. Father quit a job because he was not allowed to smoke at work,

admitted to drinking alcohol when he got stressed, and was unemployed and living with his sister and her family at the time of the termination hearing.

We conclude that the evidence supports the trial court's findings that the continuation of the parent-child relationship posed a threat to the well-being of the Children. We reverse a termination of parental rights "only upon a showing of 'clear error' -- that which leaves us with a definite and firm conviction that a mistake has been made." *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992). We find no such error here and, therefore, affirm the trial court.

Affirmed.

RILEY, J., and BARNES, J., concur.