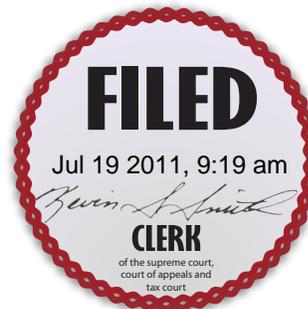


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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP)
OF: J.C. and S.C. (Minor Children),)
)
AND)
)
M.C. (Father),)
)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
Appellee-Petitioner.)

No. 34A02-1011-JT-1229

APPEAL FROM THE HOWARD CIRCUIT COURT
The Honorable Lynn Murray, Judge
Cause Nos. 34C01-1006-JT-0008 & 34C01-1006-JT-0009

July 19, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

M.C. (“Father”) appeals the involuntary termination of his parental rights to his children, J.C. and S.C. Concluding that the Indiana Department of Child Services, local office in Howard County (“HCDCS”), presented clear and convincing evidence to support the trial court’s judgment, we affirm.

Facts and Procedural History

Father is the biological father of J.C., born in July 2008, and S.C., born in June 2009.¹ The facts most favorable to the trial court’s judgment reveal that in April 2009, HCDCS received a referral from St. Joseph Hospital emergency room personnel concerning unexplained, “non-accidental” injuries suffered by then nine-month-old J.C., who had been brought to the hospital by Mother for an injury to the child’s arm. Tr. p. 37. During the medical examination of J.C.’s arm, medical staff discovered J.C. had several additional, unexplained injuries including two healing rib fractures, a meta-physical fracture to the left humerus, and bilateral lower leg bone injuries. Mother thereafter admitted to the HCDCS investigating case manager that she and Father had a history of domestic violence, and this information was further verified by the local police

¹ The children’s biological mother, Je.C. (“Mother”), voluntarily relinquished her parental rights to both children by signing consent for adoption forms during the underlying proceedings. Because Mother does not participate in this appeal, we limit our recitation of the facts to those pertinent solely to Father’s appeal.

department's confirmation that it had responded to domestic disturbance calls at the family home in the past.

J.C. was taken into emergency protective custody, and HCDCS filed a petition alleging J.C. was a child in need of services ("CHINS"). Following an evidentiary hearing in June 2009, J.C. was adjudicated a CHINS. Several weeks later, the trial court issued its dispositional order formally removing J.C. from Father's care and directing Father to successfully complete a variety of tasks and services designed to improve his parenting skills and facilitate reunification of the family. Specifically, Father was ordered to, among other things: (1) successfully complete the Parents as Teachers parenting program and provide proof of completion to HCDCS; (2) attend and complete the Batterers' Intervention Program at Family Services Association; (3) participate in and cooperate with Family Educator services; (4) actively participate in family therapy, focusing on anger management, and follow all resulting recommendations of the therapist; and (5) attend regular supervised visits with the children as directed by HCDCS. J.C. was eventually placed in relative foster care with the child's maternal great-grandparents.

In September 2009, HCDCS took then three-month-old S.C. into emergency protective custody after receiving a report from Mother that Father had hidden the child from her. S.C.'s removal was also based on Father and Mother's ongoing domestic violence issues which had occurred in the child's presence, including one incident where Mother reported Father had attempted to choke her. In addition, Mother had attempted to commit suicide by overdosing, and Father had failed to cooperate with service providers

and attend court-ordered domestic violence classes. S.C. was thereafter adjudicated a CHINS and placed in relative foster care with the maternal great-grandparents and J.C.

In October 2009, Father was formally charged with domestic battery as a Class A misdemeanor. The criminal court issued a warrant for Father's arrest and a no-contact order between Father and Mother. The court also ordered Father to complete the previously-ordered Batterers' Intervention Program. In November, the State charged Father with strangulation as a Class D felony, and Father was thereafter arrested. Father remained incarcerated until sometime in December 2009.

Meanwhile, on November 23, 2009, the trial court held a dispositional hearing regarding S.C. in the CHINS case. Father appeared at the hearing in the custody of local law enforcement personnel and was represented by counsel. Following the hearing, the court issued an order formally removing S.C. from Father's custody and directing Father to participate in essentially the same services as ordered with regard to J.C. The court also ordered Father to submit to random drug screens, successfully complete an intensive outpatient drug rehabilitation program ("IOP") approved by HCDACS, and follow all resulting recommendations of the IOP counselors, including any recommended relapse prevention or aftercare program.

In February 2010, Father was charged with invasion of privacy as a Class A misdemeanor. Father pled guilty to the invasion of privacy and domestic battery charges in April 2010 and remained incarcerated until May 2010. As part of the plea agreement, Father was again ordered to complete the Batterers' Intervention Program and to adhere to the no-contact order.

During a review hearing in the CHINS matter in June 2010, HCDCS presented evidence showing Father still had not completed the Batterers' Intervention Program or the Parents as Teachers parenting program. Although Father had participated in some supervised visits with the children since his release from incarceration, he remained unemployed, had no means of transportation, and was living with his uncle in Peru, Indiana. Later the same month, HCDCS filed petitions seeking the involuntary termination of Father's parental rights to J.C. and S.C.

A consolidated evidentiary hearing on the termination petitions for J.C. and S.C. was held in September 2010. During the termination hearing, HCDCS presented evidence concerning Father's lengthy criminal history, both before and during the underlying CHINS case, ongoing drug and alcohol abuse, unresolved anger and domestic violence issues, failure to regularly visit the children, and current inability to provide J.C. and S.C. with a safe and stable home environment.

At the conclusion of the termination hearing, the trial court took the matter under advisement. The court thereafter issued its judgment terminating Father's parental rights to J.C. and S.C. on October 12, 2010. Father now appeals.

Discussion and Decision

This Court has long had a highly deferential standard of review in cases concerning the termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). When reviewing the termination of parental rights, we will neither reweigh the evidence nor judge witness credibility. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable

inferences most favorable to the judgment. *Id.* Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

Here, in terminating Father's parental rights, the trial court entered specific findings and conclusions. When a trial court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Id.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court's decision, we must affirm. *L.S.*, 717 N.E.2d at 208.

The "traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. These parental interests, however, are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. *Id.* In addition, although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *K.S.*, 750 N.E.2d at 836.

In Indiana, before an involuntary termination of parental rights may occur, the State is required to allege and prove, among other things:

- (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). The State’s burden of proof for establishing these allegations in termination cases “is one of ‘clear and convincing evidence.’” *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code § 31-37-14-2). If the court finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship. Ind. Code § 31-35-2-8. Father challenges the sufficiency of the evidence supporting the trial court’s findings as to subsection (b)(2)(B)(i) & (ii) of Indiana’s termination statute. *See* Ind. Code § 31-35-2-4.

We pause to observe that Indiana Code section 31-35-2-4(b)(2)(B) provides that HCDCS need establish only one of the three requirements of subsection (b)(2)(B) by clear and convincing evidence before the trial court may terminate parental rights. Here, the trial court found HCDCS presented sufficient evidence to satisfy the first two subsections of (b)(2)(B) of the termination statute. *See id.* Because we find it dispositive under the facts of this particular case, however, we shall only consider whether clear and

convincing evidence supports the trial court's findings regarding subsection (b)(2)(B)(i), namely, whether there is a reasonable probability that the conditions resulting in the children's removal or continued placement outside the family home will be remedied. *See id.*

Father challenges the trial court's determination that the conditions resulting in removal of the children would not be remedied, stating that it "appears from the transcript that [his] efforts were numerous" and that he was "taking steps to remedy the conditions that resulted in the removal of the children," including "looking for work," living in Peru with his uncle, and applying to Ivy Tech for further education. Appellant's Br. p. 9. Father therefore contends that there is insufficient evidence to support the trial court's judgment and that he is entitled to reversal.

A trial court must 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 J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. The trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.* Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *A.F. v. Marion Cnty. Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. Moreover, a county department of child services is not required to provide evidence ruling out all possibilities of change; rather, it need only establish that there is a reasonable probability the parent's behavior will not change. *In re Kay L.*, 867

N.E.2d 236, 242 (Ind. Ct. App. 2007). Finally, we have previously explained that Indiana's termination statute makes clear that "it is not just the basis for the initial removal of the child that may be considered for purposes of determining whether a parent's rights should be terminated, but also those bases resulting in the continued placement outside of the home." *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*.

In determining there is a reasonable probability that the conditions leading to J.C.'s and S.C.'s removal and/or continued placement outside of Father's care will not be remedied, the trial court made numerous, detailed findings regarding Father's past and present inability to provide the children with a safe and stable home environment, stating that HCDCS had "made reasonable efforts to reunify [J.C.] and [S.C.] with their father" but that it was the trial court's opinion Father "is likely to never adequately care and provide for the children as a custodial parent." Appellant's App. p. 17. The court further found that Father had "shown a pattern of conduct in choosing his criminal lifestyle over his children," noted that J.C. and S.C. had been removed due to J.C.'s "unexplained injuries" and ongoing "domestic violence between the parents," and further acknowledged in its findings that Father was "arrested and eventually pled guilty to [d]omestic [v]iolence and [i]nvasion of [p]rivacy from inciden[ts] that occurred after the children were removed" from the home. *Id.* at 18. In addition, the court noted that since April 2009, Father had "lived at seven (7) different residences, and has been in and out of incarceration twice throughout the time the children were in relative care." *Id.* at 18-19.

As for Father's participation in court-ordered reunification services, the trial court observed that despite being "offered extensive services," Father's level of participation was considered "non-compliant," and he remained "unable to demonstrate a consistent ability to parent and provide the children with a safe, appropriate home with proper supervision" ever since the time of the children's removal from his care. *Id.* at 17, 19. The trial court also found Father refused to "consistently" submit to HCDCS drug screens requests, admitted to a history of "using marijuana, pills, and methadone," and failed to maintain regular contact with HCDCS and service providers. *Id.* at 19. In addition, the court found Father never completed the Batterers' Intervention Program despite having started the program "three different times," failed to begin an IOP, and visited with the children during only "8 of 32 arranged visitations" since June 10, 2010. *Id.* The trial court further found as follows:

The Court finds by clear and convincing evidence that it is reasonably probable that the conditions that led to the removal and . . . placement outside the home, namely the unexplained injuries to [J.C.], the continued domestic violence, the drug use, and the inability to provide the children with a safe, suitable home, will not be remedied to the degree that [Father] will be able to provide the children with the nurturing, stable, and appropriate care and environment that they require[] on a long[-]term basis. [Father] has been incarcerated for periods of the time the children have been removed from his care and remains on supervised probation. [Father] has exhibited an inability to refrain . . . [from] drug use and an inability to provide stability. Further, [Father] has not exercised his opportunity with the children. [J.C.] and [S.C.] should not have to wait to have a secure, stable and safe environment in which to live.

Id. at 20-21. A thorough review of the record reveals that these findings are supported by abundant evidence.

Testimony from various caseworkers and service providers makes clear that despite a wealth of services available to Father, he has refused to engage in services in a meaningful way, and his circumstances have remained largely unchanged. During the termination hearing, HCDCS case manager Heather Mehring confirmed that, at the time of the hearing, Father was living with his uncle, was unemployed, and had failed to complete a majority of the trial court's dispositional orders, including the Batterers' Intervention Program, an IOP, and the Parents as Teachers parenting program. Mehring further testified Father had changed residences approximately seven times during the underlying proceedings, including two stints of incarceration, maintained "very little" contact with HCDCS and service providers, and refused multiple requests for drug screens. Tr. p. 30. When asked whether she believed that there was a reasonable probability that the conditions leading to the children's removal from Father's care will be remedied, Mehring answered in the negative and further explained as follows: "There's a long history of domestic violence back and forth, something that doesn't seem to be going to be changing. . . . Neither parent has made any changes, no housing, no employment, no permanent roots . . . [N]othing [has] changed since we[] got involved in April 2009." *Id.* at 35.

Also significant, the record reveals that Father participated in approximately half of the scheduled visits with the children during the underlying case, including only eight of thirty-two scheduled visits since June 2010 following his most recent release from incarceration, and his visitation privileges were suspended in August 2010 due to three consecutive no-shows. This Court has previously stated that "[t]he failure to exercise the

right to visit one's child demonstrates a lack of commitment to complete the actions necessary to preserve the parent-child relationship." *Lang v. Starke Cnty. Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*.

In recommending termination of Father's parental rights, court-appointed special advocate Sue Arnold informed the trial court that Father's unresolved domestic violence issues and drug use "definitely" remained a concern for her, especially in light of the fact Father "does not accept responsibility for most of his actions" and "tends to blame other people for anything that goes wrong." Tr. p. 48. Arnold further testified that she did not believe Father had the ability to provide the children with the loving, "structured," and "safe" environment they needed. *Id.* at 52-53.

Finally, Father's own testimony lends further support to the trial court's findings. Father confirmed during the termination hearing that he had failed to successfully complete a majority of the court-ordered reunification services, including parenting classes, an IOP, and the Batterers' Intervention Program, despite having started the program on three different occasions. Father further admitted that he attended only half of the scheduled visits with the children, refused to participate in multiple drug screen requests, and last used methadone just "the other day." *Id.* at 82. Based on the foregoing, we conclude that HCDCS presented clear and convincing evidence to support the trial court's determination that there is a reasonable probability the conditions resulting in J.C.'s and S.C.'s removal and continued placement outside Father's care will not be remedied. Father's arguments to the contrary amount to an invitation to reweigh the evidence, which we may not do. *See D.D.*, 804 N.E.2d at 264.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.