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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE PATERNITY OF A.C.,	)	
C.C., Father,	)	
Appellant,	)	
vs.	)	No. 13A04-1009-DR-608
B.M., Stepfather,	)	
Appellee.	)	

APPEAL FROM THE CRAWFORD CIRCUIT COURT
The Honorable K. Lynn Lopp, Judge
Cause Nos. 13C01-1002-JP-1, 13C01-1004-DR-20,
13C01-0911-JM-47, 13C01-0911-JM-48

July 20, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

C.C. ("Father") appeals the trial court's grant of the petition of B.M. ("Stepfather") for custody of A.C. Father raises one issue which we revise and restate as whether the trial court abused its discretion by granting Stepfather's petition for custody of A.C. We reverse and remand.

The relevant facts follow. Father and V.M. ("Mother") had a son, A.C., born on November 23, 2006. Father became incarcerated prior to A.C.'s birth.

Stepfather and Mother were married on May 20, 2007 or 2008.[1] Stepfather lived with and supported A.C. for two years. Stepfather is a father figure to A.C., and A.C. calls Stepfather "Dad." Transcript at 13, 17, 59.

Mother and Stepfather had a son, M.M., born on April 10, 2009. In November 2009, Stepfather pled guilty to battery against Mother. At some point, the Crawford County Department of Child Services became involved with A.C.'s family because of neglect. Specifically, there was a period of time that A.C. was missing and Mother had "wandered off" and was unaware of A.C.'s location. Id. at 104. Stepfather was not directly involved in the incident. On November 24, 2009, the Indiana Department of Child Services filed a Request for Approval of Program of Informal Adjustment under Cause Numbers 13C01-0911-JM-047 ("Cause No. 047") and 13C01-0911-JM-048 ("Cause No. 048"). On November 30, 2009, the court entered an Order of Approval and Participation in Program of Informal Adjustment under Cause No. 047 and Cause No.

[1] Mother testified that she was uncertain as to the year.

048. The court ordered Mother and Stepfather to participate in and comply with the terms of the Program of Informal Adjustment concerning A.C. and M.M.

On February 16, 2010, Father filed a pro se petition to establish paternity of A.C. under Cause Number 13C01-1002-JP-001 ("Cause No. 001"). On March 3, 2010, the court held a hearing, and Mother admitted that Father was A.C.'s father.

In March 2010, Stepfather became angry and grabbed Mother around her neck in A.C.'s presence. Stepfather pled guilty to strangulation as a class D felony. Stepfather received probation and was released from jail on March 23, 2010.

On April 1, 2010, Stepfather filed a petition for dissolution in Cause Number 13C01-1004-DR-020 ("Cause No. 020") and alleged that he was the de facto custodian of A.C. On April 27, 2010, Stepfather filed in Cause No. 020 a petition for a provisional order granting him custody of M.M. and A.C. The court scheduled a hearing for May 13, 2010.

At some point, the State charged Mother with possession of methamphetamine with intent to manufacture as a class D felony, and Mother was placed in jail. At that time, M.M. and A.C. were living with Stepfather.

In Cause No. 001, the court scheduled a hearing on child support and all other issues for May 13, 2010. On May 13, 2010, the court held a hearing, and Mother and Father appeared. The court entered an order that same day which stated: "By agreement of the parties, the Court hereby FINDS that custody of the minor child, [A.C.], shall be placed with [A.C.'s paternal grandmother], until further order of the Court." Appellant's

Appendix at 123. On that same day, the court issued another order which stated that there was an open CHINS case involving A.C., vacated the previous day's order, and scheduled a hearing for May 17, 2010.

On May 24, 2010, Stepfather filed a petition to intervene in Cause No. 001 and alleged that he was A.C.'s stepfather and had been the de facto custodian of A.C. for more than one year.

On June 11, 2010, the court issued an order finding that Stepfather should retain custody of A.C. under Cause No. 001, Cause No. 047, Cause No. 048, and Cause No. 020. Specifically, the court stated:

> Comes now the Court, after being duly and sufficiently advised in the premises, and hereby FINDS as follows:
>
> 1. Court finds that, at the current time, both [Father] and [Mother] are incarcerated in jail. Due to their incarceration, the Court finds it is in the best interest that both children remain in their current placement.
>
> 2. Court finds that [Stepfather] is a proper person to have the care and custody of, not only his child M.M., but also the child of [Mother] and [Father]. Both children have been raised together and the Court finds it would be detrimental to them for them to be separated. While [Stepfather] is not the natural parent of A.C. he has been a de-facto custodian of the child during the marriage to [Mother.]
>
> 3. Court further finds that [A.C.'s paternal grandmother] should have contact with A.C. on a regular basis. Court, therefore, grants [A.C.'s paternal grandmother] time with the child on alternating weekends from Saturday at 9:00 a.m. until Sunday at 5:00 p.m. Said visitation shall commence June 26, 2010.
>
> 4. Court shall review the order of custody upon the release and request of either parent . . . .

Id. at 45-46.

On July 2, 2010, Father filed a pro se motion to correct error alleging thirteen separate errors by the trial court. On July 15, 2010, Stepfather filed a response to Father's motion to correct error. On July 29, 2010, Father then filed a pro se motion to rebut Stepfather's arguments.

On August 12, 2010, the court denied Father's motion to correct error. Specifically, the court stated:

> 1. The two (2) children at issue were the subject of the informal "JM" cases filed November 24, 2009. (See JM-47 and JM-48). The Court, on May 13, 2010, upon agreement of [Father] and [Mother] did place custody of [A.C.] (JM-47) with [A.C.'s paternal grandmother]. Shortly after the hearing, it came to the court's attention there was an active case involving [A.C.], that being 13C01-0911-JM-047. The Court immediately vacated the May 13, 2010 order the same day and set matter for hearing on May 17, 2010.
>
> 2. [Stepfather] is a de-facto custodian of [A.C.] as defined by I.C. 31-9-2-35.5, and natural father of [M.M.]. He has standing to proceed in the paternity case JP-001 involving [A.C.].
>
> 3. [Ind. Code §] 31-17-2-8.5 allows a de-facto custodian to be granted custody of a child if it is in the child's best interest.
>
> 4. The Court's ruling of June 11, 2010 was based upon the finding the placement of the children with [Stepfather] was in their best interest.
>
> 5. [Stepfather] provided sufficient evidence that rebutted the presumption raised by I.C. 31-17-2-8.3. The Court does amend the Order of June 11, 2010, to state as follows: "5) The Court finds by clear and convincing evidence that the child, [A.C.], has been cared for by [Stepfather], a de-facto custodian."
>
> 6. Court hereby DENIES, in total, [Father's] Motion to Correct Error.

Id. at 67-68.

On September 13, 2010, Father filed a notice of appeal. On February 14, 2011, Father filed a petition to consolidate the proceedings on appeal, and this court granted the petition and consolidated the appeals under appellate cause number 13A04-1009-DR-608.[2]

The sole issue is whether the trial court abused its discretion by granting Stepfather's petition for custody of A.C. Father argues that the trial court did not make adequate findings, specifically as to Stepfather's domestic violence or mental health issues, and that the findings were not supported by the evidence. Father argues that the court's conclusion that placing A.C. in Stepfather's custody was in A.C.'s best interest was clearly erroneous and that there is evidence in the record that placement with the paternal grandmother would be in A.C.'s best interest.

Stepfather acknowledges that he "has a history of violence toward [Mother] when she has provoked him." Appellee's Brief at 12. Stepfather also acknowledges that he has suffered from depression and "believes he is bipolar," but "takes Celexa and thorazine for those problems." Id. Stepfather argues that the court made the specific finding that Mother and Father were incarcerated and it was in the best interests of A.C. to remain in his current placement. Stepfather also argues that the court made additional findings that Stepfather was the de facto custodian of A.C. and that separation would be detrimental to

[2] Mother does not appeal the trial court's grant of Stepfather's petition for custody of A.C.

the children. Stepfather also states that "[t]he court, by necessity, had to place [A.C.] with a non-parent." Id. at 15.

The Indiana Supreme Court's decisions in In re K.I., 903 N.E.2d 453 (Ind. 2009), In re Huss, 888 N.E.2d 1238 (Ind. 2008), and In re B.H., 770 N.E.2d 283 (Ind. 2002), reh'g denied, provide a framework for trial courts to apply when considering a custody dispute between a natural parent and a third party.

When considering a request for child custody by a third party, a trial court must consider "the important and strong presumption that the child's best interests are ordinarily served by placement in the custody of the natural parent." In re Huss, 888 N.E.2d 1238, 1245 (Ind. 2008) (quoting B.H., 770 N.E.2d at 287). "Not only does this presumption provide a measure of protection for the rights of the natural parent, but 'more importantly, it embodies innumerable social, psychological, cultural, and biological considerations that significantly benefit the child and serve the child's best interests.'" Id. (quoting B.H., 770 N.E.2d at 287). The Court held:

> [B]efore placing a child in the custody of a person other than the natural parent, a trial court must be satisfied by clear and convincing evidence that the best interests of the child require such a placement. The trial court must be convinced that placement with a person other than the natural parent represents a substantial and significant advantage to the child. The presumption will not be overcome merely because "a third party could provide the better things in life for the child." [Hendrickson v. Binkley, 161 Ind. App. 388, 396, 316 N.E.2d 376, 381 (1974), cert. denied, 423 U.S. 868, 96 S. Ct. 131 (1975).] In a proceeding to determine whether to place a child with a person other than the natural parent, evidence establishing the natural parent's unfitness or acquiescence, or demonstrating that a strong emotional bond has formed between the child and the third person, would of course be important, but the trial court is not limited to these criteria.

> The issue is not merely the "fault" of the natural parent. Rather, it is whether the important and strong presumption that a child's interests are best served by placement with the natural parent is clearly and convincingly overcome by evidence proving that the child's best interests are substantially and significantly served by placement with another person.

K.I., 903 N.E.2d at 458 (quoting B.H., 770 N.E.2d at 287). The Court in B.H. also held that "[a] generalized finding that a placement other than with the natural parent is in a child's best interests, however, will not be adequate to support such determination, and detailed and specific findings are required." B.H., 770 N.E.2d at 287. Thus, the Indiana Supreme Court "has explicitly mandated trial courts to issue detailed and specific findings when a child is placed in the care and custody of a person other than a natural parent." In re A.R.S., 816 N.E.2d 1160, 1162 (Ind. Ct. App. 2004).

Here, the trial court's only specific findings indicate that Father was incarcerated, that the children had been raised together, and that it would be detrimental to them to be separated. While the court pointed out that Father was incarcerated, the court did not state when Father was to be released, did not find whether Father had contact with A.C., and did not enter any specific findings related to the domestic violence issues involving Stepfather, Stepfather's mental health issues, or the home of A.C.'s paternal grandmother. We cannot say that the court's statements constitute detailed and specific findings. We therefore reverse and remand this case to the trial court with instructions to issue detailed and specific findings as required by B.H. See In re Paternity of L.J.S., 923 N.E.2d 458, 465 (Ind. Ct. App. 2010) (holding that "[t]aken together, the specific findings made by the trial court are nothing more than '[a] generalized finding that a

placement other than with the natural parent is in [the] child's best interests'" and that this will not be adequate to support such a determination), trans. denied; In re Custody of J.V., 913 N.E.2d 207, 211 (Ind. Ct. App. 2009) (holding that the trial court's findings were not sufficient and remanding with instructions to enter the findings required to support its custody determination).

For the foregoing reasons, we reverse the trial court's grant of Stepfather's petition for custody of A.C. and remand this case to the trial court to issue detailed and specific findings.

Reversed and remanded.

FRIEDLANDER, J., and BAILEY, J., concur.