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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF A.S. AND A.W., MINOR CHILDREN, AND THEIR FATHER, A.S.,	)	
A.S.	)	
Appellant-Respondent,	)	
vs.	)	No. 02A03-1012-JT-657
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Charles F. Pratt, Judge
The Honorable Lori K. Morgan, Magistrate
Cause Nos. 02D08-1001-JT-43, 02D08-1001-JT-47

August 3, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Respondent A.S. ("Father") appeals the juvenile court's order terminating his parental rights to A.S. and A.W. Father alleges that the Indiana Department of Child Services ("DCS") did not provide sufficient evidence to support the termination of his parental rights. Concluding that the evidence was sufficient to support the termination of Father's parental rights, we affirm.

FACTS AND PROCEDURAL HISTORY

A.S. was born to J.W. ("Mother") and Father on May 9, 2004, and A.W. was born to Mother and Father on October 1, 2005.[1] On September 15, 2005, Father was incarcerated for and subsequently convicted of Class B felony criminal deviate conduct, Class D felony criminal confinement, Class D felony criminal recklessness, Class A misdemeanor domestic battery, and Class A misdemeanor invasion of privacy. With respect to these convictions, Father was sentenced to twenty years of incarceration in the Department of Correction ("DOC"). On September 19, 2007, A.S. and A.W. (collectively "the children") were removed from Mother's care due to the poor condition of Mother's home and Mother's positive test for marijuana use.

On October 25, 2007, and again on August 14, 2008, the juvenile court determined that the children were children in need of services ("CHINS"). On January 26, 2010, DCS

[1] The termination of Mother's parental rights is not at issue in this appeal.

filed petitions seeking the termination of Father's parental rights. On September 8, 2010, the juvenile court conducted a termination hearing at which Father appeared telephonically and was represented by counsel. During the termination hearing, DCS provided a plan for the permanent care and adoption of the children. On December 6, 2010, the juvenile court issued an order terminating Father's parental rights. Father now appeals.

DISCUSSION AND DECISION

The Fourteenth Amendment to the United States Constitution protects the traditional right of a parent to establish a home and raise her children. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 145 (Ind. 2005). Further, we acknowledge that the parent-child relationship is "one of the most valued relationships of our culture." *Id*. However, although parental rights are of a constitutional dimension, the law allows for the termination of those rights when a parent is unable or unwilling to meet her responsibility as a parent. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Therefore, parental rights are not absolute and must be subordinated to the children's interest in determining the appropriate disposition of a petition to terminate the parent-child relationship. *Id*.

The purpose of terminating parental rights is not to punish the parent but to protect the children. *Id*. Termination of parental rights is proper where the children's emotional and physical development is threatened. *Id*. 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. *Id*.

I. Sufficiency of the Evidence

Father contends that the evidence presented at trial was insufficient to support the juvenile court's order terminating his parental rights. In reviewing termination proceedings on appeal, this court will not reweigh the evidence or assess the credibility of the witnesses. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We only consider the evidence that supports the juvenile court's decision and reasonable inferences drawn therefrom. *Id*. Where, as here, the juvenile court includes findings of fact and conclusions thereon in its order terminating parental rights, our standard of review is two-tiered. *Id*. First, we must determine whether the evidence supports the findings, and, second, whether the findings support the legal conclusions. *Id*.

In deference to the juvenile court's unique position to assess the evidence, we set aside the juvenile court's findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id*. A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it. *Id*. A judgment is clearly erroneous only if the legal conclusions made by the juvenile court are not supported by its findings of fact, or the conclusions do not support the judgment. *Id*.

In order to involuntarily terminate a parent's parental rights, DCS must establish by clear and convincing evidence that:

> (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 or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(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 interests 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) (2009).

A. Conditions Resulting in Removal Not Likely to be Remedied

Father claims that DCS failed to establish by clear and convincing evidence that either (1) the conditions resulting in the children's removal from his care will not be remedied; or (2) the continuation of the parent-child relationship poses a threat to the children's well-being. It is well-established that the juvenile court need only find that either the conditions resulting in removal will not be remedied or the continuation of the parent-child relationship poses a threat to the children because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. *In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*. Therefore, "where, as here, the trial court specifically finds that there is a reasonable probability that the conditions which resulted in the removal of the child[ren] would not be remedied, and there is sufficient evidence in the record supporting the trial court's conclusion, it is not necessary for [DCS] to prove or for the trial court to find that the continuation of the parent-child relationship poses a threat to the child[ren]." *In re S.P.H.*,

806 N.E.2d at 882. In order to determine that the conditions will not be remedied, the juvenile court should first determine what conditions led DCS to place the children outside their Father's care, and, second, whether there is a reasonable probability that those conditions will be remedied. *Id*.

When assessing whether a reasonable probability exists that the conditions justifying the children's removal from and continued placement outside the parent's care will not be remedied, the juvenile court must judge the parent's fitness to care for his children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re A.N.J.*, 690 N.E.2d 716, 721 (Ind. Ct. App. 1997). The juvenile court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id*. A juvenile court may properly consider evidence of the parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate employment and housing. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). Moreover, a juvenile court "'can reasonably consider the services offered by [DCS] to the parent and the parent's response to those services.'" *Id*. (quoting *In re A.C.C.*, 682 N.E.2d 542, 544 (Ind. Ct. App. 1997)).

The juvenile court found that DCS presented sufficient evidence to prove that the conditions that resulted in the children's removal from the Father's care were not likely to be remedied, and upon review, we conclude that the juvenile court's finding to this effect is supported by the record. The law allows termination of parental rights when the parent is

unable to meet his responsibility as a parent. *See In re T.F.*, 743 N.E.2d at 773. Here, the record reveals that Father has been incarcerated throughout the entirety of the CHINS and termination proceedings. As a result of his incarceration, Father has been and remains unable to meet his parental responsibilities and provide the children with the necessary care, supervision, and support.

Father has not seen A.S. since before his incarceration began in September of 2005, and his only contact with A.W. occurred during a jailhouse visit following A.W.'s birth. Moreover, while Father appears to be completing the necessary DOC services to ensure an early release, Father's earliest possible release date appears to be sometime in 2014. However, even assuming that Father obtains early release from the DOC, there is no guarantee that Father would be a suitable parent following his release from incarceration, and upon release, Father would be required to complete certain services offered by DCS, which he has been unable to complete to date because of his incarceration, before the children could even potentially be entrusted to his care. In addition, the nature of the crimes that resulted in Father's instant incarceration include domestic abuse and the heinous attack on a former romantic partner. *See [A.S.] v. State*, 02A03-0607-CR-316 (Ind. Ct. App. December 12, 2007), *trans. denied*. Father did not demonstrate before the juvenile court that these prior criminal actions are not likely to reoccur.

When considered as a whole, the evidence is sufficient to demonstrate a reasonable probability that the conditions which resulted in the children's removal from Father's care will not be remedied. It was within the province of the juvenile court, as the finder of fact, to

minimize any contrary evidence of changed conditions in light of its determination that Father's failure to provide an adequate level of care and supervision which led to the children's removal was unlikely to change. *See id.* Father is effectively asking this court to reweigh the evidence on appeal, which, again, we will not do. *See In re S.P.H.*, 806 N.E.2d at 879.

Under these circumstances, we cannot say that the juvenile court erred in determining that DCS had established that it is unlikely that the conditions resulting in the children's removal would not be remedied. *See In re C.M.*, 675 N.E.2d 1134, 1140 (Ind. Ct. App. 1997). Having concluded that the evidence was sufficient to support the juvenile court's determination, and finding no error by the juvenile court, we need not consider whether the continuation of the parent-child relationship poses a threat to the children's well-being because DCS has satisfied the requirements of Indiana Code section 31-35-2-4(b)(2)(B) by clear and convincing evidence. The juvenile court did not err in terminating Father's parental rights because the evidence provided by DCS was sufficient to support the juvenile court's termination order.[2]

The judgment of the juvenile court is affirmed.

BAKER, J., and MAY, J., concur.

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[2] To the extent that Father argues that the evidence was insufficient to prove that the conditions resulting in the children's removal would not be remedied because the children could have been placed with either his mother or current wife, whom he married while incarcerated and who does not know the children, we observe that DCS investigated these placement options prior to the termination hearing and determined that neither presented a suitable home for the children. Father's challenge effectively amounts to a request that we reweigh the evidence, which again, we will not do. *See In re S.P.H.*, 806 N.E.2d at 879.