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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF: RN.S., RM.S., and RI.S. (Minor Children), and C.S. (Father),	)	
Appellant,	)	
vs.	)	No. 79A04-1101-JT-54
THE INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta H. Rush, Judge
The Honorable Faith A. Graham, Magistrate
Cause Nos. 79D03-1008-JT-110, 112, and 114

August 12, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

C.S. ("Father") appeals the termination of his parental rights as to his minor children, Rn.S., Rm.S., and Ri.S. (collectively, the "Children").[1]

We affirm.

ISSUE

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

FACTS

Rn.S. was born on November 1, 1999; Rm.S. was born on February 18, 2001; and Ri.S. was born on December 3, 2002, to Mother and Father. Mother and Father separated in March of 2008 but never dissolved their marriage. Father had no contact with the Children from 2008 until May of 2010.

At some point after Mother and Father separated, Mother and the Children moved from the Chicago area to Lafayette. Father remained in Chicago; he did not seek custody or visitation and did not provide regular support for the Children.

On August 12, 2009, the Tippecanoe County's office for the Indiana Department of

[1] The trial court also terminated the parental rights of S.S. ("Mother"). She does not appeal the termination.

Child Services ("DCS") received a report that Mother could not provide basic necessities, including food and electricity, for the Children. An investigation revealed that Mother's home was very dirty and that the apartment's electricity had been turned off in May. Mother reported that she had received an eviction notice from her landlord.

On September 11, 2009, DCS filed a petition, alleging the Children to be in need of services ("CHINS") due to inadequate food, shelter, medical care, and supervision. Mother denied the allegations, and the trial court ordered that the Children remain in Mother's home. The trial court further ordered Mother to cooperate with DCS; maintain stable housing; participate in services; and participate in a psychological assessment. As to Father, the trial court found inadequate service of process.

After Mother refused to move to a homeless shelter for families despite being evicted from her apartment and failed to cooperate with DCS, DCS removed the Children from Mother's home on September 30, 2009, and placed them in foster care. Following a hearing on November 5, 2009, the trial court found the Children to be CHINS.

The trial court ordered Mother to, among other things, participate in services and follow all recommendations; participate in a psychological assessment and follow all recommendations; maintain contact with DCS on a weekly basis; and maintain employment or other source of stable income. Pending Father's notice of the CHINS proceedings, the trial court ordered Father to contact DCS as well as participate in a psychological assessment, a substance abuse evaluation, services, and visitation.

Father contacted DCS on or about April 12, 2010, after a relative informed him that DCS had removed the Children from Mother's care. On April 26, 2010, Shane Allen, the family's case manager, and Verdell Releford, the court-appointed special advocate ("CASA"), traveled to Father's home to determine whether the Children could be placed with him. Although they initially determined Father's home to be suitable, a subsequent background check "conditionally disqualified" him. (CASA's Ex. C1).

Father commenced visitation with the Children on May 8, 2010. The Villages facilitated the visitations. Subsequently, the trial court ordered that Father's failure to appear at two consecutive scheduled visits would result in suspension of his visits.

Out of the approximately twenty-seven visits scheduled between May of 2010 and the date of the final hearing, Father missed fourteen. Pursuant to guidelines for visitation agreed to by Father, The Villages cancelled some of those visits due to Father's tardiness. Father also cancelled several visits. Father's last visit with the Children took place on September 25, 2010. After Father missed the last scheduled visit on October 9, 2010, the Villages suspended future visits.

On August 27, 2010, DCS had filed petitions to terminate Mother's and Father's parental rights. On September 20, 2010, subsequent to the filing of the petitions, Father completed his court-ordered psychological assessment and substance abuse evaluation. Except for testing positive for alcohol on one occasion, Father passed his drug screens.

The trial court held a termination hearing on November 5, 2010. Father testified that Mother frequently accused him of abuse during their marriage. He affirmed that between

2001 and 2009, Mother's accusations resulted in eight arrests, with the last arrest occurring in 2008. The State of Illinois again charged Father with battery on a woman in 2009.

Father testified that Mother physically assaulted him on several occasions. Father admitted to pushing or shoving Mother but asserted that he did so in self-defense. Father acknowledged that the Children witnessed their parents' fights several times. According to the report prepared by the CASA and admitted into evidence, Rn.S. remembered Father hitting Mother. He also recalled Father hitting him "on the head . . . ." (CASA's Ex. C1).

Father testified that he often missed visits with the Children or was late "because the time changes here between [Chicago's] time; it takes approximately probably two hours to get [to Lafayette] . . ."; and he does not drive because his license is suspended. (Tr. 49). He testified that although he often found it difficult to find someone to drive him to Lafayette, he never considered public transportation.

Father also testified that he had commenced anger management classes and parenting classes one month prior to the final hearing but had not completed those classes as of the date of the hearing. He further testified that he never participated in home-based case management services, asserting that DCS never offered the services.

Allen testified that DCS offered to assist Father in locating a home-based case management agency in the Chicago area. Father, however, "said he knew the area up there and that he would find it on his own." (Tr. 126).

Allen opined that termination of both Mother's and Father's parental rights would be in the Children's best interests. He testified that the Children have been placed together with

the same foster family, which plans to adopt the Children. (Tr. 131).

Releford testified that she believed termination of the parental rights to be in the Children's best interests because they "need some stability[.]" (Tr. 148). She expressed concern regarding Father's failure to complete court-ordered services and his "inconsistency, especially with the visits . . . ." (Tr. 151-52). Releford asserted that the Children are doing well in foster care and have stability.

Michael Turley, the two older children's therapist, testified that the two boys "had some issues about the inconsistency of parental visitations[.]" (Tr. 18). Specifically, they "would get ready for visitation and they would get all excited, ready to go and then often times the visitation would not occur which would often times result in an angry outburst[.]" (Tr. 18). Turley observed that the boys felt rejected by Father and that the inconsistent visits caused "significant emotional trauma . . . ." (Tr. 21).

Turley further testified that the boys expressed a desire to remain in their foster parents' home and "talk[ed] about [it] as being their home." (Tr. 20). According to Turley, the boys had "clearly formed a bond with the foster family" and are "identifying with the foster family as being part of th[eir] family unit." (Tr. 21). Turley opined that continued efforts at reunification could be "devastating" to the Children. (Tr. 22).

On November 23, 2010, the trial court entered its order, terminating Mother's and Father's parental rights. The trial court found, in pertinent part, as follows:

> 4. Pursuant to dispositional orders, . . . Father was offered the following services: psychological assessment, substance abuse evaluation, home based case management services, anger management services, and visitation. These services were exhaustive and were designed to address the parents' difficulties.

Evaluations revealed no specific barriers to the parents' ability to participate in services and achieve reunification.

. . . .

6. . . . Father had been located in April after not having seen the [C]hildren in over two (2) years.

. . . .

8. Father has a long-term history of instability, domestic violence, and a lack of investment in his children. Father had been arrested multiple times for battery related offenses. Records are unclear whether any of the arrests resulted in convictions. Father's driver's license has been suspended multiple times and is currently suspended for outstanding fines and driving while suspended. Allegations of Risk of Physical Injury by Neglect were substantiated against Father in Illinois in February 2007. Father claims Mother made numerous false reports regarding domestic violence due to her mental health problems. Father, however, failed to take any active steps to protect the [C]hildren from Mother's instability. Father also failed to take any active steps to locate the [C]hildren after separating from Mother in March 2008. During the CHINS proceedings, Father tested positive for the presence of alcohol in May 2010. Father was reluctant to provide information regarding his financial status, and although he claims to earn $4000.00 per month, he failed to provide financial support for his [C]hildren.

9. A permanency hearing was held on August 17, 2010 at which time the permanent plan was determined to be termination of parental rights and adoption. By that time, neither parent had shown a real investment in reunification. Father had failed to consistently visit with the [C]hildren as scheduled. The Court ordered that Father's visits be reduced by one (1) visit per week if he appeared late for two (2) consecutive visits and to be suspended if he failed to appear at two (2) consecutive visits. Visitation guidelines provided that a visit is cancelled if Father arrives 15 minutes late. Father still missed visitations providing various excuses for declining to follow suggestions to arrange for reliable participation at visitations.

10. The [C]hildren have experienced a great deal of trauma associated with instability, domestic violence, and periods of abandonment by both parents. They have lived in multiple residences. The older children recall Mother and Father fighting, both verbally and physically. The [older] children also recall Father hitting them. . . . Behavioral issues surfaced surrounding inconsistent

> visits from the parents. The [older] children's therapist noted that the inconsistency of visitations was causing significant emotional trauma for the [older] children. Since Father's visits were suspended, weekends in the foster home are smoother and there are fewer outbursts. If the [C]hildren continue to experience the same pattern of inconsistency, the impact will be devastating.
>
> 11. . . . At the time of the termination hearing, the [C]hildren continued to be placed together in a stable foster home. They all remained in counseling, were doing well in school, and were benefiting from the consistency being provided to them. Father had continued to display a distinct pattern of failing to be fully invested in his children's welfare.
>
> 12. CASA, Verdell Releford, supports termination of parental rights in the best interests of the [C]hildren. CASA has observed that the [C]hildren all have serious emotional problems and require a great deal of consistency and stability. The parents have failed to demonstrate they are capable of providing the consistency or stability the [C]hildren require. The [C]hildren have been in multiple foster care placements and have finally bonded with the current foster family. The [C]hildren have no special needs that prevent adoption.
>
> 13. Although the parents love these [C]hildren, neither has the current ability to meet the [C]hildren's needs. . . . Father's history of domestic violence issues remains unaddressed and he has yet to establish consistent investment in the [C]hildren. All imaginable services have been offered and nothing is singularly different in today's circumstances since the time of removal. To continue the parent-child relationships would be detrimental to the [C]hildren. The [C]hildren need permanency now.

(App. 40-42).

DECISION[2]

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

[2] We remind counsel for DCS that pursuant to Rule 43(D) of the Indiana Rules of Appellate Procedure, the typeface of both the body text and footnotes of a brief shall be 12-point or larger.

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), *trans. denied, cert. denied*, 534 U.S. 1161 (2002).

In reviewing the termination of parental rights, we 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.*

At the time DCS sought to terminate Father's parental rights, it was required to plead and prove in relevant part that:

> (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.
> . . . .
>
> (C) that termination is in the best interests of the child[.]

Ind. Code § 31-35-2-4(b)(2). These allegations must be established by clear and convincing evidence. *I.A.*, 934 N.E.2d at 1133.

1. <u>Conditions Remedied</u>

Father asserts that DCS failed to establish that the conditions resulting in the removal

of the Children will not be remedied and that a continuation of his parent-child relationship with the Children poses a threat to their well-being. Because subsection (b)(2)(B) is written in the disjunctive, however, DCS need prove only one of the two elements by clear and convincing evidence. *See I.A.*, 934 N.E.2d at 1133. Thus, if we hold that the evidence sufficiently shows that the conditions resulting in removal will not be remedied, we need not address whether the continuation of the parent-child relationship poses a threat to the well-being of the child. *See* I.C. § 31-35-2-4(b)(2)(B); *A.N.J.*, 690 N.E.2d at 721 n.2.

Father argues that the evidence does not support the trial court's findings that the conditions that led to the Children's removal will not be remedied. To determine whether the conditions are likely to be remedied, the trial court must examine the parent's fitness to care for the child "as of the time of the termination hearing and take into account any evidence of changed conditions." *In re S.P.H.*, 806 N.E.2d 874, 881 (Ind. Ct. App. 2004). The trial court, however, also must determine whether there is a substantial probability of future neglect or deprivation. *Id.* In so doing, the trial court "may properly consider 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." *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003).

The trial court may also consider the services offered to the parent and the parent's response to those services. *Id.* "Finally, we must be ever mindful that parental rights, while constitutionally protected, are not absolute and must be subordinated to the best interests of the child when evaluating the circumstances surrounding termination." *Id.* Thus, the trial

court need not wait until a child is irreversibly harmed such that the child's physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

Here, DCS presented evidence that Father has a lengthy history of arrests for battery. At least one of the Children reported witnessing, and being subjected to, Father's physical abuse. Although Father blamed Mother for his numerous arrests, his most recent arrest for battery did not involve Mother but involved another woman. Furthermore, despite Mother's volatile and erratic behavior, Father never attempted to gain custody of the Children or otherwise protect the Children. Father also had no contact with the Children during a two-year period.

Regarding services, DCS offered to assist Father in locating home-based services in his area; he, however, refused assistance. Father then was dilatory in starting the court-ordered anger management and parenting services; accordingly, he failed to complete the services by the date of the final hearing.

Father also was dilatory in providing proof of income to the trial court. Although he purportedly earned approximately $4,000.00 per month, he never provided any meaningful support to the Children after his separation from Mother. Rather, according to Father's testimony, he gave Mother's relatives $1,000.00 for the care of his three children during the two-year time period from March of 2008 through April of 2010.

As to visitation, Father missed approximately half of the scheduled visits. Father's tardiness resulted in several cancelled visits, despite Father being aware of the time

requirements for visits. Notwithstanding the trial court's order that Father's continued failure to appear at scheduled visits would result in suspension of his visits, Father continued to miss visits.

While we acknowledge Father's attempts to re-establish a relationship with the Children, we cannot overlook his pattern of conduct. Accordingly, we find that DCS established by clear and convincing evidence that there is a reasonable probability that the conditions that resulted in the Children's removal will not be remedied.

2. Best Interests

Father also challenges the trial court's finding and determination that termination of his parental rights is in the best interests of the Children. For the "best interest of the child" statutory element, the trial court is required to consider the totality of the evidence and determine whether the custody by the parent is wholly inadequate for the child's future physical, mental, and social growth. *In re A.K.*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010). In making this determination, the trial court must subordinate the interest of the parent to that of the child involved. *Id.* The recommendations of the CASA and child's caseworker that parental rights be terminated support a finding that termination is in the child's best interests. *See A.J. v. Marion County Office of Family and Children*, 881 N.E.2d 706, 718 (Ind. Ct. App. 2008), *trans. denied*; *In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (stating that the testimony of the CASA and case manager is sufficient to prove by clear and convincing evidence that termination is in the child's best interests), *trans. denied*.

Both the family's case manager and the CASA testified that it would be in the Children's best interests to terminate Father's parental rights. The trial court heard testimony that Father's inconsistent behavior has emotionally harmed the Children; the Children have benefited from the stability provided by their foster family; they are doing well in their foster home; and adoption of the Children by the foster family is a being considered.

The recommendations and testimony, along with the evidence of Father's failure to complete services and attend at least half of the scheduled visits, support the trial court's finding that termination of Father's parental rights is in the Children's best interests.

Upon review, we find that DCS established its allegations against Father by clear and convincing evidence. Such evidence supports the trial court's findings that the conditions that resulted in the removal of the Children will not be remedied and that termination is in their best interests.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.