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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF:	)	
S.C. and T.C., Minor Children,	)	
and,	)	
D.C., Father,	)	
Appellant-Respondent,	)	
vs.	)	No. 79A02-1102-JT-203
THE INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta Rush, Judge
The Honorable Faith Graham, Magistrate
Cause No. 79D03-1008-JT-133, 79D03-1008-JT-135

August 17, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BARNES, Judge

Case Summary

D.C. ("Father") appeals the termination of his parent-child relationship with his children, S.C. and T.C. We affirm.

Issue

Father raises three issues, which we consolidate and restate as whether there is sufficient evidence to support the termination of his parental rights.

Facts

Father and B.M.[1] ("Mother") have two children together: S.C., who was born on April 4, 2004, and T.C., who was born on July 7, 2005. In 2004 and 2005, Father and Mother struggled with methamphetamine addictions. Before T.C. was born, Mother and Father were involved in the equivalent of a child in need of services ("CHINS") action in Kentucky, and S.C. was placed in the custody of Father's mother. During the course of that proceeding, Mother and Father moved to Indiana, completed drug abuse programs, and stopped using methamphetamine.

At some point, Father injured his back at work and began taking Lortab for pain. Eventually Mother and Father became addicted to the pain pills. In 2007, T.C. became the subject of a CHINS action after Mother tested positive for opiates during an attempt to regain legal custody of S.C., who was still living in Kentucky. Father did not

[1] Mother's parental rights also were terminated. She does not appeal.

participate in the 2007 CHINS action because his opiate addiction was in "full swing." Tr. p. 41. Mother completed a drug treatment program, and the CHINS action was closed in December 2007. Mother regained custody of T.C. and S.C., and Father began living with them again. Mother, however, relapsed, and Mother and Father eventually began using heroin daily.[2]

In November 2009, the family was driving from Kentucky to Lafayette and, while parked at a gas station in Indianapolis with the children in the backseat, Mother injected herself with heroin and overdosed. Father called 911, and Mother survived.

The children were placed in protective custody and were found to be CHINS in January 2010. The children were initially placed in the custody of Mother's mother. Mother and Father, however, had unsupervised overnight visitations with the children in violation of the dispositional decree, and the children were eventually placed in foster care.

From December 2009 until November 2010, Mother and Father repeatedly attempted to treat their addictions without success. In June and July 2010, Father was incarcerated in Kentucky for a burglary charge, which was eventually dropped. During that time, Mother overdosed again, and her fifteen-year-old sister sought medical attention for Mother.

In August 2010, Annalyse Ewing, the ongoing case manager, informed Mother and Father that the Department of Child Services ("DCS") intended to request that the

[2] Although the specific chronology of Mother's and Father's drug use is not entirely clear, it is not disputed by Father.

plan be changed from reunification to termination unless they began making progress and participating in an intensive outpatient treatment program. Mother and Father offered no indication that they were participating in any type of substance abuse treatment, and DCS formally recommended that Mother's and Father's parental rights be terminated.

A termination hearing was scheduled for November 19, 2010. Father, however, was unable to attend because he had to undergo an emergency appendectomy, and the hearing was rescheduled. After the surgery, Father maintained consistent communication with Ewing and began participating in a sixteen-week-long matrix drug treatment program. At the time of the January 6, 2011 termination hearing, Father was six weeks into the program, and Mother had begun a similar program on January 3, 2011. Mother and Father continued to live together in Mother's long-term subsidized housing in violation of a policy limiting guests to two weeks.

On January 25, 2011, the trial court issued an order terminating Mother's and Father's parental rights. Referring to the 2007 CHINS action as the first case and the 2009 CHINS action as the second case, the trial court's order provided in part:

> 3. The reasons for the first CHINS case involved drug use by both parents. Mother tested positive for opiates, specifically morphine. Father tested positive for cocaine and opiates, specifically morphine. Both parents admitted a history of methamphetamine use.
>
> 4. The reasons for the second CHINS case included the same substance abuse issues. Specifically, law enforcement responded to a DOA (dead on arrival) call when Mother overdosed while shooting up heroin in a vehicle with the children present. Father had used heroin that day as well. The children were able to describe the events and the methods the parents use to inject heroin. Mother was miraculously

revived en route to the hospital. However, upon Mother's release from the hospital, the parents neglected to immediately contact DCS regarding the location of the children.

* * * * *

6. During the first CHINS case, the parents were offered services including the following: substance abuse treatment, home based family prevention services, couples counseling, individual counseling, random drug screens, and parenting classes. Pursuant to the dispositional order and parental participation decree issued in the second CHINS case, Mother was ordered to complete the following services: in patient substance abuse treatment, aftercare substance abuse treatment, individual counseling, and random drug screens. Father was ordered to complete similar services. These services have been exhaustive and have been designed to address the difficulties that have come to light since the initial removal of the children.

* * * * *

9. Father also has a long-standing history of instability as a result of severe substance abuse. Father is thirty (30) years old and has abused substances since he was seventeen (17) years old. Father's history of drug use includes marijuana, methamphetamine, and opiate pain pills. Father eventually became a daily heroin user. Father has been a member of the ironworkers union and is currently a member of the carpenters union. However, he has been unemployed for approximately one (1) year. Father has been in a relationship with Mother for approximately eight (8) years and has resided in Mother's subsidized housing for about four (4) years without permission.

* * * * *

11. In the second CHINS case, the parents failed to maintain regular contact with DCS during several periods. The whereabouts of the parents were unknown at times. Both parents failed to take all requested drug screens during the case and both tested positive for drugs. Father was

incarcerated for a period of approximately forty (40) days. The parents have not seen the children since June 2010 when supervised visits were suspended for continued drug use and violations of the Court's orders.

12. Mother's multiple attempts at substance abuse treatment have been wholly unsuccessful. Mother has overdosed causing cardiac arrest on two (2) occasions. The first overdose in November 2009 occurred in the presence of the children and resulted in the children's removal. During the second overdose in July 2010 Mother was again shooting up heroin in a vehicle with a child, her fifteen (15) year old sister, present. Mother still craves drugs and faces a daily struggle not to use. Mother's most recent attempts at substance abuse treatment began January 3, 2011. Father's repeated attempts at substance abuse treatment have also been followed by continued relapses. Father reports he has been clean since November 1, 2010 yet he remains in a relationship with Mother who continues to actively use drugs.

13. Although Mother and Father love these children, neither has demonstrated the ability or willingness to make lasting changes from past behaviors. The long-standing history of instability and substance abuse displayed by these parents continues today. 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 children.

14. During their lifetimes, these children have been outside the care of their parents for lengthy periods. There have been three (3) child protection proceedings within the past six (6) years. The children initially believed they had caused the problems, felt responsible, and thought they were in trouble. The children have substantially bonded with their foster family and are noticeably different since the beginning of the case. They are now open, polite, cheerful, and seldom speak of their biological parents. The children have attained a sense of stability. Resuming visitation or reunification efforts would cause another period of bereavement for the children likely to be far more traumatic than their experience thus far. At this stage in their development, permanency is critical.

> 15. CASA, Sally Simmons, supports the termination of parental rights in the best interests of the children. CASA noted that the children are content and well adjusted. The children are adoptable even if current placement is unable to adopt for any reason.
>
> CONCLUSIONS OF LAW
>
> 1. There is a reasonable probability that the conditions that resulted in the removal of the children from the parents' care or the reasons for the continued placement outside the home will not be remedied. There is no reasonable probability that either parent will be able to maintain sobriety or stablity to care and provide adequately for these children.
>
> 2. Continuation of the parent-child relationships poses a threat to the well-being of the children. The children need stability in their lives. The children need parents with whom they can form a permanent and lasting bond to provide for their emotional and psychological as well as their physical well-being. The children's well-being would be threatened by keeping them in parent-child relationships with either parent whose own choices and actions have repeatedly made them unable to meet the needs of these children.
>
> 3. DCS has a satisfactory plan of adoption for the care and treatment of the children following termination of parental rights. The children can be adopted and there is reason to believe an appropriate permanent home has or can be found for the children as a sibling group.
>
> 4. For the foregoing reasons, it is in the best interests of [the children] that the parental rights of [Mother] and [Father] be terminated. Further efforts to reunify would have continued negative effects on the child.

App. pp. 19-21. Father now appeals.

Analysis

Father contends there is insufficient evidence to support the termination of his parental rights. "When reviewing the termination of parental rights, we do not reweigh

the evidence or judge witness credibility." In re I.A., 934 N.E.2d 1127, 1132 (Ind. 2010). We consider only the evidence and reasonable inferences most favorable to the judgment. Id. "We must also give 'due regard' to the trial court's unique opportunity to judge the credibility of the witnesses." Id. (quoting Indiana Trial Rule 52(A)). Where a trial court enters findings of fact and conclusions thereon, as the trial court did here, we apply a two-tiered standard of review. Id. "First, we determine whether the evidence supports the findings, and second we determine whether the findings support the judgment." Id. We will set aside the trial court's judgment only if it is clearly erroneous, which occurs if the findings do not support the trial court's conclusions or the conclusions do not support the judgment. Id.

A petition to terminate a parent-child relationship must allege:[3]

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

[3] The statute was amended effective March 12, 2010, to include the language regarding two prior CHINS adjudications. See I.C. § 31-35-2-4(b)(2)(B)(iii). Although DCS's petition to terminate Father's parental rights was filed after March 12, 2010, the petition is based on the prior version of the statute and does not reference previous CHINS adjudications. The application of one version over the other does not affect the outcome of this appeal. Because the petition was filed after the amendments became effective, however, we refer to that version of the statute.

> (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) 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;
>
> (C) that termination is in the best interests of the child; and
>
> (D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). DCS has the burden of proving these allegations by clear and convincing evidence. I.A., 934 N.E.2d at 1133.

I. Conditions Resulting in Removal[4]

Father argues the trial court's findings do not reflect that he had made progress in addressing his substance abuse issues, that his criminal cases had been resolved, that he

[4] Father contends that the trial court's conclusions that the conditions resulting in the children's removal would not be remedied and that the continuation of the parent-child relationship poses a threat to the children's well-being are clearly erroneous. Referring to a prior version of Indiana Code Section 31-35-2-4(b)(2)(B), our supreme court observed that the statute was written in the disjunctive, requiring DCS to prove only one of the requirements of subsection (B). Id. Although the statute has been amended, it specifically requires allegations of only one of the three factors. See I.C. § 31-35-2-4(b)(2)(B)(i)-(iii). Thus, although Father argues DCS failed to prove two of the factors, we only need to address whether DCS proved that the conditions resulting in the children's removal would not be remedied. See Bester v. Lake County Office of Family and Children, 839 N.E.2d 143, 148 n.5 (Ind. 2005) (observing that under the prior version of the statute DCS was required to prove either of the two factors, not both).

attended church, that he had maintained the same residence for several years, and that he had supported his family financially. This argument, however, is a request to reweigh the evidence, which we cannot do.

Father also contends that his drug use has been remedied and that the remaining concerns about relapse could be remedied with continued effort and appropriate services.[5] In determining whether the conditions that led to a child's removal will not be remedied, the trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing and take into consideration evidence of changed conditions. In re A.B., 924 N.E.2d 666, 670 (Ind. Ct. App. 2010). "However, 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. (quoting In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied). The trial court may consider services offered by the DCS and the parent's response to those services. Id. DCS is not required to rule out all possibilities of change, but only needs to establish that there is a reasonable probability the parent's behavior will not change. Id.

The children were removed because of Mother's and Father's drug use. The evidence clearly supports the trial court's findings regarding the long-term substance abuse issues Father has faced. The evidence also supports the trial court's findings that Father has been offered extensive substance abuse treatment options over the years.

[5] Father asserts there is no evidence suggesting that continuing the CHINS action to monitor his progress would detrimentally impact the children. Instead of addressing this argument as part of the analysis of whether there is reasonable probability that the conditions resulting in removal had been remedied, we believe this argument is more appropriately addressed in analysis of the children's best interests.

Finally, the evidence supports the trial court's findings that, although Father has stopped abusing drugs in the past, he has always relapsed. Father's recent sobriety and his still-ongoing participation in a drug treatment program do not render the trial court's conclusion that the conditions resulting in the children's removal would not be remedied clearly erroneous.

II. Best Interests of Children

Father argues that the trial court's conclusion that termination of the parent-child relationship was in the children's best interests is clearly erroneous. Father first asserts that it was not in the children's best interests to be placed in non-relative foster care when their adoption was not guaranteed. Father also contends that the children could have remained in their current foster home while the CHINS action was continued and his progress was monitored.

The children were initially placed with Mother's mother. During that placement, however, Mother's mother let the children participate in unsupervised visits, sometimes overnight, with Mother and Father in violation of the dispositional decree. During the termination hearing, Father testified that he knew these visits were in violation of the trial court's order because he "was under the influence of drugs and wasn't able to properly care for [his] children." Tr. p. 51. Although the details are not clear, it appears Mother's mother had become sick and her husband had moved to another state. Eventually, the children were placed in a foster home. The evidence indicated that the children were thriving in their foster home, and the case manager testified that the foster parents had indicated a willingness to adopt the children. Under these circumstances, Father has not

established that the non-relative foster care placement was contrary to the children's best interests.

Father also suggests that it would be in the children's best interests to continue the CHINS case while his progress is monitored. Father argues that he has turned over a new leaf, and "[t]he best thing for him, and ultimately the best thing for the children, is to give him a chance to prove that." Appellant's Br. p. 15. Although we hope Father has turned over a new leaf, this was the family's third involvement with DCS for drug-related reasons. Mother and Father had both failed past attempts to stop using drugs even after having been offered extensive services by DCS. Although Father had been drug free for a short period of time prior to the termination hearing, he still lived with Mother, who had begun a substance abuse program only days before the hearing. Given Father's history of substance abuse, the possibility of relapse was not based on speculation or conjecture.

As for Father's argument that he should have been given more time to establish long-term success, Father focuses on the amount of time between the filing of the CHINS petition and the filing of the petition to terminate the parent-child relationship and points out that the children had only been out of Mother's mother's custody for seven months. He contends that it was not until the children went into foster care that he fully realized the possible consequences of his drug use.

Although from Father's perspective the current proceedings may seem like a short amount of time, the evidence established that the ongoing instability, over the course of the children's lives, has "damaged" and "really done a toll on them." Tr. p. 101. The case manager testified that it was in the children's best interests to have permanency in

their lives. She also stated that the children had told her that they were scared about what was going to happen to them and that they wanted permanency in their lives. She testified that it was in the children's best interests to terminate the parent-child relationship. This is consistent with the children's therapist's testimony that the children were bonding with their foster parents and were now cheerful and positive. The therapist testified that resuming efforts of reunification would cause the children to go through another slightly worse period of bereavement that was far more traumatic for them than the first separation.

Thus, the evidence of Father's unsuccessful attempts to remain drug free in the past and the children's need for permanency supports the trial court's findings, and the findings support the conclusion that termination of the parent-child relationship is in the children's best interests. Father has not established that the trial court's judgment is clearly erroneous.

Conclusion

There is sufficient evidence to establish that the conditions resulting in the children's removal would not be remedied and that termination of the parent-child relationship was in the children's best interests. We affirm.

Affirmed.

ROBB. C.J., and BRADFORD, J., concur.