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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF K.N. AND D.N., Minor Children, And J.P.N., Father, Appellants,	)	
vs.	)	No. 13A04-1002-JT-88
CRAWFORD COUNTY DEPARTMENT OF CHILD SERVICES, Appellee.	)	

APPEAL FROM THE CRAWFORD CIRCUIT COURT
The Honorable K. Lynn Lopp, Judge
Cause Nos. 13C01-0904-JT-004 and 13C01-904-JT-005

August 18, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

J.P. ("Father") appeals the involuntary termination of his parental rights to his minor children, K.N. and D.N., claiming there is insufficient evidence supporting the trial court's termination order. We affirm.

Facts and Procedural History

Father is the biological father of K.N., born in February 2005, and D.N., born in March 2003 (collectively referred to herein as "the children").[1] The facts most favorable to the trial court's judgment reveal that in January 2008, the Indiana Department of Child Services, Crawford County ("CCDCS") received a referral alleging that then two-year-old K.N. had been observed outside the family home without supervision, that trash was strewn throughout the home, and that Father had been recently arrested and incarcerated on domestic violence charges. CCDCS initiated an investigation during which Mother admitted she was struggling with an addiction to methamphetamines, stated that the children were staying with her mother-in-law ("Grandmother"), and further informed CCDCS that she wished for Grandmother to have guardianship of the children so that she could get help with her addiction. CCDCS also confirmed that Father was incarcerated.

The following day, CCDCS filed petitions under separate cause numbers alleging K.N. and D.N. were children in need of services ("CHINS") and an emergency detention hearing was held. The trial court thereafter issued an order finding probable cause to believe K.N. and D.N. were CHINS, temporarily removing the children from Mother's

[1] The children's biological mother, B.N. ("Mother"), voluntarily relinquished her parental rights to both children in October 2009. Mother does not participate in this appeal. Consequently, we limit our recitation of the facts pertinent solely to Father's appeal.

care, and placing the children under the care and supervision of CCDCS. The children were subsequently adjudicated CHINS.

For the next several months, K.N. and D.N. remained in relative placement with Grandmother. Following a hearing in April 2008, the trial court issued a dispositional order formally removing both children from Father's care. The dispositional order also incorporated the pre-dispositional report and directed Father to successfully complete a variety of dispositional goals and services including "participation in in-patient substance abuse counseling, random drug screens, maintaining employment, maintaining stable housing with appropriate utilities, staying in contact with [CCDCS], supervised visitations, anger management counseling, and marriage counseling." Ex. Vol. 1, p. 40.

Following his release from incarceration, Father initially exercised regular visitation with the children. In August 2008, the children were removed from Grandmother's home and placed in relative foster care in Kentucky, via an interstate compact agreement, with their paternal aunt ("Aunt") and her husband. Father and Grandmother were both in agreement with this new custodial arrangement, despite the fact that Aunt's home was an approximate forty-five minutes to one hour drive from Father's home.

Father continued to visit regularly with the children, and in January 2009, Father's supervised visitation privileges were changed to unsupervised visits every Sunday from 9:00 a.m. until 6:00 p.m. In March 2009, Father's visitation privileges were again extended to include overnights on Saturdays, from 6:30 p.m. until 6:30 p.m. on Sundays.

In June 2009, however, Father's unsupervised visitation privileges were suspended because Father failed a drug screen. Father's participation in supervised visits diminished dramatically thereafter, and Father only visited with K.N. and D.N. two times in July 2009, once in August 2009, and once in October 2009. Regarding the remaining court-ordered services, although Father participated in a psychological and substance abuse assessment, Father never obtained stable housing, and instead shuffled between living with various relatives, including Grandmother and a step-sister. Father also lost his job in April 2009 and refused to consistently co-operate with home-based service providers resulting in his case with Ireland Home Based Services ("Ireland") being closed as unsuccessful.

In April 2009, CCDCS filed petitions seeking the involuntary termination of Father's parental rights to both K.N. and D.N. A consolidated evidentiary hearing on the termination petitions was held in October 2009. At the time of the termination hearing, Father remained unemployed and without stable housing. On November 6, 2009, the trial court issued an order terminating Father's parental rights to both children. Father now appeals.

Discussion and Decision

We begin our review by acknowledging that 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 a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses.

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 that are most favorable to the judgment. Id. Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the court's 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 factual 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 County 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. However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. K.S., 750 N.E.2d at 837. Termination of a parent-child relationship is proper where a child's emotional and physical development is threatened. Id. 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. Id. at 836.

Before an involuntary termination of parental rights can occur, the State is required to allege and prove, among other things, that:

> (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; and
>
> (C) termination is in the best interests of the child . . . .

Ind. Code § 31-35-2-4(b)(2)(B) & (C) (2009).[2] The State's burden of proof for establishing these allegations in termination cases "is one of 'clear and convincing evidence.'" G.Y., 904 N.E.2d at 1260-1261 (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(b). Father challenges the sufficiency of the evidence supporting the trial court's findings as to subsections 2(B) and (C) of the termination statute cited above. See Ind. Code § 31-35-2-4(b)(2).

Initially, we observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. It therefore requires the trial court to find that only one of the two

[2] Indiana Code section 31-35-2-4 was amended by Pub. L. No. 21-2010, § 8 (eff. March 12, 2010). Because the changes to the statute became effective in March 2010 following the filing of the termination petition herein, they are not applicable to this case.

requirements of subsection 2(B) has been established by clear and convincing evidence. See L.S., 717 N.E.2d at 209. Here, the trial court found the first prong of subsection 2(B) had been satisfied under the facts of this case, namely, that there is a reasonable probability the conditions resulting in the children's removal or continued placement outside the family home will not be remedied. See Ind. Code § 31-35-2-4(b)(2)(B)(i).

When determining whether there is a reasonable probability that the conditions resulting in a child's removal or continued placement outside the family home will not be remedied, 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. However, the 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 County Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. The trial court may also consider any services offered to the parent by the county department of child services, and the parent's response to those services, as evidence of whether conditions will be remedied. Id. Moreover, a county department of child services (here, CCDCS) is not required to provide evidence ruling out all possibilities of change; rather, it need establish only 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).

In determining that there is a reasonable probability that the conditions resulting in the K.N.'s and D.N.'s removal and continued placement outside of Father's care will not be remedied, the trial court made several findings regarding Father's criminal history. Specifically, the trial court noted that Father was incarcerated at the time of the children's removal from Mother for violating a protective order and thus was unable to care for the children or provide them with "adequate food, clothing, shelter, medical care or supervision . . . ." Appellant's App. p. 10. The court also found Father's criminal history dated back to "2003 for invasion of privacy for an altercation with the children's biological mother," and that his criminal history also "includes charges for domestic violence, violating protective orders and possession of more than 3 grams of precursors (Pseudoephederine)." Id. at 15.

The trial court's termination order also detailed Father's refusal to consistently attend scheduled meetings with the Ireland parent aide and his failure to exercise regular visitation privileges with the children. In addition, the trial court made the following pertinent findings:

> 8. As part of the disposition, the parents were ordered to participate in in-patient substance abuse treatment, submit to random drug screens, actively seek and maintain employment, obtain/maintain housing with all the necessary utilities … have two (2) one (1) hour supervised visitations weekly to be adjusted throughout the case,

participate in anger management, and participate in marriage counseling.[3]

* * *

30. To date, the Court heard no testimony that [Father] found employment, housing, child care, or participated in anger management or counseling.
31. In fact, [Father] did not contest that he was not in compliance with [CCDCS] and that he did not complete services, rather [he] argues that he did not know he had to do so.

* * *

33. [Father] conceded that he did not visit with the children regularly, citing difficulty affording transportation.
34. Nevertheless, the weekend before the hearing, [Father] was able to afford to go camping in Kentucky.
35. The Court also notes that while [Father] is still drawing unemployment (income), he has no home and utilities of his own to be responsible for.
36. The Court also heard testimony that [Father] applied only for a select number of jobs. [Father] refused to apply for jobs at McDonald's or

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[3] Father does not specifically argue on appeal that he was not ordered to participate in several of these delineated services, including substance abuse treatment, random drug screens, anger management classes and marriage counseling. He does argue, however, that although the trial court's dispositional order required Father to do "certain things" as delineated in the CCDCS's pre-dispositional report, which was adopted as part of the trial court's dispositional order, the pre-dispositional order was never included in the record during the termination proceeding. Appellant's Br. at 13. Father further claims that "[n]either the dispositional order nor the permanency plan" which were included in the record specifically mentioned these requirements. Id. at 14. Father therefore concludes that the trial court's finding of fact in paragraph eight of its termination order "is simply unsupported by the record in this case." Id. This argument is disingenuous and unpersuasive. It is clear from the testimony during the termination hearing that Father was well aware of these reunification services ordered by the court. In addition, a review of the record reveals that State's Exhibit D, which was admitted into evidence without objection by Father during the termination hearing, contains the trial court's June 2008 "Entry on Dispositional Hearing" that contains the following entry:

> 10. Family services offered or provided to the parents and custodian are set forth in the pre-dispositional report, which was adopted by the court. These services include participation in in-patient substance abuse counseling, random drug screens, maintaining employment, maintaining stable housing with appropriate utilities, staying in contact with [CCDCS}, supervised visitations, anger management counseling, and marriage counseling.

Ex. Vol. 1, p. 40. See also Tr. p. 60.

as a server anywhere. [Father] stated that such a job would pay less than his unemployment benefits.

37. Family Case Manager Diana Songer testified that she was not able to give [Father] regular random drug screens because he would either be unavailable or not return her calls.

38. When [Songer] was able to give [Father] a random drug screen on June 11, 2009, [Father] tested positive for methamphetamine.

Id. at 10-14. Based on these and other findings, the trial court concluded as follows:

1. [Father] was aware of what he needed to do to be reunified with the children.
2. Though [CCDCS] has provided [Father] with various services - to this date- [Father] has failed to complete any services.
3. [Father] has not created a suitable environment for his children.
4. Specifically, [Father] remains unemployed, with no home of his own, did not set up child care, did not avail himself for random drug screens as ordered by this Court, tested positive for illegal drugs, and failed to comply with Ireland Home Based Services …
5. [Father] visited sporadically, at best, with his children.

* * *

7. Given [F]ather's twenty-two month history of failing to comply with services, given that he has not establish[ed] a home that is suitable for his children, given that he did not find a job, … has no child care lined up,…failed to avail himself of random drug screens, … tested positive for Methamphetamine in June, given his criminal history, and … sporadic visits; the Court finds that there is a reasonable probability that the conditions that brought about removal will not be remedied.

Id. at 17-18. A thorough review of the record leaves us satisfied that clear and convincing evidence supports the trial court's findings set forth above, which in turn support the court's conclusions and ultimate decision to terminate Father's parental rights to K.N. and D.N.

Testimony from various caseworkers and service providers shows that despite a wealth of services available to him for nearly two years, at the time of the termination

hearing in 2009, Father's circumstances remained largely unchanged, and he remained incapable of providing the children with a safe and stable home environment. During the termination hearing, CCDCS family case manager Songer confirmed that she had referred Father to Ireland so that he could receive assistance in achieving the specific dispositional goals of obtaining employment and appropriate housing, as well as learning how to "engage in non-destructive parenting skills." Tr. p. 53.

Songer reported, however, that Father repeatedly failed to show for scheduled appointments and that his last contact with Ireland was in May 2009. Songer also testified that although the referral with Ireland remained open until August 2009, services were eventually discontinued for lack of participation. When asked whether anything else could have been done by CCDCS to "help the parents along," Songer replied, "I feel that we offered . . . suitable services to ensure reunification." Id. at 60. Songer further indicated that she believed that "the situation that brought about the removal [of the children] cannot be remedied." Id. at 60-61.

Similarly, Ireland case workers John Andrew and Dana Wellborn both confirmed Father's participation in scheduled home-based counseling sessions throughout the underlying proceedings was sporadic and ultimately unsuccessful. Wellborn further testified that she had attempted to help Father by (1) trying to arrange weekly appointments, (2) providing Father information on how to "job search", (3) offering to "help him do a resume," and (4) meeting Father at Work One to help Father "upload [his] resume" and . . . "search for jobs," but that Father refused her offers of help and informed

Wellborn he "already knew how" to do these things. Id. at 30. When asked if she "believed [she] did everything in [her] capacity to try to provide [Father] services," Wellborn answered, "I do." Id. at 27.

With regard to visitation, the children's relative foster mother, Aunt, confirmed that Father had only visited with the children approximately four times after September 2008, despite the fact that she had never placed any limits on Father's ability to visit with the children and allowed Father to see the children "whenever he wanted." Id. at 37. Aunt also testified that she had provided Father with a cell phone so that he could speak with the children anytime he wanted to at no expense, but that Father had only used the cell phone "occasionally…. [m]aybe once a week, if that," and had later returned the phone to Aunt. Id. at 38. We have previously stated that the failure to visit one's child "demonstrates a lack of commitment to complete the actions necessary to preserve [the] parent-child relationship." Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied.

Father's own testimony further supports the trial court's findings. During the termination hearing, Father acknowledged that he was incarcerated when the children were initially removed from Mother by CCDCS. Father also admitted: (1) there had been a "history of domestic violence between [Father] and [Mother] over the years;" (2) he was currently unemployed and had been "out of work since April of 2009;" (3) Aunt and her husband had "opened their home to [Father]" for visitation with the children "[w]henever [he] wanted" but he had only visited with the children approximately four

times in 2009; (4) he was recently ordered "to submit to thirty days of home incarceration" for violating the terms of his probation by failing a drug screen in June 2009; and (5) he had spent the weekend prior to the termination hearing camping in Kentucky with friends while his children were in Indiana visiting Grandmother for a week.

Where a parent's "pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve." In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). Accordingly, we conclude that CCDCS presented clear and convincing evidence to support the trial court's findings and ultimate conclusion that there is a reasonable probability the conditions leading to K.N.'s and D.N.'s removal or continued placement outside of Father's care 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, taking into consideration the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. D.D., 804 N.E.2d at 266.

Here, the trial court had the responsibility of judging Father's credibility and of weighing his testimony regarding his participation in services against the abundant evidence demonstrating Father's past and current inability to provide the children with a consistently safe and stable home environment. It is clear from the language of the judgment that the trial court gave more weight to evidence of the latter, rather than the former, which it was permitted to do. See Bergman v. Knox County Office of Family &

Children, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding trial court was permitted and in fact gave more weight to abundant evidence of mother's pattern of conduct in neglecting her children during several years prior to termination hearing than to mother's testimony she had changed her life to better accommodate her children's needs). Moreover, contrary to Father's assertion on appeal that the trial court's "recitation of the facts in its 'finding of facts' section of the [termination order] is primarily a restatement of testimony relating to contact or attempted contact between the Ireland Home Based Services case workers and [Father]," see Appellant's Br. p. 12, a review of the record leaves us convinced that the trial court's findings reflect a thoughtful and detailed evaluation of the facts and events that occurred during the CHINS and termination proceedings.

We now turn to Father's assertion that CCDCS failed to prove that termination of his parental rights is in the children's best interests. We are ever mindful that, when determining what is in a child's best interests, a trial court is required to look beyond the factors identified by the Indiana Department of Child Services and to look to the totality of the evidence. McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, however, the court must subordinate the interests of the parent to those of the child. Id. Moreover, we have previously explained that recommendations from the case manager and child advocate that parental rights should be terminated support a finding that termination is in the child's best interests. Id.

Here, in addition to the findings and conclusions set forth previously, the trial court found that "[g]iven all the testimony put before the Court, the Court hereby finds that termination of parental rights is in the best interests of the child. . . ." Appellant's App. p. 17. This finding is likewise supported by the evidence. During the termination hearing, Case manager Songer testified that she believed termination was in the children's best interests, referring to Father's on-going non-compliance with services. Guardian ad Litem Kevin Stilwell likewise recommended termination of Father's parental rights to K.N. and D.N. In so doing, Stilwell informed the trial court that Father had failed to obtain any stability in his life even though he had had "ample time" to "get things done." Id. at 47. Stilwell therefore felt termination of Father's parental rights to K.N. and D.N. was in the children's best interests.

A court need not wait until a child is irreversibly influenced by a seriously deficient parental lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. In re E.S., 762 N.E.2d 1287 (Ind. Ct. App. 2002). Based on the totality of the evidence, including Father's failure to successfully complete and benefit from a majority of the trial court's dispositional goals, inability to refrain from criminal activity, recent use of illegal substances, and current inability to demonstrate an ability to provide the children with a safe and stable home environment, coupled with the testimony from Songer and Stilwell recommending termination of Father's parental rights, we conclude that the trial court's

determination that termination is in K.D.'s and D.N.'s best interests is supported by the evidence.

We reverse a termination of parental rights "'only upon a showing of clear error – that which leaves us with a definite and firm conviction that a mistake has been made.'" Matter of A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting Egly, 592 N.E.2d at 1235). We find no such error here.

Affirmed.

RILEY, J., and BRADFORD, J., concur.