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ATTORNEY FOR APPELLANT:

AMY KAROZOS
Greenwood, Indiana

ATTORNEYS FOR APPELLEES:

DONNA M. LEWIS
Indiana Dept of Child Services
Indianapolis, Indiana

ROBERT J. HENKE
DCS Central Administration
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF: B.M., Minor Child,	)	
L.M., Father,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A02-1012-JT-1441
INDIANA DEPARTMENT OF CHILD SEVICES,	)	
and	)	
CHILD ADVOCATES, INC.,	)	
Appellees-Petitioners.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary K. Chavers, Judge Pro Tem
The Honorable Larry E. Bradley, Magistrate
Cause No. 49D09-1006-JT-24537

August 30, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

L.M. ("Father") appeals the involuntary termination of his parental rights to his child, B.M. Concluding that there is sufficient evidence to support the juvenile court's judgment, we affirm.

Facts and Procedural History

Father is the biological father of B.M., born in May 2009.[1] The evidence most favorable to the juvenile court's judgment reveals that in June 2009, the local Marion County office of the Indiana Department of Child Services ("MCDCS") filed a petition alleging B.M. was a child in need of services ("CHINS") because Father was incarcerated on felony intimidation charges and Mother, who has mild mental retardation, lacked the cognitive ability to care for a newborn. B.M. was removed from Mother's care and placed in foster care at that time. Shortly after the CHINS petition was filed, Father was released from jail, and Father and Mother lived together.

During a subsequent hearing, Father admitted that he and Mother were currently unable to care for B.M., and the juvenile court adjudicated B.M. a CHINS. On July 20, 2009, the court issued a dispositional order and participation decree formally removing B.M. from Father's care and directing Father to complete a variety of tasks and services

[1] The juvenile court also terminated the parental rights of B.M.'s biological mother, D.M. ("Mother"), in its December 2010 judgment herein appealed. Mother, however, filed a separate appeal. In July 2011, another panel of this Court affirmed the juvenile court's termination order as to Mother. See In re B.M., Cause No. 49A02-1012-JT-1424 (July 19, 2011). We therefore limit our recitation of the facts to those pertinent solely to Father's appeal.

designed to facilitate his reunification with B.M. Specifically, the juvenile court ordered Father to, among other things, obtain and maintain suitable housing and a stable source of income, successfully complete home-based counseling services and follow any recommendation of the home-based counselor, and undergo a parenting assessment and successfully complete all recommendations developed as a result of the assessment.

Both parents participated in psychological examinations after which a clinical psychologist determined that Mother suffered from a depressive disorder, intermittent explosive disorder, cognitive disorder, and personality disorder with schizoid and obsessive compulsive features. Father was diagnosed with delusional disorder, intermittent explosive disorder, and a personality disorder with anti-social, passive-aggressive, and narcissistic traits. Moreover, Father's delusional belief system caused him to believe that there was a conspiracy between government agencies to remove B.M. from his care, and the clinical psychologist reported observing Mother as starting to mimic Father's delusional ideas.

Home-based services for both parents commenced in July 2009. Although Mother was provided intensive home-based services between six to nine hours per week with a licensed social worker, her ability to safely care for B.M.'s basic needs did not significantly improve. Moreover, she failed to regularly fill her prescriptions, and oftentimes became agitated, hostile, and aggressive. In addition, during a supervised home visit in 2010, Mother became agitated and frustrated while putting a jacket on B.M. and accidentally fractured the child's arm.

Father's participation in home-based services was likewise unsuccessful. During home-based counseling sessions, Father oftentimes became angry, was increasingly hostile toward the home-based therapist, did not take redirection well, refused to actively participate in home-based counseling sessions, and soon began missing scheduled appointments. Father's visits with B.M. also became sporadic, and he refused repeated offers from the home-based counselor to change the scheduled visits and/or home-based counseling appointments to better accommodate his work and probation commitments. In addition, Father refused to recognize Mother's limitations and insisted that Mother was perfectly capable of caring for B.M. without assistance.

In June 2010, the permanency plan was changed from reunification to adoption, and MCDCS filed petitions seeking the involuntary termination of Father's parental rights to B.M. At approximately the same time, Father and Mother were evicted from their apartment and eventually began living together above an ice cream shop where Father was seasonally employed. Due to the manner in which the business was secured, however, Father and Mother had a limited ability to leave the premises after the business closed in the evening.

A consolidated evidentiary hearing on the termination petitions filed as to Father and Mother was held in December 2010. During the hearing, MCDCS presented evidence showing that although Father had participated in anger management classes as part of the terms of his probation, he failed to benefit from this program and continued to be openly hostile and aggressive with caseworkers and service providers throughout the duration of the underlying proceedings. In addition, Father, who continued to live with

Mother, had failed to successfully complete home-based counseling services and remained insistent that neither parent needed any outside assistance in caring for B.M.

At the close of evidence, the juvenile court took the matter under advisement. The juvenile court thereafter entered an order terminating Father's parental rights to B.M. Father now appeals.

Discussion and Decision

Initially, we note our standard of review. 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 the 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, 264 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. Id.

In the instant case, the juvenile court made specific findings and conclusions in its termination order. When a juvenile court enters specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. Bester v. Lake Cnty. Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). In deference to the juvenile 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; see also Bester, 839 N.E.2d at 147.

"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. Although parental rights are of a constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. In re R.H., 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). In Indiana, before parental rights may be involuntarily terminated, the State is required to allege and prove, among other things:

> (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 . . . .

Ind. Code § 31-35-2-4(b)(2)(B). The State's burden of proof for establishing these allegations in termination cases "is one of 'clear and convincing evidence.'" In re G.Y., 904 N.E.2d 1257, 1260-1261 (Ind. 2009) (quoting Ind. Code § 31-37-14-2 (2008)). "[I]f 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(a) (emphasis added).

Father challenges the sufficiency of the evidence supporting the juvenile court's findings as to subsection (b)(2)(B)(i) and (ii) of the termination statute cited above. We

pause to observe, however, that Ind. Code § 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, MCDCS was required to establish, by clear and convincing evidence, only one of the three requirements of subsection (b)(2)(B). See L.S., 717 N.E.2d at 209. Because we find it to be dispositive, we limit our review to Father's allegations of error pertaining to subsection (b)(2)(B)(i) of Indiana's termination statute.

In determining whether there exists a reasonable probability that the conditions resulting in a child's removal or continued placement outside a parent's care will not be remedied, a juvenile 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. 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 Cnty. Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. A juvenile court may also properly consider the services offered to the parent by a county department of child services and the parent's response to those services as evidence of whether conditions will be remedied. Id.

The juvenile court's judgment terminating Father's parental rights to B.M. provides, in pertinent part, as follows:

> 14. During home[-]based services sessions, both parents evidenced anger issues . . . .

> 15. [Father] presented as agitated throughout this termination trial.
>
> 16. [Father] became hostile to the home[-]based therapist, would not take redirection well, started missing sessions in November 2009, and eventually stopped participating. Although probation matters and employment were brought up as to why [Father] could not stay and participate, he was offered the option of moving sessions any time during six days, thirteen hours a day.
>
> 17. [Father] became inconsistent in visiting with [B.M.].
>
> 18. There is a reasonable probability that the conditions that resulted in [B.M.'s] removal and continued placement outside the home will not be remedied. . . . [Father] refused to complete home[-]based services, and became inconsistent in visitations. He does not recognize [Mother's] inability to parent, or the need for services. His delusional system is a barrier to remedying conditions.

Appellant's Appendix at 27. A thorough review of the record reveals that abundant evidence supports all of the juvenile court's findings set forth above. These findings, in turn, support the court's ultimate decision to terminate Father's parental rights to B.M.

In challenging the sufficiency of the evidence supporting the juvenile court's findings, Father takes particular issue with specific finding no. 16. In so doing, Father admits that his participation in home-based counseling and visitation with B.M. had become "somewhat inconsistent" during the CHINS case. Appellant's Brief at 13. Father nevertheless directs our attention to evidence that he asked the juvenile court to order MCDCS to continue to offer services "even if the permanency plan was changed from reunification to adoption" and that he completed anger management classes as part of the terms of his probation to support his contention that the "evidence, testimony[,] and exhibits admitted at the termination trial contradicts the finding that [Father] stopped participating in services." Id.

It is undisputed that Father participated in, and even completed, some of the court-ordered reunification services, including an anger management program. Extensive evidence makes clear, however, that Father failed to benefit from these services and continued to exhibit "hostile" and "controlling" behaviors toward service providers and Mother throughout the duration of the underlying proceedings. Transcript at 173. For example, home-based case manager Lonya Thompson testified that during the CHINS case, Father displayed "resistance to redirection," "started missing some visits" after the November 2009 hearing, and began making "excuses" for his lack of participation by saying he "either had jobs to do or he . . . had to do something for probation." Id. at 171. Although Thompson offered to "try to adjust the schedule to try and meet his needs," Father "refused" her offers. Id.

Thompson also testified that by November 2009, Father had essentially "disengaged in services," as he would "come into the room, [but] wouldn't even acknowledge my presence," and there were "a lot of times that he left the visits early." Id. at 172. In addition, Father "threatened" Thompson when, following MCDCS's request that the permanency plan be changed from reunification to adoption, Father told her that "everyone that had a hand in his daughter being removed from his care," would "get what's coming to them." Id. at 191-192. Similarly, the juvenile court observed that Father "presented as agitated throughout this termination trial." Appellant's Appendix at 27. We have previously explained that "simply going through the motions of receiving services alone is not sufficient if the services do not result in the needed change." In re J.S., 906 N.E.2d 226, 234 (Ind. Ct. App. 2009).

Father also asserts that he "did what he was expected to do in order to keep his parental rights," and that "the evidence did not show[,] that [he] was unable to care for [B.M.] alone . . . ." Appellant's Brief at 15, 19. The general consensus among case workers and service providers, however, was that Father was incapable of "put[ting] [B.M.'s] needs before his [own]" issues. Transcript at 176. Moreover, Father's steadfast refusal to acknowledge his own mental health issues, as well as Mother's parenting limitations, lends further support for the juvenile court's findings.

During the termination hearing, Father informed the juvenile court that his diagnosed mental health conditions were only "speculation," that he was "falsely" diagnosed by Dr. Papandria, and that he "really didn't need" the court-ordered reunification services. Id. at 64, 66-67. Father also made clear that he and Mother did not want any additional help from MCDCS stating: "[W]e don't need any more headaches in our lives." Id. at 68-69. When further questioned, "[b]ut you and [Mother] . . . alone don't have the ability to safely provide for [B.M.] do you?" Father replied: "We do too have the ability. That's just speculation." Id. at 69.

"A pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, supports a finding that there exists no reasonable probability that the conditions will change." Lang v. Starke Cnty. Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied. Based on the foregoing, we conclude that ample evidence supports the juvenile court's specific findings set forth above. Father's arguments to the contrary, emphasizing his self-serving testimony rather than the evidence cited by the juvenile

court in its termination order, amount to an invitation to reweigh the evidence, which we may not do. See D.D., 804 N.E.2d at 265.

Father's additional assertion that his constitutional right to due process was violated when MCDCS failed to refer him for additional psychiatric services following Dr. Papandria's evaluation is likewise unavailing. We have previously explained that "the provision of services is *not* a requisite element of our parental rights termination statute, and thus even a complete failure to provide services would not serve to negate a necessary element of the termination statute and require reversal." In re E.E., 736 N.E.2d 791, 796 (Ind. Ct. App. 2000) (emphasis added). Thus, Father may not directly attack the termination order herein on the grounds that he was denied reunification services in the underlying CHINS case.

This Court has also made clear that a parent may not "sit idly by without asserting a need or desire for services" and then successfully argue on appeal that he or she was denied services to assist him or her with parenting. In re B.D.J., 728 N.E.2d 195, 201 (Ind. Ct. App. 2000). Here, Father never requested psychiatric services and refused to take full advantage of the reunification services that were offered during the CHINS case. Moreover, Father repeatedly denied having any mental health concerns during the underlying proceedings and vehemently testified during the termination hearing that he had been "falsely" diagnosed by Dr. Papandria. Transcript at 66.

This Court will 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." In re A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting Egly v.

Blackford Cnty. Dep't of Pub. Welfare, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Affirmed.

BAKER, J., and KIRSCH, J., concur.