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ATTORNEY FOR APPELLANT:

JILL M. ACKLIN
Westfield, Indiana

ATTORNEYS FOR APPELLEE:

PATRICK M. RHODES
Indiana Department 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 INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF N.S. and A.S., MINOR CHILDREN, AND THEIR FATHER, A.L.,	)	
A.L.	)	
Appellant-Respondent,	)	
vs.	)	No. 49A02-1102-JT-206
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary Chavers, Judge *Pro Tempore*
The Honorable Larry Bradley, Magistrate
Cause Nos. 49D09-1007-JT-30965, 49D09-1007-JT-30966

September 15, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Respondent A.L. ("Father") appeals the juvenile court's order terminating his parental rights to N.S. and A.S. 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

Father has two children, N.S. and A.S. (collectively "the children") at issue in this appeal.[1] N.S. was born on June 4, 2003. A.S. was born on February 3, 2005.

DCS first became involved with N.S. shortly after his birth, and in 2003, N.S. was adjudicated a Child In Need of Services ("CHINS"). At the time, the juvenile court found that N.S. was a CHINS because his mother had used cocaine while pregnant with him and that she had given birth to two cocaine-positive children in the past. In January of 2005, DCS dismissed the 2003 CHINS proceeding after N.S. was reunified with his mother. Father acknowledged that he knew about, but did not participate in, the 2003 CHINS proceedings.

In December of 2008, DCS became involved with Father and the children. DCS filed a petition alleging that the children were CHINS on December 4, 2008. In its petition, DCS alleged that Father "has not come forward to successfully demonstrate to the DCS the ability or willingness to appropriately parent his child[ren]. [Father] was arrested on narcotics

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

related charges for allegedly bringing cocaine to [A.S.'s] school. He is currently in the Marion County Jail." Petitioner's Ex. 1. On January 15, 2009, the children were adjudicated CHINS after Father entered a general admission of the allegations contained in the CHINS petitions.

On July 14, 2010, DCS filed a petition seeking the termination of Father's parental rights to the children. On January 18, 2011, the juvenile court conducted an evidentiary termination hearing at which Father appeared and was represented by counsel. During the termination hearing, DCS provided a plan for the permanent care and adoption of the children. On January 25, 2011, 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 his 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 his 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*.

Father contends that the evidence presented at the evidentiary hearing 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) (2010). Specifically, Father claims that DCS failed to establish that either (1) the conditions that resulted in the children's removal or the reasons for placement outside of his care will not be remedied; or (2) the continuation of the parent-child relationship posed a threat to the children's well-being. Father also claims that DCS failed to establish that the termination of his parental rights is in the children's best interests.

A. Conditions Resulting in Removal Not Likely to be Remedied

Father claims that DCS failed to establish by clear and convincing evidence that the conditions resulting in the children's removal from his care will not be remedied or that the continuation of the parent-child relationship poses a threat to the children. Father acknowledges that because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, the juvenile court need only find either that the conditions resulting in removal

will not be remedied or that the continuation of the parent-child relationship poses a threat to the children. *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 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)).

Here, the juvenile court found that DCS presented sufficient evidence to prove that the conditions that resulted in the children's removal from 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 record reveals that Father has an approximately nine-year history of substance abuse and that serious questions remain regarding Father's ability to provide the children with adequate supervision and a safe and stable living environment free of drugs. DCS presented evidence that Father relapsed in June of 2010 and that he had one diluted screen in 2009 prior to his June 2010 relapse. DCS case manager Stephanie Neal testified that Father was "high on cocaine" during one of his supervised visits with the children prior to his June 2010 relapse. Tr. p. 118. Father denied that he was under the influence of cocaine in front of his children, but acknowledged that he relapsed in June of 2010. Father attributed this relapse to feeling overwhelmed and frustrated. Father has not had consistent communication with Neal or the children since his incarceration following his June 2010 relapse, and does not appear to have participated in or completed any services, including drug screens, since that time.

DCS also presented evidence that Father has, to date, struggled to maintain full-time employment and housing. Neal testified that Father has not maintained stable housing or income sufficient to meet the children's needs. Neal also testified that Father has failed to obtain beds for the children or display an ability to complete a budget for household

expenses. In addition, home based services provider Janet Gibson-Zdrojewski testified that she could not recommend that the children be placed with Father because of Father's relapse and his ongoing lack of stable housing and employment. During the evidentiary hearing, Father asserted that his parental rights should not be terminated because he had secured both part- and full-time employment and housing. Father, however, failed to provide the court with documentation supporting his assertion or notify Neal about the change in his employment status and housing arrangement prior to the evidentiary hearing.

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 a stable and drug free living environment which led to the children's removal were unlikely to change. *See In re L.S.*, 717 N.E.2d 204, 210 (Ind. Ct. App. 1999), *trans. denied*. 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.

B. The Children's Best Interests

Next, we address Father's claim that DCS failed to prove by clear and convincing evidence that termination of his parental rights was in the children's best interests. We are mindful that in determining what is in the best interests of the children, the juvenile court is required to look beyond the factors identified by DCS and look to the totality of the evidence. *McBride*, 798 N.E.2d at 203. In doing so, the juvenile court must subordinate the interests of the parents to those of the children involved. *Id*. Furthermore, this court has previously determined that the testimony of the case worker and the children's guardian ad litem ("GAL") regarding the children's need for permanency supports a finding that termination is in the children's best interests. *Id*.

Here, the testimony establishes that the children have a need for permanency and that the termination of Father's parental rights would serve the children's best interests. The children's GAL, Adrienne Reed, testified to the children's need for permanency and stated that she fully supported DCS's plan for the children. Reed further testified that because Father is currently unable to provide the stability and structure that the children need, she believed that the termination of Father's parental rights was in the children's best interest. Likewise, Neal testified to the children's need for permanency. Neal testified that the children require a permanent stable environment because of their severe behavioral and medical issues, and she believed that termination of Father's parental rights is in the

children's best interest because Father has not shown that he is able to care and provide for their needs. She also testified that the children appeared to be happier, more well-adjusted, and have displayed marked academic and disciplinary improvement since being placed in a stable home environment. The juvenile court did not have to wait until the children, who have been in foster care since December of 2008 and are now eight and six years old, were irreversibly harmed such that their physical, mental, and social development was permanently impaired before terminating Father's parental rights. *See In re C.M.*, 675 N.E.2d at 1140. In light of the testimony of the children's GAL and Neal, we conclude that the evidence is sufficient to satisfy DCS's burden of proving that termination of Father's parental rights is in the children's best interests.

In sum, we conclude that 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.

The judgment of the juvenile court is affirmed.

ROBB, C.J., and BARNES, J., concur.