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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF PARENT-CHILD RELATIONSHIP OF J.G., T.G., and V.G., Minor Children, And J.G., Father, Appellant,	)	
vs.	)	No 71A03-0903-JV-95
ST. JOSEPH COUNTY DEPARTMENT OF CHILD SERVICES, Appellee.	)	

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
The Honorable Barbara J. Johnston, Magistrate
Cause No. 71J01-0706-JT-00075 and 71J01-0803-JT-00096

September 30, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Jonathon G. ("Father) appeals the involuntary termination of his parental rights to his children, T.G. and V.G., claiming there is insufficient evidence to support the trial court's judgments. Concluding that the trial court's judgments terminating Father's parental rights are supported by clear and convincing evidence, we affirm.

Facts and Procedural History

Father is the legal father of T.G., born on December 24, 2006, and the biological father of V.G., born on October 29, 2007.[1] The facts most favorable to the trial court's judgments reveal that on January 5, 2007, the Indiana Department of Child Services ("IDCS"), St. Joseph County, was informed that T.G.'s meconium had tested positive for cocaine and tetrahydrocannabinol ("THC")[2]. IDCS intake family case manager Cecilia Garber, who was accompanied by Mishawaka police personnel, went to the family residence to investigate the referral and noticed the smell of marijuana emanating from the residence. While talking to the parents, Father informed Garber that K.G. was breastfeeding T.G. As a result of this investigation, T.G. was taken into emergency protective custody. Both Father and K.G. submitted to drug screens the following day.

A detention hearing was held on January 8, 2007. At the conclusion of this hearing, the trial court determined that there was probable cause to believe T.G. was a child in need of services ("CHINS"). Following the detention hearing, both parents admitted that the results of the drug screens they each had taken the day before would be

[1] Father is the legal father of T.G. because he was married to T.G.'s biological mother, K.G., before T.G.'s birth. K.G. voluntarily relinquished her parental rights to T.G. and V.G. on January 14, 2008. Mother does not participate in this appeal.

[2] THC is the active chemical in marijuana.

positive for THC. The IDCS thereafter filed a petition alleging T.G. to be a CHINS as defined by Indiana Code section 31-34-1-10,[3] and T.G. was adjudicated a CHINS following an evidentiary hearing in March 2007.

A dispositional hearing was held on April 18, 2007. Prior to the dispositional hearing, the IDCS submitted a pre-dispositional report that was incorporated into the trial court's dispositional order. The pre-dispositional report indicated that Father had a "long standing substance abuse problem[,]" had used alcohol, marijuana, cocaine, and crack cocaine in his past, and had been previously incarcerated for selling drugs. Appellee's App. p. 127. In addition, the report revealed that the IDCS had substantiated a referral for physical abuse by Father against one of his older children in 2001, and that Father's participation in services and visitation during the earlier CHINS case had been inconsistent.[4] Finally, the pre-dispositional report revealed that although Father had initially complied with provisional court orders in the underlying CHINS case, his participation soon became sporadic, and by the time of the dispositional hearing, Father had been discharged from the Family and Children's Center's ("FCC") drug rehabilitation program, had lost visitation privileges with T.G., and was no longer submitting to random drug screens.

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[3] Indiana Code section 31-34-1-10 provides, in relevant part, that a child is a CHINS if the child is born with "any amount, including a trace amount, of a controlled substance or a legend drug in the child's body" and the child needs care, treatment, or rehabilitation that the child is not receiving or is unlikely to be provided without the coercive intervention of the court. See id.

[4] The record reveals that Father has an older daughter, who currently lives with her biological mother. He also has three older biological sons, who live with Father's father and step-mother. None of these children are biological siblings of T.G.

Following the dispositional hearing, the trial court entered an order directing Father to participate in a variety of services in order to achieve reunification with T.G. Specifically, Father was ordered to, among other things, (1) participate in individual counseling, (2) cooperate with home-based services, (3) complete a drug or alcohol rehabilitation program and follow all after-care recommendations, (4) submit to random drug screens, (5) complete parenting classes, (6) maintain a stable source of income and adequate housing, (7) remain drug-free, (8) regularly attend Alcoholics Anonymous ("AA") meetings, and (9) maintain consistent contact with the IDCS.

On October 29, 2007, V.G. was born, and Memorial Hospital personnel conducted a drug screen on V.G.'s urine on the same day. V.G.'s drug screen results came back positive for cocaine, and V.G. was taken into emergency protective custody. A detention hearing was held on October 31, 2007, and the trial court determined that there was probable cause to believe V.G. was also a CHINS. The IDCS filed a CHINS petition as to V.G. under a separate cause number on November 1, 2007.

A fact-finding hearing on the CHINS petition relating to V.G. was held on December 12, 2007. V.G. was adjudicated a CHINS and the trial court proceeded to disposition. In its dispositional order, the trial court directed Father to participate in and successfully complete essentially the same services it had previously ordered in the CHINS case involving T.G. In addition, the trial court directed Father to establish paternity of V.G. and to participate in a Batterer's Group counseling program.

Meanwhile, Father's participation in services continued to be inconsistent. For example, Father had returned to the FCC drug treatment program in early August 2007,

but only attended two or three sessions before the case was closed again for non-participation on August 23, 2007. On October 29, 2007, Father re-entered the FCC drug rehabilitation program for a third time, but in December 2007 was suspended from treatment for thirty days when he tested positive for alcohol while attending a group session. In January 2008, following a thirty-day suspension from the FCC program, Father again attempted drug rehabilitation, but he attended only two individual sessions and one group session before turning himself in to authorities in Miami County on an outstanding warrant.

Father remained incarcerated from February until October 2008. After Father's release, however, a drug screen taken as part of the terms of his parole came back positive for THC. At the time of the termination hearing, Father was not participating in any drug or alcohol rehabilitation program.

With regard to the trial court's remaining dispositional orders, Father achieved limited success. For example, Father completed parenting classes during his incarceration at Westville Correctional Facility in 2008. However, Father was unable to secure stable housing and employment throughout the duration of the underlying proceedings, in part due to his incarceration. In addition, Father failed to regularly visit with the children. His most recent visit with T.G. was in March 2007, and he never visited with V.G. following her removal from his care.

On May 5, 2008, the IDCS filed a petition seeking the involuntary termination of Father's parental rights to T.G. A similar petition pertaining to V.G. was filed on September 17, 2008. A consolidated fact-finding hearing on both termination petitions

was held on December 4, 2008. During the termination hearing, the court-appointed special advocate ("CASA") testified that T.G. and V.G. had been living together in the same pre-adoptive foster home since their respective removals from Father's care. The CASA further testified that the children were happy and thriving in their current placement and that they were bonded with their foster parents.

At the conclusion of the termination hearing, the trial court took the matter under advisement. On December 12, 2008, the trial court entered its judgments under separate cause numbers terminating Father's parental rights to both T.G. and V.G. Father now appeals.

Standard of Review

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). Thus, 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, 265 (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 present case, the trial court concluded that the elements set forth in Indiana Code section 31-35-2-4(b)(2) were satisfied, but it did not issue specific findings. Therefore, the judgment is general in nature. When the trial court makes no specific findings, but instead enters a general judgment, it should be affirmed upon any theory supported by the evidence. Lang v. Starke County Office of Family & Children, 861

N.E.2d 366, 371 (Ind. Ct. App. 2007), trans. denied. We will reverse a judgment as clearly erroneous if we review the record and have a "firm conviction that a mistake has been made."[5] Id.

Discussion and Decision

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. Bester, 839 N.E.2d at 147. A parent's interest in the care, custody, and control of his or her children is arguably one of the oldest of our fundamental liberty interests. Id. However, these parental interests are not absolute and must be subordinated to the child's best interests when determining the proper disposition of a petition to terminate parental rights. In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. Parental rights may therefore be terminated when the parents are unable or unwilling to meet their parental responsibilities. K.S., 750 N.E.2d at 836.

In order to terminate a parent-child relationship, the State is required to allege, 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

[5] Although we acknowledge the fact that trial courts are not required by statute to provide specific findings of fact and conclusions of law when involuntarily terminating parental rights, see Indiana Code section 31-35-2-8, we believe that the better practice is for trial courts to provide, at a minimum, the basic findings and conclusions that support such an important decision. See e.g. Parks v. Delaware County Dep't of Child Servs., 862 N.E.2d 1275, 1280-81 (Ind. Ct. App. 2007) (acknowledging that trial courts are not statutorily required to enter findings when involuntarily terminating a parent-child relationship, but stating that termination of parental rights is such a serious matter that appellate courts must be convinced trial court based its judgment on proper considerations).

> (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child[.]

Ind. Code § 31-35-2-4(b)(2)(B) (1998 & 2007). These allegations must be established by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992); see also Ind. Code § 31-35-2-8 (1998).[6]

Father's sole assertion on appeal is that the trial court's judgments terminating his parental rights to T.G. and V.G. are not supported by sufficient evidence because the IDCS failed to prove that there is a reasonable probability the conditions resulting in the children's removal from his care will not be remedied. Specifically, Father argues that "[a]lthough [he] did not follow through [with] many of the services that were offered to him, that in and of itself is not enough to terminate his parental rights, especially when he was not the reason for the original removal of the children." Appellant's Br. p. 4. Father also admits that he "continues to struggle with drug usage, particularly marijuana," but nevertheless claims such drug use "has never affected his ability to parent his four other children." Id. Thus, Father contends the evidence presented at the evidentiary hearing "did not meet the clear and convincing standard necessary to terminate Father's parental rights." Id. at 5.

We pause to note that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. A trial court must therefore find only one of the two requirements of subsection (B) have been established by clear and convincing evidence in order to satisfy this portion of the termination statute. See In re L.S., 717 N.E.2d 204, 209 (Ind. Ct. App.

[6] Additional conditions not at issue in this case are also required to be alleged and proved before the involuntary termination of parental rights may occur. See Ind. Code § 31-35-2-4(b)(2).

1999), trans. denied. Here, the court determined that the IDCS presented sufficient evidence to satisfy both requirements of subsection (B), that is to say, that the IDCS established, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in the children's removal from Father's care will not be remedied and that continuation of the parent-child relationships pose a threat to the children's respective well-being. See Ind. Code § 31-35-2-4(b)(2)(B)(i) and (ii). Father does not challenge the trial court's latter determination. In failing to do so, Father has waived review of this issue. See Davis v. State, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005) (concluding that failure to present a cogent argument or citation to authority constitutes waiver of issue for appellate review), trans. denied. Nevertheless, given our preference for resolving a case on its merits, we will review the sufficiency of the evidence supporting the trial court's judgment with regard to subsection (B)(i) of the termination statute.

When determining whether a reasonable probability exists that the conditions justifying a child's removal or continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his or her children *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 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. 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. In addition, a county department of child services is not required to rule 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).

Our review of the record leaves us convinced that ample evidence supports the trial court's determination that there is a reasonable probability the conditions resulting in the children's removal from Father's care will not be remedied. Father's inability to overcome his addiction to illegal substances and to consistently participate in and successfully complete court-ordered services was a dominant theme in the testimony provided by various case workers and service providers. For example, IDCS family case manager Apryl Davis, who first began supervising T.G.'s case in mid-2007 and who supervised V.G.'s case since the time of her birth until approximately five weeks before the termination hearing, informed the court that Father had never successfully completed drug or alcohol treatment. She also testified that Father had not submitted to random drug screens for the IDCS since 2007. Although Davis pointed out that Father had maintained contact with the IDCS throughout the duration of the underlying proceedings, either by letter while he was incarcerated or by "a phone call or two" following his release, she reported that Father nevertheless had failed to exercise regular visitation with the children. Tr. p. 14. Davis further clarified that Father had not visited with T.G. since March 18, 2007, and that he had never visited with V.G. In addition, Davis reported that Father established paternity of V.G. only after being threatened with being found in

contempt of court for failing to do so, and that Father had failed to obtain and maintain stable housing and employment throughout the duration of the underlying proceedings. When asked if she believed that Father would ever remedy the conditions that lead to the children's removal, Davis replied, "No." Id. at 16.

Similarly, the children's current IDCS family case manager, Kelly Agee, testified that Father still had not completed a drug rehabilitation program or a Batterer's Program. Agee also confirmed that Father had not visited with the children, that he had tested positive for THC on October 23, 2008, when tested as part of the terms of his parole, and that she had received no information from Father that he was attending AA meetings. In so doing, Agee stated, "There's been little done to rectify [Father's] drug issues. He hasn't acknowledged the domestic violence issues. And both [T.G.] and [V.G.] are . . . rooted in the home of the [foster parents]." Id. at 36.

Addiction therapist and mental health counselor Kathy Wenger worked with Father at FCC throughout the duration of the case. Various reports prepared by Wenger and admitted into evidence further illustrate Father's habitual pattern of failing to conquer his addiction issues. Wenger's April 2007 discharge summary indicates Father had been "unsatisfactorily discharged from services[,]" that his "prognosis [was] poor" and that he "remained in denial of his substance problems while in treatment." Appellee's App. p. 177. The August 2007 monthly summary likewise provides, "Nothing has changed with this client, and he has no insight into the recovery process. I see no progress at this point." Id. at 178. Wenger's November 2007 report reveals that Father's behavior was "indicative of someone who is using drugs or alcohol[,]" that he was "not invested in

treatment," and that he was "inattentive" during most of the sessions he attended. Id. at 180. In her final discharge summary made in February 2008, Wenger reported that Father's case had been closed as unsuccessful and recommended that Father complete a chemical dependency and aftercare program, participate in a Batterer's Program, attend AA and Narcotics Anonymous classes, and that visitation with the children not be considered at that time.

Finally, Father's own testimony supports the trial court's judgment. During the termination hearing, Father informed the court that he was currently living with his Father and step-mother, that he was in "no hurry" to seek private housing, and that he was financially supporting himself "[w]ith a lot of assistance from [his] father." Tr. pp. 59, 94. In addition, Father admitted that he had used marijuana three weeks prior to the termination hearing, that he had never completed a drug rehabilitation program, and that he was not currently enrolled in a treatment program despite having been released from incarceration for approximately two months.

As previously explained, a trial court must judge a parent's fitness to care for his or her children *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 children. D.D., 804 N.E.2d at 266. In addition, "[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, 861 N.E.2d at 372. Here,

T.G. and V.G. were initially taken into protective custody upon testing positive for illegal substances at birth. Although Father was not directly responsible for the children's in utero ingestion of illegal substances, the IDCS was nevertheless unable to place T.G. with Father because of his admitted use of illegal drugs while T.G. was in his custody. Similarly, the reasons for V.G.'s initial removal from Father's care, as well as both children's continued placement outside of his care, was Father's inability to refrain from using illegal substances, his failure to consistently participate in and successfully complete a drug treatment program and other court-ordered services, and his inability to demonstrate that he was capable of providing the children with a safe and stable home environment. At the time of the termination hearing, these conditions had not improved.

The trial court was responsible for judging Father's credibility and for weighing his testimony of improved conditions against substantial evidence demonstrating Father's habitual pattern of drug use and neglectful conduct. See Bergman v. Knox County Office of Family & Children, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding that trial court was permitted to 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 that she had changed her life to better accommodate children's needs). Father's arguments on appeal amount to an invitation to reweigh the evidence, and this we may not do. D.D., 804 N.E.2d at 265; see also In re L.V.N., 799 N.E.2d 63, 68-71 (Ind. Ct. App. 2003) (concluding that mother's argument that conditions had changed and that she was now drug-free constituted an impermissible invitation to reweigh the evidence).

Conclusion

A thorough review of the record leaves us convinced that the trial court's judgments terminating Father's parental rights to T.G. and V.G. are supported by clear and convincing evidence. Father has failed to make any significant improvement in his ability to refrain from the use of illegal drugs or to provide a safe and stable home environment for T.G., and V.G. As stated previously, this Court will reverse a trial court's termination order only upon a showing of "clear error" – that which leaves us with a definite and firm conviction that a mistake has been made. A.J. v. Marion County Office of Family & Children, 881 N.E.2d 706, 716 (Ind. Ct. App. 2008), trans. denied. We find no such error here. Accordingly, the trial court's judgments terminating Father's parental rights to T.G. and V.G. are hereby affirmed.

Affirmed.

DARDEN, J., and ROBB, J., concur.