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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF Z.E., A MINOR CHILD, AND HIS FATHER, N.R.,	)	
N.R., Appellant-Respondent,	)	
vs.	)	No. 49A02-0904-JV-330
MARION COUNTY OFFICE, INDIANA DEPARTMENT OF CHILD SERVICES, Appellee-Petitioner, and CHILD ADVOCATES, INC., Appellee-Guardian ad Litem.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Danielle Gaughan, Magistrate
Cause No. 49D09-0811-JT-52645

October 27, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

N.R. ("Father") appeals the termination of his parental rights as to Z.E. We affirm.

Issue

We consolidate Father's issues to be: Whether there was clear and convincing evidence to support the termination of his parental rights.

Facts and Procedural History

Z.E. was born on January 25, 2008. His parents are B.E. ("Mother") and Father. Z.E. tested positive for methamphetamines at birth, prompting the Marion County Department of Child Services ("MDCS") to file a petition alleging that Z.E. was a child in need of services ("CHINS"). The CHINS petition also alleged that Mother resided with Father, who is a convicted and untreated sex offender. Z.E. was placed in a therapeutic foster home, where his two step-brothers had previously been placed.

At the initial hearing, Mother and Father admitted to the allegations in the CHINS petition and requested the court to proceed with the disposition. The juvenile court then entered Participation Decrees for Mother and Father. Father's decree required that he do the following: notify the caseworker of changes in address, household composition or telephone number within five days of the change; secure and maintain a stable source of income; obtain and maintain suitable housing and a supply of food for the family; participate in and

successfully complete a drug and alcohol assessment and any resulting recommended programs; submit to random drug testing; prohibit the use of non-prescription drugs in the home; and participate in and successfully complete a sexual offender or support program. After an assessment, Father was referred to a drug and alcohol intensive outpatient program on June 16, 2008. Father began the program, but he stopped attending the sessions in July. Father was referred to the program again in October. Due to his prior attendance, he was placed in the aftercare program, which only met once a week for eight weeks. He successfully completed the aftercare program on February 20, 2009.

On April 29, 2008, Father was also referred to psychosexual evaluation and treatment. After administering several questionnaires, conducting an interview, and administering a personality inventory, Dr. Michael Johnson concluded that Father displayed anti-social personality characteristics, which are exhibited by the individual being self-centered and disregarding the welfare of others. The tests indicated that Father attempted to present himself in an overly positive light. Furthermore, Father was inconsistent in relaying to Dr. Johnson the underlying details of his conviction for molesting his fifteen-year-old niece in 1989. Father also admitted that he was molested by his older brother starting when he was five. He also noted that he frequently exposed himself to other drivers while he was a semi-truck driver. As for drug use, Father stated that he used marijuana extensively when he was younger, then progressed to using cocaine heavily for two years and transitioned to using methamphetamine. Based on his evaluation, Dr. Johnson recommended that Father complete sexual offender treatment for the safety of Z.E. Father failed to attend any sex offender

sessions and was unsuccessfully discharged from the program.

While Z.E. was in foster care, Father attended scheduled visits with Z.E. However, visitation was suspended on July 1, 2008, because Father had recently tested positive for methamphetamines and Mother failed to submit to a drug screen. Visitation was resumed but suspended again on November 20, 2008, as the parents again tested positive for methamphetamines. There was also concern for the well-being of Z.E. because his foster mother reported that he developed a rash after each visit with his parents.

On November 20, 2008, the MDCS filed a petition to involuntarily terminate the parental rights of Father and Mother to Z.E. At the time of the termination trial, the two step-brothers of Z.E. who lived in the same foster home were in the process of being adopted by their foster parents. The foster parents also intended to adopt Z.E. At the conclusion of the trial, the juvenile court entered an order, containing findings of facts and conclusions of law, terminating the parental rights of Father and Mother.

Father now appeals.[1]

Discussion and Decision

A. Standard of Review

This court will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, this Court neither reweighs the evidence nor

[1] Mother is not an active party to this appeal.

judges the credibility of the witnesses. Id. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id.

B. Requirements for Involuntary Termination of Parental Rights

Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied. The purpose of terminating parental rights is not to punish the parents, but to protect their children. Id.

Indiana Code Section 31-35-2-4(b) sets out the elements that the DCS must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

> (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) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
>
> (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.

The trial court must subordinate the interests of a parent to those of the child when evaluating the circumstances surrounding the termination. In re A.A.C., 682 N.E.2d at 544. Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. Id. The trial court need not wait to terminate the parent-child relationship until the child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired. Id.

C. Analysis

Father's arguments only challenge whether the MDCS presented clear and convincing evidence that there is a reasonable probability that the conditions that resulted in Z.E.'s removal or reasons for placement outside of the home will not be remedied or that the continuation of the relationship poses a threat to the well-being of the child. Father concentrates his analysis on challenging the juvenile court's conclusion that Z.E.'s placement outside the home will not be remedied because Father is an untreated child molester without stable employment or a suitable home. As to the lack of stable employment and suitable living arrangements, Father points to his testimony that he currently did a "little work" performing mechanical work at his friend's garage behind his house. Trial Transcript at 170. While the juvenile court credited this testimony, its conclusion was that this part time job was not stable. Father's contradictory testimony supports this conclusion. At first, Father testified that he had been working his current job for the past couple months, but later stated

that he had only been working three weeks. The amount of income also changed from $150 to $200 per day to $50 to $200 per day. Furthermore, he testified that he was paid in cash and had not submitted any evidence of his employment to the MDCS. This evidence supports the juvenile court's conclusion that Father did not have stable employment at the time of trial.

As for housing, Father admitted that the current location where he and Mother resided was inadequate even for the two of them. He testified that they intended to move in a week to another apartment that was larger. Before they could move in, he had to finish some remodeling in the new apartment. Despite this intention to move, Father testified that he had not notified MDCS of the anticipated move because he didn't "know if [they're] gonna go ahead and move into it or not." Tr. at 183. Therefore, based on the lack of evidence as to whether the potential new apartment was suitable for the family and question as to whether the move would occur at all, the evidence supports the juvenile court's conclusion that Father did not have suitable housing at the time of trial.

As to the conclusion that Father is an untreated sex offender, Father argues that his almost twenty-year-old child molestation conviction does not prove that he was a danger to Z.E. To the contrary, a court may consider a parent's conviction for child molestation for the purpose of termination proceedings. See Ind. Code §§ 31-35-3-8 and 31-35-3-4(1) (Conviction of child molesting is prima facie evidence of reasonable probability that conditions that resulted in the removal of the child will not be remedied). Furthermore, after Dr. Johnson performed several tests for psychosexual evaluation, he concluded based on

Father being sexually abused by his older brother and Father's conviction for child molestation that "in order to increase the safety for [Z.E.], [Father] should complete sexual offender treatment." Exhibit 34. In addition to these confirmed instances of sexual abuse, Father was also charged in 1994 for allegedly molesting his daughter. However, these charges were eventually dismissed. Based on his history of sexual abuse, Father was required to complete sex offender treatment but failed to do so. This evidence supports the juvenile court's conclusion that because Father is an untreated child molester there is a reasonable probability that the conditions of removal from the home will not be remedied.

For the foregoing reasons, we affirm the juvenile court's involuntary termination of Father's parental rights to Z.E.

Affirmed.

VAIDIK, J., and BRADFORD, J., concur.