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FILED
Oct 29 2010, 9:31 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

IN RE: THE MATTER OF THE TERMINATION OF CHILD/PARENT RELATIONSHIP OF A.K., Minor Child	)	
S.K., Appellant-Respondent,	)	
vs.	)	No. 76A03-1004-JT-247
INDIANA DEPARTMENT OF CHILD SERVICES, Appellee-Petitioner.	)	

APPEAL FROM THE STEUBEN CIRCUIT COURT
The Honorable Allen N. Wheat, Judge
Cause No. 76C01-0905-JT-164

October 29, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, S.K. (Father), appeals the trial court's involuntary termination of his parental rights to his minor child, A.K.

We affirm.

ISSUE

Father raises one issue on appeal, which we restate as: Whether the termination of Father's parental rights to A.K. was in the child's best interests.

FACTS AND PROCEDURAL HISTORY

A.K., born on August 13, 2002, is the biological child of Father and V.K. (Mother).[1] In September of 2006, A.K. was residing with her parents in a "fifth wheel camper" near Golden Lake, Indiana. (Transcript p. 24). On September 29, 2006, Steuben County Division of Child Services (DCS) removed A.K. from her parents' care after receiving a report that the camper lacked heat, running water, and suitable bedding for the minor child. In addition, the DCS noted as reasons for her removal supervision issues with A.K.'s six older siblings and the family's extensive history with the DCS.

On October 3, 2006, the trial court conducted an Out of Home Placement hearing at which the trial court determined A.K. to be a Child in Need of Services (CHINS) and authorized her removal from her home. Father was present during this hearing. On October 17, 2006, the trial court held an initial hearing on the CHINS petition filed by the DCS.

[1] Mother is not part of this appeal as she died on June 14, 2009 after a long illness. Consequently, we limit our recitation of the facts to those facts pertinent solely to Father's appeal.

During the hearing, Father denied the allegations in the petition. On December 19, 2006, the trial court granted DCS's request to amend the CHINS petition. Again, Father, who was present during the hearing, denied the allegations.

At some point in December of 2006, Father was arrested and charged with two counts of child molesting, as Class A felonies. The Information filed by the State alleged that Father had molested his step-daughter, who was less than sixteen years old at the time of the offense. Father was subsequently convicted on both counts and, on September 24, 2007, sentenced to ninety years of imprisonment. His conviction and sentence were affirmed on appeal and transfer to the supreme court was denied. Father is currently pursuing post-conviction relief.

While Father's criminal case was proceeding through court, the trial court entered a no-contact order in the CHINS proceeding on February 15, 2007, prohibiting contact between the minor child and Father. Between March 13, 2007 and October 28, 2008, the trial court conducted several dispositional hearings, at which Father appeared. At each of these hearings the trial court determined that it was in the best interests of the child to reside outside the home of her parents and ordered DCS to continue to provide services toward reunification. On February 10, 2009, the trial court entered an order concluding that reunification efforts with Father were not required due to his lengthy incarceration and that Father would no longer be transported to future hearings.

On May 18, 2009, the DCS filed a Petition for Involuntary Termination of the Parent-Child Relationship. On March 12, 2010, the trial court conducted a hearing on the DCS's

petition. Approximately twelve days later, on March 24, 2010, the trial court entered a judgment of involuntary termination of Father's parental rights, concluding, in pertinent part, that

> 19. Continuation of the parent-child relationship poses a threat to the well-being of [A.K.]. [A.K.] needs permanency in her life. Foster parents are at this time willing to adopt [A.K.]. The prospects of Father being released from incarceration prior to [A.K.] becoming an adult are extremely poor. Father has already sought relief from the Indiana [c]ourt of [a]peals and the Indiana [s]upreme [c]ourt without success.
>
> 20. The reasons for the placement of [A.K.] outside of her parents' home will not be remedied. [A.K.'s] [M]other is now deceased. Father, because of his lengthy period of incarceration, is not in a position to do anything to foster the care and well-being of [A.K.]. [A.K.] has not seen Father in more than three (3) years. During this time she has resided in foster care. Permanency is needed at this time in the life of [A.K.] in order to promote her emotional well-being. [Court-Appointed Special Advocate] and the [Family Case Manager] both favor termination Father's parental rights.
>
> 21. For each of those reasons set forth above, the [c]ourt concludes that termination of Father's parental rights will be in the best interest of [A.K.].
>
> 22. The DCS has developed a satisfactory plan for the care and treatment of [A.K.]. That plan is adoption by foster parents.

(Appellant's App. pp. 5-6).

Father now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Father contends that the DCS did not present sufficient evidence to support the involuntary termination of the parent-child relationship with A.K. In reviewing termination proceedings on appeal, this court will not reweigh the evidence nor 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 consider only the evidence that supports the trial court's decision and reasonable inferences drawn therefrom. *Id*. Where, as here, the trial court enters findings of fact and conclusions of law in its termination of parental rights, our standard of review is two-tiered. *Id*. First, we determine whether the evidence supports the findings, and second, whether the findings support the conclusions of law. *Id*.

In deference to the trial court's unique position to assess the evidence, we set aside the trial 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 conclusions of law drawn by the trial court are not supported by its findings of fact or the conclusions of law do not support the judgment. *Id*.

It is axiomatic that 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, the trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination of the parent-child relationship. *In re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Parental rights may therefore be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.* at 836.

To effect the involuntary termination of a parent-child relationship, the DCS must present clear and convincing evidence establishing that:

(A) one (1) of the following exists:

(i) the child has been removed from the parent for at least (6) months under a dispositional decree;

(ii) a court has entered a finding under I.C. § 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 had been under the supervision of a county officer of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is reasonable probability that:

(i) the condition 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.

I.C. § 31-35-2-4(b)(2).

In the instant case, Father asserts that the trial court erred in terminating his parental relationship with his daughter. Specifically, he contends that adoption is not in A.K.'s best interests because a less permanent option than adoption might be available. Father, who was present at the termination proceeding, requested the trial court to consider his sister as a possible guardian for his minor child. However, the evidence established that during the CHINS proceedings DCS had contacted Father's sister who had been unwilling to provide a home for A.K. Now, in his appellate brief, Father asserts, without any citations to case law, that

> [i]t was not in the best interests of the child that the parental relationship with [Father] be severed. The trial court had another option other than termination of parental rights that would still have provided for the long term stability and best interests of the child. The trial court could have ordered that the child's foster parents be made her permanent guardians.

(Appellant's Br. p. 4). Phrased differently, Father is opposing adoption and instead is advocating for guardianship in the hope to ever being able to parent A.K.

We are mindful that, in determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Indiana Department of Child Services and to consider the totality of the evidence. *McBride v. Monroe County Officce of Family and Children*, 798 N.E.2d 182, 203 (Ind. Ct. App. 2003). In so doing, the trial court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.*

Father was incarcerated approximately three months after the CHINS proceedings commenced, and was appointed counsel to represent him during the CHINS proceeding and subsequent termination proceeding. In *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009), *reh'g denied*, our supreme court recently decided that the involuntary termination of the parental rights of an incarcerated parent was not warranted. G.Y.'s mother, who was incarcerated for an executed time of eight years due to offenses committed before the child's conception, appealed the termination of her parental rights, arguing that the State did not present clear and convincing evidence that termination of her parent-child relationship with G.Y. was in the child's best interests. *Id*. at 1261. Our supreme court agreed, observing that G.Y.'s mother had not committed any criminal offenses during G.Y.'s lifetime and, while

incarcerated, had undertaken numerous steps to secure an earlier release date and provide for G.Y's care. *Id*. at 1263. She had completed a drug rehabilitation program and a parenting class, engaged in individualized drug counseling, was actively participating in an "inmate to work mate program," was pursuing an associate's degree, had secured a full-time job, and had arranged alternative sources of post-release housing, either through family members or a specific program. *Id*. Furthermore, the court noted that while incarcerated, mother maintained a consistent positive relationship with G.Y. through the jail's visitation program and by sending him cards, pictures and letters. *Id*. at 1264. Most importantly, our supreme court noted that while permanency is a central consideration in determining the best interests of a child, G.Y.'s mother's release from prison was imminent. *Id*. Her forthcoming release date combined with mother's positive steps taken "while incarcerated, her demonstrated commitment and interest in maintaining a parental relationship with G.Y., and her willingness to continue to participate in parenting and other personal improvement programs after her release," led our supreme court to conclude that termination of mother's parental rights was not in G.Y.'s best interests. *Id*. at 1265.

Unlike here, Father, being incarcerated for ninety years, has no release date in sight yet, nor is there any evidence that Father is pro-active in attempting to secure an earlier release date. There is no evidence of record that Father is taking any steps to further his education or acquire job skills. During the termination hearing, Father admitted that he would not be immediately able to provide a home for A.K. upon his release or secure employment to provide for her care, nor is there is any indication that Father has family

members able or willing to assist him in providing care for A.K. after his release. Additionally, there is no evidence that Father participated in services during the initial three months of the CHINS proceeding and prior to his incarceration. Furthermore, during the hearing, A.K.'s foster parent testified that A.K. is thriving in her current placement and does not mention her biological father. The foster parent expressed a wish to adopt her, together with A.K.'s biological brother and sister.

It is clear that Father will remain unavailable to parent for a very long time to come and it is doubtful whether Father will be released prior to A.K. becoming an adult. Even with an early release, Father will still need to comply with the specific requirements of DCS's participation decree: parenting assessment, classes, and obtaining suitable housing and gainful employment, among others. "It is undisputed that children require secure, stable, long-term continuous relationships with their parents or foster parents. There is little that can be as detrimental to a child's sound development as uncertainty." *Baker v. Marion County Office of Family & Children*, 810 N.E.2d 1035, 1040 (Ind. 2004). Requiring A.K. to wait indefinitely until Father is released from prison and has completed the necessary requirements to establish that he can adequately take care of his daughter would be harmful to A.K.'s emotional and physical growth. A.K. is ready to move on and start a new phase in

her life. Therefore, based on the evidence before us, we find termination to be in A.K.'s best interests. As such, we refuse to disturb the trial court's decision.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly terminated Father's parental rights to A.K.

Affirmed.

KIRSCH, J., and BAILEY, J., concur.