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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF K.A., a Minor Child, and J.L., Father,	)	
J.L., Father,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A05-0903-JV-136
MARION COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner,	)	
and	)	
CHILD ADVOCATES, INC.,	)	
Co-Appellee-Guardian ad Litem.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Danielle Gaughan, Magistrate
Cause No. 49D09-0807-JT-032755

November 16, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

J.L. ("Father") appeals the termination of his parental rights. Father asserts the court should not have terminated his parental rights because no services had been offered to him. We affirm.

FACTS AND PROCEDURAL HISTORY

Father and A.A. produced a child, K.A., who was born on January 19, 2008. Because K.A. tested positive for cocaine and marijuana at birth, the Marion County Department of Child Services ("the Department") filed a Child in Need of Services ("CHINS") petition three days later. Father admitted extensive drug use, lack of stable housing, and lack of supplies for a newborn. The court found K.A. was a CHINS and removed her from her parents' care. The court ordered Father to participate in services and maintain contact with the Department's family case manager.[1]

In April of 2008, the court suspended Father's visitation with K.A. because Father was not cooperating. Then, on July 10, 2008, Father was sentenced for robbery and possession of a firearm by a serious violent felon. Father will be incarcerated until 2025.

[1] Specifically, Father was ordered to complete a comprehensive family profile, have a substance abuse assessment, establish paternity, sign releases of information, engage in home-based counseling, visit with K.A., allow a case manager to visit, keep in contact with a case manager, and follow all recommendations made based on the assessments. (Tr. at 16.)

Prior to his sentencing Father had not completed any of the services ordered or had any contact with the Department. The Department filed a petition to terminate Father's parental rights on July 23, 2008. The court assigned counsel to assist Father, but Father refused counsel's attempts to contact him and indicated he did not wish to participate in the January 27, 2009 hearing on the Department's petition.

The court terminated Father's rights in an order that found, in relevant part:

> 13. There is reasonable probability that the conditions that resulted in [K.A.]'s removal or the reasons for placement outside the home of Father will not be remedied. Father is incarcerated until 2025 and is therefore unavailable to parent [K.A.].
> 14. Termination of the parent-child relationship is in the best interests of [K.A.]. [K.A.] needs permanency in a loving and stable home. [K.A.] is in pre-adoptive foster care with her maternal grandmother and she is doing well.
> 15. There is a satisfactory plan for the care and treatment of [K.A.], that being adoption.
> 16. The Guardian ad Litem is in agreement that termination of the parent-child relationship is in the best interests of [K.A.] and that adoption is an appropriate plan.

(Appellant's App. at 11.)

DISCUSSION AND DECISION

Father claims his parental rights should not have been terminated because the Department did not offer services to Father. We disagree.

A department of child services is generally required to "make reasonable efforts to preserve and unify families." *See* Ind. Code § 31-34-21-5.5. However, that duty to preserve families does not prohibit termination when a department is unable to offer services due to a father's incarceration. *See Castro v. State Office of Family and Children*, 842 N.E.2d 367, 377 (Ind. Ct. App. 2006) (OFC was unable to evaluate father

for services due to his incarceration; therefore failure to offer services was not a deprivation of due process rights), *trans. denied sub nom Castro v. Monroe County OFC*, 855 N.E.2d 1008 (Ind. 2006).

Nor is the Department obliged to "plead and prove that it offered services" prior to termination of parental rights. *Jackson v. Madison County Dept. of Family and Children*, 690 N.E.2d 792, 793 (Ind. Ct. App. 1998) ("the burden was upon [mother] to show that, prior to the filing of a termination petition, she sought services from the Department and was denied"), *trans. denied* 698 N.E.2d 1193 (Ind. 1998). *See also S.E.S. v. Grant County Dep't of Welfare*, 594 N.E.2d 447, 448 (Ind. 1992) (the statute setting forth the elements that must be proven to terminate parental rights "no longer requires that the agency provide services to the parent").

Accordingly we find no error in the termination of Father's parental rights based on the Department's failure to offer services to Father after he was incarcerated in July of 2008. Nevertheless we note the CHINS court ordered Father to engage in a number of services in January of 2008, and as of the time of his incarceration, Father had not engaged in any of those services.

The CHINS disposition also ordered Father to maintain contact with the Department, but Father never contacted his family case manager or anyone else at the Department. Neither would Father accept contact from the lawyer who was appointed to help Father maintain his parental rights. In light of these facts, Father's claim that the record contains "no indication [the Department] made any effort to contract [sic] Father at any point," (Appellant's Br. at 10), is of no import.

Finally, Father asserts his rights should not have been terminated because "it is possible Father could obtain relief under Indiana's post-conviction rules or under Federal *habeas corpus* provisions, and thus be released from the custody of the Indiana Department of Correction." (*Id.*) Father did not assert this argument at trial or present evidence to that effect. We will not reverse the trial court's judgment based on unsupported speculation that a parent might someday become available to parent his child.

We affirm the termination of Father's parental rights to K.A.

Affirmed.

CRONE, J., and BROWN, J., concur.