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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF D.W., Minor Child, and TIMOTHY WEBB, Father	)	
TIMOTHY WEBB,	)	
Appellant-Respondent,	)	
vs.	)	No. 18A02-0905-JV-383
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT NO. 2
JUVENILE DIVISION
The Honorable Richard A. Dailey, Judge
The Honorable Brian Pierce, Master Comissioner
Cause No. 18C02-0804-JT-41

December 8, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, Timothy Webb (Webb), appeals the termination of his parental rights to D.W., a minor child.

We affirm.

ISSUE

Webb presents one issue for our review, which we restate as: Whether the Department of Child Services, Division of Delaware County (DCS) presented clear and convincing evidence that the reasons for the placement of D.W. outside the home would not be remedied or the continuation of the parent-child relationship poses a threat to the well-being of D.W., and that termination was in the best interests of D.W.

FACTS AND PROCEDURAL HISTORY

D.W. was taken from the care of Christina Wells (Wells) and Webb when he was eight months old. At the time, a Child in Need of Services (CHINS) Petition was filed by the DCS, alleging that Wells fed D.W. food that was inappropriate for an eight-month-old baby, frequently traveled in an automobile with D.W. not in a car seat, gave D.W. prescription medication without measuring it, intentionally misled D.W.'s primary care physician, permitted D.W. to play with choking hazards, and left D.W. unattended in a sink while bathing him. After a hearing on the CHINS Petition, D.W. was declared to be a CHINS.

Webb and Wells were ordered to complete services designed to address parenting skills, living conditions, and personal coping and survival skills, and were ordered to participate in psychological evaluations. Webb actively cooperated with the services, but

failed to progress with them. He participated in supervised visitation with various persons, but never progressed to where any supervisors felt it would be appropriate for Webb to begin unsupervised visitation. Each visitation supervisor felt that Webb made an effort to fill the parental role while visiting with D.W., but could not anticipate impending dangers and was inattentive to the needs of his child. Visitation supervisor Shonet Martin (Martin), who supervised many of Webb's visits with D.W., successfully advocated at one point for Webb to be given increased supervised visitation to further Webb's development as a parent and increase the bond between them. However, after several months, Martin came to the conclusion that Webb's parenting skills had reached their plateau, and Webb could not independently care for D.W.

Dr. Paul Spengler (Dr. Spengler) evaluated Webb and concluded that he has a low average level of intelligence, is psychologically unsophisticated, and has a schizoid personality structure. Dr. Spengler concluded, "while this type of personality structure does not rule out the ability to safely parent, it is likely that Mr. Webb would have difficulty parenting due to impaired social functioning and interpersonal attachments." (Appellant's App. p 36). Dr. Bonnie Huxford (Dr. Huxford) evaluated D.W.'s attachment to Webb, and concluded that D.W. exhibited an insecure and disorganized form of attachment for Webb, and "it is not likely that [D.W.] would experience emotional problems" if visits with Webb were stopped. (Appellant's App. p. 32).

D.W. developed a good relationship with his foster family. He began progressing developmentally where before he had fallen behind. D.W.'s foster parents desired to adopt him if the opportunity became available.

On April 18, 2008, the DCS filed a petition for the termination of both Wells' and Webb's parental rights to D.W. Prior to a hearing on the petition, Wells voluntarily terminated her parental rights. On February 23, 2009, the trial court conducted a hearing on the petition with respect to Webb. On March 31, 2009, the trial court entered its Findings of Fact, Conclusions of Law and Order Terminating the Parent/Child Relationship of a Child in Need of Services. The trial court found, in part, and concluded:

> 29. [] Webb fails to take any responsibility for the conditions of the home which led to safety and health issues that led to D.W.'s initial removal. [] Webb fails to see that it is precisely that inattentiveness and failure to take responsibility which is still at issue and is at the heart of why no service provider has recommended to this court that [he] be allowed even unsupervised visitation, let alone reunification.
>
> 30. [Webb] blames those incidents on [] Wells. However, [Webb] also testified that he and [Wells] discussed a plan to have [Wells] move back in with him after [D.W.] and [Webb] are reunified.
>
> 31. That there are no other services available to [] Webb to assist him.
>
> 32. That [] Webb has demonstrated a pattern of behavior consisting of inattentiveness and poor judgment which would be detrimental for this child should he be given the responsibility of parenting this child.
>
> 33. That [D.W.] needs a safe, stable, secure and permanent environment in order to thrive. Despite the love and attachment demonstrated by [Webb] toward [D.W.], [] Webb has shown the inability to provide the child with such an environment.
>
> 34. That the CASA agrees that it is in the best interest of the child to terminate the parental rights of [] Webb.

> 35. That based on the foregoing, there is a reasonable probability that the conditions that resulted in the child's removal will not be remedied.
>
> 36. That based on the foregoing, there is a reasonable probability that the continuation of the parent/child relationship herein poses a threat to the well being of the child.
>
> 37. Termination of the parent/child relationship is in the best interest of the child.
>
> 38. The Indiana DCS has a satisfactory plan for the care and treatment of the child, which includes adoptive placement.
>
> 39. The Indiana DCS has proven their petition herein by clear and convincing evidence.

(Appellant's App. p. 57).

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

DICSUSSION AND DECISION

Our supreme court recently articulated the standard of review for appeals from the termination of parental rights as follows:

> When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. We consider only the evidence and reasonable inferences that are most favorable to the judgment. Here, the trial court entered findings of fact and conclusions thereon in granting the State's petition to terminate [] parental rights. When reviewing findings of fact and conclusions of law entered in a case involving a termination of parental rights, we apply a two-tiered standard of review. First, we determine whether the evidence supports the findings, and second we determine whether the findings support the judgment. We will set aside the trial court's judgment only if it is clearly erroneous. A judgment is clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment.

R.Y. v. Ind. Dep't of Child Servs., 904 N.E.2d 1257, 1260 (Ind. 2009) (internal citations and punctuation omitted).[1] In addition, the *R.Y.* court emphasized the protections which our law affords the parent child relationship, but noted the bounds of those protections.

> The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. A parent's interest in the care, custody, and control of his or her children is perhaps the oldest of the fundamental liberty interests. Indeed the parent-child relationship is one of the most valued relationships in our culture. We recognize, however, that parental interests are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. Thus, parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities.

Id. at 1259-60 (internal citations and punctuation omitted). It is in the context of this hierarchy of interests that we review Webb's challenge to the termination of his parental rights.

II. *Sufficiency of the Findings*

Our analysis begins by acknowledging the allegations that the State must prove in order to obtain a termination of parental rights. Indiana Code section 31-35-2-4(b)(2) requires that the State allege 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

[1] Westlaw refers to the opinion as "*In re G.Y.*" using the minor child's initials as the basis for the case name, but our supreme court has referred to the opinion as "*R.Y. v. Ind. Dep't of Child Servs*." utilizing the initials of the mother whose parental rights were at stake in the litigation. *In re J.M.*, 908 N.E.2d 191, 193 (Ind. 2009).

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.

The State must prove these elements by clear and convincing evidence. *Rowlette v. Vanderburgh County Office of Family and Children*, 841 N.E.2d 615, 621 (Ind. Ct. App. 2006).

Webb presents a consolidated argument challenging the State's evidence to prove three elements: (1) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; (2) the continuation of the parent-child relationship poses a threat to the well-being of the child; and (3) termination is in the best interests of the child. He does so because, as he states, the DCS attempted "to prove these elements by establishing that [Webb] could or would not provide adequate

protection, housing and care for his child, and that he had failed to progress in his ability to safely parent his child." (Appellant's Br. p. 17).

The crux of his argument is his contention that:

> At best, the witnesses gave perhaps twelve (12) examples of safety concerns based upon [Webb] visiting with his son for over two (2) years. Many of the incidents were described as situations that could occur between any parent and their child. These isolated incidents are not clear and convincing evidence that [Webb's] parental rights should be terminated.
>
> Certain matters favorable to [Webb's] ability to parent are undisputed. There is absolutely no evidence that [Webb] does or has ever had any issues with substance abuse. In addition, the evidence was clear that [Webb] is able to maintain a clean home. [] [Webb] had a steady job for the past sixteen (16) years, has been buying his home for the past six (6) years, and is fully capable of paying [h]is mortgage payment and utilities providing a home for his son.

(Appellant's Br. p. 18). However, we cannot consider these facts favorable to Webb under our standard of review, which limits our review to the facts which support the trial court's judgment. *See R.Y.*, 904 N.E.2d at 1260. Furthermore, living a substance abuse free life and having the means and history of paying for a mortgage does not demonstrate that Webb can safely parent a now two-year-old child.

As the trial court pointed out, because of Webb's inability to provide a safe environment for D.W., "no service provider has recommended . . . that [Webb] be allowed even unsupervised visitation, let alone reunification." (Appellant's App. p. 57). As such, if Webb's parental rights were not terminated, D.W. would be forced to remain a foster child with Webb ineffectively trying for reunification indefinitely. "There is little that can be as detrimental to a child's sound development as uncertainty over whether he is to remain in his

current 'home,' under the care of his parents or foster parents, especially when such uncertainty is prolonged." *Baker v. Marion County Office of Family and Children*, 810 N.E.2d 1035, 140 (Ind. 2004) (quoting *Lehman v. Lycoming County Children's Servs. Agency*, 458 U.S. 502, 513-14, 102 S. Ct. 3231, 73 L.Ed.2d 928 (1982)).

Moreover, both the CASA and the DCS Family Case Manager opined that it was in D.W.'s best interests to terminate Webb's parental rights. "[W]e have previously held that the recommendations of the case manager and court-appointed advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interest." *In re J.S.*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009). For these reasons, we cannot say that the trial court's judgment is clearly erroneous.

CONCLUSION

Based upon the foregoing, the trial court's determination that the DCS proved by clear and convincing evidence that (1) the conditions that resulted in D.W.' placement outside the home of his parents will not be remedied, (2) the continuation of the parent-child relationship poses a threat to the well-being of the child, and (3) termination is in the best interests of the child was not clearly erroneous.

Affirmed.

VAIDIK, J., and CRONE, J., concur.