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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF PARENT-CHILD RELATIONSHIP OF T.D.T., T.T.T., AND M.T., Minor Children, and A.D.T., Father, Appellant,	)	
vs.	)	No. 71A05-1103-JT-213
THE INDIANA DEPARTMENT OF CHILD SERVICES, Appellee.	)	

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable J. Eric Smithburn, Senior Judge
Cause Nos. 71J01-1004-JT-107, 71J01-1004-JT-108, and 71J01-1011-JT-261

December 22, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

A.T. ("Father") appeals the involuntary termination of his parental rights to his children, claiming there is insufficient evidence supporting the trial court's judgment. We affirm.

Facts and Procedural History

Father is the biological father of T.D.T., born in February 2007, T.T.T., born in December 2008, and M.T., born in December 2009 (collectively referred to as "the children").[1] The facts most favorable to the judgment reveal that in February 2009 the local St. Joseph County office of the Indiana Department of Child Services ("SJCDCS") received a referral that then two-month-old T.T.T. has suffered a "severely angulated and overlapping acute spiral fracture" to the left femur which was indicative of "non[-]accidental" trauma. Ex. Vol., Petitioner's Ex. 11. The results of a skeletal survey further revealed T.T.T. also had seven rib fractures which were in various stages of healing and were between "2-4 weeks" old. Id. While still at the hospital, Father and Mother reported to physicians, a detective from the family violence unit of local law enforcement, as well as to the SJCDCS investigating case manager that they were the

[1] For clarification purposes, we note that Father has ten children born out of wedlock, but only three of his children are subject to the trial court's judgment appealed herein. Additionally, although the children's biological mother, R.M. ("Mother"), participated in the underlying proceedings and filed a Notice of Appeal from the trial court's termination judgment in April 2011, she has failed to take any additional action to further prosecute her appeal. Consequently, we shall limit our review and recitation of the facts to those pertinent solely to Father's appeal.

only individuals who had access to T.T.T. since the child's well-baby physical several days earlier, at which time the child's femur was not injured. Additionally, neither parent could provide a plausible explanation as to how T.T.T.'s spiral fracture or any of his multiple other fractures had occurred. As a result of its investigation, SJCDCS substantiated physical abuse against Father, neglect against Mother, and took both T.T.T. and T.D.T. into emergency protective custody. SJCDCS thereafter filed petitions alleging T.T.T. and T.D.T. were children in need of services ("CHINS").

T.T.T. and T.D.T. were adjudicated CHINS in May 2009. Following a dispositional hearing in June 2009, the trial court issued an order formally removing T.T.T. and T.D.T. from both parents' care and custody and making them wards of SJCDCS. The court's dispositional order further directed Father to participate in and successfully complete a variety of services designed to improve his parenting abilities in an effort to facilitate reunification of the family. Among other things, Father was ordered to: (1) complete both a parenting assessment and psychiatric evaluation and follow all resulting recommendations; (2) participate in individual and family counseling and follow all recommendations; (3) submit to random drug screens; (4) successfully complete a Batterer's Intervention Program ("BIP"); (5) exercise regular supervised visitation with the children; and (6) maintain stable and adequate housing. Several months later, in December 2009, M.T. was born and thereafter taken into protective custody the same month. M.T. was subsequently determined to be a CHINS and, in April

2010, was formally removed from Father's care and custody pursuant to a dispositional order.

Meanwhile, Father had begun to participate in several of the court-ordered reunification services, including a parenting assessment, psychological evaluation, random drug screens, counseling, and supervised visits with the children. Despite his participation in these services, however, service providers reported that Father was unable to demonstrate that he was benefiting from his participation and/or able to incorporate the parenting and life skills he was being taught into his daily life. Additionally, Father refused to undergo the court-ordered psychiatric evaluation after his psychological assessment indicated Father was suffering from multiple significant psychological and emotional disorders including bipolar disorder, depression, delusional disorder, anxiety, and schizotypal and avoidant personality. Father also continued to engage in physical altercations with Mother and several of her relatives throughout the underlying proceedings, and refused to admit or to discuss during counseling sessions his significant history of physical altercations and/or abuse of family members.

SJCDCS eventually filed petitions seeking the involuntary termination of Father's parental rights to T.T.T. and T.D.T. in April 2010. After several continuances, an evidentiary hearing on the termination petitions was set for December 2010. In November 2010, SJCDCS filed a petition seeking the involuntary termination of Father's parental rights to M.T. as well.

A consolidated, two-day evidentiary hearing pertaining to all the children commenced in December 2010 and concluded in February 2011. During the termination hearing, SJCDCS presented substantial evidence concerning Father's significant history of domestic and family violence which oftentimes resulted in serious bodily injury, including: (1) a 1997 criminal conviction for felony mayhem in the State of Mississippi for hitting his female partner, S.K., in the face and head with a claw hammer thereby knocking out some of her teeth and causing disfigurement to her face; (2) an incident in 2000 in the State of Mississippi during which Father caused a spiral fracture to the left femur of another child, twelve-month-old A.T., who is not Father's biological child; (3) an incident in 2006 before T.T.T., T.D.T., and M.T. were born during which Father attempted to hit his twelve-year-old nephew with a belt for wetting the bed, threw a recliner across the room, and threatened to hurt Mother's mother ("Grandmother") with whom he and Mother were living at the time; (4) an altercation in 2007 during which Father shoved Mother's sister and husband and pushed Grandmother to the ground; and (5) an incident in 2008 during which Father bit Mother's nephew, drawing blood. SJCDCS also introduced evidence showing Father punched a female peer while attending high school, physically assaulted a former girlfriend, T.S., and had been repeatedly physically abusive towards Mother during their six-and-one-half-year relationship, which was still ongoing at the time of the termination hearing. In addition, SJCDCS presented evidence, showing that Father had a four-month-old son who died in Mississippi in November 2000. Although the cause of death was determined to be Sudden Infant Death

Syndrome ("SIDS"), the autopsy report, which was admitted over Father's objection, indicated the child also had multiple scars on his forehead and cheek, as well as abrasions on his thigh and bruising that is normally not associated with SIDS. Notwithstanding this evidence, Father continued to deny he had problems with domestic violence.

As for Father's unresolved and untreated psychological issues, SJCDCS presented evidence indicating that Father struggles with anxiety, bipolar disorder, depression, delusional disorder, paranoia, schizotypal and avoidant personality, and that he continues to test positive for potential physical abuse of others despite his completion of the BIP. Nevertheless, SJCDCS case manager Stacey Gappa testified that Father adamantly denied that he needed psychiatric intervention, refused to meet with a psychiatrist, and would not consider taking any psychotropic medications. Finally, SJCDCS presented evidence that the children were living together and thriving in a relative pre-adoptive home with Grandmother.

At the conclusion of the termination hearing, the trial court took the matter under advisement. In March 2011, the court entered its judgment terminating Father's parental rights to all three children. Father now appeals.

Discussion and Decision

We begin our review by acknowledging that when reviewing a 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.

Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied.

Here, in terminating Father's parental rights, the trial court entered specific factual findings and conclusions. When a trial court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. Bester v. Lake Cnty. Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. Id. "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court's decision, we must affirm. L.S., 717 N.E.2d at 208.

"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, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. In re K.S., 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Termination of a parent-child relationship is proper where a child's emotional and physical development is threatened. Id. Although the right to raise one's own child should not be terminated solely because there is a better home available for the child,

parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. Id. at 836.

Before an involuntary termination of parental rights can occur in Indiana, the State is required to allege and prove, among other things, that one of the following is true: (1) there is a reasonable probability the conditions resulting in the child's removal or the reasons for placement outside the home of the parents will not be remedied; (2) continuation of the parent-child relationship poses a threat to the well-being of the child; or (3) the child has, on at least two separate occasions, been adjudicated a CHINS. See Ind. Code § 31-35-2-4(b)(2)(B) (2008); see also L.S., 717 N.E.2d at 209. The State's burden of proof for establishing these allegations in termination cases "is one of 'clear and convincing evidence.'" In re G.Y., 904 N.E.2d 1257, 1260-1261 (Ind. 2009) (quoting Ind. Code § 31-37-14-2 (2008)). Moreover, if the court finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship. Ind. Code § 31-35-2-8(a) (2008).

Father raises two issues on appeal. Father first asserts insufficient evidence supports the trial court's determination that there is a reasonable probability the conditions resulting in the children's removal from his care will not be remedied in light of the facts he "successfully completed all services," "maintained a suitable and stable residence," visited "regularly and appropriately" with the children, "maintained regular contact with [SJCDCS]," and "attended all court hearings in his case." Appellant's Brief p. 12. Father also asserts the trial court erred in admitting the autopsy report pertaining to

another one of his children who died of SIDS in 2000 thereby entitling him to reversal. We shall address each allegation of error in turn.

I. Sufficiency of the Evidence

When making a determination as to whether there is a reasonable probability that the conditions resulting in a child's removal or continued placement outside of a parent's care will not be remedied, a trial court must judge a parent's fitness to care for his or her child 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 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 Cnty. Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. The trial court may also consider any services offered to the parent by the local Indiana Department of Child Services office (here, SJCDCS) and the parent's response to those services, as evidence of whether conditions will be remedied. Id. Moreover, SJCDCS is not required to provide evidence ruling 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).

Here, the trial court made over one hundred articulate and detailed findings in its judgment regarding Father's unresolved parenting, psychological, and physical abuse issues. In so doing, the trial court set forth the specific circumstances surrounding T.T.T. and T.D.T.'s initial removal from the family home. Within those findings, the following facts are clearly and convincingly established:

1. T.T.T. appeared to be "a normal, healthy two-month-old child" during his well-baby physical just days before he arrived at the hospital with a "suspicious" angulated spiral fracture of the left femur which doctors felt was "not accidental."

2. While at the hospital multiple anterior and posterior rib fractures that were in various stages of healing and which were likely non-accidental and caused by "multiple violent episodes" were also discovered on T.T.T.'s body.

3. Father and Mother were the only persons with access to T.T.T. during the several days between the well-baby doctor's appointment and the time T.T.T. sustained his femur injury.

4. T.T.T.'s injuries were not caused by a birth injury, action of a dog, or a doctor's check for hip displacement.

5 Neither parent ever provided a "plausible or credible explanation" for any of T.T.T.'s injuries.

6 "Father's violence against [T.T.T.] caused [T.T.T.'s] angulated spiral fracture . . . and Mother and Father, as [T.T.T.'s] sole caregivers, are responsible for [T.T.T.'s] non-accidental left femur injury and multiple rib fractures." Appellant's App. pp. 28-29.

The court also detailed Father's extensive history of "domestic and family violence," which oftentimes resulted in "serious injuries" and includes a criminal conviction for felony mayhem, as well as acts of physical abuse against a former high school classmate, former girlfriend, former female partner, several children, his nephew, Mother, Mother's sister and husband, and Grandmother. Id. at 31. Moreover, the court found that during Father's individual therapy, which was focused on "anger management and parenting issues," Father "refused to assume responsibility for any of the many incidents of domestic and family violence he has committed" and "refused to discuss" his "parental responsibility for injuries to [T.T.T.]." Id. at 34. The court also found credible the testimony provided by Family and Children's Center Clinical Director Patricia Hancock ("Dr. Hancock") indicating Father had failed to "demonstrate in the BIP group therapy that he benefitted from the BIP." Id. at 31.

Similarly, the trial court determined that Dr. David Simmons, Clinical Psychologist at the Center for Behavioral Health, also provided credible testimony concerning Father's mental health issues. In so doing, the trial court found as follows:

> 72. Father had a prorated score of 27.8 on the PCL-R, close to the cut-off of 30, which is a diagnosis of psychopathy.
> 73. PCL-R is a reliable predictive test, and a diagnosis of psychopathy is generally associated with violence and general criminal recidivism.
> 74. [Alt]hough Father didn't reach the cut-off score of 30 on the PCL-R, Father did have 4 of 5 items rated as "Present": callous/lack of empathy, lack of remorse or guilt, conning/manipulative and shallow affect.

> 75. Many of Father's personality and behavioral problems identified during his Psychological/Parenting Evaluations were also noted as items "[P]resent" on Father's PCL-R.
> 76. Dr. Simmons' opinion - that [T.D.T., T.T.T., and M.T.] should not be reunified with Father - is credible.
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> * * *
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> 78. Father refuses to follow Dr. Simmons' recommendations and the Court's Dispositional Order that Father complete a psychiatric evaluation and follow all recommendations.
> 79. For many years, Father has denied responsibility for the numerous acts of domestic and family violence he has committed.
> 80. Father does not express concern about his behaviors or his mental status (thoughts, feelings).
> 81. For example, during Father's second interview with Dr. Simmons, Father read a magazine on video games during most of the interview.
> 82. Father has no interest whatsoever in taking any psychotropic medication.
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> 84. Father believes that he is being persecuted by the Court, [SJCDCS], and other agencies.
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> 115. Despite completion of most of the services in the Dispositional Orders, . . . Father [has] not benefitted from these services.

Id. at 32-34. Finally, the trial court noted in its findings that the current SJCDCS case manager, family therapist, and Guardian ad Litem ("GAL") also all recommended termination of Father's parental rights. Id. at 35. Based on these and other findings, the trial court concluded, "There is a reasonable probability that the conditions that resulted in the removal of the children or the reasons for placement of [T.D.T., T.T.T., and M.T.] outside the home of . . . Father will not be remedied." Id. A thorough review of the record leaves us satisfied that clear and convincing evidence supports the trial court's

findings cited above, which in turn support the court's ultimate decision to terminate Father's parental rights to all three children.

The record confirms that Father participated in most of the court-ordered reunification services, including a BIP program, individual and family counseling, random drug screens, and visitation with the children. Father also maintained housing and regular contact with SJCDCS. The record is equally clear, however, that Father failed to address and/or remedy the primary reasons for the children's initial removal and continued placement outside the family home; namely, Father's unresolved and serious domestic violence and mental health issues.

During the termination hearing, it was the overwhelming consensus of case managers and service providers that Father had made little or no progress with his mental health issues and/or his ability to provide the children with a safe and stable home environment. Specifically, Dr. Hancock informed the trial court that although Father attended all twenty-six classes of the BIP, he consistently denied having any significant history of domestic violence, "maintained throughout" the BIP that he was acting in "self defense" when he hit his former female partner in the face with a claw hammer, and "spent a great deal of time minimizing his involvement" in that matter. Tr. pp. 27-28. Dr. Hancock likewise reported that Father "always denied any involvement" pertaining to the injuries suffered by T.T.T., as well as the near identical injuries suffered by the non-biological child who was living with and alone with Father at the time said injuries occurred to that child, and further testified that she never observed Father "demonstrate[]

in group" any change in his way of thinking about domestic violence. Id. at 16, 28. When asked about the significance of the BIP certificate of completion Father received, Dr. Hancock explained that the certificate is "a certificate [participants] get as a merit of attendance," rather than any indication as to whether the participant has actually benefitted from the program. Id. at 24.

SJCDCS case manager Gappa and family therapist Susan Lavaas also recommended termination of Father's parental rights. In so doing, Gappa confirmed that Father never took any responsibility for: (1) the injuries suffered by T.T.T.; (2) the nearly identical injuries inflicted upon the other baby while in Father's sole care; or (3) the facial disfigurement and other injuries suffered by his former female partner, notwithstanding Father's guilty plea to criminal felony mayhem. Gappa further testified that she did not believe Father had benefited from his participation in individual therapy because "the original reason for involvement has never been addressed or resolved." Id. at 47. When questioned about Father's progress in family therapy, Gappa likewise indicated that she never observed any "objective signs that [Father] has processed how these children keep getting hurt in his care" and/or "taken any responsibility for it." Id. at 85. Similarly, Lovaas testified it was her opinion that Father's participation in family therapy had "not been successful because . . . [t]here's been no responsibility taken for [the] injuries to [T.T.T.]" Id. at 94.

As for Father's unresolved mental health issues, Dr. Simmons provided extensive testimony concerning Father's psychological evaluation results, which were administered

in May 2009 and again in April 2010. Among other things, Dr. Simmons informed the trial court that Father's AXIS I and AXIS II test results indicate Father has a "variety of personality problem areas" as evidenced by "significant elevations on the scales of Depressive, Avoidance, Masochistic, Negativistic, Paranoid, Borderline and Schizotypal," which is indicative of a variety of personality traits and disorders. Id. at 117. Dr. Simmons also testified that the results of Father's CAPI test indicate he possesses "an array of characteristics similar to people who physically abuse children" and that Father's "probability of abuse" is "high." Id. at 126. Due to the complexity of Father's initial test results, Dr. Simmons recommended Father obtain a psychiatric evaluation in order to make a definitive diagnosis and develop a specific treatment recommendation. When asked whether he observed any change in Father's overall mental health diagnosis during his second assessment in 2010, Dr. Simmons indicated that there had been no "significant change," notwithstanding Father's completion of the BIP and ongoing participation in weekly counseling. Id. at 132.

As noted earlier, a trial court must judge a parent's fitness to care for his or her child 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 child. D.D., 804 N.E.2d at 266. "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 v. Starke Cnty. Office of Family & Children, 861 N.E.2d

366, 372 (Ind. Ct. App. 2007), trans. denied. Moreover, we have previously explained that "simply going through the motions of receiving services alone is not sufficient if the services do not result in the needed change." In re J.S., 906 N.E.2d 226, 234 (Ind. Ct. App. 2009). After reviewing the record, we conclude that SJDCS presented clear and convincing evidence to support the trial court's findings and ultimate determination that there is a reasonable probability the conditions leading to T.D.T., T.T.T., and M.T.'s removal or continued placement outside of Father's care will not be remedied.

II. Admissibility of Evidence

We next turn to Father's assertion that he is entitled to reversal because the trial court improperly admitted an autopsy report pertaining to one of Father's children who had died of SIDS in 2000 while in the care of a babysitter. The admission of evidence is entrusted to the sound discretion of the trial court. In re A.J., 877 N.E.2d 805, 813 (Ind. Ct. App. 2007), trans. denied. We will find an abuse of discretion only where the trial court's decision is against the logic and effect of the facts and circumstances before the court. Id. If a trial court abuses its discretion by admitting the challenged evidence, we will only reverse for that error if the error is inconsistent with substantial justice or if a substantial right of the party is affected. In re S.W., 920 N.E.2d 783, 788 (Ind. Ct. App. 2010). Moreover, any error caused by the admission of evidence is harmless error, for which we will not reverse, if the erroneously admitted evidence was cumulative of other evidence properly admitted. Id.

Although Father objected to the admission of the autopsy report during the termination hearing, Father failed to object to the admission of Dr. Simmons's psychological examination, which quoted language directly from the autopsy report concerning the deceased child's cause of death, multiple scars on the baby's forehead and cheek, abrasions on his thigh, and certain bruising that is not normally associated with SIDS. Additionally, several witnesses, including Dr. Simmons and Dr. Hancock and case manager Gappa, all discussed the autopsy report in their testimony during the termination hearing without any objection by Father. Thus, even assuming that the challenged autopsy report was improperly admitted into evidence, such evidence was merely cumulative of the testimony of several other witness that was admitted without objection by Father. See Gilmer v. Carney, 608 N.E.2d 709, 712 (Ind. Ct. App. 1993) (noting that any error in the admission of evidence is harmless if it is merely cumulative of other evidence admitted without objection).

This Court will reverse a termination of parental rights "only upon a showing of 'clear error'—that which leaves us with a definite and firm conviction that a mistake has been made." In re A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting Egly v. Blackford Cnty. Dep't of Public Welfare, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Affirmed.

BAILEY, J., and CRONE, J., concur.