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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF D.N.B., K.I.B., and M.F.B.,	)	
W.B.	)	
Appellant-Respondent,	)	
vs.	)	No. 28A05-1101-JT-22
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner,	)	
and	)	
CASA,	)	
Co-Appellee-Guardian Ad Litem.	)	

APPEAL FROM THE GREENE CIRCUIT COURT
The Honorable Erik C. Allen, Judge
Cause No. 28C01-1004-JT-6
Cause No. 28C01-1004-JT-7
Cause No. 28C01-1004-JT-8

July 21, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

W.B. (Father) appeals the involuntary termination of his parental rights to his children, D.B, K.B., and M.B. In so doing, Father challenges the sufficiency of the evidence supporting the trial court's termination order.

We affirm.

Father is the biological father of D.B., born in April 2005, and twins K.B and M.B., born in March 2004.[1] The facts most favorable to the trial court's judgment reveal that in May 2009 the local Greene County office of the Indiana Department of Child Services (GCDCS) received a report that the children's Mother had been in a car accident, having driven off the road and struck a gas pipe while all three children were present. Mother fled the scene, leaving the children in the car, and was later arrested for driving while under the influence. The children were taken into emergency protective custody, and GCDCS filed a

[1] At the time of the termination hearing, the children's biological mother, J.B., was participating in services with GCDCS under a dual permanency plan of reunification and/or termination of parental rights and adoption. Mother does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Father's appeal.

petition alleging they were children in need of services (CHINS). Following an evidentiary hearing in June 2009, the trial court adjudicated all three children CHINS.

A dispositional hearing was held in June 2009, after which the trial court issued an order formally removing D.B. and the twins from Father's care and custody. The trial court's dispositional order also directed Father to successfully complete a variety of tasks and services designed to enhance his parenting skills and to facilitate reunification with his children. Specifically, Father was ordered to, among other things: (1) complete an anger management assessment and follow any resulting recommendations; (2) participate in parent-aid services; (3) attend weekly supervised visits with the children; and (4) maintain regular contact with GCDCS and report any changes in address, phone number, household situations, and employment.

Father's participation in court-ordered reunification services was sporadic and non-compliant from the beginning of the CHINS case, due in part to his ongoing criminal activities and repeated periods of incarceration. After only two visits with the children in May 2009, Father informed service providers he no longer wished to visit with the children. Shortly thereafter, Father fled the State of Indiana and spent approximately one year hiding out-of-state in an attempt to evade an open warrant for his arrest. In May 2010, Father was arrested in Indiana and incarcerated until August 28, 2010.

Following his release from incarceration in August 2010, Father contacted GCDCS and requested that his visitation privileges be reinstated. On September 30, 2010, however, Father failed to attend a scheduled appointment to undergo anger management and substance abuse assessments, both of which were prerequisites for regaining his visitation privileges

with the children. Father never contacted GCDCS after missing this appointment and was re-arrested on a probation violation in October 2010.

Meanwhile, in April 2010, GCDCS filed petitions under separate cause numbers seeking the involuntary termination of Father's parental rights to all three children. A consolidated evidentiary hearing on the termination petitions was held in November 2010. During the termination hearing, GCDCS presented evidence showing Father remained incarcerated with a projected outdate of April 2011 and was therefore unable to care for the children. In addition, Father had refused to participate in and/or successfully complete any of the trial court's dispositional goals, including anger management classes, weekly supervised visits with the children, and parent aid services. There was also evidence showing Father continued to struggle with substance abuse issues, had not visited with the children in over one year, and had failed to make any progress in his ability to properly care for and supervise the children, all of whom had been diagnosed with reactive attachment disorder (RAD) and had special emotional and behavioral needs.

At the conclusion of the termination hearing, the trial court took the matter under advisement. In December 2010, the trial court entered its judgment terminating Father's parental rights to all three children. Father now appeals.

We begin our review by acknowledging that this court has long had a highly deferential standard of review in cases concerning the termination of parental rights. *In re K.S.*, 750 N.E.2d 832 (Ind. Ct. App. 2001). When reviewing the 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 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence

and reasonable inferences that are most favorable to the judgment. *Id*. 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 (Ind. Ct. App. 1999), *trans. denied*. Thus, if the evidence and inferences support the trial court's decision, we must affirm. *Id.*

Here, the trial court made specific findings in its order terminating Father's parental rights. Where the court enters specific findings and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143 (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). A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment thereon. *Quillen v. Quillen*, 671 N.E.2d 98. We will reverse a judgment as clearly erroneous only if, after reviewing the record, we have a "firm conviction that a mistake has been made." *Lang v. Starke Cnty. Office of Family & Children*, 861 N.E.2d 366, 371 (Ind. Ct. App. 2007), *trans. denied*.

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*. Although parental rights are of a constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144

(Ind. Ct. App. 2008). In addition, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In re K.S.*, 750 N.E.2d 832.

To terminate a parent-child relationship, the State is required to allege and prove, among other things:

> (B) that one (1) of the following is true:
>
> > (i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.
> >
> > (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.
> >
> > (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services; [and]
>
> (C) that termination is in the best interests of the child . . . .

Ind. Code Ann. § 31-35-2-4(b)(2) (West, Westlaw through 2011 Pub. Laws approved & effective through 6/28/2011). 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, 1260-61 (Ind. 2009) (quoting Ind. Code Ann. § 31-37-14-2 (West, Westlaw through 2011 Pub. Laws approved & effective through 6/28/2011)). 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. I.C. § 31-35-2-8 (West, Westlaw through 2011 Pub. Laws approved & effective through 6/28/2011). Father challenges the sufficiency of the evidence supporting the trial court's findings as to subsections (b)(2)(B) and (C) of the

termination statute cited above. *See* I.C. § 31-35-2-4(b)(2).

We pause to observe that I.C. § 31-35-2-4(b)(2)(B) provides that GCDCS need establish only one of the three requirements of subsection (b)(2)(B) by clear and convincing evidence before the juvenile court may terminate parental tights. Here, the trial court found GCDCS presented sufficient evidence to satisfy the first two subsections of (b)(2)(B) of the termination statute. *See* I.C. § 31-35-2-4(b)(2)(B)(i) & (ii). Because we find it dispositive under the facts of this particular case, we shall only consider whether clear and convincing evidence supports the trial court's findings regarding subsection (b)(2)(B)(i), namely, whether there is a reasonable probability the conditions resulting in the children's removal or continued placement outside the family home will be remedied. *See* I.C. § 31-35-2-4(b)(2)(B)(i).

In making such a determination, 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 (Ind. Ct. App. 2001), *trans. denied*. The court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. *In re M.M.*, 733 N.E.2d 6 (Ind. Ct. App. 2000). 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 (Ind. Ct. App. 2002), *trans. denied*. The trial court may also properly consider the services offered to the parent by a county office of the Indiana Department of Child Services, and the parent's response to those

services, as evidence of whether conditions will be remedied. *Id.* Finally, a trial court need not wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth are permanently impaired before terminating the parent-child relationship. *In re E.S.*, 762 N.E.2d 1287 (Ind. Ct. App. 2002).

Here, in finding there is a reasonable probability the conditions resulting in the children's removal and continued placement outside of Father's care will not be remedied, the trial court made multiple detailed findings regarding Father's overall lack of progress in improving his ability to care for and successfully parent the children, including Father's failure to obtain stable employment and housing, recurrent periods of incarceration, and ongoing struggle with substance abuse. In so doing, the trial court specifically found that "[i]n addition to ending his visits [with the children,] Father did not comply with or participate in any other offered services to work toward reunification with the children" and "ended all ties to [GCDCS]" thereby making it impossible for case workers to contact Father and/or make referrals for services. *Appellant's Appendix* at 49. The court also acknowledged Father's lengthy criminal history, which began before GCDCS's involvement in the underlying CHINS case with a fifteen-month period of incarceration from approximately November or December 2007 until February 28, 2009, and included his most recent arrest and incarceration "due to a probation violation for unlawfully possessing a controlled substance, Vicod[i]n, which constitutes a felony criminal offense of Possession of a Controlled Substance." *Id*. at 50. The court further found that Father "admitted to having on-going issues with 'pills and stuff like that.'" *Id.*

Based on these and other findings, the trial court concluded as follows:

> c. There is a reasonable probability that: 1) the conditions that resulted in the children's removal or the reasons for the placement outside of the parents[’] home will not be remedied . . . . Father's consistent criminal behavior and incarceration, his consistent absence from the children's lives for the last nearly 4 years, and his total lack of participation and/or cooperation with services supports this conclusion. Further, the diagnosis of each child with RAD and the harmful effect that Father's consistent pattern of behavior will have on them, as detailed in paragraph 14 above, causes the Court to conclude that continuation of the parent-child relationship poses a substantial threat to the well-being of the children.

Id. at 51. Our review of the record leaves us convinced that these findings and conclusions are supported by abundant evidence.

During the termination hearing, former GCDCS case manager Whitney Dather informed the trial court that after only two supervised visits with the children in May 2009, Father "decided he didn't want to participate in services," any longer and told Dather he "just wanted to visit with the kids when their mom got out of jail." *Transcript* at 10, 12. Dather further testified that GCDCS lost all contact with Father following the dispositional hearing in June 2009, and after making "several calls" in an attempt to locate Father, she finally spoke with Father's mother who indicated Father had "moved out of [her] house and she didn't know where [Father] was." *Id.* at 17. In recommending termination of Father's parental rights to all three children, current GCDCS case manager Kelli Rickelman also confirmed that Father had failed to remedy the conditions that had resulted in the children's removal from his care. When asked why GCDCS was unable to place the children with Father at the time of the termination hearing, Rickelman answered:

> Well[,] the obvious for one, currently he is incarcerated. He has no home of his own to provide for the children. He has no employment to, to provide for their needs. I don't believe that, at this point, he's able to deal with the children's aggressive behaviors. The children are very aggressive . . . to others

> and it[] takes a great deal of nurturing and consistency [as] a parent. And [Father] being in and out of jail is detrimental.

Id. at 112. Rickelman further testified that the children had "been in the system for over a year," and that Father had not "shown the, the drive to see his children[,] to want to be with them and have them in his care." *Id.* at 116.

Father's own testimony lends further support to the trial court's findings. Father admitted during the termination hearing that he failed to visit with the children and to maintain contact with GCDCS throughout the underlying CHINS and termination proceedings. Father also acknowledged he had refused to participate in court-ordered anger management and parenting classes, spent approximately one year of the CHINS case "on the run from police" and hiding outside the State of Indiana, continues to have "issues with drugs," and made the "conscious decision to not be a part of [the children's] lives the last year and a half" because he was "on the run and in jail." *Id.* at 81, 87.

As previously explained, a trial court must judge a parent's fitness to care for his or her children 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 children. *In re D.D.*, 804 N.E.2d 258. Where the parent's pattern of conduct shows no overall progress, the court might reasonably infer that, under the circumstances, the problematic situation will not improve. *In re A.H.*, 832 N.E.2d 563 (Ind. Ct. App. 2005). Since the time of the children's removal, Father has been in and out of jail, refused to visit with the children and participate in court-ordered reunification services, and failed to show he is capable of providing the children with the emotional support and the basic life essentials

they need to live and to thrive. For all these reasons, we conclude that clear and convincing evidence supports the trial court's determination that there is a reasonable probability the conditions leading to the children's removal and/or continued placement outside Father's care will not be remedied. Father's arguments to the contrary amount to an invitation to reweigh the evidence, which we may not do. *In re D.D.*, 804 N.E.2d 258.

We next consider Father's assertion that GCDCS failed to prove termination of his parental rights is in the children's best interests. 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 look to the totality of the evidence. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185 (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.* Moreover, we have previously held that the recommendations of both the case manager and child 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 interests. *See In re M.M.*, 733 N.E.2d 6.

In addition to the findings previously discussed, the trial court made several additional pertinent findings in determining that termination of Father's parental rights is in the children's best interests. Specifically, the trial court acknowledged that all three children had been diagnosed with RAD and thus had an "extraordinary need" for "consistency," "stability," and "structure in their li[ves]," which Father had "clearly displayed an inability to

provide." *Appellant's Appendix* at 50. The court also noted that the court-appointed special advocate (CASA) concurred with GCDCS's recommendation to terminate Father's parental rights based on Father's "lack of involvement with services and the length of the children's time in placement." *Id.* at 49. Moreover, the court found Father's "consistent lack of involvement" is "harmful" to the children and that Father had "not enhanced his ability to fulfill his parental obligations." *Id.* at 50. The court thereafter concluded:

> Termination is in the best interest[s] of each of the children. This conclusion is also based upon Father's consistent criminal behavior and incarceration, his consistent absence from the children's lives for the last nearly 4 years, his total lack of participation and/or cooperation with services, and the issues related to the children's diagnosis with RAD . . . . Further, the children have shown significant behavioral improvement since experiencing consistency and stability in foster placement. Obtaining permanency is in the children's best interest[s].

Id. at 51. These findings and conclusions, too, are supported by the evidence.

In recommending termination of Father's parental rights to all three children, Greene County CASA Director Samantha Flath referred to Father's "lack of participation" in the case, as well as the fact the children had been "placed in foster care for close to eighteen months." *Transcript* at 97. Flath stated that the children "deserve a stable, safe, [and] permanent home," and that Father had failed to "demonstrate the ability or will to provide permanency for the children." *Id.* Flath further testified, "I think even visits right now would be detrimental to the children due to all their diagnoses [and] their behavioral problems." *Id.*

Case manager Rickelman likewise testified that she believed termination of Father's parental rights was in the children's bests interests. Rickelman explained that none of the children had been able "to form any kind of attachment to [Father]," stated that Father did

"not know how to deal with the behaviors that [the children] currently have," and further indicated that she believed reunification would be "harmful or detrimental to the children at this point" because they need a caregiver who can provide "a lot of patience," "consistency," and "structure." *Id.* at 111.

To summarize, Father was incarcerated at the time of the termination hearing. He experienced a persistent and ongoing lack of stable housing and employment and failed to remedy his ongoing substance-abuse issues. He admitted he had a history of domestic violence with the children's mother. He was unable to demonstrate that he is capable of providing the children with a safe and stable home environment. Finally, Rickelman and Flath recommended termination of the parent-child relationships. Based on the totality of the evidence, we conclude that clear and convincing evidence supports the trial court's determination that termination of Father's parental rights is in the best interests of D.B., K.B., and M.B.

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 Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Judgment affirmed.

BAILEY, J., and BROWN, J., concur.