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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF:)
D.G. and G.G.,)
)
Minors,)
)
GERALD GOSS, SR.,)
)
Appellant-Respondent,)
)
vs.)
)
LAKE COUNTY DEPARTMENT)
OF CHILD SERVICES,)
)
Appellee-Petitioner.)

No. 45A03-0703-JV-123

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Judge
Cause No. 45D06-0605-JT-55
45D06-0605-JT-56

August 23, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Gerald Goss appeals the termination of his parental rights to his children D.G. and G.G. We affirm.

Issue

The sole issue raised by Goss is whether there was sufficient evidence to terminate his parental rights.

Facts

Goss's wife and the children's mother died of a drug overdose on May 16, 2005. Following their mother's untimely death, the children went to live with their uncle and aunt, Ricky and Sandra Sutton. G.G. was eleven years old and D.G. was six years old. On June 26, 2005, Goss visited the Sutton home in an attempt to reclaim his children. It is not clear from the record what Goss had been doing or where he had been living before that date. Ricky contacted the Lake County Department of Child Services ("DCS") to make a referral based on his fears regarding the neglect of the children. At that time, it

was Ricky's understanding the Goss did not have a home to take the children to, as he had been evicted from the apartment he previously shared with his wife.

The children were declared children in need of services ("CHINS") on June 28, 2005. This contact was not the first these children had with DCS; they had been declared CHINS in November of 2001. The court ordered Goss to find a suitable home for the family. The court's plan in October of 2005, was still to eventually reunite Goss with the children. Goss was ordered to participate in a long-term drug treatment program. He participated in the program, but failed four of the drug screens. In the fall of 2005, Goss was sentenced to twelve months in prison for fraud and conversion. Then on May 10, 2006, the court adopted a new permanency plan of termination of rights and adoption. DCS filed a petition for involuntary termination of parental rights on May 17, 2006.

While living with their mother and father, instability, evictions, and frequent relocations were a part of the children's lives and the family moved approximately five times a year. Utilities in the family home were also frequently turned off. When the Suttons first brought the children to their home in 2005 they were malnourished, dirty, tired, and suffering from nightmares and emotional problems. G.G. was diagnosed with Tourette's Syndrome, ADHD, and a learning disability. Since they have been in the Suttons' care, the children are healthy and G.G. is doing better in school and even participating in extracurricular activities.

The overdose death of their mother was not the first loss to drug abuse these children suffered. Drug abuse also claimed the life of the children's half brother, Brandon Tomlinson. Their half sister Sheena Tomlinson was supposed to be enrolled in

an inpatient rehabilitation facility. Their father was not exempt from these problems, as Goss admitted to a ten-year Vicodin addiction. Additional testimony indicated the abuse went back at least thirteen years and contributed to the instability of the family. Goss tested positive for opiates on August 8, 2005. He then tested positive for cocaine on September 8, 2005, September 13, 2005, and September 29, 2005, yet denied ever trying the drug prior to that time. Despite the fact that Goss knew he needed to stay drug-free and finish the drug treatment program to be reunited with his children, he used cocaine and opiates while the CHINS action was pending. He also committed two felonies and was sentenced to prison. As an inmate, Goss did not provide financial or emotional support for his children. At the time of the hearing, he had had no contact with the children for over a year. Following his release from prison, Goss had no viable prospects for employment or residence.

Considering these circumstances, counseling professionals and DCS personnel recommended that a stable environment with the Suttons was in the best interest of the children. “[W]e feel that the children need permanency and that permanency should not wait.” Tr. p. 58.

The trial court terminated Goss’s parental rights and named the Suttons as the prospective adoptive parents. This appeal followed.

Analysis

Goss contends there was not sufficient evidence to support the trial court’s termination of his parental rights. Although we recognize that the Constitution protects parents’ fundamental rights in the custody of their children, parental interests are not

absolute and “may be terminated when the parents are unable or unwilling to meet their parental needs.” Bester v. Lake County Office of Family of Children, 839 N.E.2d 143, 147 (Ind. 2005). In terminating parental rights, the purpose is not to punish the parents, but instead to protect the children. In re C.C., 788 N.E.2d 847, 855 (Ind. Ct. App. 2003), trans. denied.

We do not reweigh the evidence or judge witness credibility when reviewing the termination of parental rights. Bester, 839 N.E.2d at 147. We consider only the evidence and any reasonable inferences favorable to the judgment. Id. The judgment will be set aside only if it is clearly erroneous. Id. We engage in a two-part review of the findings of fact and conclusions thereon entered by the trial court. Id. First, we must determine whether the evidence supports the findings. Id. Then, we must determine whether the findings support the judgment. Id.

A petition to terminate the parent-child relationship must allege:

(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 description of the court’s finding, the date of the finding, and the manner in which the finding was made; or

(iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(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.

Ind. Code § 31-35-2-4(b)(2).

As to the first element, there was no dispute that G.G. and D.G. had been under the supervision of DCS and living with the Suttons for over seventeen consecutive months. As to the second element, the trial court can find either that the conditions that led to placement outside the parents' home will not be remedied or the continuation of the parent-child relationship poses a threat to the child. In re C.C., 788 N.E.2d at 854. The trial court found that both elements existed in this case.

Goss contends there was not sufficient proof that the conditions that led to the removal of the children from his care would not be remedied. We disagree. In determining that conditions will not be remedied, the trial court must determine which conditions led to the initial removal from the home and whether there is a reasonable probability those conditions would be remedied. Id. Here, the children were removed essentially because they had no home. Their mother had just passed away and the family was being evicted. The children were found to be dirty, malnourished, and suffering from emotional problems. Although their health status improved during their stay with

the Suttons, their father provided no residence for them to return to nor had he sought or secured any employment. Instead, he committed two felonies and was sentenced to twelve months in prison.

Evidence regarding Goss illustrated a decade long drug problem, with relapses even after the children were removed. On this point, Goss contends the trial court failed to recognize that he had been drug free for a year and a half at the time of the termination hearing. As pointed out by DCS, however, it is important to note that Goss was incarcerated during this time. He was not functioning in the real world and avoiding the temptation of illegal drugs. Rather, he was behind bars. Accordingly, these circumstances provided sufficient evidence to demonstrate the conditions leading to removal were not and would not be remedied.

As the trial court had sufficient evidence to support the position that the conditions which led to removal would not be remedied, it was not necessary to also prove that the parent-child relationship posed a threat to the children. Still, the trial court outlined its findings on this point as well. Regarding the prospect of whether the continuation of the parent-child relationship posed a threat to the well-being of the children, Goss makes much of the fact that the children were not injured by him. Physical injury, however, is not a necessary element. The well-being of a child encompasses much more than simply his or her physical condition. Rather, the court has a duty to safeguard the mental and emotional health of the child as well. See Doe v. Daviess County Div. of Children and Family Servs., 669 N.E.2d 192, 195 (Ind. Ct. App. 1996) (reasoning that the court's duty "to safeguard the physical, mental and emotional well-being of the child" outweighed

parents' right to privacy regarding medical records). When found in Goss's care the children were dirty, malnourished, not immunized, and had emotional issues and special educational needs that were not being met. They also suffered from nightmares. Based on their evaluations, DCS personnel and a therapist concluded a stable environment was essential to the children's growth and development. The trial court had sufficient evidence to conclude that Goss posed a serious threat to the future well-being of the children.

As to the third element of the termination statute, the court's conclusion that termination was in the best interests of the children was supported by sufficient evidence. DCS and counseling personnel testified that the children needed stability and permanency as could only be provided by the Sutton home. Return to their father would only subject them to further instability and an environment of drug abuse.

As to the fourth and final element, the trial court reasonably concluded that a satisfactory plan was in place for the care and treatment of the children with the Suttons. Mr. Sutton testified to the stability in his home and the improvements in the children's health and demeanor. He also indicated a willingness to adopt the children. In sum, the trial court's decision to terminate Goss's parental rights was supported by sufficient evidence and is not erroneous.

Conclusion

The trial court's decision to terminate Goss's parental rights is supported by sufficient evidence. We affirm.

Affirmed.

KIRSCH, J., and ROBB, J., concur.