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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF)
A.A.J., A.I.J., D.L.J., D.I.J., M.E.J., and R.L.J.,)
Minor Children, and DEWAYNE E. JOHNSON,)
Father,)

DEWAYNE E. JOHNSON,)
Appellant-Respondent,)

vs.)

TIPPECANOE COUNTY DEPARTMENT)
OF CHILD SERVICES,)

Appellee-Petitioner.)

No. 79A02-0701-JV-8

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta H. Rush, Judge
The Honorable Faith Graham, Juvenile Magistrate
Cause Nos. 79D03-0608-JT-190, 79D03-0608-JT-192, 79D03-0608-JT-194,
79D03-0608-JT-196, 79D03-0608-JT-198, 79D03-0608-JT-207

August 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Dewayne E. Johnson (“Father”) appeals the termination of his parental rights to his six children. He asserts the evidence was insufficient to support the findings and judgment. We affirm.

FACTS AND PROCEDURAL HISTORY

Father’s marriage to Roxanne Johnson (“Mother”) produced six children: D.L.J. born September 23, 1998; R.L.J. born August 24, 1999; A.A.J. born October 23, 2001; D.I.J. born October 31, 2002; M.E.J. born December 4, 2003; and A.I.J. born March 31, 2005. In September 2005, while Father was incarcerated, the Tippecanoe County Child Protective Services (“TCCPS” or “DCS”) received a report that the children, who were unclean and in need of medical care, were at the bus station with Mother and a known sex offender. Based on the circumstances in which the children were found, they were taken into protective custody. Three days later, the court heard evidence at a Child in Need of Services (“CHINS”) detention hearing and formally removed the children from the parents’ custody. After a hearing on December 6, 2005, the court declared the children to be CHINS.

After being released from prison in October 2005, Father was offered the following services: individual counseling, family counseling, visitation, home-based services, random drug screens, parenting classes, psychological evaluation, assistance

with obtaining a GED, and case conferences. However, Father's contact with TCCPS was sporadic, and he continued to have problems with housing, employment, and transportation.

On August 28, 2006, TCCPS filed petitions to terminate the parental rights of Father and Mother. The court heard evidence on October 24, 2006, and terminated their rights on November 16, 2006.¹ The court's order included the following findings related to Father:

2. . . . Mother reported being fearful of Father due to past domestic violence. . . .

* * * * *

4. . . . Father was offered the following services: individual counseling, family counseling, visitation, home-based services, random drug screens, parenting classes, psychological evaluation, GED, and case conferences.

5. By the time of the first review hearing [on January 25, 2006], the parents had cancelled a number of visits. . . . Father had been released from incarceration but Mother had become incarcerated for a period of time. Father had impregnated another woman. Contact with DCS was sporadic. The parents continued to have issues regarding housing, employment, and transportation. By the time of the second review hearing [on June 2, 2006], the parents had been evicted from their substandard apartment in Lafayette and returned to Frankfort. Both parents were unemployed. Father had yet to complete a substance abuse evaluation. The parents continued to miss visits.

6. A permanency hearing was held on August 24, 2006. By that time, services with HGCF were terminated due to Father's threatening remarks. Mother continued to waiver [sic] regarding reports of past and current domestic violence, alcohol abuse, and gang involvement. The parents had failed to report for two (2) drug screens. . . . Father's employment remained sporadic. The parents failed to engage in individual therapy. The parents continued to reside in the home of Father's mother although the home was in foreclosure. . . .

7. Mother testified to the following at the evidentiary hearing on the

¹ If Mother has appealed the termination of her rights, she did so separately, as the brief before us represents only Johnson.

DCS's petitions to terminate parental rights: . . . She denies any physical violence from the Father during this case but admits emotional abuse. . . . She agrees with the father that they are not able to provide for the children currently but could with additional time.

8. Father testified to the following at the evidentiary hearing on the DCS's petitions to terminate parental rights: He completed the seventh grade and received special education. He continues to have problems with reading, spelling, and math. He states he was not able to read the papers in this case or understand the "high words." Prior to being incarcerated in Clinton County in May 2005, his family lived in a home on Sullivan Street. Since his release from incarceration, he lived with the Mother at his mother's home. His mother would not allow services to be conducted in her home due to construction within the home. His mother's home is now in foreclosure. At one point during this case, he and the Mother lived in an apartment in Lafayette for a short period. He agrees that the apartment in Lafayette was substandard. He now lives with the Mother in a hotel in Frankfort. During this case, he has worked several places. He is now employed by Dale Davis doing various work associated with construction. He works twenty (20) to thirty (30) hours per week and is paid in cash. He plans to obtain housing with the help of his employer and his brother. He has a hard time paying rent and probation fees and is sometimes "lucky to eat". He has no vehicle. Neither he nor the Mother has a driver's license. He is currently on probation in Boone County for Intimidation. He does not believe he was threatening to service providers. He denies sexually molesting any of his children. He is currently a Confidential Informant in Frankfort and fears for the Mother's safety outside the home as a result. He was a member of the Latin Kings gang in Chicago but is no longer involved in gang activity. The last time he had an ongoing regular paycheck was in Chicago about five (5) years ago when he worked steadily for about four (4) or five (5) months. His last stable housing was on Sullivan Street where his family lived for about two (2) months. . . . He believes he and the Mother can take care of all six (6) children without help from others. He does not believe the Mother neglected the children. He agrees that he could have done better in his lifestyle. He admits he has not attended visits consistently due to transportation and work issues. He understands it is not fair for the children to wait for him to arrive. He believes the situation has improved since the children were placed in protective custody. He tried his hardest, has left drinking alone, and is not in jail. He understands it is not fair for the children to wait but believes he would need at least four (4) more months to obtain housing, beds, dressers, and clothing. He feels his family received all the services needed and there was nothing else DCS could have done except given him a little more understanding.

9. LuAnn Horton was the Family Case Manager from September 2005

through May 2006. Ms. Horton noted . . . [b]oth parents had difficulty following through with services reportedly due to transportation. . . . Both parents admitted a history of domestic violence. . . . The Father provided a tremendous amount of excuses for remaining unemployed despite door to door transportation offered by service providers. . . . Blake Jones became the Family Case Manager at the end of May 2006. . . . Mr. Jones reported that early in the case the parents went long periods without attending visitations. Throughout the case, the parents' compliance with visitation was sporadic. There are moments of positive interaction during supervised visitations. However, visitation facilitators must continue to intervene and redirect the parents from attempting to pry information from the children. The emotional health of the children is of great concern. Since the permanency hearing, the parents continued to miss visitation even though the amount of visits were reduced. Neither parent was active in individual counseling. At a case conference on August 8, 2006, the Father's comments caused service providers to be fearful of making verbal recommendations. On August 9, 2006, the Mother appeared at DCS and reported she had left the Father. The Mother disclosed a number of concerns stating that Father was controlling and would not allow her to leave the house. She reported that Father dictated the clothing she should wear and would get "crazy drunk" and hit her. Mother disclosed she recently cancelled a visit because Father had "head-butted" her leaving two (2) bruises under her eyes. Mother shortly returned to the relationship. The original conditions that resulted in the children being removed were never remedied. The parents still have no stable housing and no verifiable employment or income. The parents have demonstrated a pattern of instability and there is no reasonable probability the conditions will be remedied. The parents have not demonstrated an ability to appropriately parent the children by providing stability in basic areas such as food, clothing, and safety. The children have made remarkable progress and are adoptable. Services provided in this case have exceeded services generally offered and service providers have gone beyond what is required. The parents did not utilize the services provided. It is in the best interests of the children to terminate parental rights.

10. The children's CASA, Patricia Wilkerson, testified that termination of parental rights and adoption is in the children's best interests. . . . The biggest concerns regarding continuation of the parent-child relationships include the threat of domestic violence, employment instability, and housing instability. Additionally, the parents are emotionally the same age as the children and are unable to provide developmental assistance. Mother and Father are not productive adults able to meet their own needs. The parents are currently living in a motel. Father controls the Mother's activities. . . . The parents are educationally and medically a threat to the

children. The children become upset around visitations exhibiting nightmares and regression in potty training. Father's behavior has been perceived as threatening by some service providers. Father has reportedly been involved with gang activity.

* * * * *

12. Dr. Judith Anderson testified as an expert witness. . . . [R.L.J.] has disclosed being molested including being touched by her father. She has reported that her mother was present and has mentioned that her father had a knife. . . . [D.L.J.] also disclosed being molested by father and his friends. She has made it clear she does not want to be with father and that he frightens her. . . . The parents made no progress and there are no indications they are likely to make changes in the future. There have been multiple reports of neglect in multiple counties. At the onset of this case, these children did not know what to do with a fork and they were not familiar with real meat. They were primitive children. Dr. Anderson cannot see these children being healthy in the care of the parents. . . . Dr. Anderson believes continuation of the parent-child relationships would threaten the well-being of these children especially their emotional development. Given the history of environmental deprivation with the parents, the physical well-being of the children is also a concern. It is in the best interests of these children to terminate parental rights despite and [sic] potential negative impact and the lack of guarantee associated with adoption.

13. Dr. Vanderwater-Piercy testified as an expert witness. Dr. Piercy diagnosed Father with antisocial personality disorder. . . .

* * * * *

15. The parents love their children. Both parents' lack of participation in services along with ongoing instability problems pose a threat to the children. The children remain at risk for suffering further emotional and physical harm if reunited with either parent. The conditions that led to removal have not been remedied. The parents appeared at the termination hearing no more stable than at the time of removal. To continue the parent-child relationships would be detrimental to the children. The parents have shown they do not have the ability and/or desire to care for these children. The children have suffered harm and need permanency now. The parents do not currently have the ability to meet the children's needs.

(Appellant's App. at 133-141.) The court concluded the conditions resulting in removal of the children would not be remedied because "[n]either parent has yet demonstrated the ability or willingness to make lasting changes from their past behaviors, establish

stability, and refrain from unlawful behavior.” (*Id.* at 142.) The court concluded continuation of the parent-child relationships was a threat because the parents’ “choices and actions have made them unable to care for their own needs let alone the needs of their children.” (*Id.*) “For the foregoing reasons, it is in the best interests of [the children] that the parental rights of [the parents] be terminated” because “[f]urther efforts to reunify would have continued negative effects on the children.” (*Id.*)

DISCUSSION AND DECISION

When a parent appeals the termination of his parental rights, we will not reverse the trial court’s judgment unless is it clearly erroneous. *M.H.C. v. Hill*, 750 N.E.2d 872, 875 (Ind. Ct. App. 2001). When determining whether the evidence supports the findings and judgment, we may not reweigh the evidence or reassess the credibility of the witnesses. *Id.* We will set aside the trial court’s findings only if they are clearly erroneous; that is, if the record lacks any evidence or reasonable inferences to support them. *Id.* We consider only the evidence and reasonable inferences therefrom that support the judgment. *In re D.G.*, 702 N.E.2d 777, 780 (Ind. Ct. App. 1998).

A trial court may not terminate a parent’s rights unless the State demonstrates by clear and convincing evidence “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.” Ind. Code § 31-35-2-4(b); *see also In re W.B.*, 772 N.E.2d 522, 529 (Ind. Ct. App. 2002) (noting State’s burden of proof).

A. Conditions

Father first challenges whether the conditions resulting in the removal of the children would not be remedied. To determine whether a reasonable probability exists that the conditions justifying a child's continued placement outside the home will not be remedied, "the trial court must judge a parent's fitness to care for [his] children at the time of the termination and take into consideration evidence of changed conditions." *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied sub nom. Timm v. Office of Family & Children*, 753 N.E.2d 12 (Ind. 2001). Nevertheless, the trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.* The court may consider the parent's response to services offered by an Office of Family and Children when determining whether conditions have changed. *See M.B. v. Delaware County Dept. of Welfare*, 570 N.E.2d 78, 82 (Ind. Ct. App. 1991).

Father seems to believe the application of this standard to him is inappropriate because the children were living with Mother when they were removed. However, Father is also responsible for the situation in which the children were found, because he was incarcerated and unable to provide for them. Father was released from incarceration a full year before the termination hearing, but did not demonstrate he was able to obtain appropriate employment and housing to provide for his children. The conditions had not been remedied.

Nor was the court required to give Father additional time to remedy the situation. Father claimed at the termination hearing that if he had four more months, he would be

able to provide housing and transportation. However, after a year of opportunities to receive assistance with improving his life situation, Father had been unable to do so. The court was not required to give Father additional time, when his children need safety and security now.

Father's remaining arguments regarding this element are requests that we reweigh the evidence while ignoring the evidence most favorable to the court's judgment. This we cannot do. Our standard of review requires us to view the evidence in the light most favorable to the court's judgment. When so viewed, the evidence is more than sufficient to support the court's conclusion the conditions resulting in removal would not be remedied.²

B. Best Interests

Father asserts the removal is not in the children's best interests because he "can and will become the parent his children need him to be." (Appellant's Br. at 26.) However, the evidence before the court simply did not support this allegation. Based on the lack of change in Father's situation between his release from prison and the termination hearing, the court would have little reason to believe Father would achieve that goal. Numerous service providers believed it was in the children's best interests to have Father's rights terminated so the children could be placed with families who were capable of immediately giving the children the stability and resources necessary to keep

² Because Ind. Code § 31-35-2-4(b)(2)(B) is written in the alternative, we need not address evidence supporting the trial court's finding continuation of the parent-child relationship poses a threat to children where evidence demonstrates reasons for removal would not be remedied. *See In re J.W.*, 779 N.E.2d 954, 962 (Ind. Ct. App. 2002), *trans. denied sub nom. Weldishofer v. Dearborn County Div. of Family & Children*, 792 N.E.2d 40 (Ind. 2003).

them safe and healthy. We will not reweigh the evidence.

For these reasons, we affirm.

Affirmed.

DARDEN, J., and CRONE, J., concur.