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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE MATTER OF THE TERMINATION)
OF PARENTAL RIGHTS OF J.C.,)

JEFFREY COLLINS,)

Appellant-Respondent,)

vs.)

HUNTINGTON COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner.)

No. 35A02-0703-JV-288

APPEAL FROM THE HUNTINGTON CIRCUIT COURT
The Honorable Jeffrey R. Heffelfinger, Special Judge
Cause No. 35C01-0608-JT-3

October 31, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Jeffrey Collins appeals the termination of his parental rights to his eleven-year-old daughter. Because the evidence and findings support the court's judgment, we affirm.

FACTS AND PROCEDURAL HISTORY

Collins and his wife, Jodee, gave birth to daughter J.C. in 1995. In 2003, Collins and Jodee divorced, and Jodee received custody of J.C. Later that year the Huntington County Department of Child Services ("DCS") became involved with the family because Jodee was unable to care for J.C. while Collins was incarcerated for operating while intoxicated. Collins' nephew and the nephew's wife obtained custody and a guardianship over J.C. in early 2004.

In March of 2005, the guardians contacted DCS because they were having trouble with J.C. DCS filed a Child in Need of Services ("CHINS") petition and placed J.C. in foster care. Collins assisted DCS with the development of a case plan that required him to complete parenting skills classes, obtain a substance abuse assessment and complete any recommended treatment, receive a mental health assessment, and engage in supervised visitation with J.C.

However, in April of 2005, Collins was again incarcerated for operating while intoxicated, and his probation for invasion of privacy was revoked. Collins had signed up for the required classes and assessments, but he was unable to complete those services due to his incarceration. Neither did DCS offer him any services while he was incarcerated. Collins wrote letters to maintain contact with J.C.

On August 15, 2006, DCS filed a petition to terminate Collins' rights to J.C. The court appointed counsel to represent Collins, then held a fact-finding hearing on January 5, 2007. At that time, Collins was on work-release and working at Bluffton Rubber. On March 1, 2007, the court terminated Collins' rights in an order that contained the following pertinent findings and conclusions:

13. The Court finds by clear and convincing evidence that there is reasonable probability that the conditions that resulted in the child's removal from her home will not be remedied.

A. The testimony of HCDCS caseworker Karenna Hernandez, former HCDCS caseworker Marcia Wiblin-Whited, and Youth Services casemanager Esther Crago all establish that none of the case plans . . . were successfully complied with or completed by . . . Jeffrey Collins.

* * * * *

(2.) Jeffrey Collins has failed to do the following:

- a. Successfully complete a mental health assessment;
- b. Address his anger/discipline problems through treatment;
- c. Complete a substance abuse assessment;
- d. Address substance abuse issues through treatment;
- e. Successfully complete Parenting Classes;
- f. Failed to comply with supervised visitation schedules;
- g. Stop drinking alcoholic beverages.

14. The Court finds that while there was some visitation exercised by the natural parents soon after the removal of the child from their home, there is clear and convincing evidence that none of the requirements of the case plans have been substantially complied with by . . . the natural father

15. The Court specifically finds that the individual and family counseling services, the substance abuse counseling services, mental health services, anger management services, parenting services, and other family based support services as offered by the Department of Child Services were not successfully completed nor were the natural parents compliant with the requirements for services placed on them.

16. The Court specifically finds that the natural father, Jeffrey Collins, has been incarcerated for a very large part of the time of the pendency of

the CHINS cause of action, and due to said incarceration Jeffrey Collins was unable to comply with the requirements of any of the individual case plans.

17. There is clear and convincing evidence that termination of the parent-child relationship is proper since the HCDCS has established that the conditions leading to removal of the child would not be remedied and that the continuation of the parent-child relationship poses a threat to the child's safety and well-being.

18. When making its determination, this Court has considered the services offered to the parent and the parent's response to those services.

* * * * *

20. The Court finds that Jeffrey Collins has a long criminal history and is presently incarcerated at the Wells County Jail and has been for the past several months.

21. The Court finds by clear and convincing evidence that habitual patterns of conduct by Jeffrey Collins easily lead to the conclusion that there is a substantial probability of future neglect or deprivation of the child due to Mr. Collins [sic] inability to lead a crime-free life and to remain sober.

22. The Court finds that an individual who pursues criminal activity runs the risk of being denied the opportunity to develop [a] positive and meaningful relationship with his child and Jeffrey Collins has a significant and long history of criminal activity.

23. The Court specifically finds that under Indiana law and practice, the natural father, Jeffrey Collins, will be imprisoned until at least May 2007, and therefore [is] unable to provide any care or support the minor child as of the date of this hearing.

24. The Court hears and considers the testimony of Guardian ad litem (Tia Brewer) and agrees with the conclusions and recommendations of the GAL as reflected in her Report filed with the Court on the day of the termination hearing. The GAL Report is made a part of this Order.

A. The Court finds by clear and convincing evidence that the child . . . has "already terminated her emotional bonds with her natural parents." (Testimony of GAL Tia Brewer)

25. The Court finds by clear and convincing evidence that the physical, mental, and social growth of [J.C.] would be harmed and impaired if termination of the parent-child relationship is not completed as requested by the HCDCS and recommended by the Guardian ad litem.

* * * * *

27. It is concluded that there is a reasonable probability that the conditions which resulted in the removal of the child will not be remedied as this court has evaluated the parent's fitness to care for his children at the time of the termination hearing, taking into consideration evidence of any

changed conditions. Mr. Collins is presently incarcerated and there is no evidence that he has made any significant or substantial change of his lifestyle or corrected any of his life problems.

Best Interests of the Child

28. The Court finds by clear and convincing evidence that the father, Jeffrey Collins, has an historic inability to provide adequate housing, stability and supervision for [J.C.] and his continued incarceration at the time of the January 5, 2007 termination hearing is strong evidence of his current inability to provide same.

- A. [J.C.] is in need of stability and permanency now;
- B. [J.C.] is doing well in her current placement;
- C. There is no guarantee that [Collins] will be a suitable parent once he is released from incarceration or even that he would obtain a change of custody of [J.C.] in the dissolution action.

29. This Court concludes that a parent's historic inability to provide adequate housing, stability and supervision coupled with a current inability to provide the same supports a finding that the termination of the parent-child relationship is in the child's best interests.

30. Since the ultimate purpose of the law is to protect the child, the parent-child relationship must give way when it is no longer in the child's best interest to maintain the relationship and that principle applies in this case.

31. The Court finds by clear and convincing evidence that it has been shown that the emotional and physical development of [J.C.], a Child in Need of Services, is threatened by actions and inactions of her parents, and therefore, termination of the parent-child relationship is appropriate.

32. The testimony of the child's Guardian ad Litem (Tia Brewer) regarding the child's need for permanency supports a finding that termination is in the child's best interests.

33. The Court finds by clear and convincing evidence that the termination of the parent/child relationship between [J.C.] and Jeffrey Collins would be in the best interests of the child.

(App. at 38-41) (citations omitted).

DISCUSSION AND DECISION

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).

1. Validity of Findings

When a parent appeals the termination of his parental rights, we will not reverse the trial court’s judgment unless it is 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. Conditions

The court found the conditions resulting in J.C.’s removal would not be remedied. Collins challenges the application of this standard to him, believing it is inappropriate because J.C. was living with Jodee when DCS became involved. However, Collins is equally responsible for the situation in which DCS found J.C. because he was incarcerated and unable to provide for her. The fact he had not “involved [J.C.] in any of the incidents that led to his incarceration” is irrelevant. (Appellant’s Br. at 9.) What mattered was that he was unavailable to provide for her.

Next Collins questions the finding he failed to complete the case plan requirements, noting he completed an alcohol abuse program in jail and was unable to

complete any other requirements due to his incarceration. Even if Collins deserves credit for completing alcohol treatment while in jail, the facts remain that he did not complete the case plan requirements. The finding is not clearly erroneous.

The court found Collins had a “long criminal history.” (*See* Finding 20.) Collins challenges this finding because “he has just been incarcerated over the last three years,” (Appellant’s Br. at 9), and because his “criminal history did not implicate the care or custody of J.C.” (*Id.*) In the past three years, J.C. has lived with foster parents and with relatives who had a guardianship until they no longer felt capable of caring for her. While three years of criminal activity may not be “long” for an adult, it has affected one-fourth of J.C.’s life. We find no error in the court’s characterization.

B. Best Interests

Collins asserts “there was no evidence to support the trial court’s finding that [Collins] had an historic inability to provide adequate housing, stability, and supervision for J.C.” (Appellant’s Br. at 10.) Therefore, Collins continues, termination was not in J.C.’s best interests. When considering whether he has historically been able to provide housing and stability for J.C., Collins encourages us to consider the years 1995 to 2003, when J.C. lived with her parents, and to ignore the years 2003 to 2007, when Collins was unable to care for J.C. because he “had developed some legal problems.” (Appellant’s Br. at 10.) The trial court was not required to ignore the events during the most recent third of J.C.’s life when her father was unable to provide housing or stability for her because he was in and out of jail. In light of Collins’ inability to stay out of jail for the last four years, we cannot say the court erred when it concluded termination was in the

J.C.'s best interests. See *In re Campbell*, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (“Two years without improvement is long enough.”).

C. Plan

Next, Collins asserts the DCS failed to provide a satisfactory “permanent plan” for J.C.’s future care and treatment, because the plan amounted to keeping her in foster care and attempting to place her with a half-sister who lives in New Jersey. (Appellant’s Br. at 10.) We disagree.

In *B.R.F. v. Allen County Dept. of Pub. Welfare*, 570 N.E.2d 1350, 1352-53 (Ind. Ct. App. 1991), we explained:

Father asserts that the Department did not adequately establish a satisfactory plan for the care and treatment of the child. As he acknowledges, however, DPW planned to place Son in a foster home and provide him with medical care and schooling. Moreover, a DPW caseworker stated her intention to transfer the case to the Adoption Division. Although Father emphasizes the caseworker’s inability to recall the last time DPW successfully placed a child of his son’s age (then five years old) for adoption, this evidence does not negate the finding that DPW was able to “point out in a general sense to the trial court the direction in which its plans were going.” There is clear and convincing evidence to satisfy this element of the statute.

Thus, DCS’s plan for J.C.’s adoption was sufficient to satisfy the statutory requirement.

See id.

2. Application of Rowlett

Finally, Collins asserts the findings could not support the termination of his parental rights because he should have been permitted to complete work release and engage in the case plan before his rights were terminated. To support this argument he cites *Rowlett v. Vanderburgh County Office of Family and Children*, 841 N.E.2d 615

(Ind. Ct. App. 2006), *trans. denied* 855 N.E.2d 1006 (Ind. 2006).

Rowlett had two children out-of-wedlock for whom he had not established paternity. They were taken into custody because their mother was unable to care for them. Soon after admitting the children were CHINS, Rowlett was convicted of two drug crimes and sentenced to concurrent three-year sentences. The children were placed with their maternal grandmother, who intended to adopt the children if Rowlett's rights were terminated.

The termination hearing was set for six weeks prior to Rowlett's scheduled release from prison, and Rowlett requested a continuance so he could have "the opportunity to participate in services offered by the OFC or to demonstrate his fitness as a parent." *Id.* at 619. We held the denial of Rowlett's motion for a continuance was an abuse of discretion because the children had been living with their grandmother for three years and she was to adopt them if Rowlett's rights were terminated; therefore, "continuation of the dispositional hearing until sometime after Father was released would have little immediate effect upon the children." *Id.*

We also held the termination of his rights was erroneous because while in prison Rowlett lived in a "Therapeutic Community" where he engaged in nearly 1,100 hours of therapy, he had begun college through Ball State University, he had arranged a construction job for after his release, and he had maintained contact with his children through phone calls and letters. In addition, Rowlett's aunt would provide him a place to live upon release.

The trial court rejected Collins' analogy to *Rowlett*:

19. The findings of [*Rowlett*] do not apply to this case because Jeffrey Collins has had plenty of time to remedy problems and do services. The Court finds that the incarceration of Mr. Collins due to his own actions does not exonerate him from responsibility of remedying problems in the home and taking of [sic] advantage of services offered to him.

- A. The Court finds that minimal participation in services by the father Jeffrey Collins does not equal successful completion or compliance with services and the requirements of the case plan.
- B. It is the [parent's] responsibility to comply with service case plans and the burden is on them to meet the cased [sic] plan requirements.
- C. Any amount of sincerity on the part of Jeffrey Collins in wanting to comply with the case plan (but offering many excuses as to why compliance is not possible) does not equate to an ability to successfully complete the case plan and warrant re-unification with the child.

(App. at 39.)

We agree *Rowlett* does not control this case. Collins presented no evidence that he had taken substantial steps toward changing his life by successfully completing numerous college courses and engaging in 1,000 hours of therapy for “anger management and impulse control, parenting skills, domestic violence, self-esteem, self-help, and substance abuse.” *Rowlett*, 841 N.E.2d at 622. Neither is J.C. in a stable placement with a relative who plans to adopt her if Collins' rights are terminated; rather, she is in foster care and cannot be transferred to her half-sister in New Jersey until Collins' rights are terminated. Finally, Collins did not maintain telephone contact with J.C. while he was in prison. We find no error.

Affirmed.

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