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IN THE
COURT OF APPEALS OF INDIANA

In the Matter of the Involuntary Termination of the)
Parent-Child Relationship of K.B., Minor Child,)
and Michael Black, Father,)

MICHAEL BLACK,)

Appellant-Respondent,)

vs.)

No. 49A02-0612-JV-1168

MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner,)

and)

CHILD ADVOCATES, INC.,)

Co-Appellee/Guardian Ad Litem.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Victoria Ransberger, Judge Pro Tempore
Cause No. 49D09-0503-JT-8766

November 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Following remand, the trial court issued written findings of fact and conclusions thereon regarding its involuntary termination of Black's parent-child relationship with his minor daughter, K.B. In this appeal, Black raises the following issue: whether the Marion County Department of Child Services ("DCS") established that Black's drug use, if it existed, posed a threat to K.B.'s well-being.

We affirm.

FACTS AND PROCEDURAL HISTORY

K.B. was born on December 17, 1999. In November 2003, while K.B. was in the custody of her natural mother, DCS filed a petition alleging that K.B. was a child in need of services ("CHINS"). DCS served Black with notice of the CHINS petition by mail and publication; however, Black did not contact DCS or appear at the May 2004 CHINS hearing, where the court determined that K.B. was a CHINS and legally removed K.B. from Black's care pursuant to dispositional decree. On March 8, 2005, DCS filed a petition to terminate Black's parental rights and also removed K.B. from her mother's care.

Although Black was aware of the CHINS petition and that K.B. had been removed from her mother's home, the first contact he made with DCS was in April 2006, when he appeared for a CHINS hearing. At that hearing, DCS personally served Black with notice of the termination petition. Because Black indicated that he desired to participate in services designed to achieve reunification with K.B., DCS referred him for a parental assessment. He did not appear for two scheduled appointments at his home for the assessment. In July 2006, Black appeared at the natural mother's termination hearing. At that time, Black indicated to the DCS caseworker that he would contact her, but he never did. In September 2006, Black

attended a “facilitation hearing” with a DCS supervisor, at which time he again was referred for a parental assessment. *Tr.* at 23.

This time, Black completed the parental assessment when, in October 2006, Terrance Lovejoy of the Children’s Bureau met Black at his home for three hours. The home had no heat or stove, no bathroom sink or tub, no working smoke detectors, and little to no food, and debris and plaster on the floors. Lovejoy and Black discussed various issues, including Black’s alcohol and drug use, anger management, and housing conditions. Black advised Lovejoy that he had not seen K.B. in almost three years, since November 2003. Although Black was on probation at the time of the parental assessment meeting, he admitted to Lovejoy that he used crack cocaine just days prior.

Based upon the parental assessment meeting, Lovejoy made various recommendations, including that Black receive intensive outpatient treatment for his drug abuse, obtain treatment for his anger management issues, maintain secure and appropriate housing, secure a verifiable source of income, and seek treatment from a qualified medical professional for any medical issues. Lovejoy’s position was that until Black could establish that he was drug-free, there could be no attempt at reunification with K.B. Following the assessment, DCS sent Black a letter on October 27, 2006, informing him that he needed to participate in an intensive outpatient treatment program if he desired to reunify with K.B.

The trial on the termination petition was in November 2006. Black appeared by counsel, but not in person, even though Black had been present in court the day that the trial date was set. The trial court received evidence from DCS, the guardian ad litem, and Lovejoy. As of the date of trial, there was no evidence that Black had participated in any

intensive outpatient treatment program. Ultimately, the trial court followed the recommendation of the guardian ad litem and terminated Black's parental rights to K.B., finding that (1) K.B. had been removed from Black's care for at least six months, (2) there was a reasonable probability that the conditions which resulted in K.B.'s removal would not be remedied, (3) the continuation of the parent-child relationship posed a threat to K.B.'s well-being, (4) termination of the parent-child relationship was in the best interest of K.B., and (5) DCS had a satisfactory plan for the care of and treatment of K.B.

Black appealed the termination order, and in an unpublished decision, we remanded to the trial court with instructions to issue findings and conclusions in support of its decision to terminate Black's parental rights.¹ After the trial court entered its revised order that contained findings and conclusions, Black filed a motion with this court, asking that, in the interest of time and resources, this court consider the briefing to be already complete (based on the previously-filed briefs) and render a decision on the remaining issue of whether DCS presented sufficient evidence to establish that Black's drug use, if it existed, posed a threat to K.B.'s well-being. We granted Black's motion and now review the issue on its merits. Ind. Appellate Rule 66(B) (appellate court may decline to dismiss improperly brought appeals and retain appellate jurisdiction where same issue would be raised in new appeal); *see also Chafin v. Grayson*, 761 N.E.2d 474, 478 (Ind. Ct. App. 2002) (upon remanding to trial court to make specific findings of fact, appellate court retained jurisdiction over case and would resume consideration of merits after findings were filed), *unpublished opinion after remand* 779 N.E.2d 979 (Ind. Ct. App. 2002), *trans. denied* (2003).

DISCUSSION AND DECISION

Black asserts that the termination of his parental rights was erroneous because the State failed to prove that he posed a threat to K.B.'s well-being. Following remand, the trial court supported its order terminating the parental relationship between Black and K.B. with specific findings and conclusions. Thus, we engage in a two-tiered standard of review: first, we determine whether the evidence supports the findings; second, we decide whether the findings support the judgment. *In re W.B.*, 772 N.E.2d 522, 529 (Ind. Ct. App. 2002). We will not set aside the specific findings unless they are shown to be clearly erroneous. *Id.* A finding is clearly erroneous only when there are no facts or reasonable inferences in the record supporting it. *Id.* In reviewing the record, we consider only the evidence and inferences favorable to the trial court's decision, without reweighing it and without judging witness credibility. *Id.*

IC 31-35-2-4(b)(2) sets out the following relevant elements that DCS must allege and prove by clear and convincing evidence in order to terminate the parent-child relationship:

(A) the child has been removed from the parent for at least six month under a dispositional decree;

....

(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;

¹ *In re K.B.*, No. 49A02-0612-JV-1168, slip. op. at 5 (Ind. Ct. App. Aug. 17, 2007).

(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.

Because subsection (b)(2)(B) is written in the disjunctive, the trial court need only find either that the conditions causing removal will not be remedied or that the continuation of the parent-child relationship poses a threat to the child. *In re S.M.*, 840 N.E.2d 865, 868 (Ind. Ct. App. 2006).

Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied* (2003). In judging a parent's fitness, the trial court should examine the parent's fitness at the time of the termination hearing, as well as 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 A.L.H.*, 774 N.E.2d 896, 899 (Ind. Ct. App. 2002). A court may properly consider evidence of a parent's drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *Id.* Additionally, a trial court "can reasonably consider the services offered by the [OFC] to the parent and the parent's response to those services." *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003).

In this case, Black contends that the trial court erred when it terminated his parental rights to K.B. because there was insufficient evidence to support the termination. Specifically, he asserts that DCS failed to prove that his drug use, "if it still existed," posed a threat to K.B.'s well-being. *Appellant's Br.* at 10. Contrary to Black's assertion, however, DCS did not have to prove that his drug use posed a threat to K.B. Rather, it had to prove

either (1) there was a reasonable probability that the conditions that resulted in K.B.'s removal or the reasons for the continued placement outside Black's home would not be remedied; or (2) the continuation of the parent-child relationship posed a threat to the well-being of K.B. IC 31-35-2-4(b)(2)(B). In this case, DCS proved both.

Black had not seen or communicated with K.B. since November 2003. He failed to contact DCS despite being aware of the CHINS proceeding. He did not show up for various parental assessment meetings, and when he did, he conceded to having used crack cocaine just days prior, even though he was on probation at the time. His drug and alcohol use began when he was approximately fourteen years old. His daily marijuana use continued through age forty, and later he began smoking crack cocaine. His home lacked working utilities and presented unsafe conditions. He conceded to violent outbursts, one with a stranger as a means of resolving a dispute and another with his teenage son as a means of disciplining him. His employment history was sporadic. Other than the parental assessment, Black did not participate in any recommended services, which were designed to reunify him with K.B. He failed to attend various court hearings during the course of the proceedings, including the termination trial.

Based on the record before us, sufficient evidence existed to support the trial court's findings that the conditions that resulted in K.B.'s removal would not be remedied and that the continuation of Black's parent-child relationship posed a threat to K.B.'s well-being.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.

