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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHLD RELATIONSHIP OF D.J., K.P., AND K.R., MINOR CHILDREN, AND THEIR MOTHER, TEFFANY REAVES, AND THE FATHER OF K.R., KEVIN REAVES

TEFFANY REAVES and KEVIN REAVES
Appellants-Respondents,

vs.

MARION COUNTY DEPARTMENT OF CHILD SERVICES
Appellee-Petitioner,

and

CHILD ADVOCATES, INC.
Appellee-Guardian Ad Litem.

No. 49A05-0705-JV-241

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Larry Bradley, Magistrate
The Honorable Marilyn A. Moores, Judge
Cause No. 49D09-0603-JT-9942

November 29, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellants-Respondents Kevin and Teffany Reaves (the "Reaveses") appeal the juvenile court's order involuntarily terminating Teffany's parental rights to K.P., D.J., and K.R. ("the children") and Kevin's parental rights to K.R.[1] Specifically, the Reaveses claim that the Marion County Department of Child Services ("DCS") did not present sufficient evidence to support the juvenile court's order terminating their parental rights. Alternatively, they claim that DCS negligently provided them with services, thus impeding their ability to re-acquire custody of their children. We conclude that the *sua sponte* findings entered by the juvenile court hinder effective appellate review and therefore remand this matter to the juvenile court for the entry of further findings and conclusions thereon.

FACTS AND PROCEDURAL HISTORY

Teffany Reaves is the biological mother of K.P., born October 29, 1999; D.J., born July 22, 2001; and K.R., born February 18, 2005. Teffany is married to Kevin Reaves

[1] Ind. Code § 31-35-2-4 (2005).

who is K.R.'s biological father. Teffany and Kevin are also the parents of a daughter, T.R., born in November 2006, who is not directly at issue in this proceeding.[2]

On October 16, 2003, after receiving an anonymous tip informing DCS of the alleged deplorable and unsanitary conditions found in the Reaveses' home, DCS removed K.P. and D.J. from the Reaveses' care. On October 18, 2003, DCS filed its Petition Alleging Children in Need of Services ("CHINS"), alleging neglect by the Reaveses, citing the deplorable condition of their home. On November 13, 2003, Teffany and Kevin, who did not dispute the allegations, signed separate agreed entries, and the juvenile court entered a CHINS disposition order as to both K.P. and D.J. On February 22, 2005, three days after K.R. was born, DCS filed its petition alleging CHINS with regard to K.R. On June 15, 2005, K.R. was found to be a CHINS. Since DCS initially removed their children, all reports indicate that Teffany and Kevin have successfully complied with most, if not all, court-ordered services and have even participated in some services not mandated by court order.

At some point, DCS unsuccessfully sought termination of the Reaveses' parental rights. After the juvenile court denied the termination petition, DCS made an additional referral for services, including home-based counseling.

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[2] At trial, the DCS worker assigned to this matter testified that, pursuant to DCS policy, DCS would automatically initiate a CHINS proceeding with regard to T.R. if the juvenile court terminated the Reaveses' parental rights to the three children at issue even though the home-based counselors contracted by DCS to work with the family testified that the Reaveses were sufficiently caring for T.R. and that they would not recommend T.R. be removed from the Reaveses' care.

We observe that one of the cornerstones of the judicial process is that each individual case must be decided on its own merits. We are sure that DCS would agree that, in the interest of justice, each individual case must be decided on its own merits and, as such, we are inclined to disbelieve that DCS would employ a seemingly contradictory policy.

Service provider Adult and Child Inc. began home-based counseling and supervised visitation on August 24, 2006. Starting December 9, 2006, supervised visitation was increased from two hours per week to four hours per week. Supervised visitation was later scaled down to two hours a week after an unsubstantiated allegation was made by K.R.'s foster father that he came home with a wet diaper. Adult and Child continued to provide services to the Reaveses until February 23, 2007.

On March 9, 2006, DCS filed a petition to terminate the Reaveses' parental rights, citing cleanliness of the home and safety of the children as its main concerns. After a two-day hearing, the juvenile court took the matter under advisement and, on April 13, 2007, issued its order terminating the Reaveses' parental rights to K.P., D.J., and K.R. This appeal follows.

DISCUSSION AND DECISION

The Reaveses argue that the juvenile court erred by terminating their parental rights to the children. A parent's traditional right to establish a home and raise his or her children is protected by the Fourteenth Amendment to the United States Constitution. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). However, parental rights are not absolute and must be subordinated to the child's interest in determining the proper disposition of a petition to terminate parental rights. *Id*.

The involuntary termination of parental rights is the most extreme sanction a court can impose. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Termination severs all rights of a parent to his or her children. *Id*. Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed.

Id. The purpose of terminating parental rights is not to punish parents but to protect their children. *Id*.

To involuntarily terminate one's parental rights, the DCS must establish by clear and convincing evidence that termination is justified under Indiana Code section 31-35-2-4(b) (2006), which provides that in order to terminate one's parental rights, the petition must allege that:

> (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);
> (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 interest 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 juvenile court need only find one of the two elements by clear and convincing evidence. *Bester*, 839 N.E.2d at 148 n.5.

On appeal, the Reaveses argue that the evidence was insufficient to prove that the conditions leading to the removal of their minor children are unlikely to be remedied or that the continuation of the parent-child relationship posed a threat to their minor

children's well-being. The State must establish these allegations by clear and convincing evidence. *Id*. However, when a parent appeals the termination of his or her parental rights, we will not reweigh the evidence or judge the credibility of the witnesses, but will consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *In re A.A.C.*, 682 N.E.2d 542, 544 (Ind. Ct. App. 1997).

Here, the juvenile court's order terminating the Reaveses' parental rights contained *sua sponte* findings of facts and conclusions thereon. *See Humphries v. Ables*, 789 N.E.2d 1025, 1029-30 (Ind. Ct. App. 2003) (describing *sua sponte* findings as special findings entered by the trial court even though neither party submitted a written request for special findings prior to the admission of evidence). We note that a juvenile court's "'*sua sponte* findings control only as to the issues they cover and a general judgment will control as to the issues upon which there are no findings.'" *Parks v. Delaware County Dept. of Child Services*, 862 N.E.2d 1275, 1278 (Ind. Ct. App. 2007) (quoting *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997)); *see also* Ind. Trial Rule 52(D). We will affirm a general judgment entered with findings if it can be sustained on any legal theory supported by the evidence. *Id*.

A juvenile court is not statutorily required to enter findings when involuntarily terminating a parent-child relationship. *Id*.; *see also* I.C. § 31-35-2-8. Nevertheless, when a juvenile court has, under Indiana Trial Rule 52, entered findings of fact and conclusions thereon in a parental termination case, we apply a two-tiered standard of review. *Bester*, 839 N.E.2d at 147. First, we determine whether the evidence supports the findings. *Id*. Then, we determine whether the findings support the judgment. *Id*. We

will not set aside the juvenile court's findings unless they are clearly erroneous. *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 198 (Ind. Ct. App. 2003). A finding is clearly erroneous when there are no facts or inferences to be drawn therefrom which support it. *Id*. A judgment is clearly erroneous when it is not supported by the findings and the conclusions entered on those findings. *Id*. at 198-99. On appeal, we will reverse a termination of parental rights only upon a showing of clear error which leaves us with a definite and firm conviction that a mistake has been made. *Id*. at 199.

We find it necessary upon appellate review to examine the juvenile court's factual findings and the nexus between these findings and the conclusions the juvenile court drew therefrom. In this matter, the juvenile court issued twenty-eight factual findings in its order terminating the Reaveses' parental rights. The findings which appear relevant to whether the conditions may be remedied or the continued parent-child relationship poses a threat to the children are findings numbers 16, 17, 18, 19, 25, and 26. It appears that portions of these findings are not adequately supported by the evidence and thus cannot be used as proper support for the judgment.[3]

First, factual finding number 16 does not appear to be adequately supported by the evidence. Finding number 16 reads:

> Although the parents may be looking for a larger home, the current residence has two bedrooms. It remains a cluttered and unsafe environment for the children. Hazardous choke items are available and cleanliness is an

[3] Only finding number 25 will not be discussed in detail below because the proffered evidence is such that any review of this finding would amount to a review of the evidence. However, even if we assume that this finding is supported by the evidence, we are not persuaded that this finding, without more, would warrant the termination of one's parental rights.

> issue. The "Baby Gate" recently acquired would not keep the eldest two children in one room. Safety plugs for wall sockets have been suggested for a long period of time. Parents have moved items of furniture to cover the sockets instead of acquiring plugs.

Appellant's App. p. 14. Upon our review of the record we note that the proffered evidence made no mention of filth or unsanitary conditions[4] and showed in the light most favorable to the judgment, that the home was occasionally untidy and cluttered. The evidence makes no showing that the conditions of the Reaveses' home are currently unsanitary.[5]

Second, factual finding number 17 does not appear to be adequately supported by the evidence. Finding number 17 reads:

> Mother is inconsistent in her interaction with the children. Mother and Father have a new baby born in November 2006 on which Mother provides her main focus. Mother genuinely cares for her children but lacks the skills to appropriately interact, redirect, and provide a safe environment clear of hazards as well as proper supervision.

Appellant's App. p. 14. Upon review of the record, it appears that the portion of this finding stating that Mother lacks the skills to appropriately interact, redirect, and provide a safe environment clear of hazards as well as proper supervision lacks evidentiary support. The testimony relating to Teffany's allegedly lacking skills seems to illustrate

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[4] DCS presented one piece of evidence suggesting that the Reaveses' bathroom was unsanitary because on one visit it was not functioning. However the evidence also showed that the faulty toilet was of no fault of the Reaveses and they acted appropriately by calling their landlord and requesting maintenance. The DCS witness testified that upon her next visit the toilet was functioning properly and that the Reaveses, as tenants, acted appropriately.

[5] We question whether mere clutter or untidiness, without more, is sufficient to warrant the termination of one's parental rights.

that the parenting techniques employed by Teffany differ from those preferred by the home-based counselors. While there was ample testimony pertaining to the varying parenting techniques, none of the evidence made a showing that Teffany lacked the skills necessary to care for her children so as to warrant the termination of her parental rights.[6]

Likewise, factual finding number 18 does not appear to be adequately supported by the evidence. Finding number 18 reads:

> Given Mother's deficiencies, she would be overwhelmed with having a newborn and three boys (one with special needs) to supervise.[7] Mother lacks the motivation to implement new ideas of parenting and housekeeping. The children have returned from visitations dirty and with Kevin's diaper going unchanged.

Appellant's App. p. 14. As evidenced by our discussion above, the portion of statement number 17 pertaining to Teffany's alleged deficiencies does not appear to be adequately supported by the evidence. Therefore, it follows that a subsequent finding based on these same deficiencies would also lack evidentiary support.

Next, factual finding number 19 does not appear to be adequately supported by the evidence. Finding number 19 reads:

> Father was not present for a majority of the visitation sessions, possibly due to work. During [the] times he was present, he would often not be in the room with the children or would sleep. Father exhibits minimal engagement.

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[6] We note here that the same home-based counselors who testified to Teffany's alleged lack of the necessary skills to care for K.P., D.J., and K.R. also testified that Teffany's "skills" were adequate for caring for T.R. and that they would not recommend removing T.R. from the Reaveses' care.

[7] One may reasonably find that many parents feel overwhelmed by their children at times, and we are not convinced that termination on this ground is justified without any specific evidentiary showing that the parent's potential to be overwhelmed poses a threat to the well-being of his or her children.

Appellant's App. p. 14-15. Upon review of the record, it is clear that all evidence relating to Father's absence from services relates to Father's absence from home counseling sessions, and there is no evidence in the record suggesting that Father was absent from visitation sessions.[8] Therefore, this factual finding is not supported by the evidence and cannot support the termination order.

Finally, factual finding number 26 does not appear to be adequately supported by the evidence. Finding number 26 reads:

> A pattern of an inability to maintain a supervised, clean environment has been exhibited. A marked improvement was made after the termination trial date was set, but problems reoccurred in March 2007.

Appellant's App. p. 15. The evidence does not support the factual finding that a pattern of an inability to maintain a clean environment has been exhibited. As was discussed above, the evidence, at most, showed a pattern of an inability to maintain a tidy and uncluttered environment, but the evidence failed to establish that the untidy or cluttered conditions posed any threat to the children's well-being, and no additional evidence was presented that even alleged that there were reoccurring unsanitary conditions in the home.

Further, the juvenile court's conclusions are merely a recitation of Indiana Code section 31-35-2-4(b) and contain no explanation of how the juvenile court's factual findings support its judgment. As such, we are unable to determine whether the juvenile court mistakenly violated the Reaveses' parental rights. *See In re J.Q.*, 836 N.E.2d 961,

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[8] There is some evidence that at times, Father would be in the other room during visitation sessions, but this evidence does not, without more, support the juvenile court's finding as stated in factual finding number 19.

966 (Ind. Ct. App. 2005) (finding that the limited findings of the juvenile court made it difficult to determine whether or not a mistake has been made in adjudicating J.Q. as a CHINS). Moreover, we are bound by the findings of the juvenile court on the issues covered and are not at liberty to assume that the juvenile court's factual findings support its conclusions without any showing by the court itself. *See generally, Parks*, 862 N.E.2d at 1280. Put differently, we are bound by the findings of the juvenile court on the issues that are covered, and since these issues are the only issues in question, we may not look to other evidence to support the judgment. *Id*.

The termination of one's parental rights is of such importance that we must be convinced that the juvenile court has based its judgment on proper considerations. *See id*. at 1280-81. Therefore, we conclude that the findings of the juvenile court and its recitation of statutory language as its conclusions thereon are such that we cannot make a determination as to the validity of the termination of the Reaveses' parental rights. Accordingly, we remand to the juvenile court with instructions to enter factual findings that are fully supported by the evidence and to include an explanation as to how its factual findings support its judgment.

The cause is remanded for the entry of further findings of fact and conclusions thereon.

NAJAM, J., and MATHIAS, J., concur.