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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF A.B., and M.B., IV,

M.B.,

Appellant-Respondent,

vs.

MARION COUNTY DEPARTMENT OF CHILD SERVICES,

Appellee-Petitioner,

and

CHILD ADVOCATES, INC.,

Co-Appellee (Guardian Ad Litem).

No. 49A02-0703-JV-197

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Victoria Ransberger, Judge Pro-Tem
Cause No. 49D09-0501-JT-2042

December 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Michael B. ("Father") appeals the involuntary termination of his parental rights to his children M.B.IV and A.B. Father contends that the trial court's judgment is clearly erroneous. Concluding that the Marion County Department of Child Services ("MCDCS") proved by clear and convincing evidence that there was a reasonable probability that the conditions resulting in the children's removal will not be remedied, we affirm.

Facts and Procedural History

The facts most favorable to the judgment indicate that on March 22, 2004, at approximately 9:40 p.m., Lawrence Police Officer D. Newton was dispatched to a traffic incident involving an intoxicated driver, who was subsequently determined to be Father. Three-year-old M.B.IV and one-year-old A.B. were both in the back seat of Father's car. M.B.IV was not in a car seat.

Officer Newton administered a breathalyzer test to Father that reported a .30 blood alcohol level. Father was subsequently arrested on charges of public intoxication, driving under the influence of alcohol, leaving the scene of an accident, and driving on a suspended license. The Lawrence Police Department made a report to the MCDCS and Child Protection Services was called to the scene. The children were placed at the Marion County Guardian Home.

On March 25, 2004, the MCDCS filed a child in need of services ("CHINS") petition. On May 5, 2004, the children were removed from their parents' care, pursuant to a

dispositional decree, until the parents were able to (1) complete recommended services and receive positive recommendations from the service providers; (2) address the children's emotional and physical needs; and, (3) maintain a safe, stable, drug free and clean living environment. The trial court's participation decree was then entered directing Father to participate in various services including a parenting assessment, classes and counseling, substance abuse evaluation, random drug screens, and supervised visitation. Father was also directed to maintain stable housing and employment, and to verify his compliance with the terms of his probation.

On January 20, 2005, the MCDCS filed a petition for termination of the parent-child relationship between Father and the children. At least six separate trial dates for the termination hearing were set and continued on motions by each of the parties. In fact, on January 25, 2006, the MCDCS filed, and the trial court granted, a continuance motion to allow Father to successfully complete services. The termination hearing was eventually set and held on December 12, 2006. Father failed to appear; however, Father was represented by counsel.

At the termination hearing, Case Manager Debra Mullins testified that initially, Father was in compliance with court-ordered services. Mullins further stated that Father had completed the parenting assessment and substance abuse evaluation, and obtained and maintained housing and employment. Father also had regularly attended supervised visitation with the children at the Children's Bureau. As a result, the MCDCS initiated home-based services and began supervised visitation in Father's home. However, Mullins had some concerns, primarily due to Father's refusal to submit to drug screens.

Further testimony at the termination hearing revealed that in February of 2006, after approximately four or five in-home supervised visits with the children, Father finally submitted to a drug screen and tested positive for cocaine. As a result, home-based services ceased, and supervised visitation at the Guardian Home was reinstated. As a matter of department policy, Father was also ordered to submit to another substance abuse evaluation due to the positive drug screen. Father had completed previous substance abuse evaluations in 2004 and 2005, but did not participate in the 2006 referral.

Following his positive drug screen, Father missed approximately ten scheduled supervised visits with the children between February 2006 and April 2006. In fact, after February 2006, Father never visited with his children again. Approximately nine months later, on November 6, 2006, Father requested and was referred for a new substance abuse evaluation and treatment. The evaluation resulted in a recommendation for Father to participate in a fourteen-day residential treatment program. Father refused to participate, telling Mullins that if he did so, he would lose his job. Father's last contact with Mullins and the MCDCS was in November of 2006.

At the conclusion of the termination hearing, the trial court made the following statement:

> Okay, this is one of those cases that . . . is very difficult when the parents at one point were trying to participate and then we reach a point where the parents . . . are not participating and both parents are represented by counsel . . . . Unfortunately I am going to find that . . . the termination should occur for both parents and these are very small children. [M.B.IV's] only six and [A.B.'s] only four and they've been in care most of their [lives,] . . . more than two years ago um, because of all the problems that were happening in the home and now they've been with the same foster family which is now pre-adoptive for nearly a year and a half . . . . Both children have been removed

> from the parents . . . for well over six months and at this time there is a reasonable probability the conditions which result[ed] in the removal will not be remedied . . . .
> [Father] seems like he made it further through [services than Mother] um, even as late as November 6th . . . he was asking for a referral for IOP, to try to get the drug issue under control. He had actually gotten to a home based situation where there could be a start for him to really reunify and then he tested positive for cocaine. The case manager's testimony is un-rebutted that when he knew that he had to get treatment he just flat out refused. Now he said according to his case manager it was job related but again he's not here. He's left his attorney the full burden to try to explain [as] to why he should be ready at this point but he's not completed services[,] and cocaine or any of these drug addictions are too serious to risk the lives of small children and termination then I feel is in the best interest of both [A.B.] and [M.B.IV]. In addition [the MCDCS] has found a home where they can remain together . . . . [A]nd it's time for them to move on . . . to give the parents additional time would not do anything but prolong the uncertainty and lack of [permanence] for both of these kids. So I am going to show that termination will be granted in regard to both parents and . . . to both children.

Transcript pp. 59-61. The trial court thereafter issued its judgment terminating Father's parental rights to M.B. IV and A.B. This appeal ensued.[1]

<u>Discussion and Decision</u>

Father challenges the sufficiency of the evidence supporting the termination of his parental rights to M.B.IV and A.B. Specifically, Father contends that the MCDCS failed to prove by clear and convincing evidence that the conditions which led to the children's removal and continued placement of the children outside the family home would likely not be remedied, or that the continuation of the parent-child relationship posed a threat to the children's well being.

I. Standard of Review

This court has long held a highly deferential standard of review in cases concerning

the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). Thus, when reviewing the termination of parental rights, we neither reweigh the evidence nor judge the credibility of the witnesses. In re Kay L., 867 N.E.2d 236, 239 (Ind. Ct. App. 2007). Instead, we consider only the evidence that supports the trial court's decision and the reasonable inferences drawn therefrom. Id.

In deference to the trial court's unique position to assess the evidence, we will set aside the trial court's judgment terminating a parent-child relationship only if it is clearly erroneous. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied; see also Bester v. Lake County Office of Family of Children, 839 N.E.2d 143, 147 (Ind. 2005). Thus, if the evidence and inferences support the trial court's decision, we must affirm. In re L.S., 717 N.E.2d at 208.

II. Conditions That Resulted in Removal Will Not Be Remedied

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. Bester, 839 N.E.2d at 147. A parent's interest in the care, custody, and control of his or her children is perhaps the oldest of our fundamental liberty interests. Id. However, these parental interests are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. Parental rights may therefore be terminated when the parents are unable or unwilling to meet their parental responsibilities. In re K.S., 750 N.E.2d at 836.

In order to terminate a parent-child relationship, the State is required to allege and

[1] Mother is not a party to this appeal.

prove that:

> (A) [o]ne (1) of the following exists:
>
> (i) the child has been removed from the parent for at least six (6) months 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;
>
> (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). The State must establish each of these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

Father does not challenge the trial court's determination that the children had been removed for more than six months under a dispositional decree. Nor does he dispute the fact that the MCDCS had a satisfactory plan for the care and treatment of A.B. and M.B.IV, in that said plan was adoption. See In re A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (concluding that when parental rights are terminated, adoption is a satisfactory plan for the care and treatment of the child). Rather, Father asserts that the MCDCS failed to prove by clear and convincing evidence that there was a reasonable probability that the conditions that resulted in the children's removal from his care would not be remedied, or that continuation of the parent-child relationship posed a threat to the well-being of the children.

Father correctly points out that Indiana Code section 31-35-2-4(b)(2)(B) is written in

the disjunctive. Thus, the trial court was required to find only one of the two requirements of subsection (B) by clear and convincing evidence. See In re L.S., 717 N.E.2d at 209. We begin our review by considering whether the MCDCS provided clear and convincing evidence that there was a reasonable probability that the conditions that resulted in the children's removal from Father's care would not be remedied.

When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. However, the court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." Id. Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. A.F. v. Marion County Office of Family and Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. The trial court may also properly consider the services offered by the office of family and children to a parent, and the parent's response to those services as evidence of whether conditions will be remedied. Id. We further note that the MCDCS need not rule out all possibilities of change; rather, it need establish only that there is a reasonable probability that the parent's behavior will not change. In re Kay L., 867 N.E.2d at 242.

Here, the evidence most favorable to the judgment reveals that although Father made valiant efforts at the beginning of the CHINS proceedings by participating in parenting

assessments, submitting to substance abuse evaluations, maintaining stable housing and employment, and regularly participating in visitation with the children, all positive actions taken by Father ceased in early 2006. In February 2006, Father, who had refused to submit to drug screens even during the time he was making positive strides toward reunification, tested positive for cocaine. Father then immediately ceased all visitation with the children, missing approximately ten scheduled visitation appointments between February and April 2006. Father likewise refused to submit to a substance abuse evaluation and ceased all contact with the MCDCS and his children for approximately nine months. Even though Father did request and complete a substance abuse evaluation approximately one month prior to the final termination hearing, Father refused to follow the resulting recommendation; namely, to participate in a fourteen-day residential treatment program. Additionally, Father never resumed visitation with his children, never again communicated with the MCDCS, and failed to appear at the final termination hearing.

Father's lack of cooperation and complete non-compliance with the MCDCS's recommendations during the nine months preceding the termination hearing reflects, at best, an extreme ambivalence on Father's part, as well as a persistent unwillingness to modify his behavior in order to provide M.B.IV and A.B. with a safe and secure home life. See A.F., 762 N.E.2d at 1253 (stating that a parent's failure to appear for assessments and court hearings reflects ambivalence, and the failure to attend parenting classes reflects an unwillingness to change existing conditions). This lack of participation, coupled with Father's chronic and continuing inability to refrain from illegal drug use leaves us convinced that the MCDCS proved by clear and convincing evidence that the reasons for the children's

removal and continued placement outside of Father's care would likely not be remedied. When making its decision regarding the involuntary termination of parental rights, the trial court need not rule out any possibility of change, but merely has to determine that there is a reasonable probability that the parent's behavior will not change. In re Campbell, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989). Moreover, a trial court need not wait until the children are "irreversibly influenced" such that their physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. A.F., 762 N.E.2d at 1253. Based on the foregoing, we cannot say that the trial court's determination to terminate Father's parental rights was clearly erroneous.[2]

Conclusion

The MCDCS proved by clear and convincing evidence that the conditions that resulted in the children's removal from Father's care will not be remedied. The judgment of the trial court terminating Father's parental rights is affirmed.

Affirmed.

FRIEDLANDER, J., and MATHIAS, J., concur.

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[2] Having determined that the trial court's conclusion regarding the remedy of conditions is not clearly erroneous, we need not address whether the MCDCS proved the continuation of the parent-child relationship posed a threat to the well-being of the children.