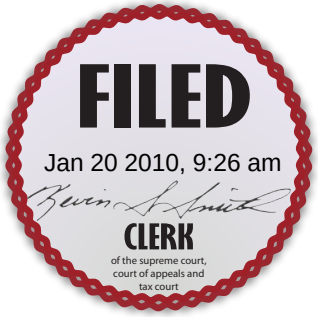

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IN THE COURT OF APPEALS OF INDIANA

IN RE THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT CHILD RELATIONSHIP OF L.W., MINOR CHILD AND HIS FATHER, G.W.,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A04-0906-JV-357
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner,	)	
And	)	
CHILD ADVOCATES, INC.,	)	
Co-Appellee (Guardian ad Litem),	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Larry Bradley, Magistrate
Cause No. 49D09-0812-JT-58418

January 20, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

G.C.W. ("Father") appeals the trial court's order that terminated his parental relationship with his son L.W. ("L.").

We affirm.

ISSUE

Whether sufficient evidence supports the termination of Father's relationship.

FACTS

L. was born on August 6, 2003, and lived with his mother, C.S. ("Mother"). On September 10, 2007, after L. and his three half-siblings were removed from Mother's care, a petition was filed alleging that he was a Child In Need of Services ("CHINS"). The petition alleged that L. had ingested a near-fatal amount of prescription medication and was suffering from an untreated bone fracture; that he and his half-siblings were dirty and in poor condition; and that despite knowing of the conditions in which L. was living, Father had failed to act to provide safe parenting for him. At a hearing on September 10th, Father was advised of his statutory rights and dispositional alternatives; and he admitted the allegations of the petition. L. was then found to be a CHINS and made a ward of the Indiana Department of Child Services, Marion County Office ("DCS") – but

to be placed with Father "upon L[.]'s release from the Hospital." (Ex. 7, p.2). The trial court further set the disposition hearing for October 3, 2007, and ordered Father to attend.

At the dispositional hearing on October 3, 2007, Father failed to appear. The CHINS court reviewed the evidence presented, and ordered that L. be removed from Father's care. Also on October 3, 2007, the CHINS court entered a parental participation decree, which ordered Father to notify the DCS caseworker of any changes as to his household address or contact information; maintain weekly contact with the caseworker; maintain a stable income to support his household; obtain and maintain suitable housing; complete a parenting assessment and any program recommended thereby; complete a home-based counseling program; complete parenting classes; and visit L. regularly in the manner approved by DCS. On December 31, 2008, DCS filed a petition for termination of L.'s relationship with Father.[1]

On May 9, 2009, the trial court heard evidence on the termination petition. Michelle Anesu testified that upon being assigned as the DCS caseworker for L. and Father on October 1, 2007, she was unable to locate him at the residential address he had given DCS. Anesu testified that information from Mother led her to locate Father at a motel, and she informed him of the importance of keeping DCS advised of his and L.'s whereabouts. Subsequently, she was unable to find Father and L. at the motel, and had received no notice from Father of any change of address. As a result, DCS had concerns for L.'s safety, and she recommended his removal.

[1] The petition also sought to terminate L.'s relationship with Mother. Subsequently, DCS reported to the trial court that Mother had signed her consent to the adoption of L. (as well as his half-siblings).

Anesu further testified that in the fall of 2007, Father was referred for random drug screens and for a parenting assessment. His assessment recommended he complete an intensive outpatient program ("IOP") for substance abuse. In February of 2008, she referred him to an IOP. When Father did not follow through with the IOP, Anesu testified, she stressed to him that it was "important that he do" the IOP; it was necessary "for [DCS] not to go to termination"; he "agreed to do" it; and she then made a second IOP referral in September of 2008. (Tr. 119, 128, 119). Nevertheless, Anesu never received any evidence that Father completed the IOP or the results of any random drug screens. Consequently, consistent with DCS policy, she made no further referrals for Father to receive the other services he was ordered to complete.

After his removal from Father's care in the fall of 2007, L. was placed with his three half-siblings in the care of their paternal grandmother – S. C. Father visited L. "about every two weeks" on a "fairly regular" basis from "November 2007 to March 2008." (Tr. 44). However, from "May 2008 until January of 2009," Father visited him only six or seven times, and Father did not visit him after January 2009.

Father admitted that he had "lied and said that [he] had a home that [he] didn't" have in order to obtain the initial placement of L. with him, (tr. 69); and that he had taken L. to live with him at a motel. Father confirmed to the trial court that from the time the CHINS case was initiated, he had lived in multiple residences – with his mother; with one girlfriend in the motel, then with his mother again; then with another girlfriend; then with a brother in Missouri; with the second girlfriend again; and, finally, with the first

girlfriend again. Father testified that as of three weeks before the hearing, he was living with the (first) girlfriend and their son in a home that she leased. Father testified that before the incident giving rise to the CHINS action, he had had "concerns about" Mother's parenting of both L. and his half-sibling A. when he saw "so many cigarette burns" on their skin, but he failed to report this to DCS. (Tr. 101). Father admitted that he had never provided evidence to DCS of his income, and that his employment for the past two years had been sporadic. He testified that he expected to begin work at a restaurant the next day – in an unknown position for which no salary had been discussed. Father further admitted that he had failed to maintain contact with DCS; that he had failed to provide evidence of completing the IOP[2]; and that he had "smoked a joint probably a couple of weeks ago." (Tr. 91). As to his failure to visit L., Father testified that because of the emotional pain he is still experiencing after learning that A. is not his child, he would "rather not see [his] kid than to have to go [to S. C.'s residence] and see A[.] and him together." (Tr. 106).

Anesu testified that as L.'s caseworker, she visited him regularly at S. C.'s home – where he was "doing well," and "appear[ed] . . . happy . . . and content." (Tr. 129). She testified that the plan for L. was adoption, and that it was not in L.'s "best interest to give [Father] more time to complete" the court-ordered services -- because it had "been 20 months"; L. "need[ed] a consistent, stable home"; and Father's history of "not following

[2] According to Father, he had received a certificate showing his completion of a drug treatment program – but he had never provided such a certificate to DCS; he did not know when he had completed this program; and he did not know whether the program he completed "would count toward" the current order as to an IOP. (Tr. 97).

through" cast doubt on the likelihood of his future compliance. (Tr. 141). Steven Raper, L.'s guardian ad litem, testified that he had visited L. several times at the C. residence, and found him "a very normal five year old child," who was "very comfortable and happy with his siblings and . . . Ms. C." (Tr. 145, 150). Raper opined that adoption by C. was in L.'s best interest, because her home was "stable" and she provided for L.'s "emotional and physical well being." (Tr. 150). C. testified that she "felt like" L. was "one of [her grandchildren]," that he "call[ed] [her] grandma," and that she wanted to adopt him. (Tr. 27).

On May 13, 2009, the trial court entered its findings of fact and conclusions of law. The trial court found that Father had not completed the IOP or complied with random drug screens, and accordingly, had not completed parenting classes or home-based counseling; had failed to report to DCS the cigarette burns and other signs of abuse he observed indicating Mother's inadequate parenting of L.; had not maintained regular visitation with L.; and had not obtained stable housing or employment. It then found that DCS had proven by clear and convincing evidence the prerequisites for termination of Father's parental relationship with L.

DECISION

The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution. *In re G.Y.*, 904 N.E.2d 1257, 1259 (Ind. 2009). A parent's interest in the care, custody and control of his or her children is a fundamental liberty interest, and the parent-child relationship is

one of the most valued relationships in our culture. *Id.* Nevertheless, we have recognized that parental interests are not absolute and must be subordinated to the child's best interests in determining the proper disposition of a petition to terminate parental rights. *Id.* Accordingly, parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.* at 1259-60.

The purpose of terminating parental rights is not to punish parents but to protect children. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002) (citing *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied*), *trans. denied*. The trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *R.S.*, 774 N.E.2d at 930. Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. *Id.* Moreover, the trial court need not wait until the child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* The parent's habitual pattern of conduct is relevant to determine whether there is a substantial probability of future neglect or deprivation of the child. *Id.*

When we review the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *G.Y.*, 904 N.E.2d at 1260. We consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* When we review the trial court's findings of fact and conclusions thereon, we determine first whether the evidence supports the findings, and second we determine whether the

findings support the judgment. *Id.* We will set aside the trial court's judgment only if it is clearly erroneous. *Id.* A judgment is clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment. *Id.*

Indiana law requires that when the State seeks to terminate parental rights, it must plead and prove in relevant part that:

> (A) 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 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)(2), 31-35-2-8(a).

The State's burden of proof in termination of parental rights is one of "clear and convincing evidence." *G.Y.*, 904 N.E.2d at 1060 (citing I.C. § 31-37-14-2). Such clear and convincing evidence need not reveal that the continued custody of the parents is wholly inadequate for the child's very survival, but rather it is sufficient that clear and convincing evidence show that the child's emotional and physical development are threatened by the respondent parent's custody. *Id.* at 1061.

Father argues that the termination order must be reversed because the evidence was insufficient to establish either "a reasonable probability that the conditions which resulted in the removal of the child and justified continued placement of the child will not be remedied" or "that the continuation of the parent-child relationship poses a threat to

the child's well-being." Father's Br. at 14. He recognizes that DCS need prove only one or the other, "not both." *Id.* at 16 (citing I.C. § 31-35-2-4(b)(2); *Bartrum v. Grant County Ofc. of Family and Children*, 772 N.E.2d 522, 531 (Ind. Ct. App. 2002).

> The trial court specifically found "by clear and convincing evidence . . .
>
> > a reasonable probability that the conditions that resulted in L[.]'s removal and continued placement outside the home will not be remedied by [Father]. Although [Father] stated he would do everything needed to get his child back, other than completion of an initial parenting assessment [Father] has taken no steps during the last nineteen months to further participate in services to demonstrate his ability to properly care for L[.] on his own. By not participating in services or maintaining more than minimal contact with DCS[] and L[.] in the past year, [Father] has demonstrated an unwillingness to remedy conditions and parent.

(App. 9, 11). Father directs us to evidence of his "dependable transportation, employment and a stable home for L." Father's Br. at 18. He identified his current vehicle as one leased by his girlfriend, as was his home of three weeks. The only evidence of his "employment" is his self-serving testimony that he expected to begin employment at a restaurant in an unknown capacity for an unknown salary on the day after his testimony. Father's Br. at 18. As to his "household income," he directs us to his testimony that his girlfriend earned $1,500.00 to $2,000.00 weekly as a dancer. *Id.* at 19. In a similar vein, Father cites his own testimony to support the reasons why he "did not report injuries to the children which occurred while they were in Mother's care," and his "failure to exercise regular visitation with L." in the year prior to the hearing. He notes the lack of any "evidence that he did not care for L. . . . properly" when L. was in his care, and asserts that in light of his girlfriend's income, his lack of employment was

irrelevant at this time. *Id.* at 19, 20, 19. The foregoing all seeks our reweighing of the evidence, which we do not do. *See G.Y.*, 904 N.E.2d at 1260.

Father reminds us of his expression to the trial court that he would "do whatever it takes." (Tr. 65). However, the action required to be taken by Father in order to maintain his parental relationship with L. was clearly expressed to him in the trial court's parental participation order of October 3, 2007. The evidence before the trial court established that Father failed to complete the services ordered, to maintain contact with DCS, to obtain and maintain stable housing and a secure income, and to visit L. regularly so as to maintain a strong bond with him. This behavior by Father did not remedy the conditions that led to L.'s placement outside his home. As the trial court found, and as the evidence clearly established, Father failed to participate in services or maintain more than minimal contact with DCS and with L. for the year prior to the trial. Thus, the trial court's conclusion that Father "demonstrate[d] an unwillingness to remedy conditions and parent" is not clearly erroneous. (App. 11).

Affirmed.

MAY, J., and KIRSCH, J., concur.