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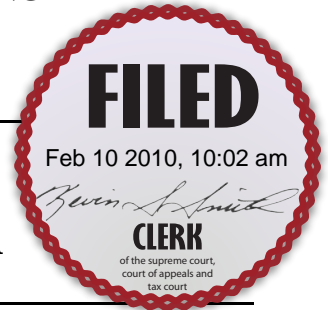
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**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF D.D.)

A.G.,)

Appellant-Respondent,)

vs.)

INDIANA DEPARTMENT OF CHILD)
SERVICES,)

Appellee-Petitioner.)

No. 82A01-0907-JV-349

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
JUVENILE DIVISION
The Honorable Brett J. Niemeier, Judge
Cause No. 82D01-0805-JT-56

February 10, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, A.G. (Father), appeals the trial court's Termination of his Parental Rights to his minor child, D.D.

We affirm.

ISSUES

Father raises three issues on appeal, which we consolidate and restate as the following two issues:

- (1) Whether the perceived procedural irregularities during the CHINS proceeding resulted in a violation of Father's due process rights during the termination of his parental rights; and
- (2) Whether the Indiana Department of Child Services (IDCS) established by clear and convincing evidence that Father's rights to D.D. should be terminated.

FACTS AND PROCEDURAL HISTORY

Father is the biological father of D.D., born on August 3, 1999. Father was in contact with D.D.'s biological Mother during her pregnancy and paternity was established on March 27, 2000. Father saw D.D. twice during the first year of her life; he saw her once thereafter. In July of 2000, a robbery charge and a charge of dealing in cocaine or narcotic drug were filed against Father. He pled guilty to these charges and received an aggregate sentence of fifteen years. Due to Father's forty-four negative conduct reports accumulated while incarcerated, Father's earliest possible release date is October of 2012. However, a detainer

has been placed on him which requires Father to address a pending immigration matter upon his release.

On May 9, 2007, D.D.'s Mother was found to be in possession of methamphetamine and prescription medications without a valid prescription. IDCS became involved and determined that D.D. had accrued an excessive amount of absences from school while in Mother's care. IDCS placed D.D. and her half-sister¹ in foster care. Two days later, on May 11, 2007, IDCS filed a petition alleging D.D. to be a Child in Need of Services (CHINS). This petition was subsequently amended on June 27, 2007. On August 14, 2008, Father was served with notice of the CHINS proceedings. Consequently, on August 19, 2008, Father appeared in the CHINS proceeding. During the hearing, Father testified and denied the allegations included in the petition. Nevertheless, based on the evidence, the trial court reaffirmed D.D. to be a CHINS.

On May 28, 2008, IDCS filed a Verified Petition to Terminate Parental Rights. On November 26, 2008, Mother voluntarily consented to the termination of her parental rights and D.D.'s adoption by her foster parents. On March 26, 2009, the trial court conducted a hearing on Father's rights. On April 17, 2009, the trial court entered findings of fact and conclusions of law terminating Father's parental rights to D.D.

Father now appeals. Additional facts will be provided as necessary.

¹ D.D.'s half-sister is not part of this appeal.

DISCUSSION AND DECISION

I. Due Process Rights

Father first contends that several procedural irregularities during the CHINS proceedings amounted to a violation of his due process rights in the termination of parental rights proceeding. Specifically, he asserts that not only did IDCS fail to timely notify him of the CHINS petition, which was filed on May 11, 2007, but he was also denied any knowledge or participation in case plans, and he was not provided with an evidentiary hearing.

It is well established that we may consider a party's constitutional claim waived when it is raised for the first time on appeal. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 194 (Ind. Ct. App. 2003). Our review of the record reveals that Father never objected to the termination because of any of the perceived irregularities during the CHINS proceedings. Thus, Father's argument is waived on appeal. *See Hite v. Vanderburgh County Office of Family and Children*, 845 N.E.2d 175, 181 (Ind. Ct. App. 2006). Waiver notwithstanding, we will address the merits of Father's argument.

The Fourteenth Amendment to the United States Constitution provides that "no person shall be deprived of life, liberty, or property without due process of law." We have repeatedly noted that the right to raise one's children is more basic, essential, and precious than property rights and is protected by the due process clause. *In re M.M.*, 733 N.E.2d 6, 10 (Ind. Ct. App. 2000). Although due process has never been precisely defined, the phrase expresses the requirement of fundamental fairness. *Id.*

When the State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of the due process clause. *J.T. v. Marion County Office of Family & Children*, 740 N.E.2d 1261, 1264 (Ind. Ct. App. 2000), *reh'g denied, trans. denied, abrogated on other grounds by Baker v. Marion County Office of Family & Children*, 810 N.E.2d 1035 (Ind. 2004). We have held that the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Thompson v. Clark County Div. of Family & Children*, 791 N.E.2d 792, 795 (Ind. Ct. App. 2003), *trans. denied*. Due process in parental rights cases involves the balancing of three factors: (1) the private interests affected by the proceeding; (2) the risk of error created by the State's chosen procedure; and (3) the countervailing government interest supporting use of the challenged procedure. *A.P. v. Porter County Office of Family & Children*, 734 N.E.2d 1107, 1112 (Ind. Ct. App. 2000), *reh'g denied, trans. denied*.

Although termination proceedings and CHINS proceedings have an interlocking statutory scheme because involuntary termination proceedings are governed by the CHINS statutory procedures, the proceedings are distinct from involuntary termination proceedings. *Hite*, 845 N.E. 2d at 182. While we acknowledge a certain implication of parental fault in many CHINS adjudications, the truth of the matter is that a CHINS adjudication is simply that—a determination that a child is in need of services. *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). Standing alone, a CHINS adjudication does not establish culpability on the part of a particular parent. *Id.* Only when the State moves to terminate a particular parent's rights does an allegation of fault attach. *Id.* As such, the termination of the parent-child

relationship is not merely a continuing stage of the CHINS proceedings. *Id.* In fact, a CHINS intervention in no way challenges the general competency of a parent to continue a relationship with the child. *Id.* Because a CHINS determination regards the status of the child, the conduct of one parent can be enough for a child to be adjudicated a CHINS. *Id.*

However, procedural irregularities in a CHINS proceeding may be of such import that they deprive a parent of procedural due process with respect to the termination of his or her parental rights. *McBride*, 798 N.E.2d at 195. It would be incongruous to hold that the IDCS, with the assistance of a trial court, may commence CHINS proceedings for a child and remove a child from his or her home, yet disregard various portions of the CHINS and termination statutes on several occasions and still terminate parental rights following the passage of time after a CHINS dispositional decree and a child's removal from the home. *See id.* In *A.P.*, we analyzed “a record replete with procedural irregularities throughout the CHINS and termination proceedings that [were] plain, numerous, and substantial” and concluded that the irregularities, taken together, required reversal. *A.P.* 734 N.E.2d at 1117-18. In sum, we analyzed seven substantial irregularities, which, we noted, if standing alone would not have resulted in a due process violation. *Id.*

Turning to the case at hand, Father first alleges that he failed to receive notice of the original CHINS action; he failed to receive case plans, and he was not provided with an evidentiary hearing. Father does not argue that his due process rights were violated due to irregularities in the termination proceeding.

With regard to notice, Father complains that he was not served with the CHINS notice until August 14, 2008, whereas the original petition was filed May 11, 2007. However, Father neglects to explain how the result of the CHINS proceeding may have been different had he known earlier about D.D.'s removal. Because Father was incarcerated, there was little, if anything that he could have done to change the situation. Given the government's strong interest in removing D.D. from an unsuitable home and the fact that Mother was notified of the removal two days after D.D. had been removed from her home by IDCS, we cannot say that IDCS's action in this regard constitutes a deprivation of due process. *See Castro v. State Office of Family and Children*, 842 N.E.2d 367, 375 (Ind. Ct. App. 2006), *trans. denied* (where the State has a strong interest in removing a child from an unsafe situation and where mother had been notified and where father was unable to parent the child due to incarceration, Father's due process rights are not violated by failure to notify him more quickly).

Next, Father contends that he was not provided with any case plans. However, the record is devoid of any indication that Father was not provided with case plans or was denied any participation therein. As such, we cannot review Father's claim and we find it waived.

Furthermore, we find Father's argument that he did not have an evidentiary hearing during the CHINS proceedings to be without merit. The evidence reflects that the trial court conducted a hearing on August 19, 2008, on IDCS's CHINS petition. During the hearing, Father was present and testified, denying the allegations raised in the petition. Nevertheless, based on the evidence presented, the trial court reaffirmed D.D. to be a CHINS. In a related

argument, Father now asserts that none of the statutory time frames were adhered to in his case. He maintains that “the court’s conclusion that D.D. had been removed from her father for six months under a dispositional decree is clearly erroneous as [F]ather’s disposition was not held until nearly three months after the court adjudicated D.D. a CHINS.” (Appellant’s Br. p. 7). However, Father fails to indicate how this prejudiced him.

In sum, we cannot conclude that the deficiencies Father complains of rise to the level of a constitutional violation. Therefore, we will not reverse the trial court on that basis.

II. *Sufficiency of the Evidence*

Father contends that the IDCS did not present sufficient evidence to support the involuntary termination of the parent-child relationship between Father and D.D. In reviewing termination proceedings on appeal, this court will not reweigh the evidence nor assess the credibility of the witnesses. *In Re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We consider only the evidence that supports the trial court’s decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the trial court enters findings of fact and conclusions of law in its termination of parental rights, our standard of review is two-tiered. *Id.* First, we determine whether the evidence supports the findings, and second, whether the findings support the conclusions of law. *Id.*

In deference to the trial court’s unique position to assess the evidence, we set aside the trial court’s findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id.* A finding of fact is clearly erroneous when there are no facts or

inferences drawn therefrom to support it. *Id.* A judgment is clearly erroneous only if the conclusions of law drawn by the trial court are not supported by its findings of fact or the conclusions of law do not support the judgment. *Id.*

It is axiomatic that 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 M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, the trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination of the parent-child relationship. *In re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Parental rights may therefore be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.* at 836.

To effect the involuntary termination of a parent-child relationship, the IDCS must present clear and convincing evidence establishing that:

(A) one (1) of the following exists:

(i) the child has been removed from the parent for at least (6) months under a dispositional decree;

(ii) a court has entered a finding under I.C. § 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) the child has been removed from the parent and had been under the supervision of a county officer of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is reasonable probability that:

(i) the condition 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.

I.C. § 31-35-2-4(b)(2).

In the instant case, Father asserts that the trial court erred in terminating his parental relationship with his daughter. Specifically, he contends that the evidence was insufficient to establish that the parent-child relationship posed a threat to the well-being of D.D. or that termination was in her best interest. To determine whether conditions are likely to be remedied, the trial court must examine Father's fitness to care for D.D. as of the time of the termination hearing and take into account any evidence of changed circumstances. *Matter of A.N.J.*, 690 N.E.2d 716, 721 (Ind. Ct. App. 1997). At the same time, the trial court must evaluate Father's patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.*

The evidence reflects that Father has no bond with D.D. He has only had contact with D.D. three times during her lifetime. D.D.'s Court Appointed Special Advocate (CASA) testified that it did not appear that D.D. had any recollection of her birth father, and that Father "has had no interaction with D.D. at all." (Transcript p. 33). Father has been imprisoned since D.D. was two years old. He has a history of substance abuse and violent tendencies. During incarceration, Father accrued a total of forty-four negative conduct reports. Within the last year, he received six conduct reports for poor behavior, including

reports for battery on prison staff, resisting prison staff, and disruptive behavior. The record shows that several of these conduct reports were initiated after Father had completed 100 hours of anger management courses. Father is not due to be released until October of 2012, after which he will be required to address a pending immigration matter. Although Father claims he is a United States citizen, he added that authorities may deport him to his native Haiti. In addition, during his testimony, Father could not recall D.D.'s birthday nor does he have any plans on how to support her financially and emotionally after his release from prison. When asked why his parental rights to D.D. should not be terminated, Father responded that termination would not be proper because she is "part of my DNA or somethin'." (Tr. p. 60).

D.D. currently lives with a foster family, who is willing to adopt her and her half-sibling. D.D. is thriving in their care, sees her foster family as her family and identifies her foster mom as "Mom." (Tr. p. 34). CASA stated that not allowing D.D. to be adopted by her foster family would be "devastating to her. She is so geared up to becoming a part of this family legally, I think anything other than that would destroy her." (Tr. p. 36).

Based on the evidence before us, we affirm the trial court's termination of Father's parental rights to D.D. It is clear that the continuation of Father's parental rights poses a threat to D.D.'s well-being because of Father's violent and disruptive behavior and his blatant disinterest in his child during her lifetime. Requiring D.D. to wait until Father is released from prison to see if he can turn his life around would be harmful to her emotional and physical growth. As we stated before, "[i]t is undisputed that children require secure,

stable, long-term, continuous relationships with their parents or foster parents. There is little that can be as detrimental to a child's sound development as uncertainty." *Baker v. Marion County Office of Family and Children*, 810 N.E.2d 1035, 1040 (Ind. 2004). Thus, termination would be in D.D's best interest. As such, we refuse to disturb the trial court's decision.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not violate Father's due process rights during the CHINS proceedings and the trial court properly terminated Father's parental rights to D.D.

Affirmed.

VAIDIK, J., and CRONE, J., concur.