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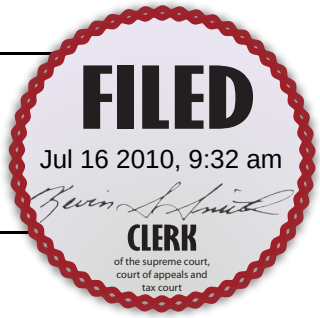

IN THE COURT OF APPEALS OF INDIANA

G.M.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 49A02-1001-JT-13
	)	
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
Cause No. 49D09-0907-JT-32341

July 16, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

G.M. ("Father") appeals the involuntary termination of his parental rights to his child, N.S., claiming there is insufficient evidence to support the juvenile court's termination order. Concluding that the Indiana Department of Child Services, Marion County ("MCDCS") presented clear and convincing evidence to support the juvenile court's judgment terminating Father's parental rights, we affirm.

FACTS AND PROCEDURAL HISTORY

Father is the biological father of N.S., born on December 12, 2003. The facts most favorable to the juvenile court's judgment reveal that MCDCS took N.S. into protective custody in March 2008 because Father was incarcerated, N.S.'s biological mother was deceased, and the person Father had left N.S. with had also recently become incarcerated, thereby leaving no appropriate caregiver for the child. At the time of N.S.'s removal, Father was already involved with MCDCS as part of an Informal Adjustment that had been filed in February 2008.

MCDCS filed a petition alleging N.S. was a child in need of services ("CHINS") and Father admitted to the allegations therein during a hearing in May 2008. The juvenile court then proceeded to disposition and issued an order formally removing N.S. from Father's care. The court's dispositional order also authorized Father to have increased visitation with N.S., including temporary in-home visitation, pending positive recommendations from service providers.

In addition to the court's dispositional order, the juvenile court also issued a Participation Decree directing Father to participate in a variety of services in order to

achieve reunification with N.S. Specifically, Father was ordered to, among other things, (1) secure and maintain a stable source of income, (2) obtain and maintain safe and suitable housing with adequate food, bedding, and functional utilities for all household members, and (3) successfully complete home-based counseling and any recommendation of the home-based counselor.

Father was released from incarceration in May 2008 and began participating in scheduled visits with N.S. Father also attended parenting classes, but in late June 2008 Father was again arrested and remained incarcerated until July 30, 2008. Following Father's release from incarceration in July 2008, he began living with his mother in a one-bedroom apartment. Meanwhile, in August 2008, N.S. was placed in relative foster care in Syracuse, Indiana, with Father's brother and his wife. Father approved of that placement.

Although Father met regularly with home-based counselor Lorella Nardini for the duration of the underlying proceedings, he was unsuccessful in obtaining either stable housing or employment. Father also was unable to regularly visit with N.S., and his relationship with the relative foster parents began to deteriorate. Father's phone calls to N.S. were also inconsistent, causing N.S. to get upset. In January or February 2009, Father requested visitation with N.S. every two weeks. Father did not have transportation, however, and there was no available bus line to Syracuse. Arrangements for daily telephone contacts were made, but Father failed to telephone N.S. at the appointed times. Following a team meeting in August 2009, it was agreed that Father would send letters to N.S., but Father was to telephone the relative foster parents before

mailing any letter so the letter could be reviewed by the relative foster parents and N.S.'s counselor before giving it to N.S. Father sent one drawing but did not telephone the relative foster parents in advance. Father also did not send any letters.

Meanwhile, in July 2009, MCDCS filed a petition seeking the involuntary termination of Father's parental rights to N.S. A three day fact-finding hearing on the termination petition commenced on November 4, 2009, continued on December 1, 2009, and was concluded on December 7, 2009. During the termination hearing, Father admitted that he had failed to successfully complete a majority of the juvenile court's dispositional orders and had not visited with N.S. for approximately one year. In addition, Father remained unemployed and was still living with his mother. At the conclusion of the hearing, the juvenile court took the matter under advisement. On December 11, 2009, the juvenile court entered its judgment terminating Father's parental rights to N.S. Father now appeals.

DISCUSSION AND DECISION

We begin our review by acknowledging that this court has long had 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). When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. In re D.D., 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), trans. denied. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. Id.

Moreover, in deference to the juvenile court's unique position to assess the evidence, we will set aside the 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.

The juvenile court's judgment in the present case contains specific findings and conclusions. When a juvenile court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. Id. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. D.D., 804 N.E.2d at 265. A judgment is clearly erroneous only if the findings do not support the juvenile court's conclusions or the conclusions do not support the judgment thereon. Bester, 839 N.E.2d at 147. Thus, if the evidence and inferences support the juvenile court's decision, we must affirm. L.S., 717 N.E.2d at 208.

A parent's interest in the care, custody, and control of his or her children is arguably one of the oldest of our fundamental liberty interests. Bester, 839 N.E.2d at 147. Hence, "[t]he 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. These parental interests, however, are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. Id. In addition, although the right to raise one's own child should not be terminated solely

because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. K.S., 750 N.E.2d at 836.

Before an involuntary termination of parental rights may occur, the State is required to allege and prove, among other things, that "there is a reasonable probability that . . . the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied . . . ." Ind. Code § 31-35-2-4(b)(2)(B) (2008).[1] In addition, "[t]he State's burden of proof in termination of parental rights cases is one of 'clear and convincing evidence.'" In re G.Y., 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code § 31-37-14-2 (2008)). Father challenges the sufficiency of the evidence supporting the juvenile court's findings as to subsection 2(B) of the termination statute cited above. See Ind. Code § 31-35-2-4(b)(2)(B). In so doing, Father asserts that the juvenile court's findings are improperly based solely on "[Father's] inability to find a job." Appellant' Br. p. 11. Father further claims that the evidence presented by MCDCS not only failed to show he is "an unfit parent," but also proves he "was making efforts to find employment." Id. Father therefore contends he is entitled to reversal because MCDCS failed to establish by clear and convincing evidence that the conditions resulting in N.S.'s removal will not be remedied or that continuation of the parent-child relationship poses a threat to N.S.'s well-being. Father also asserts that the "evidence fails to support the [juvenile court's] finding that [he] lacked effort to maintain

[1] Indiana Code section 31-35-2-4, which also details the additional requirements that must be satisfied before an involuntary termination of parental rights may occur, was amended by Pub. L. No. 21-2010, § 8 (eff. March 12, 2010). Because the changes to the statute became effective in March 2010, following the filing of the termination petition involved herein, the changes in the statute are not applicable to this case.

meaningful contact with [N.S.]" stating the evidence indicates Father "raised [N.S.] from birth until [N.S.] was . . . about four[-]and[-]a[-]half years old" and that Father was "prevented from having contact with [N.S.] after [Father's] relationship with the relative caregivers deteriorated." Id.

Initially, we observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. The juvenile court therefore needed to find that only one of the two requirements of subsection 2(B) had been met before issuing an order to terminate Father's parental rights. See In re L.V.N., 799 N.E.2d 63, 69 (Ind. Ct. App. 2003). Nevertheless, the juvenile court found sufficient evidence had been presented to satisfy the evidentiary requirements as to both prongs of subsection 2(B). Because we find the issue to be dispositive under the facts of this case, we need only consider whether clear and convincing evidence supports the juvenile court's finding as to Indiana Code Section 31-35-2-4(b)(2)(B)(i).

In determining whether there is a reasonable probability that the conditions resulting in removal of the child from the family home will be remedied, a juvenile court must judge a parent's fitness to care for his or her child 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 & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. The juvenile court may also properly consider the services offered to the parent by the county department of child services, and the parent's response to those services, as evidence of whether conditions will be remedied. Id. In addition, a county department of child services (here, MCDCS) is not required to provide evidence ruling 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 236, 242 (Ind. Ct. App. 2007).

In finding there is a reasonable probability the conditions resulting in N.S.'s removal or continued placement outside of Father's care will not be remedied, the juvenile court made numerous detailed findings concerning Father's history of prior involvement with MCDCS, incarcerations during the CHINS case, inability to obtain employment or secure a suitable home, and failure to complete court-ordered services as follows:

> 7. As part of Court[-]ordered services, [Father] was to successfully complete home[-]based counseling . . . focusing on housing, finances[,] and child care.
>
> 8. [Father] was released from jail in early May 2008, but was incarcerated again late June to July 30, 2008.
>
> 9. After [Father's] release from incarceration . . . he moved in with his mother in a one[-]bedroom senior citizen apartment.
>
> * * *
>
> 11. At the time of this trial, [Father] was unsuccessful in completing any of the [dispositional] goals.

12. Lorella Nardini, the home[-]based case manager, felt that [Father] had reached the maximum benefit in services offered, but could not recommend reunification [because] [Father] was no closer in reaching the goals of employment and housing than he was in May 2008.

13. Nardini pointed out that there was no guarantee of [Father] obtaining a job soon, and did not know if [Father] could maintain a job and home.

* * *

15. Home[-]based services also referred [Father] to a G.E.D. program until the program closed due to funding in the fall of 2008. [Father] has not pursued another G.E.D. program because he wanted to wait until he got a job.

16. [N.S.] was placed with his paternal uncle and aunt in August 2008. Parenting time was informal and not on a set schedule, partly due to the substantial distance away the uncle and aunt lived. During Christmas 2008, [Father] and his mother visited a few days at the uncle and aunt's residence . . . .

17. Phone calls to [N.S.] from [Father] were inconsistent, which upset [N.S.]. . . .

18. [B]ecause of inconsistent contact from [Father], the uncle and aunt believed it would be better if [Father] would call five days a week at the same time to commence consistent contact.

19. At a team meeting in August 2009, it was determined that [Father] would call the [relative placement] to let them know he was sending a letter, would send a letter for [N.S.] and his counselor to go through, [and] then [Father] would make a follow[-]up call. [Father] sent one drawing, no letters, and did not call.

20. [Father's] last contact with [N.S.] was in early 2009.

* * *

23. There is a reasonable probability that the conditions that resulted in [N.S.'s] removal and continued placement outside the home will not be remedied by [Father]. [Father] has been working with home based services for well over one year and[,] according to [Nardini,]

> is no closer to meeting his goals of employment and housing than when she started with him in May 2008. [Father] has barriers to employment and housing which include his borderline low intelligence quotient, not having a G.E.D., and being a convicted felon. [Father] chose not to resume another G.E.D. program. . . . [MCDCS] has provided bus tickets, a list of employers who will hire felons, and referrals for [Father]. Home[-]based service providers have consistently met with [Father] and provided transportation and leads for employment and housing. None of the efforts provided [Father] ha[ve] been successful.
>
> 24. [Father] has failed to expend more than a minimal effort to maintain contact with [N.S.], either by visitation, phone calls[,] or letters.

Appellant's App. p. 14-15. A thorough review of the record leaves us satisfied that clear and convincing evidence supports the juvenile court's findings set forth above. These findings, in turn, support the court's ultimate decision to terminate Father's parental rights to N.S.

Testimony from various service providers and caseworkers makes clear that Father initially complied with some of the juvenile court's dispositional orders by participating in scheduled visits with N.S. and parenting classes. Father's successful participation in services began to wane, however, due, in part, to his repeated incarcerations. By the time of the termination hearing, Father had failed to complete a majority of the juvenile court's dispositional goals despite the services made available to him.

During the termination hearing, MCDCS family case manager Chad Shewman confirmed that Father was currently unemployed and had been living with his Mother for approximately one year in a one-bedroom senior citizen apartment that was not an "appropriate placement" for N.S. Transcript at 65. Shewman also informed the court that, in addition to referring Father for home-based services, MCDCS had provided

Father with "a list of employers that would hire felons" in an attempt to help Father secure employment. Id. at 63. When asked whether he had been able to recommend placement of N.S. back with Father, Shewman answered in the negative and further explained that his concerns remained the same throughout the case and revolved "primarily" around Father "having appropriate housing . . . but also [with] being able to financially provide for [N.S.] . . . to meet any of the expenses that [Father] may have with caring for [N.S.], [and] providing [N.S.] with food and shelter . . . ." Id. at 72.

Home-based case manager Nardini's testimony echoed that of Shewman. In recommending termination of Father's parental rights to N.S., Nardini testified that she had worked with Father on a weekly basis since May 2008 to help Father achieve the court-ordered goals of obtaining appropriate housing and employment. When asked to describe how she had facilitated these goals, Nardini stated she had transported and accompanied Father to "innumerable" locations to submit job applications, referred Father to two G.E.D. programs and a Vocational Rehabilitation program, supplied Father with lists of available housing and employment positions, assisted Father with goal setting, and provided Father with emotional support. Id. at 215. Nardini testified, however, that although she had referred Father for vocational rehabilitation in March 2009, Father did not participate in an assessment until late September 2009. Nardini also confirmed that although she had asked Father to re-enroll in G.E.D. classes after the first G.E.D. program was closed for lack of funding, Father had not done so.

When asked during the termination hearing whether Father had successfully completed any of the goals she had set with him, Nardini replied, "No." Id. at 220.

Nardini also acknowledged that she had never been able to recommend that N.S. be returned to Father's care, and further stated that she felt Father would continue to need the support of home-based services if he were reunified with N.S. because she believed Father still "needs to have some kind of leadership to at least establish routines, understand how to take care of [N.S.] . . . fully . . . and get some parenting skills." Id. at 221. Finally, when asked how much longer she would continue working with Father, Nardini indicated that she was "closing the case" because she felt she had "reached the maximum benefit for [Father]." Id. at 222.

Father's own testimony also supports the trial court's findings. When asked during the termination hearing when he was last employed, Father confirmed that he had worked for a friend of his mother who manages a "grass cutting crew" for approximately one-and-a-half months in June 2009, and that prior to that job, he had not worked since January or February of 2008. Id. at 33-34. When asked why he had not re-enrolled in a G.E.D. program, Father said he was "gonna (sic) wait until after I find me (sic) a job . . . to get back to class." Id. at 53. In addition, when asked to describe what he had learned in the parenting classes he attended, Father answered, "Nothing. I mean[,] I didn't feel I needed to be there in the first place." Id. at 48.

With regard to visitation, Father confirmed that he had not seen N.S. since December 2008. Father also admitted that he "could" send letters to N.S. once a week but had not done so. Id. at 40. When questioned why he had not sent N.S. any letters, Father replied, "It ain't (sic) right I can't see my son. Why should I send letters? I don't wanna (sic) send no (sic) letters. I wanna (sic) see my son." Id. at 40. When asked how

often he calls the relative foster parents to "ask about [N.S.]," Father stated that he "quit calling" and hadn't talked to them since January or February 2009 because they "didn't do nothing (sic) but argue" with Father. Id. at 41. We have previously stated that "the failure to exercise the right to visit one's child demonstrates a lack of commitment to complete the actions necessary to preserve the parent-child relationship." Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied.

A juvenile court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the children. D.D., 804 N.E.2d at 266. In addition, "[a] pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, support[s] a finding that there exists no reasonable probability that the conditions will change." Id. Based on the foregoing, we conclude that clear and convincing evidence supports the juvenile court's determination that there is a reasonable probability the conditions resulting in N.S.'s removal or continued placement outside of Father's care will not be remedied. Father's arguments to the contrary, emphasizing the evidence that he raised N.S. for several years prior to the child's removal from the family home and Father's own self-serving testimony that his inability to visit with N.S. was due to the deterioration of his relationship with the relative caregivers, as opposed to the evidence cited by the juvenile court in its termination order, amount to an invitation to reweigh the evidence, which we may not do. D.D., 804 N.E.2d at 265.

This court will reverse a juvenile court's termination order only upon a showing of "clear error" – that which leaves us with a definite and firm conviction that a mistake has been made. A.J. v. Marion County Office of Family & Children, 881 N.E.2d 706, 716 (Ind. Ct. App. 2008), trans. denied. We find no such error here. Accordingly, the juvenile court's judgment terminating Father's parental rights to N.S. is hereby affirmed.

Affirmed.

VAIDIK, J., and BROWN, J., concur.