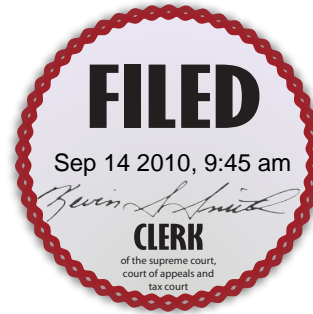


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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF:)
M.B., J.B., AND T.B., Minor Children,)

R.B., Father,)

Appellant-Respondent,)

vs.)

INDIANA DEPARTMENT OF CHILD)
SERVICES,)

Appellee-Petitioner.)

CHILD ADVOCATES, INC.,)

Co-Appellee-Guardian Ad Litem.)

No. 49A05-1002-JT-89

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Larry E. Bradley, Commissioner
Cause Nos. 49D09-0903-JT-13342, 49D09-0903-JT-13343, 49D09-0903-JT-13344

September 14, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

R.B. (“Father”) appeals the involuntary termination of his parental rights to his children, M.B., J.B., and T.B. (collectively, “the children”). Concluding that the Indiana Department of Child Services, Marion County (“MCDCS”), presented clear and convincing evidence to support the juvenile court’s judgment, we affirm.

Facts and Procedural History

Father is the legal father of M.B., born in September 1999. Father also claims to be the biological father of J.B., born in May 2001, and T.B., born in June 2002.¹ The evidence most favorable to the juvenile court’s judgment reveals that in April 2008, MCDCS was contacted by local law enforcement personnel who had responded to a domestic disturbance report at the family home. Upon their arrival, the police observed red marks on the arm and shoulder of the children’s mother. In addition, two of the children reported that Father hits their mother, and one child further indicated Father punches their mother in the head “a lot.” Exhibits, Vol. I, at 66. One of the children also reported seeing Father use marijuana in the home, and the children’s mother admitted to recent cocaine use.² The next day, MCDCS filed a petition alleging M.B., J.B., and T.B.

¹ The Record contains a Decree of Paternity as to M.B., but not for J.B. and T.B. Father and the children’s mother were not married at the time the children were born, but the couple lived together off-and-on for approximately fourteen years. Father testified during the termination hearing that he was, in fact, the biological father of all three children.

² The children’s mother, Y.B., signed voluntary consents for adoption of the children by their maternal aunt prior to the termination hearing. Y.B. does not participate in this appeal. Consequently, we shall limit our recitation of the facts to those pertinent solely to Father’s appeal.

were children in need of services (“CHINS”) because their parents had failed to provide the children with “a safe and appropriate home environment free from domestic violence, substance abuse, and neglect.” Id. In addition, the family had a significant history of involvement with MCDCS ultimately resulting in Mother losing custody of six older children.

Following an evidentiary hearing on the CHINS petition in June 2008, M.B., J.B., and T.B. were adjudicated CHINS, and the juvenile court proceeded to disposition. The juvenile court thereafter issued a dispositional order formally removing the children from Father’s care and directing Father to participate in a variety of services in order to achieve reunification. Specifically, Father was ordered to (1) maintain stable housing “safe for all residing therein;” (2) complete parenting and drug and alcohol assessments and successfully complete all resulting treatment recommendations; (3) submit to random drug screens; (4) successfully participate in a program addressing issues of domestic violence; (5) exercise regular visitation with the children as recommended by MCDCS; and (6) successfully complete home-based counseling and all recommendations of the home-based counselor. Id. at 87.

Father’s participation in services was sporadic and ultimately unsuccessful. Father initially participated in home-based counseling services, but spent the majority of his sessions blaming MCDCS for removing the children and refusing to take personal responsibility for his current circumstances, rather than working on reunification goals. Consequently, after approximately four months, Father was discharged from home-based services as unsuccessful.

In September 2008, the juvenile court ordered Father to complete a full psychological evaluation and to follow any and all resulting recommendations. Father participated in the psychological evaluation. He refused, however, to comply with any of the resulting recommendations, including intensive individual counseling and/or psychotherapy designed to address his personality disorders and anger issues. In addition, although Father completed a 26-week domestic violence program, his demeanor when interacting with service providers continued to be belligerent and confrontational. Father also regularly threatened case workers, service providers, and foster families both before and after his completion of the domestic violence program. As a result, several no-contact orders were issued by the juvenile court, and Father eventually lost his visitation privileges with the children. Regarding Father's participation in random drug screens, Father submitted to and produced ten negative drug screens. However, in early spring 2009, Father tested positive for marijuana, resulting in his second referral for home-based services being closed as unsuccessful.

In March 2009, MCDCS filed a petition seeking the involuntary termination of Father's parental rights to M.B., J.B., and T.B. A fact-finding hearing on the termination petition was eventually held in January 2010. By the time of the termination hearing, Father had failed to complete a majority of the juvenile court's dispositional goals and continued to deny there was any domestic violence in the family home. At the conclusion of the hearing, the juvenile court took the matter under advisement, and in February 2010, the court issued an order terminating Father's parental rights to all three children. 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 the 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, 264 (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. If the evidence and inferences support the juvenile court's decision, we must affirm. Id.

Here, in terminating Father's parental rights, the juvenile court entered 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. "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the juvenile court's decision, we must affirm. L.S., 717 N.E.2d at 208.

"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. 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. 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.

When seeking an involuntary termination of parental rights, the State is required to allege and prove, among other things, that:

- (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

Ind. Code § 31-35-2-4(b)(2)(B).³ The State's burden of proof for establishing these allegations in termination cases "is one of 'clear and convincing evidence.'" In re G.Y., 904 N.E.2d 1257, 1260-1261 (Ind. 2009) (quoting Ind. Code § 31-37-14-2 (2008)). If the court finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

Father challenges the sufficiency of the evidence supporting the juvenile court's findings as to subsection (B) of the termination statute cited above. See Ind. Code § 31-35-2-4(b)(2)(B). We pause to observe, however, that Ind. Code § 31-35-2-4(b)(2)(B) is

³ Indiana Code section 31-35-2-4 was amended by Pub. L. No. 21-2010, § 8 (eff. March 12, 2010). The changes to this statute became effective in March 2010, following the filing of the termination petition herein, and are not applicable to the present case.

written in the disjunctive. Thus, MCDCS was required to establish, by clear and convincing evidence, only one of the two requirements of subsection (b)(2)(B). See L.S., 717 N.E.2d at 209. Although the juvenile court found both prongs of this subsection were satisfied, because we find the issue to be dispositive, we need consider only whether sufficient evidence supports the juvenile court's determination that there is a reasonable probability the conditions resulting in the children's removal or continued placement outside Father's care will not be remedied.

Remedy of Conditions

Father argues there is insufficient evidence to support the juvenile court's determination that the conditions resulting in the children's removal will not be remedied. Specifically, Father alleges he successfully completed domestic violence and "drug counseling" classes, maintained a "stable residence and employment" during the underlying proceedings, and "interacted appropriately with his children." Appellant's Brief at 2. Father also states that he "cared so deeply about keeping his children that it sometimes led [Father] to react with hostility towards the caseworkers who were involved with his case." Id. at 5. Although Father acknowledges he could have "expressed his frustration in a more positive way," he nevertheless asserts that his "attitude" proves he is "very motivated to be a good parent to his children." Id. Father therefore contends that the juvenile court's order terminating his parental rights to the children "must be reversed." Id. at 6.

In determining whether the conditions causing removal or continued placement of a child outside the care of a parent 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. 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. A juvenile court may also properly consider the services offered to the parent by a county department of child services and the parent's response to those services as evidence of whether conditions will be remedied. Id. Finally, we point out that a county department of child services is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability a parent's behavior will not change. In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In its judgment terminating Father's parental rights to M.B., J.B., and T.B., the juvenile court specifically found that the children were initially removed from the family home "as a result of allegations of domestic violence and substance abuse." Appellant's Appendix at 22. The juvenile court further found:

5. There is a reasonable probability that the conditions that resulted in the children's removal and continued placement outside the home will not be remedied by their father. Although [Father] completed substance abuse education, he tested positive for marijuana thereafter. He chooses to stay with the children's mother who has a long history of drug abuse, resulting in a voluntary termination of her parental rights over previous children, and [MCDCS's] involvement with [M.B., J.B., and T.B.] in 2002. [Father]

believes that it is in the children's best interests to be with their mother who admitted to using crack cocaine. Domestic violence issues are still a major concern. [Father] completed domestic violence classes prior to the children's mother complaining of violence and going to a woman's shelter at least once, and when she was pregnant. [Father] has demonstrated his anger problems repeatedly throughout the CHINS matter with threats of harm. His courtroom demeanor and combative nature during testimony during trial also exemplifies he [has] anger control issues. Not only do the same conditions exist since the CHINS proceeding was filed in April 2008, but given [Father's] rigid stance blaming [MCDCS] for the children being out of the home and taking no responsibility himself, conditions will not be remedied.

Id. at 23. A thorough review of the record reveals that clear and convincing evidence supports the juvenile court's findings set forth above. These findings, in turn, support the juvenile court's ultimate decision to terminate Father's parental rights to the children.

The children were initially removed from Father's care amidst substantiated allegations of domestic violence and substance abuse in the family home. The children's continued placement outside of Father's care was the direct result of Father's refusal to consistently participate in court-ordered reunification services and his on-going threatening behavior toward service providers and caseworkers. Testimony from various witnesses during the termination hearing, including Father himself, makes clear that, at the time of the termination hearing, these conditions remained unchanged.

During the termination hearing, Dr. Mary Papandria, a clinical psychologist, testified that she had performed a psychological assessment of Father at the request of MCDCS. In so doing, Dr. Papandria administered a clinical interview, mental status examination, I.Q. test, and personality evaluation of Father. Dr. Papandria described Father's demeanor during her evaluation as "very angry, defensive, paranoid, [and]

suspicious.” Transcript at 42. Dr. Papandria further informed the court that Father had denied he had any criminal history, other than driving on a suspended license several years earlier, reported that he never used alcohol or drugs, other than marijuana when he was seventeen, and reported there was no “family history of psychiatric disorders” despite the fact the comprehensive family profile indicated Father had at least two criminal convictions for battery, participated in a substance abuse program for cocaine during a prior CHINS case, and that all three of the children were being treated for behavioral, learning, and emotional problems. Id. at 45. In addition, Dr. Papandria reported that Father “took little or no responsibility for why the children were removed from the home,” and “[d]id not appear to grasp problems with his own behavior or that [he] need[ed] to make changes for his children.” Id. at 46.

When asked to explain her ultimate diagnosis regarding Father, Dr. Papandria informed the court that Father had a personality disorder with mixed features, including obsessive compulsive features and narcissistic traits. Dr. Papandria further explained that “personality disorders are probably the most difficult thing that psychologists or psychiatrists encounter. There’s no medication for it and unless the person engages in pretty intensive psycho-therapy, not counseling[,] but psycho-therapy[,] which . . . really delv[es] into the person’s history, without that, there’s very little treatment.” Id. at 48-49. Moreover, Dr. Papandria testified that individuals with personality disorders are usually “very poor clients because they don’t consistently go to therapy They tend to get into wrangles with the therapist[,] . . . take little responsibility[,] . . . [and] tend to blame

others for their problems . . . so . . . actually seeing any change is, is marginal that it'll occur." Id. at 49.

Dr. Papandria also indicated that Father suffered from intermittent explosive disorder, a disorder in which the individual has "difficulty controlling [his/her] temper," has intermittent "outbursts," and oftentimes "may get involved in physical altercations." Id. at 48. She went on to testify that an individual with intermittent explosive disorder can exercise control "at times," but when they "do lose their temper, it tends to be pretty severe." Id. Consequently, Dr. Papandria testified that although anger management classes might help "to some degree," such classes do not "get to the source of the problem," and therefore felt "psycho-therapy or intensive counseling" is the better treatment option. Id. When asked whether she felt it would be appropriate to place the children back in Father's care and control "if these things ha[d] not been addressed," Dr. Papandria answered in the negative and explained that if left untreated, there would be a "high likelihood that [Father] would have the same issues that he had a year ago . . . [and] at that time, I, I felt . . . he was not capable of safely, effectively parenting the children." Id. at 51.

In recommending termination of Father's parental rights, MCDSCS case supervisor Sharon Profetta informed the juvenile court that Father had made multiple threats to case workers, service providers, and foster parents involved in his case. Profetta also testified that she repeatedly advised Father to "watch the words" he used because they could be construed as "threatening." Id. at 91. In addition, Profetta reported that Father "always felt that everyone was lying" in order to "get his kids," and that MCDSCS eventually had

to obtain a protective order when Father threatened the lives of family case manager Jamie Bridges and her parents, stating he “knew where they lived.” Id. When asked why MCDCS decided to change the permanency plan from reunification to termination of parental rights, Profetta answered, “We had just exhausted all avenues to offer services to the parents in order to arrive at reunification [R]eunification was just not . . . an option anymore” Id. at 90.

During the termination hearing, family case manager Bridges confirmed that Father had never taken responsibility for the children’s removal and had repeatedly threatened her and other individuals involved in his case. When asked to specifically describe the threats, Bridges replied that Father had called her a “racist,” a “bitch,” and “pretty much everything under the sun.” Id. at 171-72. Bridges also testified that Father “threatened to kill her parents” and told her that if she “continue[d] going after his family,” that he would “go after” Bridges’ family. Id. at 172.

Regarding Father’s participation in services, Bridges acknowledged that Father had provided her with a certificate of completion for his participation in the domestic violence education program. She went on to testify, however, that Father “obviously” had not benefitted from the program “because the threats and everything continued with myself and my family after [Father] completed [it]. So it’s hard for me to even accept the certificate . . . because of things that continued to follow.” Id. at 178. In addition, Bridges testified that Father continued to deny any domestic violence had ever occurred in the family home even though the children, their mother, and the children’s maternal aunt and current relative foster parent had all reported recurring and ongoing violence

throughout the underlying proceedings. In addition, Father's visitation privileges with the children were suspended on two occasions and a no-contact order was issued by the court prohibiting Father from contacting the children's former foster family due to Father's threatening and disruptive behavior.

Bridges also confirmed that Father submitted to random drug screens and produced negative results until the Spring of 2009, but that he then tested positive for marijuana, resulting in Father's second referral for home-based services being closed as unsuccessful. Father also never participated in parenting classes, and he refused to participate in any additional services, including psycho-therapy and/or intensive counseling, following his psychological examination with Dr. Papandria because Father "didn't see the point." Id. at 170. When asked whether, given her "interaction with [Father]" and Father's "level of participation in services" thus far, she believed Father was capable of providing the children with the "consistency, stability, reliability, help, love, [and] care" that they needed, Bridges replied, "No, I do not." Id. at 181.

Father's own testimony provides additional support for the juvenile court's findings regarding Father's "rigid stance" of blaming MCDCS for the children's removal from the family home and his refusal to take personal responsibility for his actions. Appellant's Appendix at 23. During the termination hearing, Father informed the court that, "We don't have domestic violence in our home." Transcript at 76. Father also denied that he ever "threatened or harassed" anyone after completing the domestic violence program. Id. at 78. When asked about the children's mother's history of drug abuse, Father was adamant that she "never" had a drug problem during their approximate

fourteen-year-relationship, despite multiple CHINS documents referencing Mother's addiction to cocaine as well as Mother's own acknowledgement during the termination hearing that she uses "crack cocaine." Id. at 65, 245.

A 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 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. Here, Father repeatedly chose to engage in violent and threatening behavior while refusing to participate in court-ordered services rather than to cooperate with MCDCS caseworkers and service providers in an effort to achieve reunification with the children. Consequently, at the time of the termination hearing, Father remained unable to demonstrate that he could provide the children with a safe and stable home environment. "A pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, supports a finding that there exists no reasonable probability that the conditions will change." Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied. Based on the foregoing, we conclude that ample evidence supports the juvenile court's determination that there is a reasonable probability the conditions resulting in the children's removal and continued placement outside Father's care will not be remedied. Father's arguments to the contrary emphasizing his self-serving testimony, rather than the evidence cited by the juvenile court in its termination order, amount to an invitation to reweigh the evidence, which we may not do. See D.D., 804 N.E.2d at 265.

Conclusion

This Court will reverse a termination of parental rights “only upon a showing of ‘clear error’— that which leaves us with a definite and firm conviction that a mistake has been made.” In re A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting Egly v. Blackford County Dep’t of Public Welfare, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Affirmed.

DARDEN, J., and BRADFORD, J., concur.