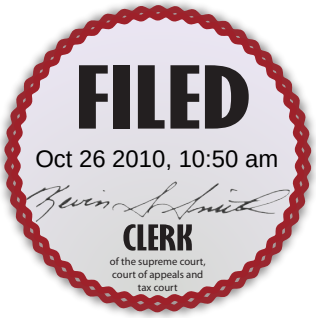

ATTORNEY FOR APPELLANT:

GREGG S. THEOBALD
Lafayette, Indiana

ATTORNEYS FOR APPELLEE:

ROBERT J. HENKE
Indianapolis, Indiana

CRAIG JONES
Lafayette, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF: C.O.V., Minor Child,	)	
C.L.V., Mother and T.G., Father,	)	
Appellants-Respondents,	)	
vs.	)	No. 79A02-1003-JT-445
THE INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta H. Rush, Judge
Cause No. 79D03-0911-JT-120; 79D03-0911-JT-121

October 26, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent T.G. (Father) appeals the trial court's judgment terminating his parental rights as to his minor daughter C.O.V., claiming there is insufficient evidence to support the termination order. Specifically, Father argues that the appellee-petitioner, Tippecanoe County Department of Child Services (DCS), failed to establish that the conditions leading to C.O.V.'s removal would not be remedied, that the evidence did not show that the termination of parental rights was in C.O.V.'s best interests, and that the trial court erroneously concluded that Father posed a threat to C.O.V. Finding no error, we affirm the trial court's judgment.

FACTS

Mother and Father are the parents of C.O.V., who was born on September 6, 2008, in Lafayette. Mother has two other children who have both been declared Children in Need of Services (CHINS) as a result of Mother's substance abuse and domestic violence issues.

On September 8, 2008, DCS removed C.O.V. from Mother's care, following allegations of substance abuse and episodes of domestic violence that occurred between Mother and Father during the pregnancy. Mother indicated that Father "got mean when he got drunk." Appellant's App. p. 72. Eight days before C.O.V.'s birth, Father shoved Mother down some stairs. As a result, Mother obtained a no contact order against Father.

When C.O.V. was born, her meconium tested positive for marijuana, and on October 22, 2008, C.O.V. was declared a CHINS. Thereafter, the trial court issued a dispositional order in November 2008, directing Mother to undergo inpatient drug treatment, aftercare services, and home-based preservation services in Lafayette. At a

subsequent hearing, Father, who was no longer in a relationship with Mother, was ordered to obtain a diagnostic assessment, attend an anger management program, and to make payments to DCS to reimburse it for the care and treatment of himself and C.O.V.

It was discovered that C.O.V. has significant health issues, including food allergies that demand constant attention. In fact, a number of medical professionals monitor C.O.V.'s eating habits, which require special dietary products, health food substitutes, and probiotics. C.O.V. will also have to undergo treatments at Riley Hospital in Indianapolis.

Mother failed several drug screens during the pendency of the various CHINS proceedings, did not follow up with housing appointments, and failed to follow medication and case management plans. Moreover, Mother refused services at a residential recovery program. As a result, Mother was not able to sustain employment or housing.

Although Mother underwent inpatient drug treatment at Fairbanks Hospital, she continued her drug use and tested positive for marijuana throughout the CHINS proceedings. Thus, Mother's visits with C.O.V. were suspended on September 21, 2009, until she again started participating in drug treatment.

A psychological assessment determined that Mother suffered from major depressive and panic disorders, marijuana dependency, and an antisocial personality disorder. The evaluation also concluded that Mother lacked the energy and stamina to consistently fulfill her parenting responsibilities.

During supervised visitations, Mother had difficulty following C.O.V.'s feeding routines and dietary restrictions. At times, Mother would become angry, yell, and "slam things." Ex. 7. Mother also failed to show for those appointments at times.

Mother was eventually arrested on a probation violation for failing a drug screen. She failed to attend three probation meetings and did not stop using drugs until January 2010. Mother also stopped participating in services and communicating with anyone involved in C.O.V.'s CHINS case.

Father has a lengthy criminal history, including convictions for forgery, resisting law enforcement, and theft. During the pendency of the CHINS proceedings, Father was convicted of public intoxication on two occasions. As a result, Father's home detention that stemmed from a driving while intoxicated conviction was revoked. Father's driving privileges were also revoked because he failed to obtain an ignition interlock device.

One of the service providers with the DCS observed that Father behaved aggressively toward his other children during the course of the CHINS case. Prior to Father's incarceration in May for violating the home detention rules, Father failed to attend anger management classes and did not participate in parenting classes. Father also made no payments toward C.O.V.'s care and showed no concern as to how his problems might affect C.O.V.'s well-being.

On November 9, 2009, DCS filed a petition to terminate both Father and Mother's parental rights as to C.O.V., alleging that the conditions that resulted in the removal of C.O.V. will not be remedied, the continuation of the parent-child relationship poses a threat to C.O.V.'s well-being, and that termination of parental rights was in C.O.V.'s best

interests. DCS also alleged that it has a satisfactory plan for the care and treatment of C.O.V.

After Father was released from incarceration in December 2009, he failed to attend two of the seven anger management sessions and "no showed" for one of only three scheduled Family Dynamics classes. Appellant's App. p. 36-38, 115-17. Father also did not meet with DCS personnel to discuss funding, the possibility of reduced fees, or C.O.V.'s special dietary needs. At the time of the termination hearing, Father did not have a permanent residence or a full-time job. Finally, the record shows that Father paid no child support for C.O.V. during the nearly eighteen months that she was in foster care.

Following the termination hearing on February 8, 2010, the trial court issued findings of fact and conclusions thereon, terminating Mother and Father's parental rights as to C.O.V. Father now appeals.[1]

DISCUSSION AND DECISION

Father claims that the termination order must be set aside because DCS failed to present clear and convincing evidence that the conditions leading to C.O.V.'s removal would not be remedied, that the continuation of the parent-child relationship poses a threat to C.O.V's well-being, and that termination was in C.O.V.'s best interests.

I. Standard of Review

We initially observe that the Fourteenth Amendment to the United States Constitution protects the traditional right of parents to raise their children. In re

[1] We recently affirmed the trial court's termination of Mother's parental rights as to C.O.V. in C.V. v. Tippecanoe Cnty. Dep't of Child Servs., No. 79A02-1003-JT-794 (Ind. Ct. App. Sept. 24, 2010).

Involuntary Termination of Parent-Child Relationship of I.A., No. 62S01-1003-JV-148, slip op. at 5 (Ind. Oct. 5, 2010). However, parental rights are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. In re D.D., 804 N.E.2d 258, 264-65 (Ind. Ct. App. 2004). Thus, parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. Id. at 265.

When reviewing the termination of parental rights, we neither reweigh the evidence nor judge witness credibility, considering instead only the evidence and reasonable inferences that are most favorable to the judgment. In re I.A., slip op. at 5. Here, the trial court made specific findings and conclusions thereon in its order terminating Mother's parental rights. Thus, we apply a two-tiered standard of review. Bester v. Lake Cnty. Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005).

First, we determine whether the evidence supports the findings, and then we determine whether the findings support the judgment. Id. We will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). A judgment is clearly erroneous when the evidence does not support the findings or the findings do not support the result. In re I.A., slip op. at 5.

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

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

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

(ii) a court has entered a finding . . . 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 has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months:

(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)(2).

Before addressing Father's specific contentions, we note that DCS was not required to prove both that the conditions which led to C.O.V.'s removal had not been remedied and that the continuation of the parent-child relationship posed a threat to C.O.V.'s well-being. The applicable statute requires the DCS to establish only one or the other of these requirements. McBride v. Monroe Cnty. Office of Family & Children, 798 N.E.2d 185, 202 n.13 (Ind. Ct. App. 2003).

II. Father's Contentions

A. Conditions Leading to C.O.V.'s Removal

In addressing Father's claim that the termination order must be set aside because the DCS failed to show that there is a reasonable probability that the conditions that resulted in C.O.V.'s removal from his care would not be remedied, we have previously recognized that a trial court is not limited to examining only the parent's fitness at the time of the termination hearing. Rather, the parent's habitual patterns of conduct should also be considered to determine whether there is a substantial probability of future neglect or deprivation of the child. McBride, 798 N.E.2d at 199. The trial court may properly consider 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. Id. Also, a parent's history of incarceration and the effects upon the children is a relevant consideration. In re A.A.C., 682 N.E.2d at 545.

A trial court can reasonably consider the services offered to the parent and the parent's response to those services. Id. Finally, a court need not wait until a child is irreversibly harmed such that her physical, mental, and social development are permanently impaired before terminating the parent-child relationship. In re D.J., 755 N.E.2d 679, 684 (Ind. Ct. App. 2001).

At the termination hearing, it was established that Father's criminal history is extensive, and he has been incarcerated multiple times during his adult life. His criminal history is replete with probation violations, missed court hearings and appointments, probation revocations, and work release violations. DCS Ex. 21. Father and Mother's

relationship was marked by violence that was fueled by Father's alcohol abuse. Appellant's App. p. 72-74.

Until a permanency hearing regarding termination was conducted, Father consistently failed to comply with court-ordered parenting programs and counseling sessions, and he did not establish stability with regard to housing and employment. Although Father was ordered to keep in weekly contact with DCS personnel upon his most recent release from jail to learn how to parent C.O.V. with her special needs, Father did not follow that order. Moreover, Father did not request that his visitations with C.O.V. resume until after a permanency plan for termination had been developed. Tr. p. 177. While Father made some improvements approximately two months before the termination hearing, the trial court was not required to ignore Father's habitual patterns of conduct when determining the probability of future neglect or deprivation of C.O.V. McBride, 798 N.E.2d at 199. In fact, a DCS caseworker testified that

> [Father is] still missing appointments . . . [and] . . . is unable to . . . figure out a situation on his own. He doesn't have a full understanding for dietary supplements or needs and I've reviewed that with him. There's just—he just has the roadblocks—you put something in front of him and he either can't get past it or wants somebody else to solve it for him rather than trying to do it on his own.

Id. at 147-48. The caseworker acknowledged that Father has failed to demonstrate anything to suggest that he would "be able to sustain the burdens of being a custodial parent" to C.O.V. Id. at 148.

Finally, even assuming solely for the sake of argument that Father might eventually develop into an appropriate parent, we will not force a child to wait for the

permanency that is essential to the child's development and overall well-being. In re S.P.H., 806 N.E.2d 874, 883 (Ind. Ct. App. 2004). Despite a wealth of services that were made available to Father, his circumstances remained largely unchanged, and he was still incapable of showing an ability to provide C.O.V. with a safe and stable home environment.

In short, the evidence establishes that Father has not shown a willingness or ability to alter the conditions that led to C.O.V.'s removal. Thus, the trial court properly concluded that there was a reasonable probability that the conditions that resulted in C.O.V.'s removal will not be remedied.[2]

B. C.O.V.'s Best Interests

Father asserts that the evidence failed to demonstrate that terminating his parental rights was in C.O.V.'s best interests. We are mindful that, in determining what is in the best interests of a child, the trial court must look beyond the factors identified by DCS and examine the totality of the evidence. McBride, 798 N.E.2d at 203. In so doing, the trial court must subordinate the interests of the parent to those of the child. Id. The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. Id. Moreover, we have previously held that recommendations by a case manager and child advocate to terminate parental rights, coupled with evidence demonstrating that the conditions resulting in removal will not be remedied, are sufficient

[2] As noted above, DCS was not required to prove that the continuation of the parent-child relationship posed a threat to C.O.V.'s well-being and that the conditions that resulted in C.O.V.'s removal would not be remedied. McBride, 798 N.E.2d at 202 n.13. Nonetheless, our review of the record indicates that DCS also proved this element by clear and convincing evidence.

to show by clear and convincing evidence that termination is in the child's best interests. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

In addition to the evidence discussed above, C.O.V.'s foster mother testified that she has cared for C.O.V. for nearly seventeen months. She tends to C.O.V's special dietary and medical needs and takes her to the necessary appointments. Tr. p. 31-35. Moreover, the DCS case manager testified that C.O.V. has bonded with her foster family and concluded that it would be in C.O.V.'s best interests to terminate the parental relationship. Id. at 145-46.

C.O.V.'s Court Appointed Special Advocate (CASA) agreed with the DCS's assessment that it was in C.O.V.'s best interests to terminate parental rights. She testified that "of the seventeen months of [C.O.V.'s] life . . . maybe a month and a half or two the parents have put forth an effort to show that they really want to parent the child." Id. at 239. The CASA also testified that C.O.V. "has a difficult time with the bonding thing, . . . so I feel like they have placed a good family setting for her with the [Foster Mother] and her spouse." Id. at 239-40. The trial court considered all of the evidence and specifically found that C.O.V. is "doing well" in her current placement and there is a plan for C.O.V.'s adoption by her foster family. Appellant's App. p. 17.

In light of the above, we conclude that clear and convincing evidence supports the trial court's judgment that termination of Father's parental rights is in C.O.V.'s best interest.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.