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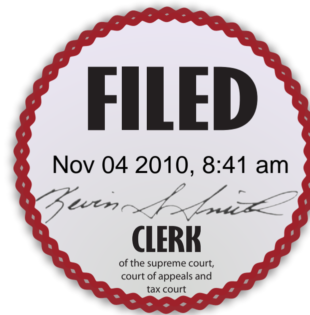

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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF C.J.M. AND HIS FATHER, C.M.,

C.M. (FATHER),

Appellant/Respondent,

vs.

LAKE COUNTY DEPARTMENT OF CHILD SERVICES,

Appellee/Petitioner,

and

No. 45A03-1004-JT-248

LAKE COUNTY COURT-APPOINTED)
SPECIAL ADVOCATE,)
)
Appellee/Guardian ad Litem.)

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Senior Judge
The Honorable Katherine Garza, Referee
Cause No. 45D06-0905-JT-139

November 4, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Respondent C.M. ("Father") appeals the termination of his parental rights to his son C.J.M., claiming that Appellee/Petitioner Lake County Department of Child Services ("LCDCS") failed to produce sufficient evidence to sustain the juvenile court's conclusions that the reasons for the original removal of the child are unlikely to be remedied, that continuing the parent-child relationship poses a threat to the child, and that termination is in the child's best interest. We affirm.

FACTS AND PROCEDURAL HISTORY

C.J.M. was born on August 18, 2008, to Father and his mother ("Mother"), who is not a party to this appeal. On August 20, 2008, due to concerns about Mother's ability to care for herself and C.J.M., LCDCS took custody of him and filed a petition to have him declared a child in need of services ("CHINS"). On August 21, 2008, M.J.C. was declared a CHINS and was made a ward of the State eight days later. The CHINS court ordered that Mother and Father undergo a drug and alcohol evaluation, a parenting

evaluation, individual and family counseling, random drug screens, supervised visitation, and psychological evaluations. The CHINS court also ordered Father to participate in anger management, Mother to continue taking medication for her paranoid schizophrenia, and that LCDCS should investigate relative placement.

Mother and Father underwent psychological evaluations on January 27, 2009. Clinical Psychologist Joel Schwartz determined that Mother was suffering from paranoid schizophrenia and caffeine and nicotine dependence and that Father was dependent on alcohol, had used cocaine in the past, and had suicidal ideations six months previously. Dr. Schwartz also noted that Father had had several arrests for public intoxication, operating a motor vehicle while intoxicated, and disorderly conduct and opined that Father could not parent C.J.M. alone until his substance abuse was addressed.

Neither Mother nor Father, who had a history of domestic violence, completed any of the other ordered services, despite some initial compliance. The parenting evaluation could not be completed because Father was not at home the several times the assessor visited. Father failed "several times" to attend supervised visitation, while "[m]ost of the time, [Mother] was outside smoking[.]" Tr. p. 61. Father failed to complete domestic violence and anger management courses, a substance abuse evaluation, and counseling. LCDCS case manager Wanda Clemmons visited Mother and Father's home once, found Mother "very incoherent most of the time," and found Father to "appear[] very, very angry." Tr. p. 61. Clemmons spoke with Father on the phone approximately seven or eight times, and "[m]ost of the time, when [Father] called [her], he was angry, he was yelling and screaming, and then he would slam the phone down." Tr. p. 83.

Therapist Carolyn Hooker provided Mother and Father home-based therapy from the fall of 2008 until March of 2009, to which he was initially receptive. The sessions became problematic as time passed, with Hooker sensing that Father was angry and Father asking Hooker to leave "on a couple of occasions[.]" Tr. p. 113. Father would often be drinking beer during the sessions. The last time Hooker saw Mother and Father, in March of 2009, Father told her "to get out, or he was going to put [her] out." Tr. p. 116. Hooker, who felt threatened, never returned.

On April 7, 2009, C.J.M.'s permanency plan was changed from reunification to termination of parental rights, and all services were stopped in May or June of 2009. C.J.M. has been with his current foster parents since April of 2009, is doing well, and has developed "a very close bond and attachment" with them. Tr. p. 70. C.J.M.'s foster parents want to adopt him.

At some point, Father's parents came forward as a placement option. LCDCS investigated but did not find the proposed placement to be suitable. The grandparents' home was small and cluttered; the grandparents proposed that C.J.M. live in a small, unventilated room directly next to the kitchen; and the grandparents never improved the home as directed by LCDCS. Additionally, grandfather had a prior conviction that prevented him from obtaining a foster parent license.

On May 20, 2009, LCDCS filed a petition to terminate Mother's and Father's parental rights to C.J.M. On March 11, 2010, following a hearing, the juvenile court issued an order terminating the parental rights of Mother and Father to C.J.M.

DISCUSSION AND DECISION

The Fourteenth Amendment to the United States Constitution protects the traditional right of a parent to establish a home and raise her children. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 145 (Ind. 2005). Further, we acknowledge that the parent-child relationship is "one of the most valued relationships of our culture." *Id.* However, although parental rights are of a constitutional dimension, the law allows for the termination of those rights when a parent is unable or unwilling to meet her responsibility as a parent. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Therefore, parental rights are not absolute and must be subordinated to the children's interest in determining the appropriate disposition of a petition to terminate the parent-child relationship. *Id.*

The purpose of terminating parental rights is not to punish the parent but to protect the children. *Id.* Termination of parental rights is proper where the children's emotional and physical development is threatened. *Id.* The juvenile court need not wait until the children are irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

Sufficiency of the Evidence

Father contends that the evidence presented at trial was insufficient to support the juvenile court's order terminating his parental rights. In reviewing termination proceedings on appeal, this court will not reweigh the evidence or 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 only consider the evidence that supports the juvenile

court's decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the juvenile court includes findings of fact and conclusions thereon in its order terminating parental rights, our standard of review is two-tiered. *Id.* First, we must determine whether the evidence supports the findings, and, second, whether the findings support the legal conclusions. *Id.*

In deference to the juvenile court's unique position to assess the evidence, we set aside the juvenile 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 legal conclusions made by the juvenile court are not supported by its findings of fact, or the conclusions do not support the judgment. *Id.*

In order to involuntarily terminate the parents' parental rights, LCDCS must establish by clear and convincing evidence that:

> (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 under IC 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 has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;
> (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) (2008). Specifically, Father claims that LCDCS failed to establish that the parent-child relationship posed a threat to C.J.M. or that LCDCS had a satisfactory plan for C.J.M.'s care and treatment.

A. Parent-Child Relationship Posed a Threat to C.J.M.

Father contends that LCDCS failed to produce sufficient evidence to establish that a parent-child relationship between he and C.J.M. posed a threat to C.J.M. The juvenile court, however, also found that the conditions resulting in C.J.M.'s removal would not be remedied. Indiana Code subsection 31-35-2-4(b)(2)(B) is written in the disjunctive, and the juvenile court need only find *either* that the conditions resulting in removal will not be remedied or that the continuation of the parent-child relationship poses a threat to the children. *In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*. The juvenile court made both of the findings pursuant to Indiana Code subsection 31-35-2-4(b)(2)(B) where only one is required, and Father challenges only one of them. We need not further address Father's argument in this regard.

B. Adequacy of Placement Plan

Father contends that LCDCS failed to sufficiently consider a family placement for C.J.M., which we treat as an argument that it failed to establish that it has a satisfactory plan for C.J.M.'s care and treatment. *See* Ind. Code § 31-35-2-4(b)(2)(D). LCDCS's plan for C.J.M. is continued placement with his foster parents, with whom he is doing "well" and who intend to adopt him. In light of this, and the considerable evidence that placement with Father's parents (as Father urges) would be unsuitable, we cannot say that

the juvenile court's decision is clearly erroneous in this regard. Father's argument is an invitation to reweigh the evidence, which we will not do. *See In re Involuntary Termination of Parent-Child Relationship of A.K. and An.K. and Their Mother, M.K.*, 755 N.E.2d 1090, 1098 (Ind. Ct. App. 2001) (concluding that State had satisfactory plan for care and treatment despite mother's claim that her niece would have made as good an adoptive parent as foster mother, with whom children were "thriving" and who intended to adopt them).

The judgment of the juvenile court is affirmed.

DARDEN, J., and BROWN, J., concur.