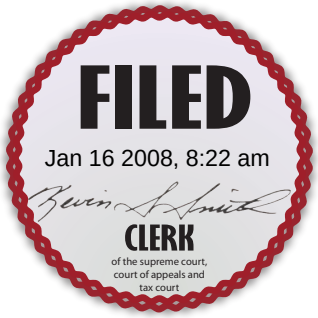

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IN THE
COURT OF APPEALS OF INDIANA

BRIAN CONRAD,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 79A04-0708-JV-440
	)	
TIPPECANOE COUNTY	)	
DEPARTMENT OF CHILD SERVICES,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta H. Rush, Judge
Cause No. 79D03-0702-JT-24

January 16, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Brian Conrad ("Father") appeals from the trial court's termination of his parental rights with respect to his son C.C. He presents two issues for our review:

1. Whether the Tippecanoe County Department of Child Services ("DCS") deprived him of his right to due process in the course of the CHINS proceedings.

2. Whether DCS presented sufficient evidence to sustain the termination of his parental rights.

We affirm.

FACTS AND PROCEDURAL HISTORY

Father was married to Eva Conrad ("Mother"), and they had a child, C.C., born November 9, 2001. In 2002, Father and Mother were caring for Mother's minor nephew, who sustained "extensive bruising to his head and face while in their care." Appellant's App. at 194. As a result, C.C. "was briefly removed from their care and placed in relative care." Id. Father and Mother successfully completed an Informal Adjustment with the DCS in January 2003. Also in 2003, "lack of supervision and environment life/health endangerment was substantiated on [Father and Mother] in regard to 2 unrelated children[.]" Id. "In addition, bruises/cuts/welts, bone fracture and inappropriate discipline were also substantiated on [Father and Mother] in regard to [an unrelated child]." Id.

On December 21, 2004, Mother was arrested for theft and robbery charges, and she was incarcerated pending trial. Mother had left C.C. in the care of a convicted child molester. At that time, Father was also incarcerated. As a result, the DCS filed a petition alleging that C.C. was a child in need of services ("CHINS"). The petition alleged that

C.C.'s physical or mental condition was seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of C.C.'s parents to provide him with necessary food, clothing, shelter, medical care, education, or supervision. In February 2005, the trial court adjudicated C.C. a CHINS, and the DCS placed him in foster care.

The DCS established a case plan for Father, which required him to undergo a psychiatric evaluation and individual therapy; complete an Aftercare program through Wabash Valley Outpatient at his own expense; submit to random drug screens; attend AA/NA (Alcoholics Anonymous/Narcotics Anonymous) meetings as recommended by his therapist; participate in therapeutic visitation with C.C. with Marianne Spicher, who would evaluate and recommend the length and frequency of visits; and participate in the parents' component of the Head Start program. Father did not comply with each of the terms of his case plan. The family preservation counselor assigned to his case, Angela Stone, summarized Father's noncompliance as follows:

> Though it is very evident that [Father] loves [C.C.] very much he has not demonstrated the ability/willingness to participate in and follow through with Court-ordered services. It is this family preservation counselor's opinion that [Father] has not been truthful about his use of alcohol and his lifestyle choices. [Father] has failed to maintain stable employment and his current housing is not suitable for [C.C.] to reside in his home. It is the recommendation of this family preservation counselor that [Father] participates in and completes the Dads Make a Difference program and that [Father] participate in co-parenting counseling services through HGCF. At this time it is recommended that [Father's] visits with [C.C.] remain fully supervised and that at the conclusion of this case his visitation again be examined to determine the ongoing level of supervision needed to ensure [C.C.'s] safety.

Appellant's App. at 304.

On May 23, 2006, the DCS filed a petition to terminate Mother's and Father's parental rights with respect to C.C. Following a hearing that took place in September and October 2006, the trial court denied the petition to terminate. But the DCS filed a second petition to terminate Mother's and Father's parental rights on February 7, 2007. Following a hearing on that petition, the trial court entered its order terminating Mother's and Father's parental rights with respect to C.C. and made findings and conclusions.[1] Father now appeals.[2]

DISCUSSION AND DECISION

Issue One: Due Process

Father contends that he was deprived of his right to due process in that he was "required to submit to a drug screen before he could arrange visitation" with C.C. and "was required to pay for visitation." Brief of Appellant at 15. The Due Process Clause of the United States Constitution prohibits state action that deprives a person of life, liberty, or property without a fair proceeding. Thompson v. Clark County Div. of Family & Children, 791 N.E.2d 792, 795 (Ind. Ct. App. 2003), trans. denied. When the State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of due process. Id. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Id. (quoting Mathews v. Eldridge, 424 U.S. 319, 333 (1976)).

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[1] Mother is not a party to this appeal.

[2] Father has included a complete copy of the transcript in his appendix. This practice not only violates Indiana Appellate Rule 50(A)(g), which instructs appellants to include "brief portions of the Transcript . . . that are important to a consideration of the issues raised on appeal," but results in unreasonably high copying expenses and an unwieldy file. We urge Father's counsel to abide by this important rule in the future.

The nature of process due in a termination of parental rights proceeding turns on 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 governmental interest supporting use of the challenged procedure. In re C.C., 788 N.E.2d 847, 852 (Ind. Ct. App. 2003). The balancing of these factors recognizes that although due process is not dependent on the underlying facts of the particular case, it is nevertheless "flexible and calls for such procedural protections as the particular situation demands." Thompson, 791 N.E.2d at 795 (quoting Mathews, 424 U.S. at 334).

Here, both the private interests and the countervailing governmental interests that are affected by the proceeding are substantial. In particular, the action concerns a parent's interest in the care, custody, and control of his children, which has been recognized as one of the most valued relationships in our culture. See id. Moreover, it is well settled that the right to raise one's children is an essential, basic right that is more precious than property rights. Id. As such, a parent's interest in the accuracy and justice of the decision is commanding. Id. On the other hand, the State's parens patriae interest in protecting the welfare of the children involved is also significant. Id. Delays in the adjudication of a case impose significant costs upon the functions of the government as well as an intangible cost to the lives of the children involved. Id.

Father contends that "any restriction on visitation must be rationally related to the benefit of the child." Brief of Appellant at 22. And Father maintains that neither the drug screen nor the payment conditions were shown to be for the child's benefit and were, therefore, in violation of his right to due process. We cannot agree.

First, Father cannot convince us that, given his history of serious drug abuse, including heroin addiction, conditioning his visits with C.C. on a drug screen is unreasonable. And we reject Father's contention that his being on drugs during visits with C.C. is somehow innocuous. Finally, Father has not demonstrated that undergoing drug screens prior to visits was unduly burdensome. We find no violation of due process.

Next, while Father asserts that the charge per visit was a "punitive measure designed specifically [to] frustrate [Father's] efforts to visit[,]" the only evidence in support of that contention is his own self-serving testimony. Brief of Appellant at 22. The DCS presented evidence that its cost to care for C.C. probably totaled "tens of thousands of dollars." Transcript at 151. Apparently, the trial court ordered Father to pay $35 per visit with C.C., although Father does not direct us to anything in the record other than a DCS case manager's testimony to support that. Nor does Father direct us to any evidence or citation to authority in support of his contention that those payments violated his right to due process. As such, Father has not satisfied his burden on this issue.

Issue Two: Sufficiency of the Evidence

Father next contends that the evidence is insufficient to support the involuntary termination of his parental rights. Initially, we note that the purpose of terminating parental rights is not to punish parents, but to protect the children. Weldishofer v. Dearborn County Div. of Family & Children (In re J.W.), 779 N.E.2d 954, 959 (Ind. Ct. App. 2002), trans. denied. "Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to

meet their responsibilities as parents. This includes situations not only where the child is in immediate danger of losing his life, but also where the child's emotional and physical development are threatened." Id.

In reviewing a decision to terminate a parent-child relationship, this court will not set aside the judgment unless it is clearly erroneous. Everhart v. Scott County Office of Family & Children, 779 N.E.2d 1225, 1232 (Ind. Ct. App. 2002), trans. denied. Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences to support them. Id. When reviewing the sufficiency of the evidence, this court neither reweighs the evidence nor judges the credibility of the witnesses. Id.

To support a petition to terminate parental rights, the DCS must show, among other things, that 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). The DCS must also show that termination is in the best interest of the child and that there exists a satisfactory plan for the care and treatment of the child. Ind. Code § 31-35-2-4(b)(2)(C), (D). These factors must be established by clear and convincing evidence. Ind. Code § 31-34-12-2.

In interpreting Indiana Code Section 31-35-2-4, this court has held that the trial court should judge a parent's fitness to care for his or her child as of the time of the termination hearing, taking into consideration evidence of changed conditions. J.K.C. v. Fountain County Dep't of Pub. Welfare, 470 N.E.2d 88, 92 (Ind. Ct. App. 1984).

However, recognizing the permanent effect of termination, the trial court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. Id. To be sure, the trial court need not wait until the child is irreversibly influenced by a deficient lifestyle such that the child's physical, mental and social growth is permanently impaired before terminating the parent-child relationship. Id. at 93. When the evidence shows that the child's emotional and physical development is threatened, termination of the parent-child relationship is appropriate. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

Father's sole contention on appeal is that "his motion for continuance of the May 1, 2007, hearing should have been granted and he be allowed well more than the three months he was given from November 2006 through the TPR filing of February 7, 2007 to reestablish himself." Brief of Appellant at 13.[3] But Father does not direct us to any evidence in the record to support his contention that more time would have made any difference in the outcome of this case. And the DCS presented clear and convincing evidence that the continuation of the parent-child relationship poses a threat to C.C.'s well-being, that termination is in C.C.'s best interests, and that the DCS has a satisfactory plan for C.C., namely, adoption.

In her report filed on September 9, 2005, Family Preservation Counselor Stone stated:

[3] Father's argument on this issue is four pages long, but he does not challenge the sufficiency of the evidence supporting any of the elements of Indiana Code Section 31-35-2-4 in the context of that argument. To the extent Father contends the evidence is insufficient to support the statutory elements, that issue is waived for lack of cogent argument.

> [Father] continues to be [defensive] regarding his responsibility for this case. He does not receive parenting instruction well and is resentful of insights made. . . . [Father] completed the IOP program through Alpine Clinic however failed to complete the Aftercare program. [Father] states that he will complete a program on his own however when questioned at the case conference said that he was going to wait to see what the Court said, despite being advised by his family preservation counselor to complete the intake process for Wabash Valley Outpatient. HGCF has been advised that [Father] has been seen on two different occasions at Harry's Chocolate Shop, a local bar. On September 7, 2005 the family preservation counselor observed an empty beer bottle in [Father's] apartment. This is in direct violation of his work in addictions services and against his terms of probation. . . . [Father] has been unsuccessfully discharged from Alpine Counseling and has not obtained any additional services.

Appellant's App. at 304. Rhonda Friend, the DCS caseworker assigned to C.C.'s case, testified at the second termination hearing that Father had not successfully contacted her since the previous termination proceedings.[4] Friend also testified that Father had not participated in any court-ordered services since November 13, 2006. Finally, Friend testified that in her opinion, Father's parental rights should be terminated.

Father merely asks that we reweigh the evidence, which we will not do. The evidence is sufficient to support the trial court's conclusions both that there is a reasonable probability that the conditions that resulted in the child's removal will not be remedied and that a continuation of the relationship between Father and C.C. poses a threat to the child's well-being. And there is also clear and convincing evidence that termination is in the best interest of the child and that there exists a satisfactory plan for the care and treatment of the child. We conclude that the DCS presented sufficient evidence to support the trial court's termination of Father's parental rights.

[4] Father called Friend after hours and left messages, but he never called her during business hours, and Friend was unable to reach Father at the phone number he left for her.

Affirmed.

BAILEY, J., and CRONE, J., concur.