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IN THE
COURT OF APPEALS OF INDIANA

IN RE: THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF: D.P., JR., Child, and DANIEL PALLICK, SR., Father,	)	
DANIEL PALLICK, SR.,	)	
Appellant-Respondent,	)	
vs.	)	No. 02A05-0704-JV-214
INDIANA DEPARTMENT OF CHILD SERVICES, STATE OF INDIANA,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Charles F. Pratt, Judge
Cause No. 02D07-0605-JT-102

December 11, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Daniel Pallick, Sr., ("Father") appeals the termination of his parental rights to D.P. Because the evidence supports the judgment, we affirm.

FACTS AND PROCEDURAL HISTORY

Father's wife Amber ("Mother") gave birth to D.P. on June 16, 2004. In April of 2005, Mother filed for divorce because their "relationship turned violent." (Tr. at 99.) On May 28, 2005, D.P. was removed from Mother's care after family members discovered D.P. had a cigarette burn that had been inflicted while he was in Mother's care and for which he had not received medical treatment. The court placed D.P. with his maternal grandmother, Diane Knapp ("Grandmother"). At the time, Father was serving a thirty-day sentence for invasion of privacy.

D.P. was adjudicated a CHINS on June 29, 2005. Mother and Father were ordered to complete a number of services, but neither complied. On April 25, 2006, the court modified the permanency plan to termination of parental rights. Thereafter, Father completed a psychological assessment and parenting classes and also attended some drug screenings. On May 9, 2006, the DCS filed a petition to terminate parental rights. Mother consented to voluntarily terminate her rights.

The court held a termination hearing as to Father's rights on November 15, 2006. The court entered the following relevant findings and conclusions in the order terminating Father's rights:

> 7. The terms of the parent participation plan and the dispositional decree were determined through a mediation (facilitation) process conducted immediately preceding the Dispositional Hearing. The Father was present during the facilitation process at which time the terms and expectations of his responsibilities under the plan were discussed. He was

also present at the Dispositional hearing and he acknowledged that he understood the plan and was willing and able to comply.

8. The Father was ordered under the dispositional decree to refrain from criminal activity. However, he was later incarcerated for probation violations arising from a prior Driving Under the Influence conviction.

9. By the terms of the parent participation plan, the [F]ather was to enroll in and complete SCAN's Home Based Services. However, the DCS made the referral when the [F]ather was incarcerated. No new referral was ever made after his release in the underlying CHINS case for the child named herein.

10. The Respondent Father was also ordered to submit to random urinalysis testing as secured through Lutheran Social Services and to refrain from the use of alcohol, illegal drugs, and other substance abuse. He has admitted to smoking marijuana approximately once every four months since June, 2005. However his assertion of a limited marijuana and drug use is not supported by the evidence. In April, 2006 he tested positive for the presence of cocaine in his system. The Father was twice referred to Lutheran Social Services. Following the second referral dated May 8, 2006, LSS caseworker, Stuart Hepler, sent Respondent a series of letters to initiate services. From Mr. Hepler's testimony, the court finds that the Father was initially cooperative. However, beginning in June, 2006, the Father again tested positive for marijuana. The following reflects the Father's drug screen results for the month of June, 2006.

a. June 8, 2006: [The Father tested] positive for marijuana.
b. June 12, 2006: The [F]ather failed to appear.
c. June 15, 2006: [T]he [F]ather tested positive for marijuana. The laboratory test confirmed that the sample given by the father had been diluted.
d. June 19, 2006: The [F]ather failed to appear.
e. June 22, 2006: The [F]ather tested positive for marijuana.

11. Believing that the services ordered through Lutheran Social Services were not of any assistance to him, the Father unilaterally quit participating. On July 7, 2006, the Father appeared at the LSS offices and advised that he would not any longer participate in the services.

12. The Father has admitted to the DCS casemanager that he has used marijuana as recently as October 19, 2006.

13. Despite his participation in the facilitation process at the Dispositional hearing, the Respondent Father now asserts that he did not complete a drug and alcohol assessment because he did not know of that requirement.

14. The Father did participate and complete parenting classes at C.A.P., Inc. Following completion of that course, the director, Pat Geimer, recommended that she observe the [F]ather's visitations to observe his

interaction with the child.

15. According to the testimony of Leah Rottinghaus, a case manager for eh [sic] agency charged with the responsibility to visitations [sic], the Father attended thirty-one (31) of the forty-two (42) scheduled visits. His visitation was placed on hold on three occasions. Once because he was incarcerated in jail for thirty (30) days; a second time following two failures to appear in December, 2005; and a third time following two failures to appear in September, 2006.

16. The Father is self employed. His income is limited. Over the past year, he has only had four to five months of employment. He resides in his father's residence and assists his father in exchange for rent. He does not have a telephone and relies on notices by mail or face to face contact.

17. On two separate occasions, the DCS casemanager, Jennifer Hayes, attempted but was unable to inspect the Father's residence because no one was at home. On one of those occasions, Ms. Hayes had made prior arrangements to meet the Father at his house. However when she arrived he was not there.

18. According to the testimony of the casemanager Hayes, the court finds that notices were sent to the Father at the address he furnished to her. Nevertheless, the Father complains that he has not been given notices of case conferences and believes he has not been afforded the services that are relevant and productive toward the goal of reunification. In support of his contention, the Father advised the court that he insisted on scheduling his own case conferences with the DCS casemanager. A conference was held at his request. However, during the meeting he became frustrated. Fearing that he would get angry, he left. The Father explained that he was frustrated because, he was not provided a lawyer, there was ineffective communication, he had not received notices of case conferences, and, most importantly, his visits with his son continued to be limited.

19. In response to the Father's request for additional visitation with his son, the DCS Casemanager advised the Father that his continued marijuana use, his failure to provide her with a release to communicate with his probation officer, and the difficulties she had had in making contact with him precluded an expansion of his visitation. According to the testimony of DCS Casemanager Jennifer Hayes, the court finds that when she attempted to discuss matters with him, the [F]ather would yell and cuss.

20. The Father completed a psychological evaluation at Park Center, Inc. However, he did not provide the test results to the Department of Child Services. It is unclear to the court why the DCS did not receive the [F]ather's psychological evaluation by means independent of the [F]ather.

21. Despite having been convicted of invasion of privacy and being the subject of a protective order, the Father denied that he had ever been physically violent. He was therefore ruled ineligible for services by the

Center for Nonviolence; a program that he was ordered to satisfactorily complete.

22. By the testimony of the Mother the court finds the relationship between her and the Father was verbally and physically violent.

23. A Review Hearing was held on November 22, 2005 in the underlying CHINS case. The Court found that the Father was not in compliance with the dispositional decree. Similarly in the permanency order of April 25, 2006, the court entered findings that the Father was not in compliance with services.

24. On October 19, 2006, the Court conducted a review hearing and found that the [F]ather was not in compliance with the parent participation plan and the reasons for the child's removal from the parents' care were not likely to be corrected.

25. On October 24, 2006, the Respondent parents appeared at an Initial Hearing regarding siblings to the child in this case. The Parent Participation Plan ordered for the Father was modified and he was ordered to obtain and maintain employment, submit to random urinalysis testing and refrain from the use of alcohol and controlled substances, complete SCAN home based services, maintain visitation with the children, and pay support and fees as ordered.

26. The Allen County Court Appointed Special Advocate (CASA) director has concluded that the termination of the parent child relationship is in the child's best interests. In arriving to his conclusion, the CASA Director noted that the case has been pending since June 2005 and that neither parent has been compliant with services. He further believes that although the father loves his child, the [F]ather's poor judgment and decision making ability hampers his successful completion of services. The child has been in relative care since through [sic] the pendency of the CHINS case and is doing well.

TO THE ABOVE FINDINGS OF FACT THE COURT APPLIES THE RELEVANT STATUTORY LAW AND CONCLUDES THAT:

* * * * *

4. The Father repeatedly referenced that no one would help him. Yet, he self-excluded himself [sic] from certain services, did not participate in others, and continued to consume illegal substances. The Father argues that the allegations regarding him in the underlying CHINS petition were not the basis for the child's removal from the parent's care. In addition he argues that he has attempted to comply with the services but was frustrated in the process. The court must consider the basis for the child's initial removal from the home and the reasons for the child's continued placement outside the home. The DCS is not required to file a new CHINS petition for each new circumstance that may be discovered during the pendency of the CHINS case. Patterns of conduct and the circumstances at the time of

> termination hearing can be considered in determining whether to terminate parental rights. In the case of Haney v. Adams County Office of Family and Children, the court stated that"[sic] A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, will support a finding that there exists no reasonable probability that the conditions will change." In this case, the Father has continued to test positive for marijuana and he did not complete and [sic] drug and alcohol assessment. He discontinued the drug testing program through L.S.S. He did not complete the Center for Nonviolence classes because he would not admit that he had been violent in the past. His denial belies the fact that he was placed under a protective order, was jailed for invasion of privacy, and that he admitted that he left the DCS offices because he feared his level of frustration would cause him to become angry. Although he completed parenting classes the director of the agency providing the classes (C.A.P., Inc.) wanted to observe his interaction with the child. The Father has not fully cooperated with the DCS. Despite having made prior arrangements to meet him at his home, he was not present when the casemanager arrived. He has not cooperated in permitting the casemanager to communicate with his probation officer. Most recently he was named as a respondent in a new CHINS case involving siblings to the child in this case. The Father has demonstrate[d] a pattern of conduct that causes this court to conclude that by the clear and convincing evidence there is a reasonable probability that the reasons that brought about the child's placement outside the home will not be remedied.

(Appellant's App. at 8-11.)

DISCUSSION AND DECISION

A trial court may not terminate a parent's rights unless the State demonstrates by clear and convincing evidence "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); *see also In re W.B.*, 772 N.E.2d 522, 529 (Ind. Ct. App. 2002) (noting State's burden of proof).

When a parent appeals the termination of his parental rights, we will not reverse the trial court's judgment unless it is clearly erroneous. *M.H.C. v. Hill*, 750 N.E.2d 872, 875 (Ind. Ct. App. 2001). When determining whether the evidence supports the findings and judgment, we may not reweigh the evidence or reassess the credibility of the witnesses. *Id*. We will set aside the trial court's findings only if they are clearly erroneous; that is, if the record lacks any evidence or reasonable inferences to support them. *Id.* We consider only the evidence and reasonable inferences therefrom that support the judgment. *In re D.G.*, 702 N.E.2d 777, 780 (Ind. Ct. App. 1998).

1. Unchanged Circumstances

Father first challenges whether the conditions resulting in the removal of the child would not be remedied. To determine whether there is a reasonable probability the conditions justifying a child's continued placement outside the home will not be remedied, "the trial court must judge a parent's fitness to care for [the] children at the time of the termination and take into consideration evidence of changed conditions." *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied sub nom. Timm v. Office of Family & Children*, 753 N.E.2d 12 (Ind. 2001). Nevertheless, the trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.* The court may consider the parent's response to services offered by an Office of Family and Children when determining whether conditions have changed. *See M.B. v. Delaware County Dept. of Welfare*, 570 N.E.2d 78, 82 (Ind. Ct. App. 1991). When viewed under that standard, the evidence is sufficient to support the court's conclusion the conditions resulting in removal would not be remedied.

Father first complains about the "relatively innocuous allegations in the Chins Petition directed towards [Father]." (Appellant's Br. at 12-13.) He claims none of the CHINS allegations suggested he was unable or unwilling to parent D.P. or reunification would harm D.P. As Father "entered admissions," (*id.* at 13), essentially consenting to D.P. being declared a CHINS, he cannot now argue the evidence was insufficient to justify the CHINS finding.[1]

Father's next complaint is that DCS failed to stay involved with his case. He says it made only "inadequate and token attempts" to conduct a home study, (Appellant's Br. at 13), "made no attempt to obtain the results" of his psychological assessment, (*id.* at 15), and failed to order home-based services for him after he was released from incarceration. Father testified he had never, in 18 months of services, received a letter from DCS regarding a case conference. However, the DCS caseworker testified she sent letters reminding him of required services and the contact information for those providers. The court was entitled to believe the DCS caseworker. (*See* Finding 18.)

Moreover, the evidence suggests Father made inadequate and token attempts to comply with some of the case plan's basic requirements. For example, Father claims he is self-employed doing construction work and worked "about maybe four to almost five months" in the past year. (Tr. at 38-9.) He asserts he could have afforded a small apartment on those funds, but when asked what his income was he said he was "not even

[1] Even if Father had not consented to the CHINS finding, Father waived any argument regarding the validity of the CHINS determination by failing to appeal that determination within thirty days of its entry.

really for sure on that." (*Id*. at 42.) The trial court was not required to believe Father's testimony of employment without supporting evidence regarding a source of income by which Father could provide stable housing for his son as required by the dispositional order. As for Father's use of illegal drugs, he denies ever using cocaine, but he tested positive for it in April of 2006. Father admits using marijuana since June of 2005, "maybe once every four months," (*id*. at 27), but his urinalysis results support the finding his use was more regular. Father also missed a number of urinalysis drops even though he had been told that a missed appointment would count as a positive test. When a parent has demonstrated no regular source of income with which to support the child and simultaneously demonstrates an inability to refrain from using illegal substances, we are hesitant to declare DCS was obliged to spend additional time and energy ensuring Father completed other services.

In addition, Father asserts the trial court erroneously concluded Father should have completed the Center for Nonviolence Classes because Father had been violent as an adult. Mother testified Father had been violent with her, and the court found the relationship between Mother and Father had involved physical violence.[2] As the trial court is charged with weighing the evidence and assessing the credibility of the witnesses, we cannot find error.

[2] Father also claims a protective order does not demonstrate Father was violent. Grandmother reported she had a protective order against Father because he "threatened to kill her if she didn't give him his son back." (State's Ex. 11 at 1.)

The record supports the findings and the conclusion "the reasons that brought about the child's placement outside the home will not be remedied." (App. at 11.)

2. Best Interests

Father asserts the DCS failed to demonstrate termination was in D.P.'s best interests. To support this argument, Father cites his completion of parenting classes and a psychological evaluation, along with "the number and quality of his visits." (Appellant's Br. at 19.) However, Father fails to acknowledge his continued drug use, his failure to complete nonviolence classes, and his failure to obtain employment sufficient to create a consistent stream of income to provide for D.P. The court's conclusion is supported by its findings and by the evidence.

3. Satisfactory Plan

Finally, Father alleges the plan to keep D.P. with his Grandmother is unsatisfactory because she has a history of substantiated abuse or neglect.[3] The general plan of adoption is sufficient to satisfy the statutory requirement for a permanency plan. *B.R.F. v. Allen County Dept. of Pub. Welfare*, 570 N.E.2d 1350, 1352-353 (Ind. Ct. App.

[3] We note the court's order did not find the DCS plan was adoption by Grandmother. Rather, it found "adoption of the child is an appropriate plan," (Appellant's App. at 11), because then D.P. could be placed in a "safe permanent home." (*Id.*) In addition, the court ordered DCS "to provide the necessary supervision and services to insure the child's care and permanency." (*Id.* at 12.) Nevertheless, because the record suggests adoption by Grandmother is the plan, we briefly address Father's argument.

We also note D.P. has been with Grandmother since being removed from Mother's care in May of 2005. Accordingly, we question the timeliness of Father's challenge to Grandmother's ability to care for D.P.

1991). Whether Grandmother is an appropriate placement for the child is a matter to be determined in a different proceeding.[4]

For the foregoing reasons, we affirm the judgment of the trial court.

Affirmed.

DARDEN, J., and CRONE, J., concur.

[4] While the initial CHINS petition included allegations that Grandmother's father and Grandmother's former husband had abused Mother and that Grandmother had failed to protect Mother from their abuse, Grandmother denied those allegations at the initial CHINS hearing. Father has not directed us to evidence of the validity of those allegations, and we will not search the record to find such evidence. *See* Ind. Appellate Rule 46(A)(8). Nevertheless, Grandmother submitted to a dispositional decree in the underlying CHINS proceeding regarding D.P., (*see* State's Ex. 9 at 3-4), and nothing in this record suggests she did not fully comply with that decree.