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IN THE
COURT OF APPEALS OF INDIANA

IN RE MATTER OF: V.R., Minor, JIMMY R., Father, Appellant-Respondent, vs. LAKE COUNTY OFFICE OF FAMILY AND CHILDREN and LAKE COUNTY COURT APPOINTED SPECIAL ADVOCATE, Appellee-Petitioner.	)	No. 45A05-0803-JV-185

APPEAL FROM THE LAKE SUPERIOR COURT – JUVENILE DIVISION
The Honorable Mary Beth Bonaventura, Senior Judge
Cause No. 45D06-0610-JT-125

August 26, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Jimmy R. ("Father") appeals the involuntary termination of his parental rights to his daughter, V.R., claiming the Lake County Department of Child Services ("LCDCS") failed to prove: (1) that the conditions resulting in V.R.'s removal or continued placement outside his care will not be remedied and that continuation of the parent-child relationship poses a threat to V.R.'s well-being and (2) that termination of his parental rights is in V.R.'s best interests. Concluding that the juvenile court's judgment terminating Father's parental rights to V.R. is supported by clear and convincing evidence, we affirm.

Facts and Procedural History

Father is the biological father of V.R., born December 9, 2003. On Friday, March 19, 2004, the LCDCS received a referral from St. Mary Medical Center staff because they suspected then-three-month-old V.R. and her three siblings were victims of neglect.[1] Father, who had been out of town for the previous two days, had taken the children to the hospital after returning home and discovering the children were very ill and had been left alone. The referral, which indicated that some of the children required hospitalization,

[1] Father is not the biological father of V.R.'s older siblings, A.L., K.M., and L.O. Following the initial CHINS determination, the children's mother did not successfully participate in services, and her parental rights to V.R.'s siblings were terminated on August 23, 2006. Father and Mother's parental rights to V.R. were subsequently terminated on December 12, 2007. Mother does not participate in this appeal. Consequently, we limit our recitation of the facts solely to those pertinent to the termination of Father's parental rights to V.R.

also alleged that the children, ages six, three, one, and three-months at the time, had been left home alone on multiple other occasions and that the children's mother had an apparent drug abuse problem. After initiating an investigation and verifying the allegations, all four children were immediately taken into protective custody. Due to the severity of their illnesses, however, V.R. and one of her siblings remained in the hospital for two days before being released to the LCDCS.

A detention hearing was held on April 6, 2004. The juvenile court found probable cause to believe the children were in need of services ("CHINS") and ordered them to remain temporary wards of the LCDCS. Additionally, services were ordered for both parents, including psychological evaluations and any recommended treatment, drug and alcohol evaluations and any recommended treatment, family and individual counseling, parenting classes, random drug screens and supervised visitation.

On August 27, 2004, the trial court held an initial hearing on the LCDCS's CHINS petition, and Father denied the allegations. A fact-finding hearing on the CHINS petition was later commenced on September 27, 2004. Following the hearing, the juvenile court granted the LCDCS's petition, making V.R. a ward of the LCDCS, retroactive to April 6, 2004.

Father initially complied with court-ordered services. Father underwent a drug and alcohol evaluation and submitted to random drug screens, all of which were returned as "clean." Tr. p. 90. Father also completed parenting classes, participated in individual counseling, and exercised regular visitation with V.R.

On or about February 28, 2005, Father underwent a psychological evaluation, conducted by Dr. Harry Gunn ("Dr. Gunn"). This evaluation revealed that Father had suffered a mental breakdown approximately one year earlier, that he was under a psychiatrist's care, and that he was on medication. The evaluation further revealed that Father, who suffers from "psychiatric episodes," has several severe mental disorders, including schizophrenia and schizoaffective disorder, major depression with psychotic processes, and paranoid ideation with a well-developed persecutory delusionary system. *Id.* at 91. The results of the psychological evaluation, including Dr. Gunn's assessment that various parenting difficulties were likely to arise due to Father's mental disorders and that Father would not be a "good risk as far as child rearing is concerned," were presented to the juvenile court at a subsequent review hearing. *Id*. at 130. Consequently, in August 2005, the court ordered Father to provide his past mental health records in order to better evaluate his condition and to make appropriate referrals for additional services. Father refused to comply.

At a review hearing in January 2006, the court expressed displeasure in Father's refusal to comply with its request and directed the LCDCS and its legal department to continue to seek Father's past psychiatric history and treatment. The LCDCS later received a report from Lakeside Counseling Services in East Chicago that Father had been to their facility, was diagnosed as schizophrenic, had attended group therapy on occasion, and was under the care of psychiatrist Dr. Eugene Khan, who saw Father bi-monthly and monitored Father's medication. The LCDCS presented this new

information regarding Father's medical history to the court at a hearing held on June 14, 2006.

During the June 14 hearing, the court questioned Father as to his current participation with Lakeside Counseling Services. Father informed the court that he was no longer seeing Dr. Kahn and that he had taken himself off of his medication. The trial court thereafter approved the LCDCS's modification of permanency plan for V.R. from reunification to termination of Father's parental rights and ordered that all services, including visitation, cease. The LCDCS thereafter filed a petition for the involuntary termination of Father's parental rights.

On July 17, 2007, a fact-finding hearing on the termination petition was set to commence. However, at the request of counsel for the LCDCS, the hearing was reset for an omnibus hearing. The delay was requested to allow Father time to submit to a new psychiatric evaluation in order to better assess his current ability to parent V.R; however, Father refused to participate. A three-day fact-finding hearing eventually commenced on October 2, 2007, was continued on November 19, 2007, and concluded on November 27, 2007. Father was present and represented by counsel. At the conclusion of the hearing, the juvenile court took the matter under advisement. On December 12, 2007, the juvenile court issued its judgment, which contained specific findings, terminating Father's parental rights to V.R. This appeal ensued.

Discussion and Decision

This Court has long had a highly deferential standard of review in cases involving the termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001).

Thus, 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*. 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*. Clear error is 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).

Here, the juvenile court entered specific findings in terminating Father's parental rights. Where the court has entered findings of fact, we first determine whether the evidence supports the findings. *D.D.*, 804 N.E.2d at 265. Then, we determine whether the findings support the judgment. *Id.* A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. *Id.* A judgment is clearly erroneous only if the findings do not support the juvenile court's conclusions or the conclusions do not support the judgment thereon. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

"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*. However, because the ultimate purpose of the law is to protect the child, the parent-child relationship must give way when the parents are "unable or unwilling to meet their parental responsibilities." *K.S.*, 750 N.E.2d at 836. The involuntary termination of parental rights is an extreme measure

that terminates all rights of the parent to his or her child and is therefore designed to be used only as a last resort when all other reasonable efforts have failed. *In re E.S.*, 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002). However, a juvenile court need not wait until a child is irreversibly influenced by a deficient lifestyle such that her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. *Id*.

In order to terminate a parent-child relationship, the State is required to allege and prove 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;
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> * * *
>
> (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) and -8. The State must establish each of these allegations by clear and convincing evidence. *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992). Father concedes that V.R. had been removed from his care, pursuant to a dispositional decree, for at least six months prior to the termination

hearing and that the LCDCS has a satisfactory plan for the care and treatment of V.R., namely, adoption by her current foster parents. Father argues on appeal, however, that the LCDCS did not satisfy its burden of proving either that the conditions resulting in removal will not be remedied or that continuation of the parent-child relationship poses a threat to V.R.'s well-being. Specifically, Father claims he was "in total compliance with his case plan" when the petition for termination was filed and that "there has never been any testimony presented that [Father] ever harmed or injured his daughter in any matter." Appellant's Br. p. 3, 5. He further asserts the LCDCS failed to prove termination of his parental rights is in V.R.'s best interests. Father argues "[s]tatistics have proved that children are much more balanced adults when they are raised with fathers in the home[,]" and he claims the juvenile court "failed to take into account the testimony that [he] was not required to take medication . . . [and] has had no further psychiatric breakdowns[.]" *Id.* at 6, 11.

I. Conditions Will Not Be Remedied

We first pause to note that Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. It therefore only requires the juvenile court to find one of the two requirements of subsection (B) to be established by clear and convincing evidence. *See L.S.*, 717 N.E.2d at 209. Here, the juvenile court found both conditions had been met, that is to say, that the LCDCS proved by clear and convincing evidence both that there is a reasonable probability the conditions resulting in V.R.'s removal and continued placement outside Father's care will not be remedied and that continuation of the parent-child relationship poses a threat to V.R.'s well-being. Because only one is required, we

address whether there is a reasonable probability the conditions resulting in V.R.'s removal and continued placement outside of Father's care will not be remedied.

When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the juvenile court must judge a parent's fitness to care for his or her children 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 whether there is a substantial probability of future neglect or deprivation of the children. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

In making this determination, the juvenile court made the following pertinent findings:

> There is a reasonable probability that the conditions resulting in the removal of the child from her parents' home will not be remedied in that:
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> * * *
>
> The child was removed from the parents after the child and her siblings were left home alone. The oldest [child] was not of school age and all the children were sick[,] including [V.R.].
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> * * *
>
> [The] Court finds the father, [Jimmy R.], was referred for drug assessment, random screens and parenting classes[,] all of which he completed successfully. The drug screens were negative. The father completed his parenting classes. However, he suffers from paranoid personality and is supposed to take psychotropic medications which he is not doing. The father could [have] benefited from further counseling[,] which he has not done. The Court ordered him to have another psychiatric evaluation and he has not done it to date. The Court finds he has had a history of psychiatric hospitalizations and the report from the doctor indicates from one of his

> psychiatric evaluations that he needs to be closely monitored by a psychiatrist on a regular basis. The father has an extensive criminal history including the use of weapons, murder, burglary, domestic battery, possession of cannabis and criminal sexual abuse.
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> The Court further finds in May of 2007, the Court ordered the father to have a current psychological evaluation to see what his mental state was and the father refused. The father has not provided that information to the Court as of this date.

Appellant's App. pp. 1-2. The evidence most favorable to the judgment supports these findings, which in turn support the juvenile court's judgment terminating Father's parental rights.

The record reveals that, following V.R.'s removal from Father's care, Father initially complied with court orders. LCDCS case manager Sheila Walker ("Walker") testified that Father completed parenting classes, participated in individual counseling, underwent a drug assessment and submitted to random drug screens, and regularly exercised visitation with V.R. Additionally, Walker reported that all drug screens for Father had been "clean." Tr. p. 90. By the time of the termination hearing, however, Father was no longer in compliance with court orders. Significantly, Father still had not provided the court with his past psychiatric history and treatment, and he had failed to submit to the most recent court-ordered psychological evaluation despite repeated requests and over a year to do so. Also significant, Father admitted he was no longer seeing his psychiatrist at Lakeside Community Services and that he had removed himself from his medications.

At the termination hearing, Dr. Gunn, who had performed the 2005 psychological evaluation on Father, stated his assessment revealed Father suffers from "a very large

range of severe emotional disturbance[s]." *Id*. at 130. Dr. Gunn further testified that he had diagnosed Father with schizophrenic disorder, schizoaffective disorder, major depression with psychotic processes, and paranoid ideation with a well-developed persecutory delusionary system. Dr. Gunn indicated Father's mental illnesses would likely impair his judgment and interfere with his ability to successfully parent a child because of the type of mental illnesses Father has, coupled with "his inability to follow the game plan for treatment of a disorder[,]" "lack of cooperation," and "suspiciousness where others are concerned[.]" *Id*. at 141. Finally, when questioned whether he believed Father's mental illnesses are likely to still be present, Dr. Gunn responded, "Absolutely. Schizophrenia, paranoia[,] even many of the depressions don't just suddenly go away." *Id*. at 140.

A juvenile court may properly consider the services offered by the Department of Child Services, and the parent's response to those services, as evidence of whether conditions will be remedied. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1252 (Ind. Ct. App. 2002), *trans. denied*. "A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support 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*. Moreover, where there are only temporary improvements, and the pattern of conduct shows no overall progress, the court might reasonably infer that under the circumstances, the problematic situation will not improve. *In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005).

Based on the foregoing, we conclude that the juvenile court's determination there is a reasonable probability the conditions resulting in V.R.'s removal and continued placement outside Father's care will likely not be remedied is supported by clear and convincing evidence despite Father's temporary initial compliance with court orders.[2] *See R.G. v. Marion County Office, Dep't of Family & Children*, 647 N.E.2d 326, 330 (Ind. Ct. App. 1995) (concluding court may properly consider a parent's mental disability where parent is incapable or unwilling to fulfill his legal obligations in caring for his child, not only in situations where child is in immediate danger of losing her life, but also where child's emotional and physical development is threatened), *trans. denied*.

II. Best Interests

Next, we address Father's assertion the juvenile court erred when it found termination of his parental rights to be in V.R.'s best interests. We are mindful that in determining what is in the best interests of a child, the court is required to look beyond the factors identified by the Department of Child Services and look to the totality of the evidence. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). The purpose of terminating parental rights is not to punish the parents but to protect the children involved. *K.S.*, 750 N.E.2d 832. The juvenile court must therefore subordinate the interests of the parents to those of the children when determining the best interests of the children. *McBride*, 798 N.E.2d at 203. Additionally,

[2] Having determined that the juvenile court's findings and conclusion regarding the remedy of conditions is supported by clear and convincing evidence, we need not address whether the LCDCS proved by clear and convincing evidence that the continuation of the parent-child relationships poses a threat to V.R.'s well-being. *See L.S.*, 717 N.E.2d at 209.

the juvenile court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.*

In addition to the findings set forth previously, the juvenile court made the following additional pertinent finding in determining that termination of Father's parental rights is in V.R.'s best interests:

> The Court finds [V.R.'s] siblings[,] whose parental rights were terminated at a prior hearing[,] all live in the current foster home and that foster mother had adopted them. [V.R.] is bonded to her siblings and is in that current foster home.[3]
>
> * * *
>
> It is in the best interest of the child and her health, welfare and future that the parent-child relationship between the child and her parents be forever fully and absolutely terminated.

Appellant's App. p. 2. The record reveals that these findings are supported by testimony from the current LCDCS family case manager as well as the PSI Family Services case manager.

Walker testified she believed termination of Father's parental rights to V.R. was in V.R.'s best interests. In so doing, Walker acknowledged Father's love for V.R. and his initial compliance with services. In explaining why Father's parental rights had not been terminated a year earlier during the termination proceedings involving V.R.'s siblings Walker stated, "I wanted to give him every benefit of the doubt. I wasn't in a rush to file

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[3] The parties do not argue on appeal, but we feel compelled to mention that this finding contains an inconsistency with the evidence in the record. V.R.'s current foster parents adopted two, not "all" of V.R.'s siblings. In light of the accuracy of the remaining portion of this finding and the remaining findings, however, we deem this error to be harmless. *See M.M.*, 733 N.E.2d at 13 (concluding that minor errors in certain findings were harmless in light of the fact additional accurate findings supported the termination).

TPR on [Father]." Tr. at 123. However, when asked why she felt termination was now in V.R.'s best interests, Walker explained, "As of today, [Father] has refused to take the psychological test that the court ordered in May of 2007. [LCDCS] still is not sure of [Father's] mental state or whether he could care for [V.R.]. *Id*. at 109. Walker further testified that V.R. had been living in her current pre-adoptive foster home with two of her siblings since October 2004, that the foster home is "very appropriate[,]" that V.R. had bonded to her foster Mother, and that she felt the foster mother would continue to provide V.R. with a "loving, caring, and stable" home. *Id*. at 107- 08.

Similarly, Jose Juarez, case manager with PSI Family Services, a foster parent licensing agency, agreed that termination was in V.R.'s best interests. Juarez testified that he had observed V.R. in the foster home. Juarez felt the foster mother was a "[v]ery good parent" and that both she and her husband "provide a very loving and nurturing home." *Id*. at 165. Juarez also testified that V.R. had lived with her foster parents since she was ten months old and that she had bonded with them and her two biological siblings, who had already been adopted by her foster parents. Juarez further believed that if V.R. was taken away from her foster home she would be "very devastated." *Id*. at 167.

Based on the totality of the evidence, we are convinced that although Father may have a sincere desire to be reunited with his daughter, the testimony set forth above reflecting the fact V.R. is happy, bonded with, and thriving in her pre-adoptive foster home, coupled with the evidence of Father's failure to take prescribed anti-psychotic medication despite multiple severe mental illnesses, failure to submit to court-ordered psychological counseling, and current unknown mental condition, is sufficient to support

the juvenile court's determination that termination of Father's parental rights is in V.R.'s best interests. Father's arguments to the contrary amount to an invitation to reweigh the evidence, and this we may not do. *D.D.*, 804 N.E.2d at 264.

Conclusion

In sum, the record reveals the LCDCS proved by clear and convincing evidence all the statutory elements required for the termination of Father's parental rights to V.R. We 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." *A.N.J.*, 690 N.E.2d at 722 (quoting *Egly*, 592 N.E.2d at 1235). We find no such error here. We therefore affirm the juvenile court's judgment.

Affirmed.

KIRSCH, J., and CRONE, J., concur.