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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF A.O., minor child, and J.P., his father,	)	
J. P.,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A02-0904-JV-368
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner,	)	
and	)	
CHILD ADVOCATES, INC.,	)	
Co-Appellee.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Larry E. Bradley, Commissioner
Cause No. 49D09-0809-JT-43135

October 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent J.P. (Father) appeals the trial court's order terminating the parental relationship between Father and A.O., his son. Father argues that there is insufficient evidence supporting the termination order. Finding sufficient evidence, we affirm.

FACTS

A.O. was born to Father and D.O. (Mother) on January 26, 2007. Father and Mother were not married. Father was present at the hospital when A.O. was born and knew that the Department of Child Services (DCS) removed A.O. from Mother's care while the newborn was still in the hospital. On January 30, 2007, DCS filed a petition alleging A.O. to be a child in need of services (CHINS), alleging that Mother had open CHINS cases with her other three children and had not yet completed services to address issues of substance abuse and domestic violence. The CHINS petition also stated that Father's whereabouts were unknown, his ability or willingness to parent was unknown, and he had not established paternity. A.O. was placed with his maternal aunt, with whom he has lived since that time.

Following A.O.'s birth, on April 13, 2007, Father was sentenced to ninety days for operating a vehicle while intoxicated. He served forty-five days and was released

directly to the Hamilton County Sheriff's Department on a charge of dealing in methamphetamine. He was then released on bond on that offense. Father had not yet appeared in the CHINS case at that point in time.

In July 2007, Father met with DCS Case Manager Ranee Rathee at her office. At that meeting, Father told Rathee that he was interested in consenting to A.O.'s adoption by the child's aunt because he was not in a position to care for A.O. Rathee informed Father that because he had not yet appeared in court, he had not been ordered to complete services to help him reunify with his child, but that Rathee could make services available to him. Father agreed to participate in these services, so Rathee made referrals in July 2007 for Father to participate—at no cost—in a parenting assessment, drug and alcohol assessment, and parenting classes. Rathee documented these referrals in her report to the court for the CHINS case. Additionally, Rathee approved a visitation arrangement, pursuant to which Father could visit A.O. in the home of A.O.'s aunt. Rathee also approved supervised visitation at a facility in case the visitation at the aunt's home did not work out. Father did not take part in the services or visit with his child on a regular basis.

Father appeared in the CHINS matter for the first time on August 10, 2007, at which time he admitted that A.O. was a CHINS.[1] On October 5, 2007, the trial court held a dispositional hearing at which Father failed to appear. In its dispositional order, the

[1] Father failed to appear at hearings held thereafter in February, March, May, September, October, and November 2007 and in February, May, and August 2008.

trial court noted that Father indicated his intent to consent to the adoption. It further found

> that reasonable efforts have been offered and available to prevent or eliminate the need for removal from the home. After reviewing the reports and information from [DCS], service providers and other sources, which the Court now incorporates into this order . . . , the Court also finds that the services offered and available have either not been effective or been completed[, which] would allow the return home of the child without Court intervention.
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> . . . The Court also orders the Parental Participation, which is made a part of the order.

Pet. Ex. 8 at 24. The trial court then formally removed A.O. from Father's care.

Father later testified that he failed to appear at hearings, stay in contact with DCS, visit his child, or participate in services because he was planning to sign an adoption consent. At some point, Rathee scheduled an appointment for Father and Mother to sign adoption consents. Mother attended the meeting but Father failed to appear. Between January 2007 and August 8, 2008, Father visited A.O. only two or three times.

Father began using marijuana at the age of twelve, and used marijuana on a daily basis from age sixteen until twenty-three. He started drinking alcohol at the age of twenty-two, and was convicted of operating a vehicle while intoxicated in March 2004. He was released on probation and then violated probation by missing appointments and testing positive on drug screens for alcohol and marijuana. As a result, he was again incarcerated for several months.

Additionally, during the six to eight months prior to August 2008, Father used methamphetamine daily and considered himself to be a methamphetamine addict. On March 12, 2008, Father pleaded guilty to class B felony dealing in methamphetamine. The actual incident had occurred in February or March 2007, shortly after A.O.'s birth. After pleading guilty, Father absconded to Georgia even though he knew that such a trip was not permissible. When he returned to Indiana, he was arrested on August 8, 2008, and has been continuously incarcerated since that time. Father was still actively using methamphetamine at that time. On September 17, 2008, Father was sentenced to ten years, with six years executed and four years suspended. His earliest possible release date is December 20, 2010.[2] Father is also serving a concurrent five-month sentence for resisting law enforcement, with that conviction based upon his decision to abscond to Georgia following the guilty plea.

During Father's incarceration, he has completed a GED program and has also completed six months of an eight-month drug treatment program. At the time of the hearing herein, Father had just begun attending a family relationship group and intended to complete parenting classes. He also intended to attend vocational classes to help him obtain employment after his release, though he had not yet done so.

On September 23, 2008, DCS filed a petition seeking to terminate Father's parent-child relationship with A.O., and a termination hearing was held on March 27, 2009. Following the hearing, on March 30, 2009, the trial court ordered the termination of the parent-child relationship, finding, in pertinent part, as follows:

[2] Father received a six-month sentence reduction for obtaining his GED.

8. . . . [Father] will remain unavailable to parent until December 20, 2010. His ability to parent remains unknown. [Father] failed to participate in services prior to being incarcerated and would have to participate after his release from prison. It is also unknown whether [Father] will be able to remain clean and sober outside the controlled prison environment with a history of abusing substances from the age of twelve, and be able to appropriately and safely parent. By not participating in services, engaging in meaningful visitation, establishing paternity, and initially agreeing to consent to an adoption, [Father] has exhibited his unwillingness to parent [A.O.] when he was available to do so. [Father] has a history of not being a parent to his twelve year old daughter who he has seen two times in the past two and one half years.

9. Continuation of the parent-child relationship poses a threat to the well-being of [A.O.] in that [Father] is unavailable to parent. To leave this matter open until [Father] is released from prison, obtains housing and income, and completes services will detrimentally deny [A.O.] permanency with the only family he has ever known.

10. Termination of the parent-child relationship is in the best interests of [A.O.] [A.O.] has always been placed with his maternal aunt. He is provided wonderful care. He is well loved and happy. . . . Termination, providing the opportunity for a subsequent adoption, will provide [A.O.] with the knowledge that he will have permanency in a safe, secure, loving environment where his needs will be met, and with the only family he has known. It is admirable that [Father] has obtained his G.E.D. and is in classes, and has plans to continue classes, but it was the result of his actions, during the CHINS case, that made him unavailable to parent at this time. Instead of allowing more time, in excess of a year when the CHINS case has been pending for over two years, [Father's] rights should be subordinated to [A.O.'s] best interests.

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12. Lisa Fox has been [A.O.'s] Guardian ad Litem for over two years. She has observed him as being well adjusted and bonded in his placement. Given that this is the only family [A.O.] has ever known and the confusion that would arise if visitation with [Father] was to begin next year, and that [Father] does not have a

> clear plan for [A.O.], she feels it is in [A.O.'s] best interests that termination of the parent-child relationship goes forward. . . .

Appellant's App. p. 11. Father now appeals.

DISCUSSION AND DECISION

I. Standard of Review

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). We neither reweigh the evidence nor judge the credibility of witnesses, and we will consider only the evidence that supports the trial court's decision and the reasonable inferences that may be drawn therefrom. Id. If the evidence and the inferences support the trial court's decision, we must affirm. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

II. Termination

Father argues that the trial court erred by terminating his parental relationship with A.O. We acknowledge that the involuntary termination of parental rights is the most extreme sanction a court can impose on a parent because termination severs all rights of a parent to his or her children. Id. Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. Id. The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Id. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities. Id.

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

> (A) one (1) of the following exists:
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> > (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) after July 1, 1999, 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;
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> (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).

In construing this statute, this court has held that when determining whether certain conditions that led to the removal of the children will be remedied, the trial court must judge the parent's fitness to care for the children at the time of the termination hearing, taking into consideration evidence of changed conditions. In re D.J., 755 N.E.2d

679, 684 (Ind. Ct. App. 2001). A parent's habitual pattern of conduct must also be evaluated to determine the probability of future negative behavior. Id. The trial court need not wait until a child is irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship. Id.

Additionally, the trial court may consider the services offered as well as the parent's response to those services. Id. Parental rights may be terminated when parties are unable or unwilling to meet their responsibilities. Ferbert v. Marion County OFC, 743 N.E.2d 766, 776 (Ind. Ct. App. 2001). Also, when determining what is in the best interests of the children, the interests of the parents are subordinate to those of the child. Id. at 773. Thus, parental rights will be terminated when it is no longer in the child's best interests to maintain the relationship. In re B.D.J., 728 N.E.2d 195, 200 (Ind. Ct. App. 2000).

Father first argues that the trial court erroneously concluded that the conditions that led to A.O.'s removal are not likely to be remedied. Specifically, Father argues that A.O. was removed because of Mother's drug use, not because of Father's actions. We cannot agree. The CHINS petition states that, in addition to Mother's drug use, "[t]he alleged father of the child is [Father] and his whereabouts are unknown. Neither the alleged father identified, nor anyone claiming to be the father of the child, has come forward to demonstrate to DCS the ability or willingness to appropriately parent the child." Pet. Ex. 1 at 2. Therefore, A.O. was removed from his parents' care based on actions of both Mother and Father, and the trial court did not err for this reason.

Father next contends that the trial court erroneously found that he had failed to complete any required services, arguing that he was never ordered to do so. Again, we cannot agree. The dispositional order entered in the CHINS case explicitly ordered parental participation and incorporated the Parental Participation Decree. Pet. Ex. 8 at 24. The Decree, in turn, requires Father to take a number of actions, including participation in a parenting assessment, drug and alcohol assessment, random drug testing, and a substance abuse treatment program. Therefore, Father was, in fact, ordered to participate in a number of services, which he failed to do. The trial court did not err on this basis.

Father further argues that it was erroneous for the trial court to base its order on the fact that he did not regularly visit his son, emphasizing that his incarceration prevented him from doing so. The record reveals that the CHINS petition was filed in January 2007. Father was not incarcerated from January through May 2007 or from July 2007 through August 2008. During that period of nearly one and one-half years, Father failed to participate in ordered services and only visited A.O. two or three times. He had ample opportunity to demonstrate his willingness to parent A.O. and failed to do so. Therefore, the trial court did not err on this basis.

Father also argues that the trial court erroneously terminated the parent-child relationship based on a finding that his ability to parent is unknown, contending that "uncertainty about a parent's abilities does not satisfy the statutory burden of endangerment to a child's health or welfare." Appellant's Br. p. 5. While that may be true, the reason that Father's ability to parent is unknown is his own refusal to participate

in services when not incarcerated, including supervised visitation with his child. Additionally, his alcohol and marijuana abuse, methamphetamine addiction, and repeated criminal behavior further obscure the trial court's ability to predict Father's ability to parent A.O. See In re D.J., 755 N.E.2d at 684 (finding that a parent's habitual pattern of conduct must be evaluated to determine the probability of future negative behavior).

Father directs our attention to two cases in support of this argument, but we find each to be easily distinguishable from the circumstances herein. In Rowlett v. Vanderburgh County Office of Family and Children, this court reversed a termination order because the father had been incarcerated for all but two months of the CHINS and termination cases. 841 N.E.2d 615, 619 (Ind. Ct. App. 2006). Therefore, we concluded that he "had not had the opportunity to participate in services offered by the [DCS] or to demonstrate his fitness as a parent." Id. Here, in contrast, Father was not incarcerated during approximately sixteen months of the CHINS case. During that period of time, he had ample opportunities to participate in services and visit his child, but he failed to do so, and likewise failed to appear for multiple significant CHINS hearings.

Additionally, the father in Rowlett was due to be released six weeks following the termination trial, so his ability to parent outside of prison could be observed in a relatively short period of time. Here, however, Father is not due to be released until December 2010 at the earliest—twenty-one months following the termination trial. Finally, the father in Rowlett had maintained a relationship with his children while incarcerated, through letters and phone calls. Here, in contrast, Father has made no effort

to maintain a relationship with A.O., whether incarcerated or not. Therefore, we find Rowlett to be distinguishable from the circumstances herein.

In In re H.T., the father had been incarcerated during the entire life of the child; therefore, he had no opportunity to participate in ordered services. 901 N.E.2d 1118, 1119-20 (Ind. Ct. App. 2009). During his incarceration, the father had completed a college degree, a substance abuse program, and parenting classes. He had sent letters to the child and the child's caregiver from prison. He was released from prison prior to the termination trial and contacted his child's guardian ad litem the same day, but did not have the opportunity to participate in services before termination occurred.

Here, however, as noted above, Father has not maintained a relationship with A.O. and failed to participate in services during the many months when he was not incarcerated. Moreover, though Father has received a GED while in prison and has begun other services but had not completed any at the time of the termination hearing.

Finally, we note that our Supreme Court's recent termination decision is likewise distinguishable from this case. In re G.Y., 904 N.E.2d 1257 (Ind. 2009). In G.Y., the mother's criminal activity predated her child's birth and she had cared for the child for twenty months before being incarcerated. She had been a fit parent to the child during those months. While in prison, she had weekly visitation with the child and completed substance abuse treatment, parenting classes, an inmate to work program, and was completing classes toward an associate's degree. She had already obtained housing and a job for herself upon her release. Furthermore, because she had been incarcerated during the entire CHINS case, she had not had an opportunity to complete ordered services.

Here, on the other hand, Father's most recent criminal activity and methamphetamine use occurred after A.O.'s birth. He has never had or attempted to maintain a relationship with his child. He had every opportunity to participate in ordered services when not incarcerated but neglected to do so. He does not have a plan or a job in place when he is released—which, at the earliest, will occur twenty-one months after the termination trial took place. Therefore, we find G.Y. to be distinguishable from these facts as well.

In sum, Father has failed to make any effort to maintain a relationship with A.O. Since the child's birth, Father has used and dealt methamphetamine and absconded from the jurisdiction. When not incarcerated, he failed to participate in ordered services and did not appear for significant CHINS hearings. He has abused drugs since the age of twelve, has violated probation, and failed to overcome his substance abuse problem when offered treatment during probation. He has amassed four criminal convictions. Throughout the CHINS proceeding, he indicated his intent to consent to the adoption, admitting that he was not in a position to parent A.O. Though he has admirably begun participating in substance abuse treatment and parenting classes during incarceration, he has not completed those programs. He is not due to be released until December 2010 at the earliest. A.O. does not know Father and has lived his whole life with his aunt, who has provided a stable and loving home for the child. Under these circumstances, we do not find that the trial court's decision to terminate the parent-child relationship was clearly erroneous.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and RILEY, J., concur.