ATTORNEY FOR APPELLANT:

DONALD S. EDWARDS
Columbus, Indiana

ATTORNEYS FOR APPELLEE:

CARRIE T. INGRAM
Columbus, Indiana

ROBERT J. HENKE
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF: N.S., A.S., and A.S., MINOR CHILDREN AND, D.S.,	)	
Appellant-Respondent,	)	
vs.	)	No. 03A01-1005-JT-222
BARTHOLOMEW COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE BARTHOLOMEW CIRCUIT COURT
The Honorable Stephen A. Heimann, Judge
The Honorable Heather M. Mollo, Magistrate
Cause No. 03C01-0901-JT-221, 03C01-0901-JT-222, 03C01-0901-JT-223

November 30, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BARNES, Judge

Case Summary

D.S. ("Father") appeals the trial court's termination of his parental rights to L.S.,[1] A.S., and N.S. (collectively, "the Children"). We affirm.

Issue

Father raises one issue, which we restate as whether the trial court properly found a reasonable probability that the conditions resulting in the Children's removal will not be remedied or that the continuation of the parent-child relationship poses a threat to the well-being of the Children.

Facts

Father and J.S. ("Mother") were married and had three children: L.S., born in March 2000, A.S., born in March 2002, and N.S., born in September 2003. Father and Mother divorced, but at times, Mother continued living with Father.

On December 1, 2007, the Bartholomew County Department of Child Services ("DCS") removed the Children from Father and Mother after seven-year-old L.S. reported that Father stabbed her on the forearm because she was not eating her supper. L.S. reported that, after Father stabbed her, he stitched the wound himself. L.S. also reported that Father spanked her and her brothers with a belt and that there was domestic violence between Father and Mother. L.S. had bruising on her buttocks consistent with being spanked with a belt.

[1] L.S.'s name is actually A.S., but her nickname is L.S. To avoid confusion with her brother, A.S., we will refer to her as L.S.

The State charged Father with battery by means of a deadly weapon as a Class C felony and battery resulting in bodily injury as a Class D felony. In May 2008, Father pled guilty to neglect of a dependent as a Class D felony, and he was sentenced to twenty-seven months suspended to probation.

The Children initially were placed in foster care, and later they were placed with their maternal grandmother. The DCS filed a petition alleging that the Children were children in need of services ("CHINS"). Mother admitted the allegations in the petition, and Father denied the allegations. After a fact-finding hearing, the trial court found that the Children were CHINS. The trial court entered a dispositional order, which required Father to: (1) cooperate with DCS and actively participate in the development of a Case Plan; (2) maintain consistent contact with the Family Case Manager and report any household changes; (3) complete a parenting assessment and follow any recommendations; (4) complete a psychological evaluation and follow any recommendations; and (5) sign necessary releases for DCS and the trial court.

Father completed a parenting assessment, which showed that Father had a "coercive and controlling approach to parenting." Tr. p. 349. Father appeared to "believe in corporal punishment, physical punishment as a means of gaining respect from the children and gaining control of the children." Id. The evaluator had concerns about Father's anger management and lack of emotional engagement between Father and the Children. The evaluator also had serious concerns about Father's "willingness and ability to adequately meet the needs of his children and whether the children would be safe in his care in light of what seemed to be a lack of remorse" for the stabbing incident. Id. at 352.

The evaluator recommended individual therapy, attendance at a group parenting class, and attendance at a men's batterers group.

Father also completed a psychological evaluation with Dr. Susan Pauly. During the evaluation, Father blamed L.S. for the stabbing. He said that L.S. was poking the knife at her brother, that Father took the knife away, and that he wanted to teach her a lesson that she should not poke at her brother with a knife. Father also did not see his stitching the wound as inappropriate and believed that the incident had been blown out of proportion. Father seemed upset that he was in trouble for the incident, not upset that he had harmed L.S. When asked what he would do differently, Father responded that he would not stitch L.S. because "that got him in trouble." Id. at 61. Father denied physically abusing the Children or Mother.

The evaluation showed that Father was defensive and unwilling to admit personal problems, he viewed the children as not having acceptable characteristics, he did not feel emotionally attached to the children, and he used a great deal of energy trying to prevent the expression of his anger. Dr. Pauly described Father as "egocentric, very centered on [his] own thoughts and points of view and having little capacity or insight as to how [his] actions affect other people." Id. at 66. She did not see any evidence of empathy toward the Children or anyone else during the evaluation, and she believed that he viewed Mother and the Children as his property. When given his evaluation results, Father was not receptive to Dr. Pauly's recommendations, did not believe he had done anything wrong, and blamed Mother, L.S., and others for misunderstanding the situation.

Dr. Pauly recommended that Father attend weekly individual psychotherapy, attend a structured anger management group, and participate in parental training in conjunction with supervised visitations. Dr. Pauly believed that Father needed long-term therapy that could take two to five years to complete. However, because Father "projects blame onto others and does not see himself as having any problems," Dr. Pauly believed that it was "unlikely that significant change will occur even with therapy." Appellee's App. p. 20. Father's prognosis for change was "very grim." Id.

Father completed an anger management class through his probation, but he failed to take responsibility for his actions during the class. DCS referred Father for a parenting class, which was a six-week course with weekly meetings. Out of the six classes, Father attended one class and participated in one make-up class. He did not appear for the remainder of the classes.

Although DCS referred Father for individual counseling, Father failed to schedule an appointment. When asked by the trial court during a hearing why he did not schedule the therapy appointment, Father said that he had better things to do. Father later asked for another referral, which DCS provided, but Father again did not participate in the therapy. From DCS's perspective, developing empathy and an acceptance of responsibility for his actions through therapy were the most important problems to be addressed, but Father failed to do so.

There were four supervised visitations between Father, A.S., and N.S. beginning January 28, 2008. Overall, the visitations were "tense." Tr. p. 164. Father did not "seem to know how to interact" with A.S. and N.S. Id. The first two visits were so tense that

there was very little conversation between Father and the boys. After the visit, when asked if they enjoyed the visit, A.S. said, "He made us popcorn. He wasn't mean to us." Petitioner's Exhibit 3. After the four supervised visitations with A.S. and N.S. in Father's home, visitations were suspended because Father reportedly had guns in his house. Although DCS offered to hold the supervised visitations in a different location, Father refused.

In August 2008, Father wrote two letters to the trial court. Father described the stabbing as an accident and stitching the wound as no more painful than ear piercing. Father also defended his failure to visit with the Children. He claimed to have stopped visitations because DCS had "blown this up so bad that everything [he] tried to do to cooperate with them just made [him] look worse." Petitioner's Exhibit 11. He decided to focus his efforts on his probation and said that he was willing to "do what ever [sic] it takes to be reunified with [his] kids." Id.

Supervised visitations between Father and all three of the Children started in November 2008. However, the Children regressed and had behavioral issues when they learned that visitations with Father were going to start again. The visitation supervisor noted that there was very little interaction or bonding between Father and the Children. Prior to one of the visits, N.S. and A.S. talked about wanting to harm Father and even said that they wanted to kill him. Father did not attempt to redirect the Children during the visitations or control their behavior. After three visits, the supervised visitations were stopped due to significant concerns about the Children's behaviors. The Children's

therapist was "gravely concerned" about continued visitations with Father because of the Children's regression. Tr. p. 280.

The Children were also referred for therapy. L.S. began therapy with Sandra McKinney in January 2008. She was very stressed, had depressive symptoms, had severe symptoms of post-traumatic stress disorder, had nightmares, had a very poor attention span, and was aggressive in the foster home. L.S. revealed that Father had pointed a hunting gun and hunting bow at them. L.S. was afraid of Father's temper. L.S.'s behaviors stabilized after seven months of counseling sessions.

In therapy, N.S. was extremely angry. N.S. claimed that Father was "mean" to Mother and the Children. Id. at 111. He also saw Father stab L.S., and he was "very angry" about that. Id. N.S. had frequent tantrums and "meltdowns." Id. at 112. A.S. said that he "was always happy" and refused to talk about any abuse. Id. at 114. In play therapy, the boys portrayed Father as the "monster" or the "bad guy." Id.

The Children had numerous scars on their bodies that they claimed were the result of Father hitting them with a belt. The Children also claimed that, when Father was angry with them, he would spin them around by their ankles and slam them against walls. Additionally, the Children claimed that Father would put them inside the washing machine and sit on the lid as a punishment.

In January 2009, DCS filed a petition to terminate Father and Mother's parental rights. During hearings, Father and Mother revealed that they started living together again in August 2009. The CASA testified that the Children were "afraid" of Father. Id. at 188. She recommended that Father and Mother's parental rights be terminated and that

maternal grandmother adopt them. According to the CASA, Father and Mother had failed to make progress, and the Children were thriving with maternal grandmother. CASA testified that Father thought he "had done nothing wrong and he didn't see why he had to work with DCS." Id. at 189. L.S. told CASA that she did not want to live with Father because she is afraid of him. Further, A.S. and L.S. told the DCS case manager that they did not want to see Father. After hearings, the trial court granted the petition as to both Father and Mother. Father now appeals.

Analysis

The issue raised by Father is whether the trial court properly found a reasonable probability that the conditions resulting in the Children's removal will not be remedied or that the continuation of the parent-child relationship poses a threat to the well-being of the Children. The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. In re I.A., 934 N.E.2d 1127, 1132 (Ind. 2010). "A parent's interest in the care, custody, and control of his or her children is 'perhaps the oldest of the fundamental liberty interests.'" Id. (quoting Troxel v. Granville, 530 U.S. 57, 65, 120 S. Ct. 2054 (2000)). "Indeed the parent-child relationship is 'one of the most valued relationships in our culture.'" Id. (quoting Neal v. DeKalb County Div. of Family & Children, 796 N.E.2d 280, 285 (Ind. 2003)). We recognize of course that parental interests are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. Id. (citing In re D.D., 804 N.E.2d 258, 264-65 (Ind. Ct. App. 2004), trans. denied)). Thus, "[p]arental rights may be terminated when the parents are

unable or unwilling to meet their parental responsibilities." Id. (quoting D.D., 804 N.E.2d at 265).

When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. Id. We consider only the evidence and reasonable inferences that are most favorable to the judgment. Id. We must also give "due regard" to the trial court's unique opportunity to judge the credibility of the witnesses. Id. (quoting Ind. Trial Rule 52(A)). Here, the trial court entered findings of fact and conclusions thereon in granting DCS's petition to terminate Father's parental rights. When reviewing findings of fact and conclusions thereon entered in a case involving a termination of parental rights, we apply a two-tiered standard of review. First, we determine whether the evidence supports the findings, and second we determine whether the findings support the judgment. Id. We will set aside the trial court's judgment only if it is clearly erroneous. Id. A judgment is clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment. Id.

Indiana Code Section 31-35-2-8(a) provides that "if the court finds that the allegations in a petition described in [Indiana Code Section 31-35-2-4] are true, the court shall terminate the parent-child relationship." Indiana Code Section 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege, in part, that:

> (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.

The State must establish 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 first argues that the trial court's findings and conclusions are clearly erroneous regarding whether there was a reasonable probability that the conditions resulting in the Children's removal would not be remedied. In making this determination, the trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing and take into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. However, 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. When assessing a parent's fitness to care for a child, the trial court should view the parent as of the time of the termination hearing and take into account any evidence of changed conditions. In re C.C., 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), trans. denied. The trial court can properly consider the services that the State offered to the parent and the parent's response to those services. Id.

The Children were removed from Father's care because Father injured L.S. by stabbing her on the arm with a knife, because Father failed to seek appropriate medical care for L.S. and the other children, and because of Father's inappropriate discipline of the Children. After their removal, the Children made further allegations of abuse against Father. Father argues that, except for participating in individual therapy, he has substantially complied with the Case Plan's requirements. However, the evidence presented at the termination hearings shows that Father refused services for the majority of the case or failed to participate in services offered to him.

Father initially complied with a few of the dispositional order requirements, including participation in a parenting assessment and a psychological evaluation. However, the parenting assessment and psychological evaluation revealed significant issues, and the parenting evaluator and Dr. Pauly recommended long-term individual therapy along with other recommendations, such as anger management classes, parenting classes, and supervised visitations. Although Father completed anger management classes, he failed to complete parenting classes, failed to begin individual therapy, and had only minimal supervised visitations.

In particular, developing empathy and an acceptance of responsibility for his actions through therapy were the most important problems to be addressed, but Father failed to do so. There was no evidence that the conditions resulting in the Children's removal, i.e., Father's inappropriate discipline and abuse, had been remedied. Further, there appeared to be little bond between Father and the Children. Given the evidence

discussed above, the trial court properly found a reasonable probability that the conditions resulting in the Children's removal would not be remedied.

Father also argues that the trial court erred by finding the continuation of the parent-child relationship posed a threat to the well-being of the Children. Indiana Code Section 31-35-2-4(b)(2)(B) required the DCS to demonstrate by clear and convincing evidence a reasonable probability that either: (1) 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 (2) the continuation of the parent-child relationship poses a threat to the well-being of the child. The trial court specifically found a reasonable probability that the conditions that resulted in the Children's continued placement outside Mother's home would not be remedied, and there is sufficient evidence in the record to support the trial court's conclusion. Thus, we need not determine whether the trial court's conclusion that there was a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the Children is clearly erroneous. See, e.g., Bester, 839 N.E.2d 143, 148 n.5 (Ind. 2005); In re T.F., 743 N.E.2d 766, 774 (Ind. Ct. App. 2001), trans. denied.

Conclusion

The trial court properly found a reasonable probability that the conditions resulting in the Children's removal would not be remedied. As a result, we conclude that the evidence is sufficient to support the trial court's termination of Father's parental rights to the Children. We affirm.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.