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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINMATION OF PARENT-CHILD RELATIONSHIP of P.F and S.F., Minor Children, and their FATHER, COURTNEY FRIERSON,	)	
COURTNEY FRIERSON, Appellant-Respondent,	)	
vs.	)	No. 49A02-0703-JV-250
MARION COUNTY DEPARTMENT OF CHILD SERVICES, Appellee-Petitioner,	)	
and	)	
CHILD ADVOCATES, INC., Co-Appellee-Guardian Ad Litem.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Larry Bradley, Judge
Cause No. 49D09-0604-JT-014750

November 30, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Courtney Frierson ("Father") appeals the termination of his parental rights to his daughters, P.F. and S.F., in Marion Superior Court. In so doing, Father raises several issues which we restate as whether the trial court's order terminating Father's parental rights to P.F. and S.F. is clearly erroneous. We affirm.

Facts and Procedural History

The facts most favorable to the trial court's judgment indicate that on May 25, 2005, the Marion County Department of Child Services ("MCDCS") filed a petition alleging P.F. and S.F. were children in need of services ("CHINS"). The MCDCS filed this petition after Father notified school counselors that he had discovered bruises and welts on P.F. which resulted from excessive discipline by her mother.[1] At the time the CHINS petition was filed, P.F. was nine years old and S.F. was ten years old.

At the initial CHINS hearing, Father admitted that his children were in need of services. Ex. Vol.1 p.7. The trial court proceeded to disposition as to Father on July 1, 2005, and issued its participation decree removing P.F. and S.F. from his care. The participation decree also ordered Father, among other things, to maintain weekly contact with the MCDCS caseworker, to notify the caseworker of any changes in address or telephone number within five days of said change, to secure a legal and stable source of income sufficient to support all household members, to obtain and maintain suitable housing, to participate in and successfully complete a home-based counseling program, to complete a parenting assessment and parenting classes, to visit the children on a

[1] We note that while both Father and the girls' mother, Erika Brooks, were parties to the proceedings below, the children's mother is not a party to this appeal.

consistent and regular basis, and to participate in drug and alcohol assessment, treatment and random testing in order to achieve reunification with the children. Ex. Vol.1, pp. 39-40. Father signed the participation degree.

Father was referred to parenting classes on October 12, 2005, October 20, 2005, and again in January of 2006. Father eventually completed the parenting classes sometime after January 17, 2006. Father was referred to Valley Vista for a drug screen, and was re-referred three times due to his failure to participate. Appellant's App. p. 68. Father admitted to using drugs and tested positive for cocaine on at least one occasion.

Father was initially referred to an intensive outpatient program ("IOP") with the Salvation Army in May or June of 2005. He failed to participate. Father was re-referred to an IOP in April of 2006, but again failed to participate. On April 7, 2006, MCDFC filed a petition for involuntary termination of the parent-child relationship asking the court to terminate the parent-child relationship between Father and P.F. and S.F. Id. at 14.

In January of 2007, two months before the termination hearing, Father contacted the Salvation Army and requested an IOP referral. The MDCFC caseworker made the referral for Father. The outpatient counselor recommended that, following an initial "detox" program, Father participate in a fourteen-day inpatient residential program prior to beginning the IOP, in order to get him focused on his recovery, and to lay a foundation for the IOP. After completing detox, Father entered the residential program, but quit after three days. Father did proceed, however, with the IOP program in February of 2007.

A fact-finding hearing on the petition for involuntary termination of the parent-child relationship was held on March 5, 2007, and the trial court issued its termination order on March 6, 2007. In so doing, the trial court made the following pertinent findings:

FINDINGS OF FACT

By clear and convincing evidence, the Court now finds that:

*** * ***

3. A Dispositional Decree was entered in the CHINS proceeding on July 1, 2005, removing the children from parental care. The children have not been returned to the care of their parents.
4. The reason for the children's removal from the care of their mother is that [P.F.] had extreme bruising on her arm and right leg.
5. Placement was made outside the home of [Father] as a result of him not having legal custody of the children and concerns about his ability to parent until an assessment could be completed.

*** * ***

8. Father completed his parenting assessment and parenting classes after re-referral.

*** * ***

10. Prior to Home Based Counseling, [F]ather would have to complete his intensive outpatient treatment, including transitional housing. Father requested a program through the Salvation Army on January 29, 2007 at which time he admitted he needed transitional housing to be in a supportive environment. Father left the fourteen day program after just three days.

11. The children have been removed from their parents since May, 2005 and both parents have had ample opportunity to complete the services know to be required in order to have the CHINS matter closed. At this point there is no reasonable probability that services will be completed.

12. The children have been in limbo since the CHINS was filed and they deserve permanency.

13. [P.F.] & [S.F.] are presently in relative care. [Their] sibling is in pre-adoptive foster parent placement and the foster parents are willing to adopt [P.S.] and [S.F.] so all the siblings will be together. Grandmother is willing to obtain guardianship but has no interest in adopting the children.

CONCLUSIONS OF LAW

1. [P.F.] & [S.F.] have been removed from [Mother] and [Father] for at least six (6) months under the CHINS Dispositional Decrees [.]

2. There is a reasonable probability that the conditions that resulted in the removal of the children and placement outside the home will not be remedied.

3. Termination is in the best interests of the children.

4. There is a satisfactory plan for the care and treatment of the children, that being adoption.

Id. at 11-12. This appeal ensued.

Standard of Review

This court has long had a highly deferential standard of review in cases concerning 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 Termination of Parent-Child Relationship of D.D., 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), trans. denied. We consider only the evidence and reasonable inferences that are most favorable to the judgment. Id.

Here, the trial court made specific findings in granting the termination of Father's parental rights. Where the trial court enters specific findings of fact, we must first determine whether the evidence supports the findings. Id. Then, we determine whether the findings support the judgment. Id. We will not set aside the trial court's judgment terminating parental rights unless it is clearly erroneous. Rowlett v. Vanderburgh County Office of Family and Children, 841 N.E.2d 615, 620 (Ind. Ct. App. 2006). A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. In re Termination of Parent-Child Relationship of D.D., 804 N.E.2d at 264. A judgment is clearly erroneous only if the findings of fact do not support the trial court's conclusions thereon, or the conclusions thereon do not support the judgment. Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996).

Discussion and Decision

The sole issue on appeal is whether the trial court's order terminating Father's parental rights to P.F. and S.F. is clearly erroneous. "The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." Matter of M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. However, these 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. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. In re K.S., 750 N.E.2d at 836.

In order to terminate a parent-child relationship, the State is required to allege and prove by clear and convincing evidence that:

(A) [o]ne (1) of the following exists:

(i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

* * *

(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.

Indiana Code § 31-35-2-4(b) (1998). The State must establish each of these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Works, 592 N.E.2d 1232, 1234 (Ind. 1992).

Father does not challenge the trial court's finding that P.F. and S.F. had been removed for more than six months under a dispositional decree. Rather, Father argues that the following findings and conclusions by the trial court are not supported by sufficient evidence, and thus are clearly erroneous: (1) that there was a reasonable probability that the conditions that resulted in the children's removal or the reasons for placement outside of Father's home would not be remedied; (2) that the termination was in P.F.'s and S.F.'s best interests; and, (3) that the MCDCS had a satisfactory plan for the care and treatment of P.F. and S.F. We address each argument separately.

I. Reasonable Probability Conditions Won't Change

Father argues that the trial court erred by concluding that there is a reasonable probability that the reasons for P.F.'s and S.F.'s placement outside of the home will not be remedied. Specifically, Father argues that the MCDCS "stated the conclusion [that] the conditions which resulted in the removal or the reason for placement outside the home would not be remedied. . . . However, this was a mere conclusion without any evidence in support. [Father] was never accused of having harmed the girls." Br. of Appellant at 9. Thus, since the CHINS petition stated that the children were removed due to bruises and welts inflicted by Mother, and because no accusations of abuse were ever made against Father, Father asserts that the trial court's findings are not supported by the evidence.

While it is true that the reason for the children's removal from *Mother's* home was due to allegations of physical abuse to P.F., the trial court's specific finding pertaining to the reason the children were placed outside of *Father's* care stated that "[p]lacement was made outside the home of [Father] as a result of his *not having legal custody of the children* and *concerns about his ability to parent until an assessment could be completed*." Appellant's App. p. 11. (Emphasis added.) This finding was supported by Father's own admission that the allegations in the CHINS petition were true.

To determine whether a reasonable probability exists that 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 his children 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.

The record reveals that in 2005, the trial court ordered Father, via its participation decree, to maintain weekly contact with the MCDCS caseworker, including notifying the caseworker of any changes in address or telephone number within five days of said change, to secure a legal and stable source of income sufficient to support all household members, to obtain and maintain suitable housing, to participate in and successfully complete a home-based counseling program, to complete a parenting assessment and parenting classes, to visit the children on a consistent and regular basis, and to participate in drug and alcohol assessment, treatment and random testing in order to achieve reunification with the children. However, at the time of the termination hearing, Father had wholly failed to maintain contact with the caseworker and admitted that he had only spoken with her approximately three times since she took over the case in July of 2006: twice on the phone and one time in court. Father also had failed to regularly exercise visitation with the children since the initial CHINS proceeding. In fact, Father testified that he only visited with P.F. and S.F. "probably about once a month. Maybe some time [sic] less than that." Tr. p. 24. Father also failed to obtain suitable housing by the time of the termination proceeding and had recently requested help from the Salvation Army in obtaining transitional housing.

While Father testified that he had been working at Steak-N-Shake for approximately one month by the time of the termination hearing, he failed to provide proof that he could support all members of the household on his salary, including his

fiancé and her two children with whom he was living, as well as himself, P.F. and S.F. Additionally, despite three referrals and approximately two years, Father still had not completed the IOP program, which was a pre-requisite for home-based counseling. Moreover, just two months prior to the termination proceedings, Father quit the fourteen-day residential program recommended by the outpatient counselor after only three days.

After reviewing the evidence of Father's habitual pattern of conduct, we believe there was sufficient evidence to show a reasonable probability that the conditions that led to the removal of P.F. and S.F. from Father's care would not change. Additionally, the trial court's finding that "both parents have had ample opportunity to complete the services known to be required in order to have the CHINS matter closed" and that "[a]t this point there is no reasonable probability that services will be completed" is supported by the evidence.

Based on the foregoing, we find that the trial court's findings support its ultimate conclusion that "There is a reasonable probability that the conditions that resulted in the removal of the children [from Father] and placement outside the home will not be remedied." Appellant's App. p. 12. We are unwilling to put P.F. and S.F. on a shelf until Father is capable of caring for them. Two years without improvement is long enough. See Matter of Campbell, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (holding that the Welfare Department "does not have to rule out any possibility of change" but just has to show that there is a reasonable probability that the parent's behavior will not change).

II. Best Interests of the Children

Next, Father asserts that the trial court's conclusion that termination was in the children's best interests is clearly erroneous. In determining what is in the best interests of the children, the trial court is required to look at the totality of the evidence. A.F. v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1253 (Ind. Ct. App. 2002), trans. denied. In so doing, the trial court must subordinate the interests of the parents to those of the children involved. Id.

In the present case, the evidence reveals that Father had a history of substance abuse and criminal activity that made him unable to provide a consistent and stable home and environment for P.F. and S.F. Additionally, despite extensive services offered to Father since the children were removed from his care in 2005, including parenting classes, drug counseling and screening, residential and intensive outpatient programs, transitional housing, and home-based counseling, Father failed to adequately demonstrate a change in the conditions that resulted in the children becoming CHINS. Moreover, the MCDCS caseworker testified that at the time of the termination hearing, Father had failed to maintain consistent visitation with the girls, had not completed the court-ordered services, and had failed to obtain suitable housing despite having approximately two years to do so. In fact, Father admitted that he was unable to provide a suitable home for the girls at the termination hearing and stated that he wanted his mother to continue to have guardianship of the children. The MCDCS caseworker testified that she felt termination was in the best interests of P.F. and S.F. She further testified that she was unable to recommend placement with Father because he had been given "ample time" to complete his services, he had failed to provide a "secure safe home" for his daughters,

and because the case had been active for a long time and she felt that "the girls need[ed] to have permanency and a family that [could] be supportive of them." Tr. p. 42. The guardian ad litem assigned to the case also testified that termination of Father's parental rights was in the best interests of the girls.

Extended CHINS, adoption and custody litigation damages the most vulnerable people the system seeks to protect: the children. As Justice Powell wrote, "There is little that can be as detrimental to a child's sound development as uncertainty over whether he is to remain in his current 'home,' under the care of his parents or foster parents, especially when such uncertainty is prolonged." Leham v. Lycoming County Children's Servs. Agency, 485 U.S. 502, 513-14, 102 S.Ct. 3231 (1982). It is "undisputed that children require secure, stable, long-term, continuous relationships with their parents or foster parents. There is little that can be as detrimental to a child's sound development as uncertainty." Id. at 513.

Based upon the totality of the evidence, we conclude that the evidence supports the trial court's conclusion that termination was in P.F.'s and S.F.'s best interests.

III. Satisfactory Plan for Care

Lastly, Father contends that the trial court's conclusion that the MCDCS had a suitable plan for the children's care is clearly erroneous. Specifically, Father argues that throughout the termination hearing, the MCDCS emphasized the sibling bond that "supposedly" existed between the girls and their stepbrother, and "completely ignore[ed] the parent-child relationship and the relationship between the girls and their grandmother." Appellant's App. p. 11.

In order for the trial court to terminate the parent-child relationship, the trial court must find that there is a satisfactory plan for the care and treatment of the children. In re B.D.J., 728 N.E.2d 195, 204 (Ind. Ct. App. 2000). This plan need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated. Id. Here, the MCDCS's plan was for P.F. and S.F. to be adopted by the same pre-adoptive foster parents who were caring for and also seeking adoption of the girls' younger stepbrother. We note that MCDCS did investigate the possibility of paternal grandmother adopting the girls, but she was not willing to do so. The MCDCS's plan gave a general sense of direction for the care and treatment of P.F. and S.F. after Father's rights were terminated. Thus, the evidence supports the trial court's finding that MCDCS had a satisfactory plan for the care and treatment of the children. See In re D.D., 804 N.E.2d at 268 (holding that the State's plan for D.D. to be adopted by the current foster parents or another family constituted a suitable plan for D.D.'s future care). Father's arguments that the trial court should have left the girls in the care of their grandmother amount to nothing more than an invitation to reweigh the evidence, which we will not do.

For all of these reasons, we affirm the trial court's judgment terminating Father's parental rights to P.F. and S.F.

Affirmed.

NAJAM, J., and BRADFORD, J., concur.