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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF M.G., minor child, and her Mother, LESLIE GORDON and her Father, JERRY GORDON,	)	
JERRY GORDON,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A02-0706-JV-524
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, Magistrate
Cause No. 49D09-0607-JT-029807

December 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Jerry Gordon appeals the order terminating his parental rights with respect to his daughter, M.G. Jerry contends that the trial court erroneously concluded that appellee-petitioner Marion County Department of Child Services (DCS) met its burden of proving the requisite statutory elements. Finding no error, we affirm the judgment of the trial court.

FACTS

M.G. was born on December 23, 2003, to Jerry and his wife, Leslie Gordon. On September 1, 2005, Jerry and Leslie were arrested while driving under the influence of cocaine with M.G. as a passenger. On September 6, 2005, the DCS filed a petition alleging M.G. to be a child in need of services (CHINS) because both parents had been arrested, leaving no one to care for the child. At the time the petition was filed, Jerry was incarcerated and Leslie's whereabouts were unknown. On September 13, 2005, Jerry pleaded guilty to operating while intoxicated with a minor in the vehicle. He was sentenced to eighteen months, all suspended, and was placed on probation. On September 29, 2005, the court in the CHINS proceeding declared M.G. to be a CHINS, and eventually entered a dispositional order removing M.G. from the care of her parents, placing her in foster care, and ordering Jerry and Leslie to comply with a number of requirements.

Among other things, Jerry was required to obtain and maintain stable and suitable housing and a stable source of income sufficient to support M.G. After Jerry was released from jail in September 2005, he was homeless for two months and lived on the street. Thereafter, he lived with different relatives and friends for short periods of time until he was again incarcerated in July 2006.

Jerry was also required to complete a drug and alcohol assessment and complete all resulting recommendations. Before M.G.'s removal, Jerry and Leslie had used cocaine up to three times per month. Following M.G.'s removal, Jerry was referred to Community Addictions of Indianapolis (CASI) for assessment and treatment. He was diagnosed with cocaine use and placed in a twelve-week substance abuse program, consisting of group counseling, individual counseling, and random urine drug screens. Lance Brown was Jerry's CASI counselor. Brown testified that Jerry tested positive for cocaine use on January 6, 2006.

As a result of the positive drug test, the Hancock County prosecutor filed a notice of probation violation. On February 7, 2006, Jerry admitted to violating his probation and was sentenced to eighteen months in Community Corrections home detention or until completion of his treatment at CASI and three negative drug screens.

On March 2, 2006, Jerry attended a group counseling session at CASI and was informed that he would be required to undergo a drug screen after the session was finished. Jerry left CASI and refused to participate in the drug screen, exiting the building and ignoring the fact that Brown was calling to him as he walked away. The next time Jerry attended a session at CASI, Brown confronted him and advised him that he was suspended

from further group sessions until he attended an individual session with Brown to discuss his sincerity regarding the treatment. Jerry failed to attend the individual counseling session and failed to return to CASI for any treatment. Consequently, he was discharged unsuccessfully from CASI thereafter. Jerry's prognosis for his ability to abstain from drug use upon discharge was "guarded," meaning that there was concern regarding his "ability to maintain abstinence for any substantial length of time." Tr. p. 16. Because Jerry failed to complete substance abuse treatment at CASI, his DCS case manager referred him for substance abuse treatment at Family Service Association in March 2006. Jerry did not comply with that referral.

Jerry had supervised visitation with M.G. at Giant Steps, which has a policy that if a parent misses three consecutive visits, the visitation will be cancelled until the case manager refers the parent again. Jerry visited consistently with M.G. until March 2006, but thereafter, he failed to attend scheduled visits and Giant Steps cancelled his visitation. Jerry did not contact his case manager until March 2007, eleven months later, to request that his visits be reinstated.

On June 19, 2006, Jerry called his case manager to tell her that he had gotten into some trouble, could not attend a hearing in this matter because there was an open warrant for his arrest in Hancock County, and was planning to leave the state to work somewhere in Michigan. In July 2006, Jerry was arrested and incarcerated for a violation of probation. He remained in Hancock County Jail until his release in October 2006. He failed to contact his DCS case manager to inform her that he had been incarcerated. On July 20, 2006, DCS filed a petition to terminate Jerry and Leslie's respective parental rights to M.G.

While Jerry was incarcerated, he completed the Jail Intervention Program, a twelve-week group counseling program regarding education about and treatment of substance abuse. This program did not include any urine drug screens and there was no aftercare plan developed for Jerry.

Jerry faxed a certificate regarding the completion of the Jail Intervention Program to his DCS case manager in October 2006 but made no further attempt to contact her until leaving two voicemail messages for her in November 2006. The case manager attempted to return each of the messages but was unable to reach Jerry either time. Jerry neither left an address in his voicemail messages nor explained why he had been out of contact with his case manager for several months. Thereafter, Jerry made no additional attempt to contact her until he appeared in court for a hearing on the termination proceedings on March 9, 2007. At that time, she learned that he had been incarcerated and advised him to call her to schedule an appointment so that they could discuss his situation and explore additional services he might need to complete. Jerry did not call her until April 18, 2007. At that time, the case manager referred him to a substance abuse assessment and for urine drug screens. As of May 10, 2007, Jerry had neither completed the assessment nor undergone any drug screens.

On May 10, 2007, the trial court held a hearing on the termination petition. On May 21, 2007, the trial court terminated Jerry's parental rights,[1] finding in relevant part as follows:

> 16. Cocaine is a stimulant which affects the body's central nervous system. Cocaine use can cause confusion, forgetting daily living tasks, impaired judgment, and is psychologically addictive, causing a person to

[1] The termination order in the record refers only to Jerry. It is not apparent from the record whether Leslie's parental rights were also terminated. Regardless, she is not taking part in this appeal.

make its continued use a priority over other responsibilities including parenting.

17. A plan for supportive care after treatment is important to address "triggers" that may lead to substance abuse relapses. "Triggers" identified in Father's life included stressful situations and using [cocaine] with his wife. It is clear that Father is still presented with stressful situations and he intended to remain with his wife after her release from prison as long as she remained clean from drug usage.

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19. During the CHINS and termination proceedings, Father has not had stable housing, living with relatives or friends. Father has also lived in motels or has been homeless or in jail during this time. The case manager was informed of six different addresses . . . .

20. Father did sign a one year lease on a home on May 1, 2007. He still resides with co-workers during the week because of transportation problems including not having an automobile or valid driver's license.

21. Father has been working a full-time construction job for two months. His employment history for the past eighteen months has been sporadic and mainly part-time.

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23. Father remained in weekly contact with his case manager until March of 2006. His next contact came on June 19, 2006 at which time he was going out of state because of an open warrant. Other than two voicemails in November of 2006, the next contact between Father and his case manager was at court on March 9, 2007.

24. Although Father's recent involvement and volunteerism with a church is commendable, it does not remedy the reason why [M.G.] was removed from him and the reasons for continued placement of the child outside his care. After approximately eighteen months, Father has still not completed appropriate outpatient services and maintained drug screens to demonstrate his ability to refrain from substance use.

25. Father has not taken parenting classes.

26. No real steps have been taken by Father to visit his child.

27. With his past history of instability, having a lease for a week and a

job for two months is not an indication that problems are over.

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29. [M.G.'s current placement with a foster family] is pre-adoptive. [M.G.] is developing well, is happy and adjusted to this placement.

30. Based upon the time [M.G.] has spent outside the home, and that Father has not shown an appropriate willingness to complete services, [M.G.'s] Guardian ad Litem . . . recommends adoption as being in the child's best interests.

31. Termination of the parent-child relationship, and subsequent adoption, would provide [M.G.] with permanency and a stability to assure that her needs will be safely met.

Appellant's App. p. 13-15. Jerry now appeals.

DISCUSSION AND DECISION[2]

Jerry argues that there is insufficient evidence supporting the trial court's determination to terminate his parental rights. 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).

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

[2] We note that page thirteen is absent from the copies of Jerry's brief that were filed with this court. Inasmuch as that page is not necessary to resolve this dispute, however, we will nonetheless resolve Jerry's appeal.

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:
>
> > (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;
>
> (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).

Jerry argues that the trial court failed to take a number of factors into account: his completion of the Jail Intervention Program, his alleged completion of parenting classes, the facts that he had been working steadily for two months prior to the termination hearing and that as a construction worker he is necessarily a seasonal employee, and the fact that he had signed a one-year lease on an apartment just before the hearing.

To the contrary, however, the trial court acknowledged each factor. As to the

intervention program, the trial court noted that the counselor testified that "he was not there to tell individuals to stop their substance abuse, but to educate them that they have the emotional and spiritual power to change." Appellant's App. p. 13. Furthermore, as noted above, there were neither drug screens nor aftercare involved as components of the program. As to the parenting classes, the trial court simply observed that although Jerry claims he completed such classes, he has failed to produce documentation proving his attendance. Finally, the trial court acknowledged the recent developments in Jerry's employment and housing situation, but concluded that the eighteen-month pattern of unstable behavior and living conditions and the failure to complete substance abuse treatment outweighed Jerry's more recent history. See McBride v. Monroe County Office of Family and Children, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003) (holding that the court must evaluate not only the parent's fitness at the time of the termination hearing, but also the parent's habitual standards of conduct to determine whether there is a substantial probability of future neglect or deprivation of the children).

Jerry also argues that his case manager failed to return his calls in a timely manner and was "so negligent that reversal of termination in this case is warranted." Appellant's Br. p. 12. The evidence in the record, however, establishes that it is Jerry, not the case manager, who is responsible for the gaps in communication. Jerry failed to communicate with the case manager for a lengthy period of time, failed to notify her that he was incarcerated, failed to inform her of his current address, and failed to follow up in a timely fashion when she instructed him to set up an appointment to discuss his situation and explore further services he might need to complete. Jerry's arguments to the contrary and his remaining arguments

regarding, among other things, his visitation with M.G., are mere invitations for us to reweigh the evidence and judge the credibility of witnesses—practices in which we do not engage when evaluating a trial court's termination of parental rights. We find that the trial court's determination that termination is in M.G.'s best interests was not clearly erroneous.

The judgment of the trial court is affirmed.

DARDEN, J., and BRADFORD, J., concur.