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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP)
OF T.M.W.W., minor child)
BRADLEY EVERETT WOOTEN, natural father)
)
BRADLEY EVERETT WOOTEN,)
)
Appellant,)
)
vs.)
)
TIPPECANOE COUNTY DEPARTMENT)
OF CHILD SERVICES,)
)
Appellee.)

No. 79A02-0602-JV-156

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Diana LaViolette, Special Judge
Cause No. 79D03-0508-JT-85

November 3, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, Bradley Everett Wooten (Father), appeals the trial court's involuntary termination of his parental rights to his minor child, T.W.

We affirm.

ISSUE

Father raises three issues on appeal, which we consolidate and restate as the following single issue: Whether the evidence was sufficient to support the trial court's termination of Father's parental rights to T.W.

FACTS AND PROCEDURAL HISTORY

On December 28, 2005, the trial court entered the following Order, in pertinent part, terminating the parent-child relationship of Father and T.W.:

1. [Father] is the [biological parent of T.W.], born September 29, 1999. Destiny Wooten [(Mother)] is the mother of T.W. and a separate petition to terminate the parent-child relationship between Mother and T.W. is pending. These parents also had another child that was born of their marriage, [S.W.].
2. Tippecanoe County Department of Child Services [(TCDCS)], became involved with this family during January of 2004. At that time, T.W. had extensive bruising of unexplained origin. During the investigation, Father did not cooperate and could not provide an explanation for the bruising. Child Protective Services [(CPS)] substantiated [a] lack of supervision against Father and referrals for services were made. [Mother and Father] failed to complete the recommended services. []
3. In April of 2004, [CPS] received additional reports regarding this family, including a report that T.W. sustained injuries during a physical tug of war between Mother and Father. Father admitted his fault in this altercation during the trial. [CPS] substantiated physical abuse and life/health endangerment against both parents at that time. After this investigation, the parents agreed that T.W. would live with Father[,] S.W. remained with Mother. []

4. In June and August of 2004, [CPS] received reports that T.W. was touched inappropriately by Mother's boyfriend during visits with Mother. Sexual abuse of T.W. was substantiated against Mother's boyfriend. Mother did not believe the allegations and continued her relationship with her boyfriend. An emergency modification of custody was granted in the divorce proceeding on August 13, 2004[,] and both T.W. and S.W. went to live with Father and his girlfriend, Jessica Sargent [(Sargent)]. All visits with Mother were suspended. A Guardian Ad Litem, Faith Norton [(Norton)], was appointed. []
5. On September 15, 2004, S.W. was admitted to Methodist Hospital [in Indianapolis, Indiana] in critical condition as a result of non-accidental trauma that she sustained while in the care of Father's girlfriend, [Sargent]. Protective custody was taken of T.W. and S.W. on September 16, 2004[,] and T.W. was placed in foster care. []
6. Father admitted that his girlfriend was caring for S.W. at the time of her injuries and that she shook S.W. Father claims that it was an attempt to revive S.W. after she was found unconscious. Father admitted that doctors did not find this possible. At the time that T.W. was removed from Father's care, [Sargent] had two daughters that lived with them. Her daughters were removed from her care and placed in foster care through a separate [Child in Need of Services (CHINS)] proceeding. Her daughters remain in foster care.
7. Father's girlfriend, [Sargent], has charges pending against her for Neglect of a Dependent (B Felony) and Battery (B Felony) based on the injuries sustained by S.W. Dr. Laskey examined S.W. and found that she had sustained a spinal cord injury and bleeding around the brain and eyes. S.W. remained alive at that time, but she was paralyzed and had little brain activity. She was expected to die as a result of her injuries.
8. T.W. was placed in relative foster care on September 16, 2004, and has remained there since that time. On October 20, 2004, T.W. and S.W. were found to be CHINS based on both parents admitting the allegations in the CHINS petition. Father was ordered to participate in services, including psychological evaluation, individual counseling, family counseling with T.W.'s psychologist, visitation with the children, parenting classes, [Sexual Abuse Family Treatment Intervention Program (SAFTIP)], and anger management.

9. S.W. remained in critical care and died as a result of her injuries on December 6, 2004. [Norton], the GAL, testified that S.W. died alone as neither of her parents were visiting her regularly.
10. [Norton], the GAL, testified regarding her involvement with this family and her observations of Father while his child remained in critical care. She testified that Father failed to participate in medical decisions regarding his daughter and that he failed to visit his daughter in the hospital more than a few times. At the conclusion of her investigation, [Norton] concluded as follows: “[N]either parent was in a position to provide minimally safe care to a child. Neither parent had demonstrated the ability or willingness to make their children first priority. Both parents exhibited self-centered behavior with regard to their children. Both parents refused to protect their children despite prior knowledge of substantiated neglect/abuse or criminal action against their respective significant others. Neither parent appeared to understand the seriousness of their situation . . . Without even considering stability issues such as housing, employment, income, and transportation, there were grave concerns regarding the placement of any child with any of these parents.” []
11. The relationship between Mother and Father was volatile and abusive. Father testified that he “restrained” Mother a lot and that he shoved her a couple of times. Father also stated in his Rapid Assessment that Mother was physically and verbally abusive to him. []
12. Mother has a history of filing for protective orders against Father and his girlfriend[, Sargent]. In these petitions for protective orders, Mother alleges that Father and his girlfriend stalked her, called her in a harassing manner, and threatened to kill her. []
13. Father admits that he has not had stable housing for several years. Father testified that he owes \$3000 in back rent for his current apartment. Father also admitted during his testimony that he has been evicted from every apartment in which he has lived.
14. Father also has a sporadic work history. He testified that he is currently unemployed. Other than a one month temporary job, Father has been unemployed since November of 2004. He worked as a Certified Nursing Assistant for several months at a time in various facilities prior to that time. [His] longest period of employment was one year, and he was asked to resign from that job because of allegations that he mentally abused a patient. Father stated during his Rapid Assessment that he was

not good at keeping a job because he did not like “taking a lot of crap off of people.” []

15. Father failed to complete the recommended services to address the issues of anger management and his relationship with [Sargent]. Father missed and cancelled individual therapy appointments. Father indicated to his therapist, Peter Des[M]angles [(DesMangles)], that he had a difficult time believing that [Sargent] was responsible for the death of [S.W.], but that he understood that staying with [Sargent] would hurt his chances of reunification with [T.W.]. Father’s therapist, [DesMangles], concluded that Father failed to demonstrate a need or desire to change his current patterns of behavior. As a result, continued counseling with Father would be ineffective. []
16. Father’s inability to provide a minimally safe home for T.W. continues as he remains in the same home with [Sargent]. Even though Father was ordered by the [c]ourt to establish separate housing, he failed to do this by the date of the termination trial. Father stated that he would never leave his girlfriend. Father expressed a belief that if he leaves his girlfriend that it will give [CPS] and others “more ammunition” to arrest his girlfriend. []
17. Father testified that he learned in parenting class that he needs “to protect his child over anybody.” However, Father states that he refuses to choose between his girlfriend and his son. Father admitted that he was told that T.W. would not be returned to his care if he continued to reside with his girlfriend since she posed a threat to T.W.’s safety. Despite the death of S.W. caused by [Sargent], Father testified that he did not believe that [Sargent] posed a threat to T.W. and that he will never believe that she harmed S.W. While T.W. remained in foster care, Father continued to live with his girlfriend, [Sargent], and she became pregnant.
18. Father admitted that T.W. calls his girlfriend “mean Jessica” and that T.W. told Father and T.W.’s psychologist that [Sargent] harmed T.W. as well. T.W.’s psychologist, Dr. Judith Anderson [(Dr. Anderson)], testified that T.W. is very afraid of [Sargent]. T.W. revealed to her that [Sargent] put a pillow over his face and held it there until he urinated in his pants.
19. Father testified that he does not believe his son’s statements regarding [Sargent] harming him, but he does believe T.W.’s statements that Mother’s boyfriend harmed him. Father testified that he believes that

- T.W. obtained his fear of [Sargent] from [CPS] and Dr. Anderson. Father continues to blame others for his not being able to raise his child.
20. Father testified that [CPS] “has it in for [his] family” and that he cannot do anything to please [CPS]. He blames [CPS] for “taking away” his home and his job and killing his daughter. He places no blame or responsibility on his girlfriend because he does not see what she did as harmful.
 21. Father testified that he “wholeheartedly” blames [CPS] for the death of his daughter because of the decision to remove her from life support.
 22. Father testified that his plan for T.W. was for T.W. to live with him and his girlfriend. He also stated that he plans to marry his girlfriend, [Sargent]. Father stated that it would not be harmful for T.W. to live with [Sargent] despite T.W.’s fear of [her] because Father never saw [Sargent] harm T.W.
 23. T.W.’s psychologist, Dr. Anderson[,] testified regarding her treatment of T.W. throughout the CHINS case, which included therapeutic visits with the Father. During the CHINS case, she recommended that the visits be stopped as they were harmful to T.W. Further, she testified that Father is not capable of providing a safe home for T.W. since he does not acknowledge that the presence of his girlfriend, [Sargent,] is a threat to T.W.’s safety. Dr. Anderson believes that the continuation of the parent-child relationship between Father and T.W. would be harmful to T.W. and that it would be in the best interests of T.W. to terminate the parental rights of Father and allow T.W. to be adopted.
 24. Mary Jo Cuculic [(Cuculic)] was the family case manager for the [TCDCS]. She testified regarding the services that were provided to Father. Father failed to complete some of these services and was slow to complete other services. [] Cuculic stated in her [c]ourt [s]ummary on July 30, 2005, that although he had the opportunity to participate in services for months, it was not until his girlfriend became pregnant with his child that he began to participate in services on a more frequent basis. []. Despite the services provided for Father, [] Cuculic did not believe that Father could provide a safe and stable home for T.W. and that the reasons for T.W.’s removal from Father’s care had not been remedied. She believed that termination of parental rights was in T.W.’s best interests.

25. CASA supports the TCDCS' petition to terminate Father's parental rights. [CASA] believes that it is in the best interests of T.W. to terminate Father's parental rights because Father's "presence and participation promotes a negative atmosphere" when T.W. needs stability. []
26. [The court] finds that the child was removed from Father's care on September 16, 2004, and remains in foster care. The [c]ourt finds that reasonable efforts towards reunification were provided under [Ind. Code §31-34-21-5.6]. The [c]ourt finds that extensive reasonable, appropriate and necessary services were offered to Father.
27. The [c]ourt finds as a matter of law that there is not any basis for any reasonable belief that the circumstances that resulted in the removal of the child from Father's care or the reasons for continued placement outside the home will be remedied. Father failed to cooperate with and learn from services. Father does not indicate that he has a basic understanding, belief or ability to provide a minimally safe, secure and stable home for his child.
28. The [c]ourt finds as a matter of law that the continuation of the parent-child relationship poses a significant threat to the well[-]being of the child given Father's denial of the harm caused to S.W. and to T.W. by his girlfriend[, Sargent,] and his denial that the presence of [Sargent] in the home is a threat to T.W.'s safety.
29. The [c]ourt finds as a matter of law that it would not be in the best interests of the child to try to reunite the family.

[30]. The [c]ourt finds that TCDCS has an acceptable, reasonable, appropriate and satisfactory plan for the care and treatment of the child. The plan for T.W. is that he be adopted.

[31]. The [c]ourt finds that it would be in the best interest of the child for the rights of [Father] to be terminated so that the child can be placed for adoption at the earliest possible time.

(Appellant's App. pp. 9-13). The trial court then ordered that the parent-child relationship between Father and T.W. be terminated.

Father now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Father argues that the trial court erred when it terminated his parental rights to T.W. Specifically, Father contends that the TCDCS failed to demonstrate: (1) a reasonable probability that the conditions resulting in T.W.'s removal from Father would not be remedied; (2) a reasonable probability that the continuation of the parent-child relationship between Father and T.W. poses a threat to T.W.'s well-being; and (3) that the termination of Father's relationship with T.W. is in T.W.'s best interest.

I. Standard of Review

We will not set aside a trial court's order to terminate parental rights unless it is clearly erroneous. *In re Involuntary Termination of Parent Child Relationship of A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). In determining whether the evidence is sufficient to support the judgment of termination, we neither reweigh the evidence nor judge the credibility of witnesses. *Id.* We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.*

The involuntary termination of parental rights is the most extreme measure that a court can impose and is designed only as a last resort when all other reasonable efforts have failed. *In re D.G.*, 702 N.E.2d 777, 780 (Ind. Ct. App. 1998). This policy is in recognition of the Fourteenth Amendment to the United States Constitution, which provides parents with the right to establish a home and raise children. *See id.* However, these protected parental rights are not absolute and must be subordinated to the children's interest to maintain the parent-child relationship. *See id.*

The purpose of terminating parental rights is not to punish parents but to protect their children. *Matter of A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). Although parental rights have a constitutional dimension, the law allows for their termination when parties are unable or unwilling to meet their responsibility as parents. *Id.* In the present case, to effect the involuntary termination of Mother's parent-child relationship with T.W., the TCDCS must have presented clear and convincing evidence establishing 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;
- (ii) a court has entered a finding under I.C. § 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 officer of family and children for at least fifteen (15) months of the more recent twenty-two (22) months;

(B) there is reasonable probability that:

- (i) the condition 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.

I.C. § 31-35-2-4(b)(2).

Additionally, in determining whether a reasonable probability exists that the reasons for removal will not 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 any evidence of changed conditions. *In re Termination of Parent-Child Relationship of D.D.*, 804 N.E.2d 258, 266 (Ind. Ct. App. 2004), *trans. denied*. A trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation." *Id.*

II. *Likelihood of Conditions Leading to Removal Being Remedied*

Here, Father first contends that the TCDCS failed to show that there is a reasonable probability that the conditions leading to T.W.'s removal from his care will not be remedied. As support for this argument, Father merely asserts that he participated in several of the services ordered by the trial court; thus, he apparently wishes for us to infer that he has displayed some dedication to improving his parenting skills and that as a result, the conditions surrounding T.W.'s removal from his care can be remedied. We cannot accept this argument. Foremost, we note that Father admits to not completing all of the services ordered by the trial court. In addition, the record indicates that at the termination hearing, Dr. DesMangles, a psychologist who conducted individual therapy with Father, testified that Father frequently did not show or cancelled his therapy appointments. Likewise, case manager, Mary Jo Cuculic, testified that there were referrals for services that Father never began. An examination of the record further reveals that Father's counseling sessions with Dr. DesMangles resulted in little progress. In fact, Dr. DesMangles testified at the termination hearing that, at the end of the therapy

sessions, he and Father were “in agreement that it was going to be difficult for [Father] to get his child back.” (Tr. p. 124).

Moreover, there is considerable evidence in the record of Father’s defiance in ending his relationship with Sargent, even though she faces criminal charges associated with the death of his daughter. In fact, Father testified that he considers S.W.’s death an “unfortunate mishap.” (Tr. p. 31). Thus, Father’s testimony and argument here that he has taken every step to make a safe environment for T.W., except leaving Sargent, does not hold any merit as far as we are concerned. Rather, our review leads us to conclude that Father’s partial participation in the services ordered by the trial court is not enough to show a commitment to changing T.W.’s environment, especially in light of his continued relationship with Sargent. Consequently, we cannot conclude that there is a reasonable probability that the conditions leading to T.W.’s removal will be remedied.

III. *Relationship’s Threat to T.W.’s Well-Being*

Next, Father alleges that the TCDCS did not show that there is a reasonable probability that the continuation of his relationship with T.W. would pose a threat to T.W.’s well-being. Even though I.C. § 31-35-2-4(b)(1)(B) only requires clear and convincing evidence of either a reasonable probability that the conditions resulting in placement outside the home will not be remedied *or* a reasonable probability that the continuation of the parent-child relationship will pose a threat to the well-being of the child, we nevertheless will respond to this specific argument by Father. In particular, Father contends that the trial court focused not on the threat he poses to T.W., but on the threat that his girlfriend, Sargent, poses to T.W. Since Sargent is likely to be sentenced to

prison as a result of the charges against her in association with S.W.'s hospitalization and death, Father argues that any threat to T.W. is unlikely. Again, we disagree.

Regardless of Father's involvement with Sargent, there is evidence in the record that Father engaged in arguments with Mother wherein T.W. was injured. Also, the record discloses testimony by Dr. DesMangles that Father refused to take responsibility for his anger management problems. However, coupled with the additional risk of Father remaining involved with Sargent, we conclude there is undoubtedly more than sufficient evidence to support a finding that continuation of a relationship with Father poses a threat to T.W.'s well-being. For instance, our review of the record shows testimony by Dr. Anderson, T.W.'s psychologist, stating that if T.W. was placed in Father's care and Father continued to live with and maintain a relationship with Sargent, T.W. "would be panicked all of the time," as "[h]e was panicked in advance of visiting his father in the safety of [Dr. Anderson's office]." (Tr. p. 103). It is clear from our review that T.W. is not safe and does not feel safe in Father's care.

IV. *Best Interests of T.W.*

Finally, Father argues that the termination of his relationship with T.W. is not in T.W.'s best interests. Specifically, Father contends that upon his last visitation with T.W., the two were progressing toward a better relationship, and therefore it is in T.W.'s best interest to continue working on that relationship. We are mindful that in determining what is in the best interests of the children, the trial court is required to look beyond the factors identified by the Department of Child Services and look to the totality of the circumstances. *In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005), *trans. denied*. In

doing so, the trial court must subordinate the interests of the parents to those of the child. *Id.* In the case before us, we conclude that the trial court did just that and appropriately concluded that T.W.'s best interests will be served in an adoptive home. While there is evidence in the record that Father's interactions with T.W. improved over time, it does not minimize the gravity of the abuse and instability that T.W. has been exposed to under both his Mother's and his Father's care. Also, Father's relentless support of Sargent and refusal to put his children in front of his relationship lead us to conclude that Father lacks the ability to make conscientious decisions for his children.

Furthermore, a parent's historical inability to provide adequate housing, stability and supervision, along with a current inability to provide the same will support a finding that termination is in the child's best interests. *Castro v. State Office of Family and Children*, 842 N.E.2d 367, 374 (Ind. Ct. App. 2006), *trans. denied*. Here, the record indicates that Father admitted at the termination hearing that he has a sporadic employment history, and additional evidence showed that he has been asked to resign from at least one position due to allegations of abusive behavior. The record also indicates that Father has had to rely on members of his family to pay his various debts, and that he has been unable to pay rent on his apartment for several months. In light of the substantial evidence present in this case supporting a conclusion that Father is unable to provide stability to T.W., we conclude the trial court properly terminated his parental rights.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly terminated Father's parental rights to T.W.

Affirmed.

BAILEY, J., and MAY, J., concur.