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ATTORNEY FOR APPELLANT:

TIMOTHY E. STUCKY
Blume, Connelly, Jordan, Stucky & Lauer, LLP
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEES:

DAVID E. COREY
Hancock County Department of Child Services
Greenfield, Indiana

ROBERT HENKE
Department of Child Services
Central Administration
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE TERMINATION OF THE)
PARENT-CHILD RELATIONSHIP OF)
A.G.C., J.K.S., & K.M.S,)

and)

G.S.,)

Appellant-Respondent,)

vs.)

No. 02A03-1009-JT-489

INDIANA DEPARTMENT OF CHILD)
SERVICES,)

Appellee-Petitioner.)

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Charles F. Pratt, Judge
The Honorable Lori K. Morgan, Magistrate
Cause No. 02D08-0911-JT-453
02D08-0911-JT-455

April 12, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

G.S. (“Father”) appeals the trial court’s termination of the parent-child relationship with his children, five-year-old A.G.C., three-year-old J.K.S., and two-year-old K.M.S. (collectively the “Children”), on the petition of the Allen County Department of Child Services (“DCS”). On appeal Father raises two issues, which we restate as one: whether sufficient evidence was presented to support the trial court’s termination of his parental rights. Concluding that the evidence presented is sufficient to support the trial court’s termination of Father’s parental rights, we affirm.

Facts and Procedural History

On July 28, 2008, DCS filed a petition alleging the Children were seriously physically or mentally impaired or endangered as a result of the inability, refusal, or neglect of their parents, and were therefore children in need of services (“CHINS”). The trial court found

probable cause that the Children were CHINS, removed them from the home of Father and their biological mother, and placed them in licensed foster care.

On August 11, 2008, DCS filed an amended petition. Of the several allegations in the original and amended CHINS petitions, Father admitted to the following allegations: 1) Father has not established paternity for any of the Children; 2) a home inspection revealed “an empty liquor bottle on the floor, the sink . . . full of dishes, garbage . . . on the floor, dishes . . . all over the stove[;] . . . clothes, blankets, and a used diaper . . . on the stairs,” “a knife in reach of the children, laxatives on the floor, . . . the [bathroom] sink and bathtub . . . full of ashes and cigarette butts,” and “no pampers in the home for 10 month old [J.K.S.],” Appellant’s Appendix at 46; 3) Father was arrested on an outstanding warrant for failure to pay child support; and 4) Father “is unable or unwilling to provide care for [the Children],” id.; see id. at 51 (regarding Father’s admissions).

In addition, Father denied the following allegations in the original and amended CHINS petitions: 1) at the age of one month, K.M.S. was taken to the emergency room for seizures and the treating physician expressed concern that K.M.S. was malnourished; 2) a home inspection revealed “a limited supply of food in the refrigerator, no milk for 10 month old [J.K.S.], and no formula for one month old [K.M.S.],” id. at 46; 3) Father “has not provided material or financial support on a regular basis for [the Children],” id.; and 4) Father “has not maintained regular contact with, or visited regularly with [the Children].” Id.

On August 20, 2008, based on the admissions of Father and the biological mother, the trial court approved a parent participation plan for Father, and via a dispositional order

required among other things that Father: 1) refrain from criminal activity; 2) obtain a drug and alcohol assessment by September 20, 2008 and follow the recommendations; 3) enroll in parenting classes by September 20, 2008, and complete the program; and 4) undergo a psychological evaluation and follow any recommendations. Id. at 56.

On September 17, 2009, DCS filed a second amended CHINS petition, additionally alleging that D.C.C. – an eleven-year-old half-brother of the Children – reported sexual abuse by Father involving anal sex, and A.A.C. – an eight-year-old half-sister of the Children – reported that Father had entered her room and lay naked in bed with her.

On December 18, 2009, following a hearing, the trial court entered additional findings of fact, and entered a judgment that the Children are CHINS. Specifically, the trial court found that Father was unemployed on the date of the hearing and has failed to comply with the parenting plan by: failing to complete drug and alcohol treatment or submit to regular drug screens, failing to consistently attend and complete parenting classes, failing to undergo a psychological evaluation (finding that he lied during the first evaluation and due to positive screens for cocaine was not able to be re-evaluated), and continuing to use cocaine (evidenced by four positive drug screens). In addition, the trial court found that Father had engaged in anal sex with D.C.C. and lay naked in bed with A.A.C., and that Father had admitted his addiction to drugs and history of cocaine usage.

The record is unclear as to when, during the pendency of the CHINS case, Father was incarcerated. He was arrested and imprisoned on July 27, 2008, the day before the original CHINS petition was filed on a warrant for failure to pay child support. It is unclear when he

was released, but the record indicates Father was out of prison at the latest by February 2009, when he began attending parenting classes. The record does not indicate that he was imprisoned again until January 2010, when he turned himself in for violating his probation by using cocaine.

DCS filed a petition for termination of parental rights on November 16, 2009. On September 7, 2010, following hearings pursuant to DCS's petition, the trial court entered findings of fact and conclusions of law and ordered termination of Father's parental rights to the Children.¹ Father now appeals. Additional facts will be supplied as appropriate.

Discussion and Decision

I. Standard of Review

We have long held 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). When reviewing the termination of the parent-child relationship, we neither reweigh the evidence nor judge the credibility of the witnesses. In re G.Y., 904 N.E.2d 1257, 1260 (Ind. 2009). We consider only the evidence most favorable to the judgment and the reasonable inferences to be drawn therefrom. Id. Where, as here, the trial court entered findings of fact and conclusions of law, 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.

¹ The trial court order also involved a CHINS petition and the termination of parental rights as to other children and adults (including D.C.C., A.A.C., and the biological mother of all of the children), but none of these other adults or children are parties to or the subject of this appeal.

To terminate one's parental rights, the State must allege and prove by clear and convincing evidence, among other things, 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;

Ind. Code § 31-35-2-4(b)(2); G.Y., 904 N.E.2d at 1260 (referring to the clear and convincing evidence standard).² Termination of parental rights is not undertaken to punish parents, but to protect their children. Matter of A.N.J., 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). Accordingly, parental interests are "subordinated to" their children's interests. G.Y., 904 N.E.2d at 1259.

II. Remedy of Conditions

At the outset, we observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, such that the trial court is only required to find one element under subsection (2)(B) by clear and convincing evidence. See In re L.S., 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), trans. denied, cert. denied, 534 U.S. 1161 (2002). Because we find it dispositive under the facts of this case, we need only consider whether DCS established that there is a reasonable probability the conditions resulting in the Children's removal or the reasons for placement outside Father's home will not be remedied.

² We cite the version of Indiana Code section 31-35-2-4(b)(2) effective at the time the termination petition was filed in this case. The statute has since been amended effective March 12, 2010. See P.L. 21-2010, § 8.

In determining whether there is a reasonable probability that the conditions which resulted in the removal of the Children will not be remedied, the trial court should evaluate a parent's "fitness to care for his children at the time of the termination hearing, taking into consideration evidence of changed conditions" and "the parent's habitual patterns of conduct." In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. The trial court may also consider services offered to Father and his response to those services. See id.

Father argues that two primary factors that contributed to the removal of the Children – inappropriate housing and Father's unavailability to care for the Children while incarcerated – were nearly resolved at the time of the termination hearing, and therefore the trial court's findings were erroneous.

At the time of the termination hearing Father was in prison, although scheduled for release within two to four months. He also notes that he has maintained sobriety while incarcerated, has enrolled in parenting and substance abuse classes while incarcerated, and that gainful employment was available to him upon his release. Further, Father indicates that he and the Children's biological mother prepared a home for the Children and she had been living there for over one year by the time of the termination hearing.

However, considering the evidence most favorable to the judgment and the reasonable inferences therefrom, see G.Y., 904 N.E.2d at 1260, we are drawn to evidence presented regarding Father's long-term and ongoing drug addiction. His candid testimony during the hearing as to the intensity and duration of his addiction and history of failed attempts to quit constitute a reasonable probability that the reasons for the Children's removal would not be

remedied. Under the influence of illegal drugs, Father is unlikely to maintain a safe and healthy home, for this was a major underlying cause for his being deemed unable to care for the Children and their removal. Even if he does maintain a home and keep it safe and appropriately supplied for the Children, it is reasonably probable that Father may return to prison for another drug offense.

We do not intend to express cynicism or make light of Father's efforts or ability to break his addiction once and for all. However, in following our deferential standard of reviewing the trial court's evaluation of the facts and circumstances, we cannot reverse the trial court to rule otherwise in light of Father's admitted long-term drug addiction and repeated failed attempts to break his habit.

Father has testified at length regarding the current status of his addiction, and also – what we consider painfully ironic – how Father was addicted years ago when the trial court terminated his parental rights to another child on unrelated grounds. And while that case is of no consequence here, the limited facts he reveals to us about that case and his present failure to break his addiction do not bode well for his current challenge to the trial court's conclusion that it is reasonably probable that his drug addiction would not be remedied. We have previously stated: “children continue to grow up quickly; their physical, mental, and emotional development cannot be put on hold while their recalcitrant parent fails to improve the conditions that led to their being harmed and that would harm them further.” Matter of D.T., 547 N.E.2d 278, 286 (Ind. Ct. App. 1989), trans. denied.

Further, the fact remains that while out of prison for most of the pendency of the CHINS case, Father failed to complete a drug and alcohol treatment program, which could have served as the foundation for his quitting drugs once and for all. In addition, Father failed to attend parenting classes, which could have served as a foundation for his learning to care and provide materially and emotionally for the Children, provide a safe and stable home for them, and also likely further encourage his quitting drugs. Finally, Father failed to complete a psychological evaluation, which also could have helped his pursuit of drug rehabilitation and efforts to remedy the conditions that led to removal of the Children.

We consider Father's "fitness to care for his children at the time of the termination hearing, taking into consideration evidence of changed conditions," his "habitual patterns of conduct," and the degree to which he took advantage of or failed to take advantage of services offered to him. J.T., 742 N.E.2d at 512. He failed terribly to take advantage of any of the services offered to him. Although he has remained sober while he has no access to drugs in prison and began substance abuse and parenting classes while relatively inactive in prison, this conduct does not reflect especially positively on his commitment to sobriety and consistent attendance of substance abuse and parenting classes upon release. His failures to take advantage of services also demonstrate his questionable commitment to making other changes in his life to remedy the conditions that led to removal of the Children, or to otherwise facilitate the Children's development and stability. Based on Father's habitual pattern of conduct, we cannot say that the trial court clearly erred in finding it reasonably probable that the conditions that led to removal of the Children will not be remedied.

Conclusion

The evidence presented supports the trial court's findings of fact, which support its judgment to terminate the parent-child relationship between Father and the Children.

Therefore, we affirm.

Affirmed.

NAJAM, J., and CRONE, J., concur.