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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF: J.J.)
)
TONY E. JONES, Father)
Appellant-Respondent,)
)
vs.)
)
ELKHART COUNTY DEPARTMENT)
OF CHILD SERVICES)
Appellee-Petitioner,)
)

No. 20A05-0702-JV-89

APPEAL FROM THE ELKHART CIRCUIT COURT, JUVENILE DIVISION
The Honorable Deborah A. Domine, Magistrate
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0607-JT-17

September 14, 2007

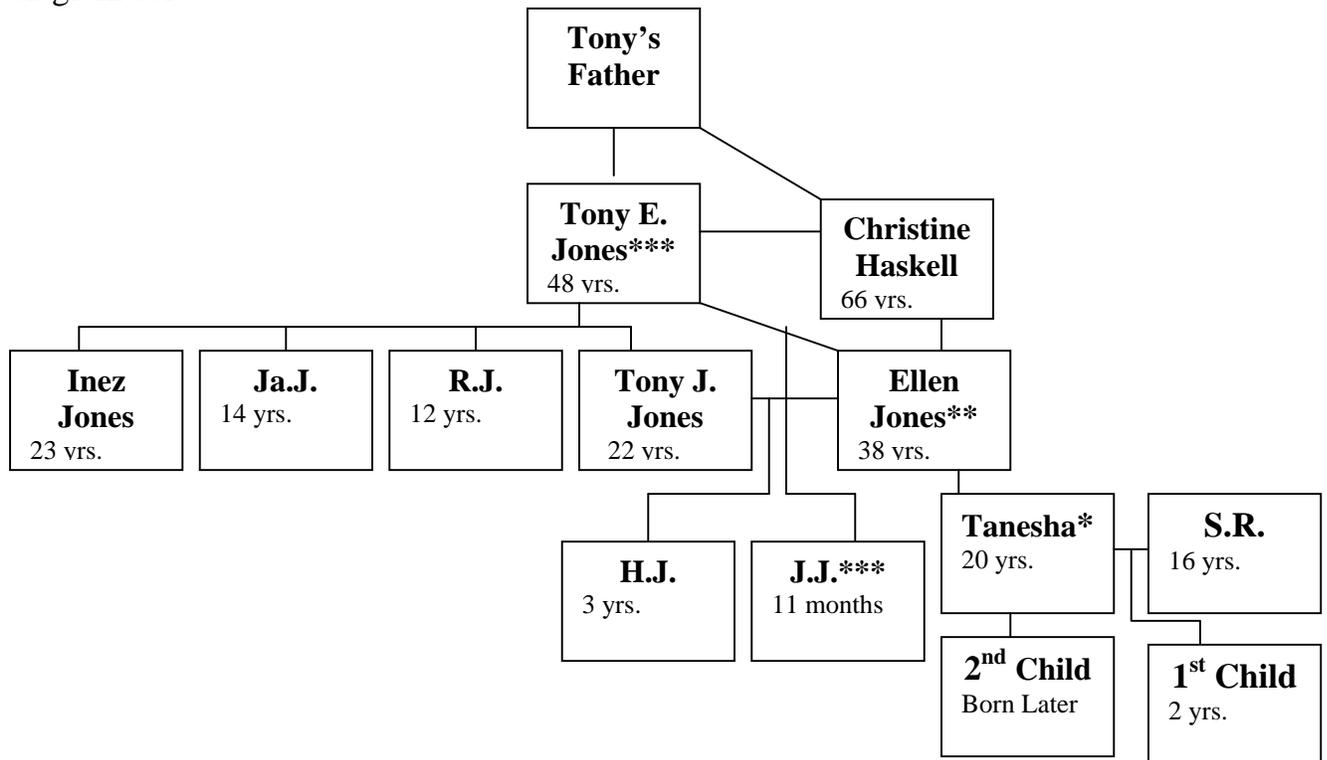
MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Respondent, Tony E. Jones, appeals the juvenile court’s involuntary termination of his parental rights.¹ Specifically, Tony E. claims that the Elkhart County Department of Child Services (“ECDCS”) did not present sufficient evidence to prove that termination of his parental rights was justified. Concluding that the evidence was sufficient, we affirm.

FACTS AND PROCEDURAL HISTORY

The intertwining relationships in the Jones family are most clearly depicted by the diagram below:



* At some point Tanesha had a relationship with Ja. J. and there is a fifty percent chance that he is the father of Tanesha’s second child.

** Ellen Jones has four other children. Her mother, Christine Haskell, raised Ellen’s oldest daughter while her parental rights for the other three were involuntarily terminated.

*** This case involves Tony E. Jones’s parental rights to his minor son, J.J.

¹ Ind. Code § 31-35-2-4 (2006).

As evidenced by this diagram, Tony E.'s partner, Christine, had previously engaged in a romantic relationship with Tony E.'s father. Tony E. has also fathered a child with Christine's daughter, Ellen,² who is currently married to Tony E.'s son, Tony J., and it is this child, J.J., who is at issue in this case.

During February of 2005, Tony E. and his partner Christine lived with Ellen, J.J., H.J., R.J., Tanesha, Tanesha's boyfriend S.R., and Tanesha's first child in Tony E. and Christine's home located on Garver Avenue in Elkhart, Indiana.³ On February 27, 2005, Tony E. spent the evening at home with numerous teenage visitors who were freely coming and going from the residence. Tony E. was aware that they were drinking alcohol while in his home. The scene was described to be chaotic, and at some point, Tanesha's boyfriend S.R. urinated on H.J.'s face.⁴ Later that same evening, a teenage visitor to the home sexually molested H.J. Despite being home at the time of the incident, Tony E. did not report the molestation to the police or take H.J. to the hospital.⁵

² It should be noted that Ellen was, at the time of her affair with Tony E., married to his son, Tony J. Tony J. was considered to be J.J.'s legal father since he and Ellen were married when J.J. was born, even though the parties acknowledged that Tony E. was J.J.'s biological father. Both Ellen and Tony J.'s parental rights to J.J. were also terminated by the juvenile court's January 26, 2007 order and are not at issue in this appeal.

³ Tony J. had previously been living at the residence, but was incarcerated during February of 2005 and was not present at the home during the evening when the incident leading to the children's removal occurred.

⁴ The evidence shows that such chaos was not uncommon at the Jones family's home, but rather was the norm. For example, underage drinking was a frequent occurrence, often leading to open sexual activity that would take place in all areas of the home, including the living room, in front of whoever was present at the time. On one such occasion S.R. walked up behind Tanesha, ripped off her pants, and began having sexual intercourse with her in front of everyone present in the room.

⁵ Tony E. admitted that on at least two other occasions he had witnessed child abuse in the house and had not notified authorities. Tony E. stated that he had witnessed Tanesha kick her son in the face and

Later that evening, the police were called to the home to break up a fight. The police discovered that H.J. had been molested and notified Ellen, who was out playing bingo with Christine. Ellen did not return home immediately but continued to play bingo for a few more hours.

Representatives from the ECDCS visited the Jones family's home on March 4, 2005. Upon arrival at the home, they discovered that the home was very dirty and malodorous. The home had no hot water or gas and was heated by a kerosene heater. The ECDCS representatives found puppy feces, dirty clothes, dirty diapers, and moldy food on the living room floor. They also found a baby bottle in a litter box. The ECDCS representatives examined the children and discovered that H.J. had a scratch on her face and a black eye, and J.J. had a gash and a knot on his head. Both children were very dirty and smelled of body odor. The children were removed from the home and placed in protective custody and have remained in the State's custody since their removal on March 4, 2005. The children were subsequently placed in foster care, and their foster mother testified that in over seven years of being a foster parent and caring for nearly twenty to twenty-five children, "[t]hese were, probably, the worst two kids I've ever seen come into my house. Just physically, they way the[y] looked and the way the[y] smelled and the way the[y] related to everything around them." Tr. at 188.

knock him over. Tony E. also stated that he had witnessed S.R. shooting his son with an "air BB gun," leaving red marks on the child and making him cry. Tony E. testified that he did not notify the authorities because Tanesha told him that, if he did, they would probably lose the children.

ECDCS filed a petition to terminate Tony E.'s parental rights to J.J. on July 6, 2005. At that time the J.J. and H.J. were the subject of proceedings to establish that they were children in need of services ("CHINS"). Dispositional orders in these CHINS proceedings were entered on July 14, 2005. As part of the dispositional order, Tony E. was ordered to undergo random drug screens, obtain and maintain adequate and stable housing, complete psycho-sexual assessments and follow the recommendations given, establish paternity, undergo a psychological parenting assessment, attend parenting classes, and participate in the Rapid Family Assessment program.

During the termination proceedings, numerous experts, including psychologists and family counselors, who were retained in this matter, acknowledged that while Tony E. did in fact complete the requirements as set out in the dispositional order, he failed to display any indication that he had improved either his parenting capabilities or his judgment to a level where they felt that it would be safe to entrust minor children to his care. On January 26, 2007, after a lengthy fact-finding hearing, the juvenile court determined that it was in the minor children's best interest to terminate Tony E.'s parental rights to J.J. and entered an order to that effect. Tony E. now appeals the termination of his rights to J.J.

DISCUSSION AND DECISION

In cases involving the termination of parental rights, we grant great deference to the juvenile court and will not set aside its 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). A finding is clearly erroneous when no facts or inferences support it. *In re*

J.W., 779 N.E.2d 954, 959 (Ind. Ct. App. 2002). We will reverse a judgment as clearly erroneous if we review the record and have a “firm conviction that a mistake has been made.” *Id.* We will not reweigh the evidence nor judge the credibility of the witnesses, but consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *In re A.A.C.*, 682 N.E.2d at 544. Where the trial court enters findings of fact, as in the present case, our review is two-tiered. *Bester v. Lake County Office of Family and Children*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings. *Id.* Second, we determine whether the findings support the judgment. *Id.*

While we recognize that the parent-child relationship is “one of the most valued relationships in our culture,” we also recognize “that parental interests are not absolute and must be subordinated to the child’s interests in determining the proper disposition of a petition to terminate parental rights.” *Id.* (internal quotations omitted). Thus, “parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities.” *Id.* Under Indiana Code section 31-35-2-4(b) (2006), before the State can terminate parental rights in Indiana, it must prove by clear and convincing evidence 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 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);
- (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 interest of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

After examining the facts of this case as well as the expert testimony provided at the fact-finding hearing, the juvenile court determined that the evidence presented satisfied each of the requirements for terminating Tony E.'s parental rights to J.J. by clear and convincing evidence. We agree.

First, the evidence establishes that J.J. was removed from Tony E.'s home on March 4, 2005 and has not been returned to the home since his removal, that the juvenile court entered a dispositional decree finding J.J. to be in need of services on July 14, 2005, and that the juvenile court ordered that Tony E.'s parental rights be terminated on January 26, 2007. Therefore, J.J. has been under the care and supervision of the ECDCS for at least fifteen of the most recent twenty-two months prior to the termination, and he had been removed from Tony E.'s care and custody for at least six months pursuant to the dispositional decree.

Second, the evidence establishes that there is a reasonable probability that the conditions resulting in J.J.'s removal from Tony E.'s home are unlikely to be remedied and the continuation of the parent-child relationship poses a threat to J.J.'s well being. While the juvenile court noted that Tony E. has made significant progress toward

improving the physical condition of his home, it further noted that this is where the improvement ends. For example, Billie Pawlek, Tony E.'s parenting class instructor, testified that even though Tony E. completed each of the requirements for successful completion of the class, it did not appear that Tony E. was able to apply what he had learned as he displayed no indication that he had enhanced his parenting abilities. Likewise, the Court-Appointed Special Advocate for the children testified that the conditions that led to the children's removal from the home remain, as evidenced by the family's substantial history of insufficient supervision and neglect, as well as various expert assessments revealing that there would be a significant risk for the children to be returned to the home.

Third, the evidence establishes that termination of Tony E.'s parental rights is in the best interest of J.J. Dr. Anthony Berardi, a psychologist who examined Tony E. concluded that:

I thought he [Tony E.] had some real significant problems that impact his parenting capacity in that [it] would be difficult to trust that he would be able to meet minimum standards of caring and protecting the child. . . . I think . . . there would be considerable risk of a child in his care and that risk could range from a lack of appropriate supervision, to a lack of appropriate boundaries.

Tr. at 137. Further, Kathy L. Byler, an expert who conducted a psychosexual assessment on Tony E., concluded that Tony E. displays poor sexual boundaries, that those sexual boundaries can be harmful to children, and that he should have no unsupervised contact with anyone under the age of sixteen years old.

Lastly, the evidence establishes that the ECDCS has a satisfactory plan in place for the care and treatment of the J.J. ECDCS's plan is for adoption, which encompasses J.J.'s need for permanency and stability.

In effect, Tony E.'s claims are an invitation to reweigh the evidence that was presented before the juvenile court, which we decline to do. We therefore conclude that the juvenile court's termination of Tony E.'s parental rights to J.J. was not clearly erroneous.

The judgment of the juvenile court is affirmed.

NAJAM, J., and MATHIAS, J., concur.