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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE TERMINATION OF THE PARENT-)
CHILD RELATIONSHIP OF:)

A.B. (Minor Child),)

AND)

E.B. (Father),)

Appellant-Respondent,)

vs.)

THE INDIANA DEPARTMENT OF CHILD)
SERVICES,)

Appellee-Petitioner.)

No. 79A05-1102-JT-102

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta Rush, Judge
Cause No. 79D03-1010-JT-145

September 27, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant–Respondent, E.B. (Father), appeals the trial court’s Order terminating his parental rights to his minor child, A.B.

We affirm.

ISSUE

Father raises two issues on appeal, which we consolidate and restate as: Whether the trial court’s termination of Father’s parental rights was clearly erroneous.

FACTS AND PROCEDURAL HISTORY

A.B. was born on November 27, 2007 to an acquaintance of Father. Father is not the biological parent, but arranged to adopt A.B. while the mother was pregnant. Father is the sole legal parent of A.B. Father had four children from previous marriages who, along with one grandchild, resided with Father. Father operated a daycare out of his home with his ex-wife. A.B. resided alternatively with Father and his ex-wife.

On January 12, 2010, the Tippecanoe County Division of Family and Children (DCS) received a report that Father used heroin while operating a daycare and caring for A.B. and his other children. DCS commenced an investigation and ordered substance abuse testing for all members of the household. Father exhibited evasive behavior regarding substance abuse

by insisting on using a private drug testing facility rather than the DCS mandated drug testing facility, and by removing his body hair in anticipation of a hair follicle drug screen. Following several positive drug tests, Father later admitted to using prescription drugs without a prescription as well as marijuana.

On February 3, 2010, DCS filed its petition alleging that A.B., his half-sister, and a child of A.B.'s other half-sister were children in need of services (CHINS). On February 4, 2010, A.B. was removed from Father's home. On February 5, 2010, the trial court held a hearing and authorized A.B.'s removal from the home based on Father's drug use, evasive behavior, criminal history, and evidence of both instability and incidents of inappropriate sexual conduct between family members at Father's home.

On March 19, 2010, the trial court held a fact finding hearing and adjudicated A.B. to be a CHINS. Immediately following the CHINS adjudication, the trial court conducted a dispositional hearing and entered a dispositional decree along with a separate parental participation decree. Under the parental participation decree, DCS provided case management, individual therapy, parenting classes, and substance abuse assessments to Father. Father was required to obey the law, refrain from all drug use and possession, as well as maintain a residence, source of income, and pay reimbursements to DCS for A.B.'s care.

On June 18, 2010, the trial court held a review hearing. The trial court ordered Father to continue participation with the parental participation decree, and in particular, continue substance abuse treatment. The trial court found that the objectives of the dispositional decree were not met, though there was a possibility that they might be, and scheduled a

permanency hearing for September 15, 2010.

During the pendency of CHINS proceedings, Father was incarcerated twice. Father was held in the Marion County jail from July 26, 2010 to August 9, 2010 following his arrest for possession of stolen property and heroin. From November 2 to November 28, 2010, Father was held in the White County jail on a petition to revoke probation. Father was convicted of possession of heroin, a Class A misdemeanor, and received a suspended sentence of one year. On August 27, 2010, the trial court found Father in contempt for failure to comply with the parental participation decree, and ordered the permanency hearing continued to September 24, 2010.

On September 21, 2010, DCS completed its progress report regarding A.B. The progress report reviewed the events since January 12, 2010, and in particular, Father's compliance with the parental participation decree. Though noting Father's participation in parenting and home-based-case classes as well as individual and substance abuse counseling, DCS found that Father was "dishonest" about his substance abuse based upon Father's failed drug tests and admission of drug use. The progress report contained Father's therapists' concerns regarding the effect of Father's July 26, 2010 arrest and Father's tendency to put his own affairs ahead of the A.B.'s needs. The progress report also noted DCS's concerns that A.B. experienced physical distress, which was believed to have resulted from the uncertainty and stress of A.B.'s lack of a permanent living situation. DCS found that Father had not provided a stable environment for A.B., and amended the permanency plan from reunification of A.B. with his Father to termination of Father's parental rights. DCS also

recommended that Father thereafter pay for all services at his own expense.

On October 6, 2010, the trial court completed its hearings and issued its order on the permanency hearing. The Order adopted DCS's recommendations that the permanency plan be changed to terminate Father's parental rights and that Father pay for all services at his own expense. Specifically, the trial court found that DCS made reasonable efforts to provide substance abuse assessment and treatment to Father. The trial court set the termination of parental rights hearing, and also ordered A.B. to remain in his foster home.

On January 6, 2011, the trial court held the termination of parental rights hearing, and on January 27, 2011, the trial court issued its Order terminating Father's parental rights as to A.B. In its Order, the trial court found in pertinent part:

18. During Father's visits with [A.B.], people c[a]me by the home, including [A.B.]'s natural mother. Father acknowledged that his old friends would come by the house and ask him to get high. During one (1) visit, Father's drug supplier went into the house, got a piece of furniture, and left.

19. Father has an extensive history of substance abuse. He started taking opiates approximately ten (10) years ago for physical conditions. Father would try to get off the pills for several months and then would return. Father started taking pain medications that were not prescribed to him about four (4) years ago. Father started using heroin and taking other opiates about three (3) years ago. Father started smoking marijuana several years ago.

20. The following positive drug screens were collected by DCS as to Father: January 27, 2010 positive for propoxyphene; February 8, 2010 positive for morphine; February 18, 2010 positive for amphetamines, opiates (specifically hydrocodone and hydromorphone), and propoxyphene and norphoxyphene; March 3 and 17, 2010 positive for amphetamines and opiates (specifically hydrocodone and hydromorphone); March 18, 2010 positive for amphetamines and hydrocodone; March 30, April 1, April 15, 2010 positive for amphetamines, hydrocodone, and hydromorphone; April 22, 2010 positive for hydrocodone, hydromorphone, and morphine; April 29, 2010 positive for opiates, specifically hydromorphone; May 15, 2010 positive for amphetamines;

and August 6, 2010 positive for morphine. All drug screens from August to date have been negative.

21. At times, Father had a valid prescription for Lortab that he admits abusing for his drug addiction. Father never told his prescribing doctor about his drug addiction so he could be prescribed a non-narcotic alternative. Father had been prescribed Adderall for years, found some old pills, and started using them without the advice of his doctor.

22. In the beginning of the CHINS case, Father denied having substance abuse problems. Father was provided substance abuse treatment and counseling. Father lied to his treatment provider and went to great lengths to avoid acknowledging his drug issues. Father shaved all his body hair to avoid having to submit to a hair drug screen, and would dodge or change times of drug screens.

23. Father moved into Seeds of Hope, a residential drug treatment facility, after he was arrested in Marion County, in July 2010, for heroin. Father stayed three (3) weeks and left the treatment facility without completing the program, and against the recommendation of the treatment team providers.

24. DCS also provided substance abuse treatment through Turning Point Counseling. Father was dishonest about his drug addiction to his therapist during the first several months of the CHINS case. Around his July arrest, Father became honest and started working his treatment and did well in his second substance abuse treatment. Father then stopped treatment after the permanency planning hearing as would have to pay for his treatment at a reduced rate. Father was also to participate in a twelve (12) step program but failed to provide proof of his attendance. According to Father's therapist, Father is very early in his recovery with a high risk of relapse.

25. Even though Father's last positive drug screen was in August[] 2010, his family preservation workers report many of the issues leading to [A.B.]'s removal still remain. At this time, Father has made only "minimal progress in this case. While Father's direct parenting skills are adequate ... the lack of understanding as to how his CONTINUED illegal and dangerous choices harm his son is unbelievable" ... "the [Home-Based/Goal-focused Services for Children & Families] staff have felt throughout this case that [Father] has been dishonest and due to the different people coming in and out of his house that he is still living life as an addict [U]nfortunately for [A.B.], [Father] has chosen not to genuinely and honestly work this case for the 7 ½ months we have been involved. He has been dishonest and has constantly denied drug

use[. He and his adult children appear to be overly enmeshed, which has been a source of chaos throughout this case.”

26. According to many of the service providers, Father was extremely deceptive with the CHINS treatment team.

27. Father began intravenous heroin use right after he adopted [A.B.] and just prior to taking guardianship of another infant. Father failed to disclose his drug addiction to the children’s mothers or to any of the parents utilizing his in-home daycare. Drugs, including pills, were found in the home and some pills were loose in a couch the children used.

28. Father was ordered to comply with family preservation services to assist with reunification. Father struggled with taking his pain medications as prescribed. Providers would have to count his medication during visits. Father’s medication counts were often not accurate or not as prescribed. Father did not acknowledge his heroin drug addiction until he was arrested and jailed in July 2010. Even at after the arrest, Father continued to live “an addict’s lifestyle” with numerous drug users coming and going from the house. Father was repeatedly advised to end such associations.

29. During several periods during the CHINS case, Father would show cooperation with the services but he failed to sustain any improvement. Father now wishes that he had taken full advantage of the services. Father says that he has changed but “needs help from the community” and acknowledges neglecting [A.B.]. After the permanency hearing, Father was provided information on community-based services that would be available to him such as case management and substance abuse treatment at little to no expense. Father has not taken advantage of the recommendations and is not currently in any services.

* * *

31. [A.B.] is need of a safe, stable, and secure home that will meet his needs.

32. [A.B.] has significant issues relating to anger, stress, and abandonment. When originally placed in foster care in February of 2010, he would throw fits, have angry outbursts, scratch his face, harm himself, pull his pants down and fondle his genitals, bite peers, and would ask providers not to hit him. [A.B.] would worry that Father was going back to jail and told his play therapist that [A.B.]’s behavior caused [A.B.] to be placed in foster care. [A.B.] was placed in play therapy to deal with his issues. At times, after visitations with Father, [A.B.] would smear his feces, have increased bed wetting, would put his finger in his rectum, and would have an upset stomach. When Father did not show

for visits or was incarcerated, [A.B.]’s symptoms would decrease. [A.B.] would consistently state to his therapist his desire to have a permanent “mom and dad” of his own. According to [A.B.]’s therapist, [A.B.]’s symptoms of anxiety have diminished significantly since contact with his Father ceased and he is beginning to flourish in his concurrent home.

* * *

36. Father’s inability to make safe decisions for his or other’s children is a long-standing concern. Father has many problems in addition to his substance abuse and heroin drug addiction. Father allowed [A.B.’s older half-brother], who had molested two of his other children, to work in his daycare and live in the home with [A.B.]. Father allowed and welcomed drug users in his home both before and after the children were removed. Father continued to commit crimes throughout the CHINS case. Father admits stealing “a lot” during the CHINS case. Father has several criminal cases pending with the outcome of those cases unknown at this time. Father did not originally want [A.B.] placed in his ex-wife’s [] care, then changed his mind and wanted him placed with her.

(Appellant’s App. pp. 4-6) (internal citations omitted).

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

DISCUSSION AND DECISION

Father contends that the trial court’s termination of his parental rights to A.B. was clearly erroneous. To involuntarily terminate parental rights, DCS must allege and prove, among other things:

(B) that one (1) of the following is true:

(i) There is a reasonable probability that the conditions that resulted in the child’s removal or the reasons for placement outside the home of the parents will not be remedied.

(ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child . . . [and]

(C) that termination is in the best interests of the child

(D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). DCS must prove the foregoing elements by clear and

convincing evidence. I.C. § 31-37-14-2; *In re I.A.*, 934 N.E.2d 1127, 1133 (Ind. 2010). The trial court must terminate parental rights if it finds the allegations to be true. I.C. § 31-35-2-8(a).

We employ a highly deferential standard of review for judgments terminating parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). Only evidence and reasonable inferences most favorable to the judgment are considered. *Bester v. Lake Cnty. Office of Family and Children*, 839 N.E.2d 143, 147 (Ind. 2005). When, as here, the trial court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review, determining first whether the evidence supports the findings, and second, whether the findings support the judgment. *Id.* “A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it.” *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004). A judgment is clearly erroneous when “the findings do not support the trial court's conclusions or the conclusions do not support the judgment.” *Bester*, 839 N.E.2d at 147 (quoting *In re the Matter of R.J.*, 829 N.E.2d 1032, 1035 (Ind. Ct. App. 2005)).

Father notes that the trial court (1) held a permanency hearing a mere six months after the CHINS fact-finding; and, (2) ordered Father to pay for his own substance abuse services. Father contends that these two acts combined did not give him enough time to allow substance abuse treatment to take hold, thereby denying A.B. “a real chance to be reunited with his [F]ather.” (Appellant’s Br. p. 26). Accordingly, Father contends that “the law should not be interpreted to allow permanency hearings to occur for drug addicted parents who are working to complete a program that they cannot possibly complete in six month[s].”

(Appellant's Br. p. 26). We address these contentions in turn.¹

The trial court must hold a permanency hearing no later than 12 months following (1) the date of the original dispositional decree; (2) the date that a child in need of services was removed from the child's parent's home; or (3) "more often if ordered by the trial court." I.C. § 31-34-21-7(a)(2)-(3). Here, the trial court determined A.B. to be a CHINS and issued the dispositional decree on March 19, 2010. At the early review hearing held on June 16, 2010, the trial court ordered the permanency hearing to occur in three months' time, i.e., September 15, 2010, but later continued to October 6, 2010, despite a finding that "the objectives of the dispositional decree have not been accomplished." (DCS Exh. 2, p. 11). Moreover, DCS testified that the permanency hearing was held within six months "[b]ecause [Father] wasn't doing anything to work the case." (Transcript pp. 208-09). We find that the trial court held the permanency hearing well within the statutory time frame proscribed by I.C. §31-34-21-7(a).

To the extent that DCS's termination of its support services serves as a basis to contest a parental rights termination order, two rules of law stand in the way of Father's argument. First, issues regarding services are "a matter separate and distinct from the operation of the

¹ Father also contends that the following of the trial court's conclusions were not supported by clear and convincing evidence: (1) that the conditions resulting in removal would not be remedied; (2) that continuation of the parent-child relation posed a threat to the child's well-being; and (3) termination was in the child's best interest. (Appellant's Br. p. 1). However, despite an initial recitation of these issues in Father's Issues Section of his brief, Father presents no argument on whether these elements were met. Indiana Appellate Rule 46(A)(8) requires that an appellant's brief contain "the contentions of the appellant on the issues presented, supported by cogent reasoning." Although Father's brief provides citations to the statutory scheme and standard of review, Father's brief contains no argument contesting the factual or legal bases for the trial court's Order terminating his parental rights to A.B. Accordingly, we find that Father has waived appellate review as to sufficiency of the evidence.

parental rights termination statute.” *In re E.E.*, 736 N.E.2d 791, 796 (Ind. Ct. App. 2000) (citing *Stone v. Daviess County Div. of Children and Family Services*, 656 N.E.2d 824, 830 (Ind. Ct. App. 1995), *trans. denied*). Thus, “even a complete failure to provide services would not serve to negate a necessary element of the termination statute and require reversal.” *Id.*; *see also In re H.L.*, 915 N.E.2d 145, 148 n. 3 (Ind. Ct. App. 2009) (failure to provide services is not a basis to attack a parental rights termination order).

Second, we have recognized that “the time for parents to rehabilitate themselves is during the CHINS process, prior to the filing of the petition for termination.” *Prince v. DCS*, 861 N.E.2d 1223, 1230 (Ind. Ct. App. 2007). The *Prince* court also rejected the argument that “the responsibility for [a parent’s] failure to achieve and maintain sobriety in a timely fashion belonged to either the trial court of the DCS.” *Id.*

Here, the trial court found that, even prior to removal, Father went to great lengths to hide his substance abuse, including testing at a facility other than ordered by DCS and shaving his hair follicles. The trial court further found that after A.B.’s removal, Father refused to admit to using heroin and failed several drug screens despite his obligation to obey the law and not use or possess drugs. By Father’s admission, he had not stopped using drugs until the day before his arrest on July 26, 2010, more than five months after A.B.’s removal, and four months after entry of the dispositional decree.

The force of Father’s argument further weakens by reviewing his responses to substance abuse treatment throughout the process. DCS determined that Father pay for his own substance abuse counseling and advised Father of low-cost programs. Upon being

advised by DCS that their payment for his substance abuse services would cease but that Father could avail himself of low cost alternatives, Father failed to take advantage of such services. Testimony from Father's counselors confirmed that Father was advised of the gravity of the situation and necessity to fulfill his obligations.

Father decries DCS's offers of low cost programs as a "recitation[that Father] might locate some." (Appellant's Br. p. 26). We find Father's argument to be disingenuous. One of Father's counselors testified that Father was advised of sliding scale treatment programs. Yet, instead of pursuing low-cost treatment options, Father elected to seek treatment with his former substance abuse counselors provided by DCS. Because both the trial court's findings and the record are clear that Father was given ample opportunity to take advantage of services offered to him, but nonetheless failed to do so, we cannot say that the trial court incorrectly found as a matter of law that six months was sufficient time for Father to take advantage of the services offered.

CONCLUSION

Based on the foregoing, we conclude that the trial court's termination of Father's parental rights to his minor child, A.B. was not clearly erroneous.

Affirmed.

NAJAM, J. and MAY, J. concur