

Children's Law Center of Indiana



Termination of Parental Rights (TPR)

11/18/2008

In **C.T. v. Marion Cty. Dept. of Child Services**, 896 N.E.2d 571 (Ind. Ct. App. 2008), the Court affirmed the trial court's termination of the parent-child relationships of Mother and Father with the child. The child was born to Mother and Father on December 2, 2006. Three days later, (1) the Marion County DCS (MCDCS) filed a CHINS petition regarding the child, removed him from Mother, and placed him in foster care because he tested positive for cocaine at birth; and (2) following a detention hearing, the trial court found there was probable cause to believe the child was a CHINS. The CHINS petition also indicated Mother had an extensive history with MCDCS, including an open CHINS case involving Mother's older children for which Mother had failed to complete rehabilitative services. Father was incarcerated at this time. The decision details the previous history of Mother and Father with MCDCS with regard to their four older children, which history culminated in termination of their parental rights regarding them. Following a fact-finding hearing, the trial court found the child to be CHINS with regard to Mother on May 4, 2007, and as to Father on June 13, 2007, after Father's paternity was established. Following a June 27, 2007 hearing, the trial court granted MCDCS' motion requesting that it no longer be required to make reasonable efforts to reunify Mother with the child. MCDCS filed its petition for involuntary termination of the parent-child relationship between the child and both Mother and Father on September 28, 2007. At a two-day fact-finding hearing which concluded on February 13, 2008, Mother was present and represented, and Father was not present because of his incarceration, but was represented by counsel. Father's counsel filed a motion, which he renewed at the beginning of the hearing, requesting that the termination hearing be continued until Father was released from prison, which was scheduled to occur in April 2008. The motion was denied. On February 20, 2008, the trial court issued its judgment terminating both Mother's and Father's parental rights to the child. Both appealed.

The Court concluded that clear and convincing evidence supported the trial court's findings and ultimate determination that there was a reasonable probability the conditions resulting in the child's removal and continued placement outside Mother's and Father's care would not be remedied. *Id.* at 582, 585. The Court opined: (1) the traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment; (2) however, the trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination; (3) parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities; and (4) the juvenile court must assess the parent's ability to care for the children as of the date of the termination hearing. *Id.* at 577, 582. (citations omitted). Regarding Mother's claim that MCDCS had not proven by clear and convincing evidence that the conditions resulting in the child's removal and continued placement outside of her care would not be remedied, the Court noted that, (1) contrary to Mother's contention, the caseworker testified that she had referred

Mother to participate in a drug and alcohol assessment, but Mother had not participated; (2) each of Mother's claims of changed conditions were either based on Mother's self-serving testimony or contradicted by other evidence including her own testimony; and (3) Mother's own witness, Mother's support group leader from Gallahue Community Mental Health, testified that Mother continued to have "limited insight" into her mental illness despite her regular participation in the support group, she was not "therapeutically treating" Mother's mental health issues, the support group did not address Mother's "symptomology," Mother had not taken responsibility for what happened with her children but instead insisted she did not know why MCDCS removed the children, she was concerned with the way Mother had been using sleep as a coping skill, she felt Mother was "at risk of relapse, using drugs[,] and she had recommended Mother participate in a substance abuse program on several occasions, but Mother had failed to do so. *Id.* at 581-82. The Court held that, although it acknowledged and applauded Mother's efforts to change her life since she was released from prison, the trial court was within its discretion to judge her credibility and to weigh her testimony of changed conditions against the significant evidence demonstrating (1) her habitual pattern of conduct in failing to address her parenting and mental health deficiencies, (2) her long-standing addiction to illegal drugs, and (3) her past and present inability to provide a safe, stable, and nurturing home environment for the child. *Id.* at 582-83. As to Father's claim in this regard, the Court observed that Father (1) was incarcerated and therefore unavailable to parent the child when the child was initially removed from Mother's care in December 2006; (2) has a significant criminal history including twenty-one convictions, which resulted in his being unavailable throughout the majority of the CHINS proceedings because of being in and out of prison; (3) failed in two prior CHINS proceedings to avail himself of court-ordered reunification services, and his failure to do so ultimately resulted in the termination of his parental rights to the child's siblings; (4) had, by the time of the termination hearing here, failed to complete any of the dispositional goals specified in the pre-dispositional report and was once again incarcerated; and (5) consequently remained unavailable to parent the child. The Court opined that (1) this Court has previously recognized that individuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children; (2) a trial court need not wait until a child is "irreversibly influenced" such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship; (3) here, the child should not be required to continue to wait until Father is willing and able to care for him; and (4) under the circumstances of this case, the child has waited long enough. *Id.* at 585 (citations omitted).

Based on the totality of the evidence, including (1) Mother's failure to remedy the conditions resulting in the child's removal from her care, (2) Father's chronic and current incarceration, and (3) both parents' prior history with MCDCS, coupled with the testimony of the caseworker and the CASA recommending termination and adoption, the Court could not conclude that the trial court erred in its determination that termination of both Mother's and Father's parental rights was in the child's best interests. *Id.* at 586. Mother claimed that there was insufficient evidence to support the trial court's finding that termination was in the child's best interests because the record "contains little evidence about [her] home, employment or interaction with [the child]." Father argued "[t]here would be little if any impact on [the child] if the wardship was continued for a few more months until [he] was released from prison and had a chance to complete services and show he was fit to parent [the child]." *Id.* at 585. The Court opined that (1) in determining what is in the best interests of the child, the trial court is required to look beyond the factors identified by MCDCS and to look to the totality of

the evidence; (2) in doing so, the trial court must subordinate the interests of the parent to those of the children; and (3) previously, the Court has determined that the recommendations of the caseworker and CASA that parental rights be terminated support a finding that termination was in the child's best interest. *Id.* at 585-86 (citations omitted). The Court noted: (1) the caseworker testified that termination of both parents' parental relationships were in the child's best interest, the child was currently placed with two of his siblings in a pre-adoptive foster home, the child "is bonded with his foster care placement....He's doing just great. His development overall is going well. And being with [his] sibling[s] is important;" and (2) the CASA testified that she had visited the child in his current foster home on several occasions, she had observed the child interact with his foster parents and their children, the foster mother was "very attentive" to the child, the child's needs were being met, and the CASA was in agreement with MCDCS' permanency plan that the child be adopted by his current foster parents. *Id.* at 586.

After balancing the substantial interests of both Father and the State as they related to the termination hearing, and in light of the minimal risk of error created by the challenged procedure, the Court concluded that the trial court did not abuse its discretion, nor was Father denied due process of law, when the trial court denied Father's motion to continue and proceeded with the termination hearing in his absence. *Id.* at 587. On appeal, Father alleged that he was denied due process of law when the trial court denied his motion to continue the termination hearing. The Court opined: (1) when the State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of due process; (2) the nature of the process due in a termination of parental rights proceeding turns on the balancing of three factors which are, the private interests affected by the proceeding, the risk of error created by the State's chosen procedure, and the countervailing governmental interest supporting use of the challenged procedure; (3) in termination cases, both the private interests of the parents and the countervailing governmental interests that are affected by the proceeding are substantial; (4) a termination action affects a parent's interest in the care, custody, and control of his or her child, which has been repeatedly recognized as one of the most valued relationships in our society; (5) as such, a parent's interest in the accuracy and justice of the decision is a commanding one; (6) the State's *parens patrie* interest in protecting the welfare of a child is also significant; (7) although the State does not gain when it separates children from the custody of fit parents, the State has a compelling interest in protecting the welfare of the child by intervening in the parent-child relationship when parental neglect, abuse, or abandonment are at issue; (8) when balancing the competing interests of a parent and the State, the risk of error created by the challenged procedure – here, Father's absence from the termination hearing – must be considered; (9) although IC 31-35-2-6.5(e) states that a trial court shall provide a party with an opportunity to be heard at the hearing, this statutory provision does not create a constitutional right for Father to be physically present at the termination hearing; and (10) the doctrine of invited error, grounded in estoppel, provides that a party may not take advantage of an error that he commits, invites, or which is the natural consequence of his own neglect or misconduct. *Id.* at 587-88 (citations omitted). The Court observed that, here, (1) the child was physically removed from his parents and placed in foster care in December 2006; (2) the termination hearing did not commence until January 2, 2008; (3) Father, who had been incarcerated throughout the majority of the CHINS case, remained incarcerated at the time of the termination hearing and was not expected to be released from prison until sometime in April 2008; (4) thus, a significant amount of time had passed since the child's initial removal; (5) had the trial court granted Father's

continuance request, the child would have had to continue to wait for at least four additional months before a termination could even commence; (6) although continuances may be necessary in certain situations to ensure the protection of a parent's due process rights, the Court has previously held that courts must also be cognizant of the strain these delays place upon a child; (7) Father was represented by counsel throughout the entire termination hearing; (8) Father's counsel was provided the opportunity to, and did, cross-examine the State's witnesses and was granted the opportunity to introduce evidence in defense of the action; (9) Father received actual notice of the termination hearing, signed the original advisement of rights form, and then attached a handwritten letter requesting a continuance of the hearing until his release and stating that he did not want to be transported "at this time;" (10) Father maintained regularly contact with Mother, who testified that Father wrote to her approximately one a week and it appeared from his responses, that he received her letters; (11) Father failed to communicate with his attorney prior to the termination hearing; and (12) Father's attorney informed the court that he had attempted to contact Father by sending him at least three letters, to which Father failed to respond. Id. at 587-88. The Court concluded that the risk of error caused by the trial court's denial of Father's motion to continue was minimal considering that, (1) in failing to respond to his attorney's letters or to communicate with his attorney prior to the termination hearing, despite his actual knowledge of the hearing, Father invited the alleged error of which he now complains; and (2) Father failed to allege any specific prejudice that resulted from his absence from the termination hearing. Id. at 588.

The Court cautioned MCDCS that a trial court's determination that reunification services are no longer required pursuant to IC 31-34-21-5.6, neither abolishes a parent's fundamental right to family integrity, nor absolves MCDCS of its responsibility to properly oversee and manage the case. Id. at 583-84, 588.