



Termination of Parental Rights (TPR)

2/13/2006

In **Castro v. Office of Family and Children**, 842 N.E.2d 367 (Ind. Ct. App. 2006), the Court affirmed the trial court's order terminating Father's parent-child relationship with his daughter. The child was born May 6, 1996. Father has been incarcerated for more than ten years and for the child's entire life. Father held her once and saw her approximately ten times before she was eighteen months old. Since then his only contact with the child has been by letter. On March 16, 1998, Father was sentenced to an executed prison term of forty years after he pled guilty to one count of criminal deviate conduct as a Class B Felony and six counts of burglary as Class B felonies. Father became eligible in September 2005 to petition for a modification of his sentence. Because of good time credit and the completion of several programs while in prison, Father is scheduled for release in May 2012. The Marion County Office of Family and Children (MCOFC) took the child from her mother on August 7, 2003, after the child was found playing unsupervised in her trailer park with her young brothers. On October 27, 2003, Mother and Father admitted that the child was a CHINS and the trial court entered judgment. MCOFC filed a petition for termination of the parental rights of both parents on September 30, 2004. On June 20, 2005, the trial court entered an order with findings and conclusions in which the trial court terminated Father's parental rights to the child. Father appealed alleging that: (1) the trial court erred by finding that MCOFC presented clear and convincing evidence that (a) there was a reasonable probability that the conditions that resulted in the child's removal would not be remedied or (b) termination of his parental rights was in the child's best interests; (2) errors made by the MCOFC throughout the CHINS/termination process deprived him of his due process rights; and (3) the entire CHINS/termination process, from the State's initial intervention to the trial court proceedings and up through the appeals court's analysis, violates the due process rights of parents.

The trial court did not commit clear error when it found that there was a reasonable probability that the conditions leading to the child's removal from Father will not be remedied. *Id.* at 374. The Court reviewed the statutory elements set forth in I.C. 31-35-2-4(b)(2) which the trial court must find the petitioner proved by clear and convincing evidence in order to terminate the parental rights of a parent. I.C. 31-37-14-2. The Court also noted that: (1) when the evidence shows that the emotional and physical development of a child in need of services is threatened, termination of the parent-child relationship is appropriate, citing In Re E.S., 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002); and (2) the purpose of terminating parental rights is not to punish parents but to protect children, citing In Re A.I., 825 N.E.2d 798, 805 (Ind. Ct. App. 2005), *trans. denied*. Castro at 372-73.

Father argued that in finding there was a reasonable probability that the conditions resulting in the child's removal would not be remedied, the trial court ignored the facts that he was eligible to petition for a modification of his sentence in 2005 and that he had improved himself while incarcerated by, among other things, completing a parenting course. Citing In Re M.M., 733 N.E.2d 6, 13, the Court noted that (1) when addressing this issue, "the trial court should judge a parent's fitness to care for his children at the time of the termination hearing, taking into consideration evidence of changed conditions;" and (2) the trial court must evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the children. The Court observed that Father's incarceration (1) was in part the "condition" that resulted in the child's removal or the "reason" for her placement in a new home because of his consequent inability to provide food, shelter, clothing, medical care, education or supervision for the child; (2) prevented Father from contributing directly to the physical conditions that led to the child's removal from Mother; and (3) equally caused Father's inability to remedy those conditions. The Court opined that, (1) if as projected, Father will not be released until 2012, he is helpless to remedy those conditions within a meaningful timeframe; and (2) if his sentence is modified so that he will be, or already has been released earlier, his incarceration for more than ten years for at least seven serious felony convictions presents circumstances in which Father will have difficulty establishing a stable life for himself, let alone for the child. Castro at 373-74.

The trial court's conclusion that termination of Father's parental rights was in the child's best interests was supported by clear and convincing evidence and therefore was not clearly erroneous. Id. at 375. The Court cited In Re. A.L.H., 774 N.E.2d 896, 900 (Ind. Ct. App. 2002), In Re. S.P.H., 806 N.E.2d 874, 880 (Ind. Ct. App. 2004), and Matter of A.C.B., 598 N.E.2d 570, 572 (Ind. Ct. App. 1992), respectively, for the propositions that (1) a parent's historical inability to provide adequate housing, stability and supervision coupled with the current inability to provide the same will support a finding that termination of the parent-child relationship is in the child's best interests; (2) "[a]lthough parental rights have a constitutional dimension, the law allows for their termination when parties are unable or unwilling to meet their responsibility as parents;" and (3) "[i]ndividuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children." The Court noted the following factors as weighing in favor of the trial court's conclusion that the termination of Father's parental rights was in the child's best interests: (1) because of Father's incarceration since before the child's birth, he has an historical inability to provide adequate housing, stability and supervision for her; (2) Father's continued incarceration at the time of the termination hearing is strong evidence of his current inability to provide the same; (3) the child is in need of stability and permanency now; (4) the child is doing well in her current placement; and (5) there is no guarantee that Father will be a suitable parent once he is released or that he would even obtain custody. Id. at 374-75.

The Court agreed with MCOFC's contention that the requirements of due process were met inasmuch as MCOFC did everything it could to the best of its ability given the resources it had and given the fact that Father was incarcerated. The Court found that any procedural irregularities that occurred in this case were largely

attributable to the fact that Father was incarcerated throughout the proceedings and those flaws that were not attributable to Father's incarceration did not rise to the level of a deprivation of his due process rights. *Id.* at 375, 376-77. The Court reviewed the case law regarding due process considerations when the State seeks to terminate the parent-child relationship and noted that (1) due process requires notice, as well as the opportunities to be heard and to confront witnesses; (2) the notice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections; and (3) procedural irregularities in a CHINS proceeding may be of such import that they deprive a parent of procedural due process with respect to the termination of his or her parental rights. Father alleged four areas in which he was denied due process. (1) The Court found that Father's contention that he should have been informed earlier of the child's removal from Mother's home did not constitute a deprivation of due process. The Court noted in this regard that Father had failed to explain why the failure to notify him more quickly amounted to a deprivation of due process or how the result of the CHINS/termination proceeding might have been different had he known earlier; Father's incarceration rendered him unable to do much to change the situation; the government had a strong interest in removing the child from an unsuitable home; and Mother was quickly notified of the child's removal. *Id.* at 375 (2) The Court disagreed with Father's assertion that the MCOFC's failure to strictly follow certain statutory procedures relating to case plans deprived him of due process and found that MCOFC's failure to adhere to the time requirements regarding case plans did not deprive Father of due process. *Cf. A.P. v. Porter County Office of Family & Children*, 734 N.E.2d 1107, 1114 (Ind. Ct. App. 2000) (complete failure to provide case plans to parents cited as one of several procedural irregularities that combined to constitute a deprivation of due process). The Court noted that Father did not allege that he was not allowed to participate in case plan negotiations, but that he was unable to do so because of his incarceration; that he was able to communicate by letter to participate in the formulation of the case plans; and that, although MCOFC failed to comply with the technical time restrictions regarding case plans, those case plans were completed and Father did eventually receive copies of all of them thus, notifying him of conduct that could lead to the termination of his parental rights and informing him of steps needed to facilitate reunification with the child. *Id.* at 376. (3) The Court acknowledged that the first two of the three case plans contained some inconsistencies and the second case plan contained errors, but found that because the conditions required of Father in the case plans were clear, it could not say that any confusion arising from the inconsistencies in the plans deprived Father of due process. *Id.* (4) The Court found that MCOFC's failure to offer services to Father did not constitute a deprivation of his due process rights. It noted that, because of Father's incarceration, not only was MCOFC unable to offer services to him, it was also unable to fully evaluate him to determine what services were necessary. *Id.* at 377

Inasmuch as the General Assembly has adopted the clear and convincing standard for termination cases, the Indiana Supreme Court has consistently applied it, and the United States Supreme Court has held that such a standard satisfied the requirements of due process, the Court rejected Father's argument that parents are deprived of due process of law by the statutory requirement that the State need only

prove its allegations in a termination case by clear and convincing evidence. Id.
at 377. The Court quoted Santosky v. Kramer, 455 U.S. 745, 769-70 (1982):

A majority of the States have concluded that a 'clear and convincing' standard of proof strikes a fair balance between the rights of the natural parents and the State's legitimate concerns. We hold that such a standard adequately conveys to the factfinder the level of subjective certainty about his factual conclusions necessary to satisfy due process. We further hold that determination of the precise burden equal to or greater than that standard is a matter of state law properly left to state legislatures and state courts.

The Court agreed with the holding in Phelps v. Sybinsky, 736 N.E.2d 809 (Ind. Ct. App. 2000) finding constitutional I.C. 31-35-2-4.5(a)(2)(B), (codifying the requirements of 42 U.S.C. § 675(5)(E)) which requires the filing of a petition to terminate the parental rights of the parents of a child who has been in foster care under the responsibility of the State for fifteen of the most recent twenty-two months.) Castro at 377-78.

The Due Process clause does not empower the judiciary to sit as a superlegislature to weigh the wisdom of legislation. The legislation must merely bear a rational relation to a legitimate governmental purpose. The Indiana statute seeks to facilitate adoptions, instead of endless foster care placements, for children placed outside their parental homes for an extended period of time. Accordingly, it sets a fifteen-month benchmark after which the judicial system becomes involved by the automatic filing of a petition to terminate parental rights. Although the filing of such a petition is certainly not a matter to be taken lightly, it does bear a rational relation to the State's very legitimate interest in promoting adoptions of children who have been removed from their parental homes for extended periods of time.

The Indiana statute ... does not violate the Due Process Clause.

Phelps at 818.