



Termination of Parental Rights (TPR)

2/24/2005

In ***In Re A.I.***, 825 N.E.2d 798 (Ind. Ct. App. 2005), the Court affirmed the trial court's termination of both Mother's and Father's parental rights regarding A.I. In April 2002, the Vanderburg County Office of Family and Children received a referral alleging that the child was in danger of being molested by Father based on a claim by another of his daughters who did not live with the parties. The assigned case manager identified the problems in the household as substance abuse, domestic violence, and basic parenting and safety issues, and put into place a plan pursuant to which Father was to leave the home and the child would remain with Mother pending an investigation. Subsequent visits showed that Father was not abiding by the plan and Mother was continuing to be a victim of his domestic violence. At the subsequent detention hearing, the trial court authorized the child's placement in foster care, pending Father's departure from the premises. At the initial hearing the trial court issued a no contact order in favor of Mother and child against Father, who was ordered to move from the premises within a month. The child was returned to Mother's care as of that date. Soon after the hearing it was apparent that Father was violating the no contact order and abusing Mother who would not go to a battered women's shelter. In June 2002, Mother and child were evicted from the residence, the Father found them and abused Mother, for which he pled guilty to a Class A misdemeanor. The OFC filed an information for contempt (IC) alleging a violation of the no contact order. In July 2002, Mother was homeless and had not made any progress on the issues identified by OFC, and OFC filed for change of placement and requested detention of the child, which was granted by the trial court. In late August or early September 2002, the trial court conducted the dispositional hearing in which it found the child CHINS and that placement out of the home was in her best interests. Each parent agreed to an extensive parental participation plan (PPP) with which the trial court ordered them to comply. *See Id.* at 802-3. After several continuances, the trial court conducted a review and permanency hearing on April 9, 2003. The OFC expressed concerns that both parents were abusing prescription medications; both refused to sign releases; no support had been paid; domestic conflict continued; and Mother reported she could not protect the child from Father. The trial court found that the child remained CHINS and continued the dispositional decree. Both parents' ICs were heard with the parents represented by counsel. A petition for the termination of parental rights was filed on May 30, 2003, and a hearing was held by the trial court on August 6, 2003, at which time the trial court advised the parents of their rights, appointed a CASA, and set the matter for trial beginning November 20, 2003. The trial court also found Father in contempt and sentenced him to a suspended sentence. In September 2003, the trial court

conducted a review hearing and continued the placement in foster care. The parties were homeless and refused to inform the OFC where they were residing or maintain contact with the OFC; neither party had paid child support for the child; Father tested positive for Methadone and prescription drugs; Mother had failed to follow through with her court-ordered treatment at Stepping Stone; and the parties were not visiting the child. After the trial, commencing in November 2003, the trial court terminated the parties' respective parental rights. Both parents appealed, raising essentially the same issues.

The trial court's finding that the conditions were not likely to be remedied is not clearly erroneous. Here, the trial court properly considered the conditions leading to the continued placement outside of the home rather than simply focusing on the basis for the initial removal of the child, namely the allegation of sexual abuse made by another of Father's daughters. A new CHINS petition was not required for each additional ground for intervention that was discovered. See C.D., 614 N.E.2d 591, 593 (Ind. Ct. App. 1993); Y.D.R., 567 N.E.2d 872, 876 (Ind. Ct. App. 1991).

Id. at 807. The trial court found that the reasons for the child's removal were not likely to be remedied based on the evidence that (1) both parents had a history of abusing drugs; (2) their marriage was occasioned by domestic violence; (3) the parents were transient; and (4) they put their own interests above those of the child. The Court stated that I.C. 31-35-2-4(b)(2)(B)(i) provides that the State must establish 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." This language clarifies that it is not just the basis for the initial removal of the child that may be considered for purposes of determining whether a parent's rights should be terminated, but also those bases resulting in the continued placement outside of the home. See *In re A.A.C.*, 682 N.E.2d 542, 544 (Ind. Ct. App. 1997) (holding that the proper inquiry was what conditions led to the OFC's retention of custody of the child and whether there was a reasonable probability that those conditions were likely to be remedied). *A.I.* at 806.

A review of the evidence makes it clear that the trial court was within its discretion to find that the continuation of the parent relationship posed a threat to the child. The Court stated that it need not wait until the child suffers permanent psychological or physical injury before intervening. *Id.* at 811. The Court noted that Mother acknowledged the evidence presented that (1) she has a substance abuse problem; (2) that her addiction has affected her financially to the point where she paid three thousand dollars in one week for drugs and was evicted from her home after spending rent money on drugs; (3) she is the victim of "occasional domestic violence;" (4) she questioned her ability to protect the child from Father in the event it was necessary to do so; (5) she wondered whether Father had molested his daughter; and (6) she was concerned that the child might be hurt if Mother and Father began fighting. Yet she claimed that none of these factors justified the trial court's judgment and that the OFC did not present clear and convincing evidence establishing that the child's well-being was threatened by her behavior. Father urged reversal of the termination because there was an absence of specific evidence that the domestic violence and the substance abuse posed a threat to the child or rendered the parents unable to care for her. To the contrary, the Court found that there was ample evidence presented to establish that the parties engaged

in destructive and dangerous behavior, that the behavior was ongoing without any serious sign of improvement, and that the behavior posed a threat to the child. Id. at 808. The Court included an extension review of supporting evidence in its Opinion. See Id. at 808-11. The Court held that, (1) although there was no specific testimony that either parent had physically abused the child, there could be little doubt that the parties' serious substance abuse addictions detrimentally affected or greatly endangered her; and (2) the parties' failure to maintain stable employment and housing, as well as the constant drug use and sporadic domestic violence, rendered the environment for the child destructive at best and dangerous at worst. Id. at 811.

Based upon the totality of the evidence, the trial court's finding that termination was in the child's best interest was supported by the evidence. See In re M.M., 733 N.E.2d 6, 15 (Ind. Ct. App. 2000) (holding that the testimony of the CASA and the family case manager, coupled with the evidence that the conditions resulting in the placement outside the home will not be remedied, is sufficient to prove by clear and convincing evidence that termination is in a child's best interest). The Court noted that (1) the evidence demonstrated that the parents have a history of serious substance abuse and a number of mental health problems; (2) despite extensive services offered to them, the parents failed to adequately demonstrate a change in the conditions that necessitated the child's continued removal; (3) the CASA testified that termination of the parents' rights was in the best interest of the child; and (4) the family case manager testified that termination was in the child's best interests, noting that, as of the date of the final hearing, neither parent could provide permanency for the child and although both parties voiced a willingness to try to establish a stable environment for the child, neither had changed their behavior to make it happen. Id. at 811.

None of the four examples cited by the parties constituted a violation of their procedural due process rights. However, even if one or more of the examples were found to be procedurally irregular, they would not rise to the level of a constitutional violation. Id. at 815-16. (1) Contrary to the parties' contention, OFC made reasonable attempts to reunify the family as required by I.C. 31-34-21-5.5. The OFC made attempts to reunite the child with Mother and appropriately removed her initially when Mother continued to allow Father into the home which posed a threat to the safety and well-being of the child. Further, the OFC made attempts to help the parties improve the circumstances in order for them to regain custody of the child after more issues were discovered; but the parties failed to cooperate and failed to make sufficient progress so that there could be a safe return of the child to their care. Id. at 812-13. (2) Contrary to the parties' contentions, there is no basis for the claim that they lacked notice as to what was considered to be a safe environment for the child or that they were hampered by their ability to comply with the OFC's requirements for the return of the child to their care. Id. at 813. (3) Contrary to Mother's contention that her due process rights were violated because the trial court failed to comply with the requirement of I.C. 31-34-11-1 that it conduct an evidentiary hearing before finding a child to be in need of services, such a determination was made after the parents presented evidence. The trial court's docketing error in stating that the child was CHINS prior to the hearing was corrected by the trial court, and found by the Court to be harmless error. Id. at 813-14.

(4) Contrary to Mother's contention that the trial court failed to issue findings and conclusions in its orders removing the child from Mother's custody, as required by I.C. 31-34-19-10, the Court found that the trial court's order, while sparse, substantially complied with the statutory requirements and that the trial court considered all the factors set forth in the statute. Id. at 814.

The Court held that the procedural irregularities in this case, if in fact there were any, did not amount to a procedural due process violation. The Court discussed its decision in A.P. v. Porter County Office of Family & Children, 734 N.E.2d 1107. 1111 (Ind. Ct. App. 2000) trans. denied, which reversed a trial court's termination of A.P.'s parents' rights based on several substantial procedural irregularities during the CHINS and termination proceedings, which, when taken together, constituted a violation of due process. The Court found that, here, unlike A.P., the procedural deficiencies alleged by the parents, if there were any, did not rise to the level of a constitutional violation. In comparing the cases, the Court noted that, here, (1) the parents did not complain that OFC failed to provide them with a case plan; (2) there was no contention that the parties were ever deprived of their right to be present or that the trial court failed to conduct necessary hearings during the course of the CHINS and termination proceedings; and (3) unlike A.P., here, the Court did not have concerns with respect to whether the parties were properly included in the proceedings, whether the OFC followed proper procedures in removing the child, and whether the parties were adequately informed of what was required of them before the child would be returned to their care.

Mother was not denied substantive due process by the State violating her Fourteenth Amendment right to family integrity because she was required to choose between her husband and her child as she argued on appeal. The trial court did not base the termination order on Mother's failure to leave Father, but rather on her own failure to accept responsibility and make the necessary changes to appropriately parent the child. Id. at 816-17.