

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

8/31/12

In In Re B.F., 976 N.E.2d 65 (Ind. Ct. App. 2012), the Court reversed and remanded the trial court's order which terminated Father's and Mother's parental rights. The child was born on May 19, 2009. On January 27, 2010, the Gibson County Department of Child Services (DCS) removed the child from Mother's home. A CHINS petition alleging that the child was without necessary supervision based on drug use in the home was filed on January 28, 2010. Both Mother and Father appeared at court and admitted to the allegations in the CHINS petition, resulting in the child's CHINS adjudication on January 28, 2010. On March 30, 2010, the trial court held a dispositional hearing, and both Mother and Father signed a parental participation order. The trial court entered its dispositional decree on May 25, 2010. DCS filed its Verified Petition to Terminate Parental Rights on October 8, 2010, less than four months after the entry of the dispositional decree and less than nine months following the child's removal from Mother's home. The termination petition contained no allegations that the trial court had entered a finding under IC 31-34-21-5.6, nor did it allege that the child had been removed from Mother and Father for at least fifteen of the most recent twenty-two months. The petition alleged that the child had been removed from the parents for at least six (6) months under a dispositional decree on March 30, 2010. The trial court held a hearing on the termination petition on August 25, 2011, and issued its order terminating parental rights on February 1, 2012. Both Mother and Father appealed.

The Court concluded that the trial court committed fundamental error in terminating parental rights because the statutory time requirements at IC 31-35-2-4(b)(2)(A) had not been met before the termination petition was filed. Id. at 67. The Court noted that, because parents have a constitutionally protected right to establish a home and raise their children, pursuant to the Fourteenth Amendment to the United States Constitution, DCS must strictly comply with the termination statute. Id. at 67, citing In Re K.E., 963 N.E.2d 599, 601 (Ind. Ct. App. 2012). The Court noted that DCS has conceded that its petition is jurisdictionally flawed. B.F. at 67. The Court said that DCS must prove, by clear and convincing evidence, that at least one of the requirements of IC 31-35-2-4(b)(2)(A) is true at the time the termination petition is filed. Id. The Court reviewed the requirements:

- (i) The child has been removed from the parent for at least six (6) months under a dispositional decree.

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- (ii) A court has entered a finding under [I.C. §] 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required[...].
- (iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the last twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child[.]

Id. The Court found that the only requirement alleged under IC 31-35-2-4(b)(2)(A) was not true.
Id. The Court remanded for further proceedings consistent with this opinion. Id. at 67-68.