

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

8/12/14

In **In Re C.A.**, 15 N.E.3d 85 (Ind. Ct. App. 2014), the Court affirmed the trial court's order terminating Mother's and Father's parental rights to their three children. *Id.* at 87. Mother and Father were married and had three children, born in May 2004, June 2005, and December 2007. From October 2011 through January 2012, Father sold methamphetamines; Mother and the children were present during some of the exchanges. On February 29, 2012, the State charged the parents with various drug and child neglect offenses, and the parents were arrested and incarcerated. DCS placed the children in foster care and filed a petition alleging that the children were CHINS because of the parents' arrests and incarceration. On March 14, 2012, the trial court adjudicated the children as CHINS upon the parents' admission that they were unable to care for the children. In the trial court's April 2012 dispositional decree, the parents were ordered to contact the DCS family case manager weekly; enroll in programs recommended by DCS; maintain suitable, safe, and stable housing; maintain a legal and stable source of income; not use any illegal controlled substance; ensure that the children are engaged in counseling; complete substance abuse assessment; submit random drug screens; and provide the children with a safe and secure environment. In July 2012, Mother pled guilty to class D felony neglect of a dependent, and was sentenced to an executed term and probation, but was released based on time served. In October 2012, Father was convicted of class B felony dealing in methamphetamine, and was sentenced to fourteen years, with ten years executed and four years of probation.

On October 24, 2012, the trial court heard evidence at a CHINS review hearing that (1) Mother had secured employment at a nursing home; (2) Mother was attending required therapy sessions and classes; (3) parents were having regular contact with the children; (4) Mother was having regular visits with the children. At an October 22, 2012 team meeting (apparently attended by Mother, her service providers, the case manager, and the court appointed special advocate) the participants learned that Mother's live-in boyfriend was a convicted felon who had prior DCS contacts. Mother was informed that she could not live with her boyfriend if she intended to see the children at the residence she shared with him. Mother became angry, and told the team that she was entitled to a life. In October 2012 Father was transferred from Morgan County Jail to the Department of Correction (DOC), and no longer received services from DCS.

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The court appointed special advocate filed a report stating that, after November 1, 2012, Mother had missed approximately one-third of her scheduled visits with the children and there was no progress toward reunification. DCS also stated that the parents had made no progress since November 2012. At a December 17, 2012 team meeting, the participants learned that: (1) Mother had lost her job and was unwilling to look for another unless her counselor drove her; (2) Mother expressed anxiety over having unsupervised visits with the children; and (3) during the few partially supervised visits Mother had with the children, they began to trust her and felt safe. On January 8, 2013, DCS filed notice of Mother's failed drug test for her use of amphetamine and methamphetamine. Mother's probation was revoked, and she was released at the end of April 2013. Mother had continued services while in jail and completed her assignments. After Mother's release, she remained drug free, attended counseling, and was seeking employment.

At the May 22, 2013 permanency hearing, the court appointed special advocate informed the trial court of the following: (1) the oldest child was having trouble with her peers, foster parents, and siblings; (2) the oldest child expressed anger at Mother and feared going home; (3) the youngest two children were doing well in foster care; (4) the middle child stated that she wished to remain in foster care, had written letters to Father, and was processing issues on Mother's returning to jail; (5) the youngest child was working through fears involving his parents' incarceration. On June 3, 2012, the trial court held a permanency hearing and entered a permanency order approving concurrent permanency plans of reunification and adoption.

On July 23, 2013, DCS filed termination petitions as to all three children, and a court appointed special advocate was appointed in each case. On October 7, 2013, a review hearing was held in the CHINS proceeding and an initial hearing was held in the termination proceeding. At the CHINS review hearing, it was shown that Mother was no longer employed at the nursing home and that she had not been visiting the children. The Court denied the request by the attorneys for Father and Mother to continue the review hearing and the termination proceeding because DCS had not filed a report for the CHINS review hearing. Among the evidence regarding Mother which was presented at the termination hearing was that: (1) DCS had referred her to services to address parenting issues, substance abuse, life skills, budgeting, and transportation; (2) Mother met with her service provider but did not follow up; (3) Mother had moved to Indianapolis with her boyfriend, a convicted felon who had prior DCS contacts; (4) Mother had not completed individual therapy to which she had been referred by DCS. Evidence regarding Father which was presented at the termination hearing included that: (1) Father had remained incarcerated since his initial March 2012 arrest; (2) Father had participated in individual counseling while he was incarcerated in Morgan County Jail and had good evaluations; (3) Father was transferred to DOC in October 2012, and was involved in the purposeful incarceration program; (4) Father's earliest possible release date is in the fall of 2014 because, by his own actions, he had cost himself an additional year of incarceration; (5) Father's release date is March 5, 2017 and he had lost his "credit time." Evidence presented regarding the children at the termination hearing included that:

(1) they had been residing in the same foster home since their initial placement; (2) when they first arrived at their foster home, they appeared “wor(n) down,” had “bags under their eyes,” were withdrawn, made no eye contact, appeared traumatized, and hid when anyone visited the foster home; (3) all of the children were suffering from post-traumatic stress disorder (PTSD), which, according to their therapist, arose from being in the parents’ care; (4) at the time of the termination hearing, the children were doing well in school and were the first ones to go to the door when someone came to the home; (5) the therapist testified that, in the four years that she had worked on DCS cases, she had never seen children more comfortable in their foster home; (6) the children wanted to remain in their foster home; (7) just before the termination hearing, the therapist had spoken to the oldest child at school about the possibility of returning to the parents, and the child began “sobbing uncontrollably,” had a “complete meltdown,” and could not return to classes. During the termination hearing, the DCS family case manager could not recall presenting Mother or Father with a case plan, and neither Mother nor Father signed a case plan. On December 26, 2013, the trial court issued an order, containing over 200 findings of fact and conclusions of law, in which the court terminated Mother’s and Father’s parental rights to the children. Among the court’s conclusions was that DCS had a satisfactory plan, namely, adoption by the foster parents. Mother and Father appeal.

The Court could not conclude that the failure of DCS to provide a case plan to Mother resulted in a procedural irregularity so egregious that she was denied due process of law.

Id. at 93. Mother claimed that her due process rights were violated because DCS did not give her a case plan which DCS must prepare for each Child in Need of Services after negotiating with the child’s parent. The Court noted that a case plan must be given to the parent within ten days of its completion, as required by IC 31-34-15-3, and a parent’s signature indicates that the negotiation took place. Id. The Court found the record indicated that it was not Mother’s lack of knowledge or direction as to what she needed to do to get her children back, but rather her lack of participation. Id. The Court distinguished this case from A.P. v. Porter Cnty. Office of Family & Children, 734 N.E. 2d 1107, 1118-19 (Ind. Ct. App. 2000), *trans. denied*, in which the Court of Appeals reversed a termination of parental rights judgment because of numerous procedural irregularities. The irregularities included: (1) failure to provide the parents with copies of the case plan; (2) there was no signed or verified CHINS petition; (3) there was no dispositional decree containing written findings; (4) there was no permanency hearing. C.A. at 93. The Court found that, in this case, the only procedural irregularity argued was Mother’s failure to receive a case plan. Id. The Court cautioned DCS to be more cognizant of the statutory framework by which it should abide. Id.

The Court held that the trial court did not err by concluding that there was a reasonable probability that the conditions which resulted in the children’s removal would not be remedied, and that there was a reasonable probability that the continuation of the parent-child relationship posed a threat to the children’s well-being. Id. at 94. The Court noted the following evidence on the trial court’s conclusions: (1) at the time of the termination hearing, Mother was not meeting with her service providers; (2) Mother did not complete her individual

therapy and when her therapists changed, she did not want to continue; (3) Mother's residence with her live-in boyfriend who had prior DCS contacts and a criminal history was an inappropriate place for the children to visit and to live; (4) Mother still had issues with long term stability and had not demonstrated the ability to care for the children's daily needs or their well-being; (5) Mother seemed to lack the motivation to visit her children, especially after her 2013 release from incarceration for her probation revocation; (6) Mother frequently cancelled visits, failed to meet consistently with the provider who transported her to visits, and missed several weeks of visits just before the termination trial; (7) when Mother visited the children, she talked on the phone throughout the visit and then left thirty to forty-five minutes early. Id.

The Court could not say that the trial court clearly erred in determining that termination of Mother's parental rights was in the children's best interest. Id. at 95. The Court observed that, in determining the best interests of the child, the trial court is required to look beyond the factors identified by DCS and consider the totality of the evidence. Id. at 94, citing In Re J.S., 906 N.E. 2d 226, 236 (Ind. Ct. App. 2009). Quoting In Re J.C., 994 N.E. 2d 278, 290 (Ind. Ct. App. 2013), the Court noted that, "[i]n so doing, the trial court must subordinate the interests of the parent to those of the child" and "[r]ecommendations of the case manager and court-appointed advocate, in addition to evidence that the conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in the child's best interest." C.A. at 94. The Court affirmed the trial court's termination order as to Mother, noting that the evidence included: (1) recommendations from all service providers, the court appointed special advocate and the case manager the parental rights be terminated; and (2) Mother's disinterest in the children. Id. at 94-95.

The Court affirmed the trial court's termination order as to Father. Id. at 96. Father contended that there was insufficient evidence to terminate his parental rights. Father argued that he will complete his sentence in March 2017, but the sentencing judge stated that, if he completes the purposeful incarceration program, his sentence could be modified to home detention, work-release, or probation, and he could be released as early as August 2014. The Court noted the following in support of its finding that the trial court did not commit clear error when it found there was a reasonable probability that the conditions leading to the children's removal from Father would not be remedied: (1) Father's release date had already been pushed back by one year because he wrote a letter threatening Mother and her boyfriend, and the chronological case summary indicated only that the judge would "consider modification" upon Father completing counseling programs in the DOC; (2) it was entirely possible that the children would have to wait almost three years for Father to be released from prison; and (3) the children had not visited Father since he was arrested in March 2012. Id. at 95. The Court observed that, even if he is released early, Father will have a class B felony methamphetamine dealing conviction on his record and "will have difficulty establishing a stable life for himself, let alone for [the children]," quoting Castro v. State Office of Family & Children, 842 N.E. 2d 367, 374 (Ind. Ct. App. 2006). C.A. at 95. The Court noted the following evidence in support of the trial court's conclusion that there was a reasonable probability that continuation of the parent-child

relationship with Father will pose a threat to the children's well-being; (1) the children suffered from PTSD as a result of living with Father before his arrest, but had "connected to the foster parents" and were "doing incredibly well in school" according to their therapist; (2) the children's therapist opined that the children "would be re-traumatized" if they were reunited with their parents, which is "a very negative thing because the more repeated trauma a child suffers, the less likely they are [sic] to heal"; (3) the oldest child began "sobbing uncontrollably" and had a "complete meltdown" when the therapist mentioned the possibility of reunification. Id. at 96. The Court also concluded that the totality of the evidence, including the recommendations of the case manager, the court appointed special advocate, and the children's therapist, supported the trial court's determination that termination of Father's parental rights was in the children's best interests. Id.