

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

9/25/13

In **In Re D.P.**, 994 N.E.2d 1228 (Ind. Ct. App. 2013), the Court reversed the termination judgment and remanded the case to the juvenile court for a new evidentiary hearing. The child was born on July 7, 2003. On October 18, 2010, DCS filed a verified CHINS petition, alleging that Mother had failed to provide the child with a safe and appropriate living environment free from substance abuse and that Father was incarcerated and unable to appropriately parent the child. The child was found to be a CHINS on December 7, 2010. On January 4, 2011, the juvenile court issued a dispositional order and parental participation decree in which it ordered Father to complete certain services. On June 11 2012, DCS filed a petition seeking the termination of Father's parental rights. On October 24, 2012, Magistrate Julianne Cartmel conducted an evidentiary termination hearing at which Father appeared telephonically and was represented by counsel, and at which Magistrate Cartmel heard testimony from the DCS case worker, Father, and the guardian ad litem. The witnesses gave conflicting testimony regarding whether the reasons for removing the child from Father's care would be remedied in the future and whether termination of Father's parental rights was in the child's best interests. Magistrate Cartmel took the matter under advisement following the conclusion of the hearing, but resigned from her position as magistrate before reporting recommended factual findings and conclusions thereon to the juvenile court. The case was transferred to replacement Magistrate Larry Bradley, who reviewed the record created during the evidentiary hearing and reported recommended findings of fact and conclusions thereon to the juvenile court. Magistrate Bradley did not conduct a new evidentiary hearing. The juvenile court approved Magistrate Bradley's factual findings and conclusions and issued an order terminating Father's parental rights to the child on February 20, 2013. Father appealed.

The Court concluded that Father's due process rights were violated because the replacement magistrate could not properly resolve questions of credibility and weight of evidence since he did not have an opportunity to hear the evidence and observe the demeanor of the witnesses. *Id.* at 1233. The Court agreed with Father's contention that his due process rights were violated because the magistrate who conducted the evidentiary hearing was not the same magistrate who made and reported the recommended findings and conclusions to the juvenile court. *Id.* at 1231-32. The Court observed that Indiana Courts have long held that a party to an action is entitled to a determination of the issues by the jury or judge that heard the evidence and where a case is tried by the judge, and the issues remain undetermined at the death, resignation, or expiration of the judge's term, his successor cannot decide, or make findings in the case, without a trial *de novo* (multiple citations omitted). *Id.* at 1232.

The Court explained that this is because due process requires that the trier of fact hear all of the evidence necessary to make a meaningful evaluation in a case where the resolution of a material issue requires a determination as to the weight and credibility of the testimony. Id., citing Farner v. Farner, 480 N.E. 2d 251, 257 (Ind. Ct. App. 1985). Quoting Urbanational Devrs., Inc. v. Shamrock Eng'g, Inc., 372 N.E. 2d 742, 746 (Ind. Ct. App. 1978), the Court observed that “[w]hen a successor judge attempts to resolve questions of credibility and weight of evidence without having had an opportunity to hear the evidence and observe the demeanor of witnesses, he is depriving a party of an essential element of the trial process.” D.P. at 1232. The Court said that the circumstances in this case closely resemble the situation where evidence is heard by a trial judge who thereafter dies or resigns from office before making findings or ruling on evidence. Id. The Court said that DCS had presented no authority, and the Court had found none, suggesting that a magistrate should be treated any differently from a trial judge in a situation where the magistrate makes factual findings without having had the opportunity to hear the testimony and observe the witnesses. Id.

DCS claimed that Father had waived his right to have a factual determination made by Magistrate Cartmel. The Court agreed that parties could stipulate that the substitute judge should determine the case on the record, but said that Father had not stipulated that Magistrate Bradley should determine the case on the record. Id. at 1233. The Court remanded the case to juvenile court for a new evidentiary hearing. Id.