

Children's Law Center of Indiana



Termination of Parental Rights (TPR)

03/12/2009

In ***In Re E.D.***, 902 N.E.2d 316 (Ind. Ct. App. 2009), the Court affirmed the trial court's order terminating Mother's parent-child relationship with the child. The child was removed from the Mother's care before either of them left the hospital after the child's birth on February 15, 2007. The child was placed in a pre-adoptive foster home where he remained at the time of the hearing. The Mother, who was homeless and had untreated mental health issues that allegedly posed a risk to the child, was detained in the hospital psychiatric ward. Mother's parental rights to eight other children had previously been terminated. During the CHINS proceedings, DCS was unable to locate Mother and she made no effort to contact DCS. In September 2007, when DCS was still unable to locate Mother, it filed a motion, pursuant to IC 31-34-21-5.6, for a hearing on the reasonable efforts requirement. Following the hearing, the trial court granted the motion, finding that DCS was not required to make reasonable efforts to reunify Mother with the child. On October 5, 2007, DCS filed a petition to terminate Mother's parental rights to the child. In December 2007, DCS became aware that Mother was incarcerated at Rockville Correctional Facility. The child's GAL wrote to Mother there, but received no response. The trial court appointed counsel for Mother and scheduled a termination hearing for March 18, 2008. On March 3, 2009, Mother's attorney filed a motion to continue, in which she indicated that she had visited Mother in prison and that she believed that Mother's mental illness had "substantially improved" since her incarceration, but that she did not believe that Mother could provide informed consent to adoption. The trial court continued the hearing, entered an order granting Mother's counsel and DCS' joint request for the correctional facility to release Mother's mental health records to them, and appointed a GAL to review Mother's mental health records and interview Mother in order to ascertain Mother's mental condition and capacity to sign a consent to adoption. Mother's GAL (1) obtained and reviewed Mother's medical records from various facilities; (2) visited Mother in prison where he found that she did not give appropriate responses to questions asked; and (3) filed a report, in which the GAL opined that Mother was "incapacitated and unable to give her consent to adoption of her son," and which indicated that Mother had expressed a desire to keep her child and did not want to consent to adoption. On July 22, 2008, the trial court held a termination hearing at which Mother was represented by counsel and appeared telephonically from prison. At the hearing, Mother's counsel asked the trial court to continue the hearing based on the counsel's assertion that Mother was unable to assist in her defense which he argued at some length on the record. DCS and the child's GAL opposed continuing the hearing and gave their reasons. The trial court denied the motion to continue and ultimately terminated Mother's parental rights. Mother appealed. Additional facts the Court specifically noted in its analysis are given below.

After balancing the substantial interest of Mother with that of the State, and in light of the minimal risk of error created by the challenged procedure, the Court concluded that,

under the facts of this case, the trial court did not deny Mother due process of law when it denied counsel's request to continue the termination hearing. *Id.* at 323. On appeal, Mother argued that she was denied due process of law when the trial court denied her request to continue the termination hearing, which request was premised on the assertion that, because of her serious mental health issues, Mother was unable to assist in her defense, and that this inability should be treated the same as a situation in which a criminal defendant is found to be incompetent to stand trial. *Id.* at 320. The Court opined: (1) regarding the process due to a parent in a termination proceeding, in addition to statutory protections, the Due Process Clause of the U.S. Constitution prohibits state action that deprives a person of life, liberty, or property without a fair proceeding; and (2) when the State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of due process. The Court stated that the nature of the process due in a termination of parental rights proceeding turns on the balancing of three factors: (1) the private interests affected by the proceeding, (2) the risk of error created by the State's chosen procedure, and (3) the countervailing governmental interest supporting use of the challenged procedure. The Court observed, (1) in termination cases, both the private interests of a parent and the countervailing governmental interests that are affected by the proceeding are substantial; (2) here, this termination action concerns Mother's interest in the care, custody and control of her child, which has been repeatedly recognized as one of the most valued relationships in our society; (3) it is well settled that the right to raise one's child is an "essential, basic right that is more precious than property rights;" (4) thus, Mother's interest in the accuracy and justice of the proceeding is a "commanding" one; (5) on the other hand, the State's *parens patriae* interest in protecting the welfare of the child is also significant; (6) "although the State does not gain when it separates children from the custody of fit parents, the State has a compelling interest in protecting the welfare of the child by intervening in the parent-child relationship when parental neglect, abuse, or abandonment are at issue." *Id.* at 321 (citations omitted). The Court specifically noted the following facts and law: (1) the child was removed from Mother's care and placed in a foster home in February 2007 after Mother exhibited bizarre behavior, which posed a risk to the child at the hospital following his birth; (2) throughout the CHINS proceeding, DCS was unable to locate Mother, and Mother neither saw the child nor contacted DCS regarding the child; (3) the trial court had already once continued the termination hearing to allow Mother to obtain medical records and allow a GAL to interview and represent Mother's interests in the termination proceeding; (4) Mother was in prison at the time of the termination hearing on July 22, 2008, and, thus, one and one-half years, which was the entire length of the child's young life, had passed between the child's removal and his termination hearing; and (5) "While continuances may be necessary to ensure the protection of a parent's due process rights, courts must also be cognizant of the strain these delays place upon a child." *In Re C.C.*, 788 N.E.2d 847, 853 (Ind. Ct. App. 2003). *E.D.*, at 322.

The Court concluded that the risk of error caused by the trial court's denial of counsel's continuance request was minimal. *Id.* at 323. Regarding assessing the risk of error created by the challenged procedure, the Court registered its disagreement with Mother's contention that the risk of error here is great because by denying her request to continue the termination hearing, she was denied her due process rights to assist counsel in her defense and understand the proceedings against her. *Id.* The Court found that the due process safeguards afforded a defendant in a criminal trial are not applicable to a parent in a civil termination proceeding, and cited *Baker v. Marion County Office of Family & Children*, 810 N.E.2d 1035, 1039 (Ind. 2004) for its recognition that "criminal prosecutions and termination proceedings are substantially different in

focus. The resolution of a civil juvenile [termination] proceeding focuses on the best interests of the child, not on guilt or innocence as in a criminal proceeding.” The Court opined that (1) Mother’s contention that a termination hearing for an incompetent parent should be continued until the parent is able to achieve the competency necessary to assist counsel runs contrary to a termination proceeding’s purpose of protecting the child and trying to achieve stability and permanency for the child, and could result in an inordinate delay; and (2) delays in the adjudication of a termination case “impose significant costs upon the functions of the government as well as an intangible cost to the lives of the children involved.” E.D. at 322 (citation omitted). The Court (1) held that Mother’s rights in this termination hearing were not significantly compromised in that, although Mother had no constitutional right to be present at the termination hearing, the trial court allowed her to participate telephonically in the hearing from prison, Mother was represented by counsel throughout the termination proceedings, Mother’s counsel was provided with the opportunity to, and did, cross-examine the State’s witnesses and was given the opportunity to introduce evidence in defense of the action, which counsel chose not to do after consulting with Mother; (2) found that, under these circumstances, the risk of an inaccurate result decreases significantly; and (3) noted that Mother had failed to allege any specific prejudice that resulted from her alleged inability to assist counsel. Id. (citation omitted).