

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

10/5/10

In ***In Re I.A.***, 934 N.E.2d 1127 (Ind. 2010), the Court reversed the trial court's judgment which had terminated Father's parental rights. The child, born on February 18, 2006, was one of Mother's seven children. Within a few months after the child's birth, Mother told Father that the child was his son. The Perry County Department of Child Services (DCS) removed the child and his siblings from Mother's care on December 21, 2006, due to lack of supervision and filed CHINS petitions for the child and his siblings on January 4, 2007. The child's CHINS petition named Father as a party to the petition, and stated that Father's address was unknown. After Father and Mother appeared pro se at a hearing held on March 30, 2007, the trial court entered an order granting the CHINS petition. The order, entered on April 12, included a case plan for reunification with Mother which required that Mother participate in CHINS Drug Court, supervised visits with the child, parent-aide services, a parenting skills assessment and follow recommendations of the assessment, and individual counseling and required Mother to obtain and maintain employment. With respect to Father, the order declared that Father waives his right to counsel and admits the child is a child in need of services. Mother and Father appeared for a review hearing on July 12, 2007, and the court ordered Mother and child to continue to participate in the case plan. No findings were entered with respect to Father, and the record does not reveal that a case plan was ever entered with respect to Father. Father later testified that he was initially allowed limited visitation with the child during the summer of 2007, but visitation was discontinued in September 2007, apparently because paternity had not yet been established. DCS filed a petition to terminate Mother's and Father's parental rights on February 12, 2008. In May 2008, Father sought paternity testing and filed a petition to establish paternity of the child which the court granted on September 30, 2008. Father was allowed supervised visitation with the child beginning July 11, 2008. Visits were initially conducted for an hour to an hour and a half one day a week outside of Father's residence. Thereafter visits were increased to twice a week at Father's residence. All visits were supervised by a parent aide employed by a social services agency. Visitation continued through January 29, 2009. At a review hearing held on November 25, 2008, at which Father appeared but Mother did not, the court entered findings that Father has complied with the case plan, has enhanced his ability to fulfill parental obligations, visits regularly with the child, and is cooperating with DCS. The court found that Mother had not complied with the case plan, nor enhanced her ability to fulfill parental obligations, and had not visited the child regularly, or cooperated with DCS.

After a hearing conducted on February 17, 2009, the trial court entered an order granting DCS' petition to terminate Father's rights to his child and terminating Mother's rights to six of her seven children. The court's findings regarding Mother included her failure to visit, her continued drug use, termination from the Perry County CHINS Drug Court and her failure to cooperate with a drug recovery program, the DCS caseworker, the parent-aide and DCS services. With regard to Father, the court found there is a reasonable probability that the conditions that resulted in the child's removal or the reasons for the placement outside the parent's home will not be remedied in that: (1) Father has not bonded with the child after six months of parent-aide services; (2) evidence presented from the parent-aide caseworker shows there has been no progress in the relationship between Father and child in six months of services; and (3) Father needs lots of direction regarding simple tasks relating to the care of the child. The court also found that continuation of the parent-child relationship poses a threat to the child's well-being because Mother continues to abuse illegal substances, lacks supervision of the children, and has not remedied any of the causes for removal and Father has not bonded with the child. Father appealed and the Court of Appeals affirmed the trial court in a memorandum decision. The Indiana Supreme Court granted transfer.

The Court held that to determine whether a judgment terminating parental rights is clearly erroneous, the Court reviews the judgment to determine whether the evidence clearly and convincingly supports the findings and the findings clearly and convincingly support the judgment. *Id.* at 1132.

The Court found that the trial court's termination of Father's parental rights cannot be sustained on the ground that there is a reasonable probability that the reasons for placement outside the parents' home will not be remedied. *Id.* at 1135. The Court noted that IC 31-35-2-4(b)(2)(B) (the termination statute) requires DCS to prove by clear and convincing evidence that there is a reasonable probability that:

- (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child

Id. at 1133. DCS was required to prove only one of the requirements of section (B), but the trial court found that both prongs of section (B) were satisfied, so the Court examined each in turn. *Id.* The Court observed that the child was removed because of Mother's lack of parental supervision: two of Mother's younger children were discovered playing in the parking lot of a motel unsupervised and two of Mother's older children had travelled to a nearby town alone. *Id.* The Court noted that at the time the child was removed, Mother and Father were not residing in the same household; the child was living with Mother in Mother's sole custody and care. *Id.* at 1133-34. The Court opined that the conditions that resulted in the child's removal—lack of parental supervision—cannot be attributed to Father. *Id.* at 1134. The Court said that, therefore, the inquiry is whether there is a reasonable probability that the reason for placement outside the parents' home will not be remedied. *Id.* In order to determine whether the conditions which led to placement of the child outside the home of the Father are not likely to be remedied, the trial court must: (1) determine what

conditions led to DCS placing and then retaining the child in foster care rather than placing him with Father; and (2) then determine whether there is a reasonable probability that those conditions will not be remedied. Id. The Court observed that, although the termination order sets forth why placement outside Father's home will not be remedied, the order does not indicate the conditions that led DCS to place the child in foster care or the reasons the child remained in foster care rather than being placed with Father. Id. The Court said that the factors identified by the trial court as conditions that will not be remedied are relevant only if those conditions were factors in DCS' decision to place the child in foster care in the first place. Id. Finding nothing in the termination order or the record indicating the conditions that led DCS to place the child in foster care and to continue the child's out-of-home placement rather than place him with Father, the Court concluded that DCS failed to demonstrate by clear and convincing evidence that there is a reasonable probability that the reasons for placement outside the home of the parents will not be remedied. Id. at 1134-35.

The Court concluded that DCS has failed to prove by clear and convincing evidence that there is a reasonable probability that by continuing the parent-child relationship, the emotional or physical well-being of the child is thereby threatened. Id. at 1136. As an alternative ground for terminating Father's parental rights the trial court determined that continuance of the relationship posed a threat to the child's well-being because Father had "not bonded" with the child. Id. at 1135. The Court observed that the trial court and DCS apparently are referring to what they perceive as insufficient emotional attachment and interaction between Father and child. Id. The Court was not convinced that all reasonable efforts have been employed in this case to unite Father and the child, noting: (1) a case plan for reunification was never developed for Father indicating what was expected of him; (2) other than a parent aide, no services were provided to assist Father in developing effective parenting skills; (3) nothing in the record demonstrates that the exercise of visitation twice a week for an hour and a half over a six month period with a two-year-old child is sufficient time under the circumstances to establish a bond; (4) Father never cancelled or missed a single visit; (5) the DCS case manager did not explain why continuing the parent-child relationship between Father and the child posed a threat to the child's wellbeing. Id. at 1135-36. The Court said that it is of course true that "the provision of family services is not a requisite element of our parental rights termination statute" quoting In Re E.E., 736 N.E.2d 791, 796 (Ind. Ct. App. 2000). In Re I.A. at 1136. The Court saw "little harm in extending the CHINS wardship until such time as Father has a chance to prove himself a fit parent for his child." Id.