

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

3/26/14

In **In Re I.P.**, 5 N.E.3d 750 (Ind. 2014), the Supreme Court granted transfer, vacated the published Court of Appeals decision at 977 N.E. 2d 393 (Ind. Ct. App. 2013), and reversed the trial court's judgment terminating Father's parental rights to his child. *Id.* at 752. The Court remanded the case for further proceedings consistent with this opinion. *Id.* Father was incarcerated at the time of the termination hearing, participated in the hearing by telephone, and was represented by counsel. Magistrate Cartmel presided over the hearing, and took the matter under advisement at its conclusion. Magistrate Cartmel resigned her position before reporting recommended factual findings and conclusions to the Judge of the Marion Superior Court Juvenile Division. The case was transferred to Magistrate Bradley, who, without holding a new evidentiary hearing, reviewed the hearing record and reported recommended findings and conclusions to the Judge. Father did not agree to have Magistrate Bradley recommend findings and conclusions based on a review of the record. The Judge of the Marion Superior Court, Juvenile Division, approved Magistrate Bradley's findings and conclusions and ordered Father's parental rights terminated.

The Court, citing In Re D.P., 994 N.E. 2d 1228, 1233 (Ind. Ct. App. 2013), found that the procedure used by the trial court violated Father's due process rights. *Id.* at 752. Citing Bester v. Lake Cnty. Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005), the Court observed that a parent's interest in the care, custody, and control of his or her child is one of the oldest fundamental liberty interests, and the parent-child relationship is one of the most valued in our culture. *I.P.* at 751. The Court observed that the process due in a termination case 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. *I.P.* at 751-52. The Court opined that a party is entitled to a determination of the issues by the judge who heard the evidence, and where a case is tried to a judge who resigns before determining the issues, a successor judge cannot decide the issues or enter findings without a trial de novo. *I.P.* at 752, citing State Ex Rel. Harp v. Vanderburgh Cir. Ct., 227 Ind. 353, 85 N.E.2d 254, 258 (1949). The Court, quoting In Re D.P., 994 N.E.2d 1228, 1232 (Ind. Ct. App. 2013), observed that when a successor judge who did not hear the evidence or observe the witnesses' demeanor attempts to weigh evidence and make credibility determinations, the judge "is depriving a party of an essential element of the trial process." *I.P.* at 742. The Court, citing In Re E.M., 4 N.E.3d 636, 641-42 (Ind. 2014), explained that because the judge or magistrate presiding at a termination hearing has a superior vantage

The Derelle Watson-Duvall Children's Law Center of Indiana - A Program of Kids' Voice of Indiana
9150 Harrison Park Court, Suite C • Indianapolis, IN 46216 • Ph: (317) 558-2870 • Fax (317) 558-2945
Web Site: <http://www.kidsvoicein.org> • Email: info@kidsvoicein.org

point for assessing witness credibility and weighing evidence, the Court gives great deference to a trial court's decision to terminate a parent's rights. I.P. at 752. The Court said that in this case, Magistrate Bradley, who reported recommended findings and conclusions to the Judge, did not hear the evidence or observed the witnesses, and Father did not agree to have Magistrate Bradley recommend findings and conclusions based on a review of the record. Id. The Court also found that Ind. Trial Rule 63(A) was inapplicable to this case. Id. The Court stated that T.R. 63(A) permits a successor judge to perform the duties of the predecessor judge "after the verdict is returned or the findings or decision of the court is filed," but in this case, Magistrate Cartmel resigned before reporting recommended findings to the Judge. Id.