

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

3/8/12

In ***In Re K.E.***, 963 N.E.2d 599 (Ind. Ct. App. 2012), the Court reversed the trial court's judgment terminating Mother's and Father's parental rights and remanded the case for further proceedings consistent with this opinion. The Elkhart County Office of the Indiana Department of Child Services (ECDCS) took the two-month-old child into protective custody in May 2010 and filed a CHINS petition due to substantiated reports of neglect and drug use in the family home. An evidentiary hearing on the CHINS petition was held in June 2010. During the hearing Mother admitted that she had a significant history of substance abuse and that the child had been exposed to illegal substances while in her care. Father admitted that he was currently incarcerated and unavailable to care for the child. The child was adjudicated a CHINS, formally removed from Mother's and Father's respective care, and made a ward of ECDCS in the court's dispositional order dated July 13, 2010. The trial court's dispositional order also directed Mother and Father to successfully complete a number of tasks and services designed to help improve their parenting abilities and facilitate reunification. On December 30, 2010, five months and seventeen days after the trial court entered its dispositional order, ECDCS filed its "Petition for the Involuntary Termination of the Parent-Child Relationship." An evidentiary hearing was held in April 2011, and the trial court issued its order terminating Mother's and Father's parental rights. Mother and Father appealed, contending, *inter alia*, that the judgment must be reversed because ECDCS failed to satisfy the requirements of IC 31-35-2-4(b)(2)(A).

The Court concluded that the trial court committed reversible error in granting the involuntary termination petition because ECDCS failed to comply with the statutory mandate. *Id.* at 602. The Court quoted IC 31-35-2-4(b)(2)(A), which provides that a petition seeking the involuntary termination of parental rights "must allege" that one of the following is true:

- (i) The child has been removed from the parent for at least six (6) months under a dispositional decree.
- (ii) The court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required....
- (iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the last twenty-two (22) months, beginning with the date the child is

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

removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child[.]

Id. at 601. The Court observed that it is undisputed that: (1) ECDCS filed its termination petition on December 30, 2010, only five months and seventeen days after the trial court entered its dispositional order; (2) the petition was filed only seven months after the child was removed from the family home and placed under ECDCS supervision as a result of the CHINS allegations; (3) the parties do not allege, nor is there any evidence, that the trial court ever entered a finding pursuant to IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification were not required in the underlying CHINS case. Id. The Court stated that an involuntary termination petition must allege, and the State must prove by clear and convincing evidence, that at least one of the requirements of IC 31-35-2-4(b)(2)(A) is true *at the time the termination petition is filed*. (Emphasis in opinion.) Id.