

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

3/26/14

In **In Re S.B.**, 5 N.E.3d 1152 (Ind. 2014), the Supreme Court granted transfer, vacated the published Court of Appeals decision at 999 N.E.2d 419 (Ind. Ct. App. 2013), and reversed the trial court's judgment terminating Mother's parental rights to her four children. *Id.* at 1154. The Court remanded the case for further proceedings consistent with this opinion. *Id.* Mother did not attend the termination hearing, but 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. Mother 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 Mother's parental rights terminated.

The Court, citing In Re I.P., 5 N.E.3d 750 (Ind. 2014), found that the procedure used by the trial court violated Mother's due process rights. *Id.* at 1153. The Court, citing I.P. at 752, said 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. S.B. at 1153. 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." S.B. at 1153. 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 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. S.B. at 1153-54. 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 Mother did not agree to have Magistrate Bradley recommend findings and conclusions based on a review of the record. *Id.* at 1154. The Court found that Mother did not waive her due process right by failing to object to Magistrate Bradley's recommending findings and conclusions based on a review of the record. *Id.* The Court said that it appeared Mother was unaware of Magistrate Bradley's involvement in the case until after entry of the termination order. *Id.*

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