

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

6/27/13

In **In Re S.S.**, 990 N.E.2d 978 (Ind. Ct. App. 2013), the Court affirmed the juvenile court's order terminating Mother's parental rights to three of her children. *Id.* at 986. The children were removed by DCS in July 2011 due to Mother's medical neglect of their special needs and failure to supervise them. The children were four years, two years, and ten months old at the time of their removal. Mother and the children had been previously involved with CPS in Florida because Mother was a victim of domestic violence and in Kentucky because Mother was homeless and "low functioning." On October 19, 2011, the juvenile court determined that the children were CHINS after Mother admitted that her housing was unstable, the youngest child was diagnosed with failure to thrive, the middle child was diagnosed with autism, Mother needed assistance obtaining medical care for the children, and intervention was necessary for the children to receive the needed services. On December 1, 2011, the juvenile court entered its dispositional decree ordering Mother to contact DCS weekly; notify DCS of any change in address, household composition, telephone, employment, arrest, or criminal charges; participate in home-based services, a parenting assessment, the children's medical, mental health, and dental appointments; and attend all visits with the children. Instead of following the orders in the dispositional decree, Mother left Indiana, claiming that she was going to visit family in Alabama and would return. Mother changed her telephone number and refused to provide her address to DCS or the home-based service provider. Although Mother informed the service provider that she would attend the May 16, 2012 permanency hearing, she failed to appear. DCS discovered that Mother was in Florida when Florida CPS contacted DCS about Mother. On July 5, 2012, DCS filed a petition to involuntarily terminate the relationship between Mother and the children. Mother was personally served in Florida with a copy of the summons on August 8, 2012, by certified mail. Mother failed to appear at the August 29, 2012 initial termination hearing and also failed to appear at the September 26, 2012 evidentiary hearing but was represented by counsel. Mother's counsel requested a continuance until a time when Mother could be there because she lived in Florida. The juvenile court denied Mother's motion to continue. The juvenile court heard evidence on the termination petition, which included that: (1) Mother was repeatedly abused by Boyfriend while she was pregnant with his child, but returned to live with Boyfriend, who was also Mother's first cousin, despite the criminal charges of domestic violence; (2) Mother declined a protective order against Boyfriend, lost her housing eligibility because she left the domestic violence shelter, and failed to cooperate with the prosecutor's office so the charges against Boyfriend were dropped; (3) despite the children's medical conditions that included very bad teeth which required caps, Mother brought candy and sugary drinks to visits to bribe the children into behaving; (4) despite repeated instruction from medical personnel at Riley that

Mother had to feed the youngest child slowly through his G-tube to prevent aspiration, Mother would speed up his feeding, failed parent care instruction, and could not feed the youngest child without assistance; and (5) Mother left the children unattended during visits, was not able to focus on more than one child at a time, did not redirect the oldest child's aggressive behavior, and was often resistant to parenting prompts from the visit supervisor. *Id.* at 982-83. The Court also noted the following evidence about the children's needs: (1) since the children's removal, the oldest child was diagnosed with Rett's syndrome, for which autism is the main symptom, is taking medication, and is "like a completely different child" according to the foster mother; (2) the middle child has a developmental therapist, continues to have speech and communication delays, and is learning how to play; (3) the youngest child suffers from ear infections and can receive nutrition only through his G-tube, but now weighs twenty-four pounds and is "pretty healthy"; and (4) doctors believe that the youngest child will always aspirate his food because his body does not respond normally to allow him to cough up food, and medical professionals at Riley believe that he has cerebral palsy but have yet to diagnose him. *Id.* at 983. The Court also noted the recommendations of the case manager, the court appointed special advocate, and the guardian ad litem that the court terminate Mother's parental rights. *Id.* at 983-84. The juvenile court issued its order terminating the parent-child relationship between Mother and the children on October 22, 2012, and Mother appealed, arguing that she was denied procedural due process when the juvenile court terminated her parental rights after denying her motion for continuance.

The Court concluded that, upon balancing Mother's interest, the risk of error by not having Mother present, and the State's interest in protecting the welfare of these children, under the facts and circumstances of this case, the juvenile court did not deny Mother due process of law when it denied her motion for continuance. *Id.* at 985-86. The Court, citing *In Re C.C.*, 788 N.E.2d 847, 852 (Ind. Ct. App. 2003), said that the nature of process due in a termination 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. *S.S.* at 984. The Court said that the private interests of Mother are substantial, noting that parents' interest in the care, custody, and control of their children is one of the most valued relationships in our society (multiple citations omitted). *Id.* The Court noted that the challenged procedure is Mother's absence from the termination evidentiary hearing, and said that, although IC 31-35-2-6.5(e) states that a court must provide a party with an opportunity to be heard, it does not confer a constitutional right to be present at the hearing. *Id.* The Court opined that, under these facts and circumstances, the risk of error created by the denial of Mother's motion for a continuance is minimal: (1) Mother's counsel stated that Mother had her telephone number and knew how to contact her; (2) Mother was aware of the date of the termination hearing because she signed the summons and spoke to the case manager about the hearing; (3) Mother was represented by counsel throughout the termination hearing and her counsel questioned witnesses and gave a closing argument. *Id.* at 984-85. The Court found that Mother had failed to show prejudice. *Id.* at 985. The Court said that the third factor, the countervailing government interest, considers the State's significant *parens patriae* interest in protecting the welfare of children by intervening when parental neglect, abuse, or abandonment are at issue. *Id.* Citing *In Re B.J.*, 879 N.E.2d 7, 17 (Ind. Ct. App. 2008), the Court noted that it has recognized that delays in adjudication impose

significant costs on the children involved. S.S. at 985. The Court noted evidence presented at the termination hearing, including Mother’s significant exposure to domestic violence, Mother’s difficulty “keeping herself safe,” Mother’s problems meeting the children’s medical needs, Mother’s failure to make any lasting changes, Mother’s having left the state shortly after the dispositional order was entered and not seeing the children for ten months, and the children’s progress in foster care. Id.