



Termination of Parental Rights (TPR)

7-7-03

In **McBride v. County Off. Of Family & Children, 798 N.E. 2d 185 (Ind. Ct. App. 2003)**, decided on July 7, 2003 and publication ordered on September 8, 2003 the Court affirmed the trial court's judgment which involuntarily terminated the mother's rights to three of her children. The two older children had been removed from the mother's and father's care in Georgia on two occasions. The first removal occurred when the mother was arrested twice for writing bad checks. The two oldest children were returned to the care of the mother after seventeen months in foster care. The two oldest children were removed by Georgia law enforcement six months after their return to the mother due to linear bruises on their legs and buttocks caused by the father's beating of the children with a paddle. The parents were also providing a cluttered, dirty home environment for the children which lacked heat in the winter, refrigeration, a stove, or electrical power. The parents pled guilty to the charge of Cruelty to Children in Georgia.

The youngest child was born one month after the mother's release from jail on the Cruelty charge. When the youngest child was one month old, the mother allowed the father to move in with her and the infant despite the father's admission that he had beaten the two oldest children. When the infant was six months old, the father threw a beer bottle at the mother and hit her in the face. The father was arrested for battery, his probation on the Cruelty to Children charge was revoked, and the father was ordered not to have contact with the mother. Approximately one month later, the infant was removed by Georgia Child Protective Services and placed in foster care with her two siblings. The mother did not visit the children and admitted that she was not following the requirements of the Georgia case plan.

Eleven months later, the mother moved to Indiana. She finally settled in Bloomington, where she lived at Rise, a transitional housing facility for victims of domestic violence and their children. The mother resided at Rise for sixteen months and was offered comprehensive services. The three children continued to live in foster care in Georgia and the mother did not visit with them regularly. Despite the recommendation of the Georgia juvenile officials and an Indiana caseworker, the Georgia court returned the children to the mother's care and custody in Indiana because the mother had secured a safe living environment for the children at Rise and was separated from and in the process of divorcing the father. The mother did not inform the Georgia court that while living at Rise she had accepted collect calls which cost approximately \$1000.00 from the father who was incarcerated.

The mother left Rise with the children and brought the father to live with them when he was released from prison. The mother never informed the Georgia court that she was having contact with the father. Seven months after the parents began living together, the father hit the mother in the presence of one of the children. The mother sought a protective order but later claimed to have been pressured into this action. Five months later, the mother was threatened by the father at her home in the children's presence. The mother left the home with the children, but did not believe that the father was a danger to the children. The three children were removed from the mother's care and placed in foster care by order of the Monroe Circuit Court.

The children were adjudicated CHINS due to the mother's admission to the amended allegations while represented by counsel. The mother was provided a draft case plan sixty days after the children's removal, but refused to sign it until four months later. The mother refused to prohibit contact between the children and their father. At the parental participation hearing the mother was ordered to, inter alia, complete a psychological evaluation and follow any recommendations, actively participate in individual and family counseling and work with service providers to develop a safety plan in the event that the father attempted to contact her or the children. The mother objected to the O.F.C.'s recommendation that she have no contact with the father, so it was stricken and the court did not enter a no-contact order for the mother. The O.F.C. had previously obtained a protective order against the father on behalf of the children.

Seven months after the review/dispositional hearing order was entered, a petition to involuntarily terminate the parents' rights was filed. At the time of the hearing, the oldest child had been in and out of the juvenile system for over 75% of her life. The children had been in their current foster home for sixteen months and this was their longest place of residence. The oldest children had been removed from their parents three times and the youngest child had been removed twice. The trial court issued its termination order and entered findings and conclusions sua sponte.

Mother waived her due process constitutional challenges due to failure to raise them at the CHINS or termination trials.

The mother asserted that the judgment should be reversed due to the following alleged procedural irregularities in the CHINS proceedings: (1) O.F.C. did not complete a case plan within sixty days as required by I.C. 31-34-15-2; (2) the trial court's dispositional and periodic review findings did not comply with statutory requirements; (3) the trial court did not enter adequate findings or hold a permanency hearing within the statutorily required period. Monroe County O.F.C. responded that the mother had waived her due process challenge because, despite being represented by counsel throughout the CHINS and termination trials, she failed to object to the alleged errors during the CHINS proceeding and did not raise her due process claim at the termination trial. The Court noted that a parent's right to raise her children was protected by the Due Process Clause, but the Court was unpersuaded by the mother's Due Process argument. Citing In Re K.S., 750 N.E 2d 832, 834 fn.1 (Ind Ct. App. 2003), the Court opined that because the mother

had raised her procedural due process claim for the first time on appeal, she had waived her constitutional challenge. McBride at 195.

Waiver notwithstanding, the mother failed to demonstrate that the alleged procedural errors rose to the level of due process violation.

The Court found that Monroe County O.F.C. had provided the mother with case plans and that she was aware of what was required of her before the children could be returned to her care. A draft case plan had been given to the mother within the sixty day time period, but the mother had not signed the plan until four months later. The Court opined that any alleged deficiencies regarding O.F.C.'s case plan did not deprive the mother of due process. Id. at 196.

The mother also complained that the trial court's dispositional and periodic review findings were inadequate in that they did not comply with I.C. 31-34-19-10 or I.C. 31-34-21-5. The Court was unpersuaded by this argument, noting that the dispositional decree expressly incorporated the O.F.C.'s predispositional report and six month periodic review report and recommendations. The Court found that the dispositional order as a whole met the statutory requirements for such orders. Id. The Court also found that the periodic review orders also incorporated extensive O.F.C. reports and recommendations and therefore contained substantially all of the determinations required under I.C. 31-34-21-5(a) including (1) whether the child's case plan, services, and placement meet the special needs and best interests of the child; and (2) whether the county office of family and children has made reasonable efforts to provide family services. Id. O.F.C. conceded that the third requirement under I.C. 31-34-21-5 had not been met, namely, a projected date for the child's return home, the child's adaptive placement, the child's emancipation, or the appointment of a legal guardian. The Court opined that the mother had not demonstrated how this error denied her due process in the CHINS proceeding. Id. at fn 9. The Court was also unpersuaded by the mother's complaint that the trial court's periodic review order was inadequate because it did not specifically address each of the fifteen factors discussed under I.C. 31-34-21-5(b). The Court noted that the trial court's findings must be based on consideration of the listed factors and found that the mother's complaint that no evidence was presented at the periodic review hearings regarding the fifteen factors was untimely. Id. at 197. The Court acknowledged an inconsistency in the trial court's second periodic review order, but opined that the mother had not demonstrated how this isolated discrepancy had resulted in a denial of her due process rights. Id. at 197, fn 10.

The mother's final due process argument was that the trial court had held the permanency hearing in conjunction with a periodic case review hearing, did not make adequate findings, and conducted the review hearing fourteen months, rather than twelve months, after the children's removal. The Court found that the mother's allegations that these deficiencies had denied her due process lacked merit for the following reasons: (1) the mother had provided no authority to support her contention that it was error for the court to conduct a review hearing and a permanency hearing simultaneously; (2) the court's findings were adequate; (3) the O.F.C. had filed its twelve-month periodic review and

permanency report within the relevant twelve-month period; (4) the court had granted O.F.C.'s motion for permission to file its termination petition; (5) O.F.C.'s report and the fact that O.F.C. sought to terminate the mother's parental rights were sufficient to rebut the presumption that the court's jurisdiction should last no longer than twelve months following the children's removal. Id. at 197-198.

Trial court applied correct clear and convincing evidentiary standard in termination proceeding.

The mother argued that the trial court's finding that there is a reasonable possibility that the conditions that led to the removal or the reasons for the placement outside the mother's home will not be remedied showed that the O.F.C. was held to a lower, incorrect standard of proof. I.C. 31-35-2-4(b)(2)(B) requires that the O.F.C. show a reasonable probability rather than a reasonable possibility. The O.F.C. argued that the trial court's substitution of the word "possibility" rather than the word "probability" was merely a scrivener's error. The Court agreed with the O.F.C. argument, stating that the court's statements to the mother at the initial hearing on the termination petition, along with the court's findings and conclusions as a whole, revealed that the court was aware of and applied the correct standard of proof. Id. at 200.

Trial court's conclusions that conditions which resulted in the children's removal would not be remedied was supported by the evidence.

The mother disputed parts of three of the trial court's sua sponte findings concerning whether the conditions which led to the children's removal would not be remedied. The Court noted that a finding is clearly erroneous when there are no facts or inferences to be drawn therefrom which support it. Id. at 198, citing In Re M.B. and P.B., 666 N.E 2d 73, 76 (Ind. Ct. App 1996). The first alleged erroneous finding concerned services which had been offered to the mother. The Court found that the following evidence supported the trial court's finding regarding services: (1) the mother's placement at Rise where she was provided a secure living environment for eighteen months; (2) the mother's testimony that Georgia child protection services asked her to undergo a psychological evaluation and participate in a family building class in order to have her children returned to her; (3) the mother's acknowledgment that Monroe County O.F.C. had recommended that she undergo a psychological evaluation, attend domestic violence support groups, refrain from contact with the children's father and develop a safety plan.

The mother also disputed the court's finding that she had continued to maintain a relationship with the father. The mother alleged that the Court's finding that her divorce from the father was still pending was erroneous because she had testified that the divorce was final. She also asserted that her testimony at the termination hearing had been taken out of context and directed the court to her testimony that she had sought a protective order against the father and had informed him that she wanted no further contact with him. The Court agreed that two statements in one of the trial court's findings regarding the mother's relationship with the father were incorrect but also found an abundance of evidence in the record which supported the trial court's finding that the mother had continued to maintain contact with the father, namely: (1) the mother lied to personnel at

Rise about her continued relationship with the father; (2) the children had been returned to the mother by Georgia child protection services based on the mother's assertion that she was not having contact with the father, yet she continued to have contact with the father in Indiana; (3) the mother admitted to having contact with the father four months before the filing of the termination petition.

The mother also argued that the trial court's finding provided incorrect dates regarding her psychological evaluations and that the evidence did not support the finding that she made little or no efforts to obtain services for herself. The Court acknowledged that the finding contained an incorrect date regarding the mother's first psychologist appointment but opined that the significance of the finding was that the mother waited ten months to comply with O.F.C.'s request that she undergo a psychologist evaluation. The Court also noted the following evidence in support of the trial court's finding that the mother had made little or no efforts to obtain services for herself: (1) the mother attended only four counseling sessions; (2) the mother stopped attending domestic violence counseling; (3) the mother refused O.F.C.'s recommendations that she have no contact with the father, (4) three O.F.C. witnesses, including the caseworker, the psychologist, and the CASA all gave similar opinions about the mother's unwillingness or inability to alter the conditions which led to the children's removal.

The Court concluded that O.F.C. proved by clear and convincing evidence that the conditions which led to the children's removal would not be remedied. Id. at 202.

Trial court's conclusion that O.F.C. proved by clear and convincing evidence that termination of the mother's parental rights would be in the children's best interests was supported by the evidence.

The mother's final argument was that the trial court erred when it determined that termination of her parental rights was in the children's best interests. She argued that the court should have denied the termination petition and allowed her time to undergo treatment for her disorders. She pointed to the psychologist's testimony that, with consistent treatment, she could show progress within six months and complained that O.F.C. had not afforded her an opportunity to demonstrate her parenting skills. The Court was unpersuaded by the mother's argument and opined that the testimony of the caseworker and CASA alone was sufficient to support the trial court's conclusion that termination was in the children's best interests. Id. at 203. The Court also noted that several witnesses testified that the children were thriving in their current foster home. The Court concluded that O.F.C. proved that termination was in the children's best interests by clear and convincing evidence. Id.