

Children's Law Center of Indiana



Termination of Parental Rights (TPR)

8/04/2009

In **In Re H.L.**, 915 N.E.2d 145 (Ind. Ct. App. 2009), the Court affirmed the trial court's termination of Father's parental rights. When the child was born, June 30, 2006, and for the first nine months of the child's life, Father was incarcerated, and Mother had sole custody of her. On June 11, 2007, DCS filed a petition alleging the child was a CHINS because her parents were unable or unwilling to provide for her care. The child was hospitalized because of pneumonia earlier in June, had been diagnosed with cystic fibrosis, and had experienced multiple hospitalizations for "failure to thrive." Additionally Mother did not respond to the child's cries or interact with her "unless prompted." The trial court found the child to be a CHINS and ordered Father to establish his legal paternity of the child, which he did. Father was also ordered to participate in a family profile and bonding assessment and to complete a drug and alcohol assessment. Mother subsequently agreed to the termination of her parental rights. Father remained incarcerated in county jails on multiple charges, and was unavailable to complete basic parenting services or prepare to meet the child's extraordinary medical needs. On August 27, 2008, DCS petitioned to terminate Father's parental rights, which the trial court terminated January 12, 2009, following an evidentiary hearing. Father appealed.

Father did not show that he was deprived of due process. *Id.* at 150. Father contended that he was denied due process because he was not afforded the opportunity to be heard at the termination hearing and because he was not provided services in order to develop a relationship with his child despite his incarceration. The Court noted: (1) Father has been incarcerated throughout the CHINS proceedings, but was appointed counsel to represent him in the CHINS and termination proceedings; (2) Father's attorney was advised that a transport order would not be signed, but Father could appear telephonically but the attorney would have to arrange it; (3) there is no indication in the record that Father requested telephonic participation; and (4) Father requested a continuance so further discussions could take place regarding possible post-adoption visitation, but the continuance was denied. The Court concluded that Father had not shown that he was deprived of the opportunity to be heard at a meaningful time and in a meaningful manner; he simply did not avail himself of the opportunity offered to him. *Id.* at 147-48.

The Court also concluded that Father did not show that DCS failed to make reasonable efforts toward family preservation. The Court opined that, in a strict sense, the record supported Father's assertions that DCS did not actively promote the development of his relationship with the child whom Father has not met; but, the absence of services was due to Father's incarceration and he did not point to evidence that he specifically requested visitation or other services. The Court noted that (1) at the time of the termination hearing, Father had been sentenced to multiple years of imprisonment in two separate counties; (2) DCS was unable to offer services to Father

or fully evaluate him to determine what services might have been needed; and (3) the inability to provide services in such circumstances does not amount to a denial of due process. Id. at 148 (citations omitted).

DCS established by clear and convincing evidence the requisite elements to support the termination of Father’s parental rights. Id. at 150. Father specifically challenged the trial court’s determination that termination was in the child’s best interests. The Court distinguished In Re G.Y., 904 N.E.2d 1257 (Ind. 2009), which was relied upon by Father. The Court noted that in G.Y., the mother, who was incarcerated due to offenses committed before the child’s conception, (1) had taken numerous steps to secure an earlier release date and provide for the child’s care; (2) had completed a drug rehabilitation program and a parenting class, and engaged in individualized drug counseling; (3) was actively participating in an “inmate to work mate program;” (4) was pursuing an associate’s degree; (5) had secured a full-time job; and (6) had arranged alternative sources of post-release housing, either through family members or a specific program. The Court contrasted this case where (1) Father had not asserted that he was able to provide a home for the child at any time within the next several years; (2) there was no evidence of record that Father was taking steps to further his education, acquire job skills, or secure employment to commence after his release from incarceration; and (3) there was no indication that Father had family members able or willing to assist him by providing care for the child. Moreover, according to the Court, the child requires extraordinary medical care and supervision in seclusion; there was no evidence Father had requested assistance with understanding or meeting the child’s extraordinary medical needs. The GAL testified that the foster mother was very diligent in administering the medical procedures needed by the child and making sure that her lungs were cleared out, and adoption by her foster parents was in the child’s best interests. Id. at 149-50.