

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

9/21/10

In **Parent-Child Rel. of I.B. v. Indiana Child Services**, 933 N.E.2d 1264 (Ind. 2010), the Court affirmed the trial court's judgment that denied the appointment of appellate counsel to represent Mother in an appeal of the involuntary termination of Mother's parental rights. The newborn child tested positive for amphetamines and was removed from Mother and placed with Grandmother by the Bartholomew County Office of the Indiana Department of Child Services (State). Mother admitted the child was a Child in Need of Services (CHINS) at the dispositional hearing on October 9, 2007. The juvenile court adjudicated the child a CHINS on the same day and ordered Mother to participate in services, including drug screens. Mother complied with the requested drug screens in July and August 2007 and had negative results. After August 2007, Mother did not keep to the scheduled visits, individual counseling sessions, or the drug screens, and refused to complete a required substance abuse evaluation. Mother moved in with Grandmother in December 2007, but was ordered to leave Grandmother's home in March 2008 because of Mother's excessive alcohol consumption. Thereafter, Mother missed numerous supervised visits and individual counseling sessions and had no further contact with the child after April 2008. In October 2008, the State petitioned to terminate Mother's parental rights and performed service through publication. Although Mother did not appear for any of the termination proceedings, the court appointed counsel to represent her. Before the termination hearing, Mother's counsel moved to withdraw; he explained that he had never met Mother, had had no contact with her, and did not know how to locate her. The court declined Mother's counsel's request to withdraw, and he participated in the termination hearing. Grandmother testified at the termination hearing that she notified Mother of the hearing, but Mother did not want anything to do with the State. Grandmother also testified that she did not know Mother's address or telephone number. The court terminated Mother's parental rights on July 28, 2009. Mother's counsel filed a notice of appeal and moved for the appointment of appellate counsel. Mother's counsel admitted that he had never had contact with Mother and did not know whether she wanted to file an appeal. The juvenile court denied the motion to appoint appellate counsel but appointed counsel to appeal this decision. The Court of Appeals affirmed the juvenile court's denial of the motion to appoint appellate counsel at **In Re Parent-Child Rel of I.B. v. DCS**, 922 N.E.2d 62, 68 (Ind. Ct. App. 2010). Counsel for Mother sought, and the Indiana Supreme Court granted, transfer.

The Court held that Indiana statutes dictate that the parents' right to counsel continues through all stages of the proceeding to terminate the parent-child relationship, including appeal. *Id.* at 1267. The Court observed that the parents' right to counsel in termination of parental rights cases is granted by statute and case law (IC 31-32-2-5, IC 31-32-4-1, IC 31-32-4-3; *Taylor v. Scott*, 570 N.E.2d 1333 (Ind. Ct. App. 1991), *trans. denied*). *Id.* The three statutes use the term "proceedings to terminate the parent-child relationship" which the Court of Appeals in *In Re Parent-Child Rel of I.B.*, 922 N.E.2d 62, 66 defined as "the time between the commencement and the entry of judgment," citing *Black's Law Dictionary*. *I.B.*, 933 N.E.2d 1267. The Court noted that *Black's Law Dictionary* provides several definitions for the word "proceeding", including any step in the process of a resolution of a matter before a court. *Id.* In the Court's view, a "proceeding" is not limited to the trial court stage. *Id.* The Court said that, for the purposes of the statutes implicated in this case, a proceeding does not limit the appointment of counsel to the trial proceeding but rather applies to the entire process, including through the direct appeal proceeding. *Id.* The Court also noted that other jurisdictions with similar statutory language have found a right to appellate counsel, citing case law from Illinois, California, and Iowa. *Id.* at 1267-68. The Court said that the need for counsel to protect the interests of a parent does not diminish on appeal. *Id.* at 1268.

The Court opined that if a parent's lawyer in an involuntary termination proceeding is unable to locate the client despite due diligence and cannot get clear instructions from the client with respect to an appeal, the lawyer should not file a notice of appeal. *Id.* at 1270. The Court observed that this case presents the dilemma an attorney faces where, after a client's parental rights have been terminated, the client does not cooperate or communicate the client's instructions with respect to an appeal to the attorney. *Id.* at 1268. The Court looked to the Rules of Professional Conduct to provide general guidance on this question, noting that: (1) Prof. Cond. R. 1.2 requires lawyers to abide by the client's decision as to the objectives of representation and to consult with the client as to the means by which the client's objectives are to be pursued; (2) Prof. Cond. R. 1.3 requires a lawyer to act with reasonable diligence and promptness in representing a client; (3) Prof. Cond. R. 1.4(a) and comments 2-5 require the lawyer to maintain reasonable communication between the lawyer and the client so the client can participate effectively in the representation; (4) Prof. Cond. R. 1.4(b) requires the lawyer to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." *Id.* at 1268-69. The Court also cited cases from California, Maryland, Pennsylvania, South Carolina, and Washington, stating that a rule of not proceeding absent instructions is consistent with decisions in other jurisdictions that have considered the issue in family law matters. *Id.* at 1269. The Court stated that an appeal of a decision to terminate parental rights, by its very nature, causes delay and prolongs the process of uncertainty for a child. *Id.* at 1270. The Court opined that to sanction an appeal as a matter of course would not further the objective of bringing permanency to the child through the prompt resolution of termination proceedings. *Id.*

The Court said that if a parent is present at the termination hearing and contests the termination order, the parent is entitled to appeal the termination order with the assistance of court-appointed counsel, although the parent can waive the right to appeal. Id. at 1270. The Court went on to say that when the parent does not appear at the termination trial, is not present when the termination order is issued, or has not had contact with counsel, the parent's trial lawyer has an obligation to contact the client and inform the client of the result of the termination proceeding. Id. At this point, the parent's lawyer can receive instructions with respect to an appeal. Id. If the lawyer does not know the parent's whereabouts, the lawyer must use due diligence to locate the client during the time period between the entry of the termination order and the time that the notice of appeal is due; however, if the lawyer cannot locate the client or get clear instructions from the client with respect to an appeal, the lawyer should not file a notice of appeal. Id. The Court observed that the trial rules may provide a remedy in certain situations if the parent resurfaces and seeks to pursue an appeal after the time period for filing the notice has closed. Id.

The Court found that, on the facts of this case, the lawyer had no basis to file an appeal and the trial court was correct not to appoint appellate counsel for that purpose. Id. at 1271. The Court observed that, due to Mother's own inaction, her counsel could not ethically or effectively represent that she wanted an appeal. Id. The Court quoted In re Dependency of C.R.B., 814 P.2d 1197, 1202 (Wash. Ct. App. 1991), "a child's right to a stable home cannot be put on hold interminably because a parent is absent from the courtroom and has failed to contact his or her attorney." I.B., 933 N.E.2d 1271.