

Children's Law Center of Indiana



Termination of Parental Rights (TPR)

08/07/2009

In **In Re J.H.**, 911 N.E.2d 69 (Ind. Ct. App. 2009), the Court affirmed termination of Father's parental rights to his son. Necessary facts are included below in the discussion of the Court's holding. Father appealed.

The trial court did not err in terminating Father's parental rights despite an agreement between DCS and Father granting him the right to exercise visitation rights with his son, where the Court held that the agreement became void at the moment the trial court entered its Order terminating Father's parental rights. *Id.* at 75. Father contested the termination solely based on the contention that termination of his parental rights is inconsistent with his March 27, 2008, agreement with MCDCS which provided that Father would have supervised visitation with his son as long as he participated in drug screens. *Id.* at 72-73. The Court distinguished the case Father relied on to support his contention, **In Re E.E.S.**, 774 N.E.2d 376, 378 (Ind. Ct. App. 2007) (Court of Appeals reversed termination of mother's parental rights while mother was incarcerated, where, in exchange for mother admitting to allegations in CHINS petition, Office of Family and Children had entered into agreement with mother to support family bond until mother was released from prison and had opportunity to carry out case plan requirements), *trans. denied*. The Court noted that the **E.E.S.** court specifically stated its disapproval of such agreements and strongly cautioned against them, and contrasted the facts here with those of **E.E.S.**: (1) here, Father did not receive visitation rights with his son in exchange for his admission to CHINS allegations, but rather the agreement was executed after DCS had filed its petition to involuntarily terminate his parental rights and Father had signed an Advisement, acknowledging that he had read and understood his rights regarding the proceeding to terminate his parental rights; (2) unlike in **E.E.S.** where mother had not yet participated in services and still wished to be reunited with her children, here, prior to entering into the agreement, Father refused to further participate in services because he did not seek reunification; and (3) here, the terms of the agreement itself merely clarify how and under which conditions Father could exercise his visitation time. *Id.* at 73-74. The Court observed that, because DCS had already filed its petition to involuntarily terminate Father's parental rights, it seemed that Father attempted to avoid a permanent cessation of these rights by entering into an agreement granting him visitation rights, thus attempting to sidestep the clear and unambiguous provision of IC 31-35-6-4(a)(1) (termination of parental rights permanently terminates all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, parenting time, or support pertaining to the relationship). *Id.* at 74. The Court cited case law and policy, and concluded by stating (1) its belief that allowing parents to avoid the consequences of the termination of their parental rights by executing an agreement providing for visitation, or any other parental right, in an attempt to circumvent IC 31-35-6-4(a)(1), would impermissibly tie the

hands of the trial court and DCS, while at the same time discourage future adoption of the child whose parents' rights have been terminated; (2) its acknowledgement that the agreement entered into between Father and DCS was valid until the trial court issued its Order terminating Father's parental rights; (3) its holding that the agreement became void at the moment the trial court entered its Order terminating Father's parental rights; and (4) its reasoning that this holding furthers the strong public policy underlying Indiana's termination statutes in protecting our children's emotional and, in some instances, physical well-being and in avoiding protracted instability and uncertainty in the lives of children whose parents have failed to rectify their situation or refuse reunification outright. Id. at 74-75.