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## The Children's Law Center of Indiana

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### Termination of Parental Rights

10/23/02

#### Tillotson v. Dept. of Family and Children, 777 N.E.2d 741 (Ind. Ct. App. 2002)

In Tillotson v. Dept. of Family and Children, 777 N.E.2d 741 (Ind. Ct. App. 2002), the Court affirmed the trial court's judgment terminating the parental rights of the mother and father to their five children. The Court found that the trial court's failure to implement alternative means for allowing the incarcerated parents to testify at the termination hearing did not deny the parents due process of law.

At the time of trial, both parents were incarcerated, having pleaded guilty to the charge of neglect of a dependent. They had shackled their fourteen-year-old son in a two-foot-by-three foot closet and provided him with only bread and water. The parents also had a long history with the local OFC, including several substantiated abuse and neglect charges. The children in the family were adjudicated CHINS and placed in foster care. Eventually OFC filed petitions for the involuntary termination of parental rights. The parents filed a pro se Motion to Transport, asking the trial court to order the sheriff's department to transport them from their places of incarceration to the court for the termination hearing. They did not ask for a hearing on the motion, and the motion was denied. The following month the parents, by counsel filed a second Motion to Transport, which sought, in the event the trial court denied transport, an alternative method that would allow the parents to testify and otherwise participate in the hearing. The trial court again denied this motion. Four months later, on the second day of the termination hearing, and prior to the introduction of evidence, the parents, by counsel, objected to the fact that the parents had not been transported to the trial and that there had been no hearing on the parents' request for alternative methods that would allow them to testify. The trial court inquired as to what type of alternative method would suffice, and parents' counsel allowed that a simple speaker phone would have been adequate. The trial court again denied the motion, and the hearing proceeded. During the course of the proceedings, parents were always represented by counsel. Their attorney cross-examined OFC witnesses, but did not present evidence or witnesses in their favor. Following the hearing, the trial court entered an order terminating parental rights. The parents appealed.

**Balancing the three Matthews factors leads to the conclusion that trial court's failure to implement alternative means for parents to testify at termination hearing did not deny them due process of law; however, in the future, courts should consider alternative methods that will allow incarcerated parents to meaningfully participate in termination hearings when they cannot be present physically.** The parents contended their due process rights were violated when the trial court did not devise an alternative method by which they could testify at the termination hearing. The Court initially noted that although an incarcerated parent does not have an absolute right to be physically present at a termination proceeding, such a parent does have a right to be heard at a meaningful time and in a



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meaningful way. Id. at 745 (quoting J.T. v. Marion County Office of Family and Children, 740 N.E.2d 1261 (Ind. Ct. App. 2000)). While due process has never been specifically defined, the phrase embodies a requirement of fundamental fairness. Id. In termination of parental rights actions, the nature of due process turns on a balancing of three factors: (1) the private interests affected by the proceedings; (2) the risk of error created by the state's chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure. Id. (quoting Matthews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893, 47 L.Ed. 2d 18 (1976)).

As to the first prong of the Matthews test, the Court conceded that the parent-child relationship implicates one of society's oldest fundamental liberty interests and that a parent's interest in the accuracy and justice of a parental rights proceeding is "a commanding one." Id. (quoting J.T. v. Marion County Office of Family and Children at 1264). However, under the second prong of Matthews, the government has a countervailing and "compelling interest in protecting the welfare of the child by intervening in the parent-child relationship when neglect, abuse, or abandonment are at issue." Id. (quoting E.P. v. Marion County Office of Family and Children, 653 N.E.2d 1026, 1032 (Ind. Ct. App. 1995)). The Court further recognized that "delays in the adjudication of a case impose significant costs upon the functions of government as well as intangible cost to the lives of the children involved." Id. (quoting J.T. v. Marion County Office of Family and Children at 1264.) The Court noted that the parents had not requested a hearing in either of their motions. It was not until the second day of the termination hearing, four months after the second motion, that the parents cited an example of a method that might be utilized to allow them to testify from prison. By that time, it was too late to make the necessary arrangements. The eleventh hour request, according to the Court, would have imposed fiscal and administrative burdens upon the state. Finally, addressing the third prong of the Matthews test, the Court noted that the parents were represented by counsel throughout the proceedings and had the opportunity to cross examine witnesses and present evidence of their own. Under these circumstances, "the risk of an inaccurate result decreases significantly." Id. The Court remarked that it was noteworthy that the parents chose not to present any evidence or statements on their own behalf, although they could have done so (for example, by deposing themselves, as unavailable witnesses, and entering their deposition into evidence at the hearing). The risk of error, given the procedures employed at the termination hearing, was insignificant. Id. At 746.

In balancing the three Matthews factors, the Court found that, under the narrow facts of this case, the trial court's failure to employ alternative methods for allowing the parents to testify at the termination hearing did not deny the parents due process of law. However, the Court cautioned that, in the future, courts would do well to consider alternative methods for allowing incarcerated parents to participate in termination of parental rights hearings when they cannot be physically present. Id.