

Children's Law Center of Indiana



Termination of Parental Rights (TPR)

12/10/2007

In **In Re A.J.**, 877 N.E.2d 805 (Ind. Ct. App. 2007) the Court affirmed the trial court's termination of the parental rights of both Mother and Father to their three children. In 2004, Mother began exhibiting mental health issues relating to depression and anxiety. She took the children and left the home she shared with Father because she thought Father had done something to the children. She was hospitalized for five days. In January 2005, Mother again removed the children from the home because she was "afraid" of Father. She spent about a week in the hospital's psychiatric unit and was placed on medications. On January 4, 2005, Marion County Department of Child Services (MCDCS) filed a petition alleging the children to be CHINS for several reasons, including the fact that Mother was residing in the psychiatric unit and there was a concern that the children had been sexually molested by Father. The next day, the trial court made the children wards of MCDCS and ordered that they reside outside the home of Mother and Father (Parents). In March 2005, Parents each entered into an Agreed Entry admitting that the children were CHINS. The Court ordered the children removed from Parents' care immediately, delineated specific requirements for reunification including that Parents actively participate in and successfully complete specific services and follow all recommendations made by the therapists and counselors. The ordered services included a parenting assessment, mental health treatment and home-based counseling for Mother and participation in a parenting assessment, a specific parenting class for parents of children who have been sexually molested by an unknown offender, and home-base counseling for Father. On April 18, 2006, MCDCS filed its petition for involuntary termination of the parent-child relationship as to both Mother and Father. On January 30, 2007, the trial court held a fact finding hearing and subsequently issued its order terminating Parents' parental rights to all three children, including findings of fact and conclusions of law. Parents appealed, alleging that the trial court erred in allowing testimony regarding a polygraph examination and that the order terminating their terminal rights was clearly erroneous.

The trial court did not err in allowing a psychologist, expert witness to testify as to his recommendations for treatment which were based, in part, on the results of polygraphs given to Mother and Father. *Id.* at 814. Parents argued that even though, on their objection to a witness' statement that Parents failed their polygraph examinations, the trial court had struck that testimony, the trial court had readily admitted statements of a psychologist, expert witness which supported a strong inference that Parents' polygraph exam results were not favorable, thereby resulting in prejudice to Parents. The Court noted that (1) polygraph examination results are generally

inadmissible absent a valid stipulation between the parties; (2) the expert witness did not testify as to the results of the polygraph examinations; and (3) the expert did testify as to his recommendations for treatment, which were based, in part, on his review of the polygraph results. The Court also observed that inasmuch as Ind. Evid. R. 703 allows experts to testify to opinions based on inadmissible evidence, provided that it is the type reasonably relied upon by experts in the field, the admissibility of the expert's polygraph testimony hinged on whether the use of polygraph examinations in the field of sexual abuse treatment is reasonably relied upon by experts in the field. The Court noted the expert's testimony as to the reliance on polygraph testing by experts in the field and concluded that the challenged testimony was admissible. *Id.* at 813-14. Further the Court held that Parents failed to provide any evidence showing that the trial court made an inappropriate or prejudicial inference based on the expert's testimony. In this regard, the Court noted that (1) the record revealed that the trial court immediately sustained Parents' objection and granted their motion to strike the testimony of the witness who stated that the Parents flunked their polygraph exams; (2) the trial court made clear that it based its determinations that one of the children had been sexually abused by Father, and that Mother had failed to protect the child from the abuse, on free-standing evidence completely independent of the expert witness' polygraph testimony. *Id.* at 814-15.

The record shows that the trial court's detailed findings were supported by the evidence, the findings supported the trial court's conclusions and ultimate judgment terminating the parental rights of Mother and Father, and, therefore, the trial court's judgment was not clearly erroneous. *Id.* at 816. In order to terminate a parent-child relationship, the State is required to allege and prove by clear and convincing evidence that:

(A) one (1) of the following exists:

(i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

* * * * *

(B) there is a reasonable probability that:

(i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

IC 31-35-2-4(b). Parents did not challenge the finding that the children had been removed for more than six months, but alleged that MCDCS failed to provide sufficient evidence to prove the remaining statutory elements. The Court disagreed. In this regard, the Court noted: (1) the child's own testimony regarding the abuse she suffered while in the care of her parents was both detailed and credible; (2) the child's testimony was substantiated by the testimony of the child's therapist and another psychologist witness; (3) at the time of the final termination hearing, Mother was not in compliance with the terms of the Dispositional Order; (4) Mother testified that she did not believe that she had a mental health problem and she continued to deny Father had ever molested the child; (5) Mother admitted she had not participated in any psychological evaluation since February 2006, and, despite multiple recommendations by her therapists and case

managers, she had not participated in any follow-up counseling, nor taken any medications for her mental health issues since February of 2006; (6) at the time of the termination hearing, Father still had not admitted to sexually molesting the child; (7) Father did not complete any of the sexual offender classes which were necessary for reunification; (8) the GAL testified that termination of Parents' parental rights and subsequent adoption was in the best interests of the children; and (9) MDCDCS had a satisfactory plan for the care and treatment of all three children following termination of Parents' parental rights. Id. at 816.