

Children's Law Center of Indiana



Termination of Parental Rights

10/23/2007

In **Involuntary Termination of the Parent-Child Relationship of B.R.**, 875 N.E.2d 369 (Ind. Ct. App. 2007), the Court affirmed the trial court's termination of Mother's parent-child relationship with her adopted child. The child was born October 2, 1992. As she grew older, she exhibited behavioral problems such as hurting herself, assaulting other children, setting fires, and killing small animals. She was diagnosed with Reactive Attachment Disorder, ADHD, and Conduct Disorder. She was admitted to LaRue D. Carter Memorial Hospital sometime in 2001. Her behavior worsened and, on April 24, 2002, the Miami County Department of Child Services (MCDCS) placed the child in Methodist Hospital, and then, the following month, at the Youth Opportunity Center. Two days later, the MCDCS filed a petition alleging the child to be a CHINS. Mother admitted the allegations of the CHINS petition, and the trial court found that reunification was not yet possible because of continuing friction between the child and Mother. The trial court ordered Mother to participate in visitations with the child and in any counseling sessions identified by her therapist. During her several months at the Youth Opportunity Center, the child continued to display violent outbursts, but it was determined that she had demonstrated enough progress to be reunified with Mother who was ordered to participate in the Wraparound Program to ease the transition. The reunification, which started in November 2002, lasted only four and a half months, because the child soon began destroying property, fighting with other children, and threatening to set fires again. The child was again placed in treatment facilities. Inasmuch as the goal was no longer reunification, the discharge plan was placement in a foster home. Mother visited the child infrequently, and contacts between Mother and the child seemed to trigger "uncontrollable" behavior by the child. On May 4, 2005, the court prohibited further contact between Mother and the child because of the negative effects on the child's behavior. On June 1, 2005, the child was placed in a therapeutic foster home with foster parents who ultimately sought to adopt the child. The child showed much improvement while living with these foster parents. On January 17, 2006, the MCDCS filed a petition to terminate Mother's parental rights, which petition the trial court ultimately granted. The Mother appealed.

Waiver notwithstanding, the Court found that I.C. 31-34-1-16 did not apply to this case and, thus, did not limit the State's power to request the termination of the parent child relationship, inasmuch as Mother did not place the child out of the house solely because she could not provide treatment for the child. *Id.* at 374-75. On appeal Mother argued the limitations of I.C. 31-34-1-16, and that they applied to this case. Because Mother failed to raise this issue before the trial court, the Court found it to be waived on appeal. However, the Court addressed the issue, waiver notwithstanding. *Id.* at 373.

I.C. 31-34-1-16(a) provides that the DCS may not:

- (1) initiate a court proceeding to:
 - (A) terminate the parental rights concerning; or
 - (B) transfer legal custody of; or
- (2) require a parent, guardian, or custodian to consent to:
 - (A) the termination of parental rights; or
 - (B) transfer of legal custody of;

a child with an emotional, a behavioral, or a mental disorder or a developmental or physical disability who is voluntarily placed out of the home for the purpose of obtaining special treatment or care, *solely* because the parent, guardian, or custodian is unable to provide the treatment or care. Relinquishment of custody of a child described in this subsection may not be made a condition for receipt of services or care delivered or funded by the department or county office of family and children.

(Emphasis added). The Court found that Mother's admissions showed that she was motivated to place the child out of the home in part because of her inability to control the child and her fear the child might harm her other children. *Id.* at 374. The Court noted that (1) the original CHINS petition stated that Mother admitted "that she was experiencing difficulty in maintaining [the child] in the home while safeguarding her other children;" (2) one of the petition's stated goals was that Mother and her family have "the chance to reside without fear;" (3) after the attempt at reunification failed in 2003, Mother again stated that she could not care for the child and feared for the safety of her other children; and (4) at a hearing in January 2006, Mother testified that the child "needs more care than [Mother and her family] can give" and that "it wasn't safe for [the child] to be in [Mother's] home." *Id.* at 374-75.

Contrary to Mother's additional argument of fundamental error, the Court held, that there was no fundamental error and stated: "Because we hold that [I.C.] 31-34-1-16 did not apply to this case, the trial court's failure to raise the statute neither constitutes a clearly blatant violation of basic and elementary principles nor presents harm or the potential for harm." *Id.* at 375.