

Children's Law Center of Indiana



Termination of Parental Rights (TPR)

05/30/2008

In ***In Re A.B.***, 887 N.E.2d 158 (Ind. Ct. App. 2008), the Court affirmed the trial court's termination of Mother's parental rights. The child was born in August 1996. Mother hospitalized her for violent, uncontrollable behavior in March, May, and October 2001. On August 9, 2002, Mother admitted the child to Parkview Behavioral Health for out-of-control, dangerous, and aggressive behaviors. Several days later, DCS received a referral alleging that the child had engaged in sexual behavior with her eleven-year-old brother. The child was adjudicated a CHINS in December 2002. The trial court entered a Dispositional Order which, among other things, directed Mother to: (1) maintain clean, safe, and appropriate housing; (2) obtain and maintain suitable employment; (3) enroll in family counseling at Crossroads when deemed appropriate by the child's therapist, attend all classes, and successfully complete the counseling program; (4) cooperate with service providers and Crossroads to establish and consistently enforce appropriate rules in the family home; (5) cooperate with the child's therapist and case manager in developing/accepting training for parenting skills; and (6) appropriately participate in all visits with the child as directed. Additional facts are detailed below. Mother's parental rights were terminated on August 21, 2007. Mother appealed.

The Court found, as a matter of first impression, that IC 31-34-1-16 does not preclude the initiation of termination proceedings where, although prior to initiation of CHINS proceedings Mother voluntarily placed the child in residential treatment, termination proceedings were not initiated solely because Mother was unable to provide the care the child required. *Id.* at 163. The Court noted that (1) IC 31-34-1-16 applies to this case inasmuch as Mother voluntarily placed the child in residential treatment prior to the initiation of the CHINS proceeding underlying this matter; (2) DCS' involvement with Mother and the child stemmed from a referral DCS received while the child was residing at the residential treatment facility; (3) the referral alleged that the then six-year-old child had participated in inappropriate sexual conduct with her eleven-year-old brother; (4) following a preliminary inquiry, the trial court ordered that the child be deemed a CHINS and, thereafter, removed the child from Mother's care and custody and ordered the child be continued in placement at the residential treatment facility until she could be "placed in an appropriate Residential Treatment Program;" (5) for about four years following the CHINS determination, DCS attempted reunification by offering numerous services to the family including individual and family counseling, residential treatment, home based services, psychological evaluations, and visitation; and (6) nevertheless, Mother was unable to provide the child with the care and treatment the child required. *Id.* 162-63. The Court also observed that, (1) on June 30, 2006, the permanency plan was changed from reunification to termination of parental rights because Mother was not in compliance with the Parent Participation Plan; (2) the DCS case manager testified that the plan was changed because of six years of unsuccessful efforts to put the family back together, the child's need of a

permanent place with a family that will be able to take care of her special needs, and Mother's demonstrated inability to move past her own issues to participate in the ordered family counseling and put the child first; (3) Mother who was diagnosed with moderate to severe depression, refused to participate in a court-ordered psychological evaluation for more than nine months, thereby preventing DCS from pursuing and developing the best possible approach to family reunification; and (4) Mother refused to participate in individual counseling which would have helped her to address her own psychological issues which were interfering with her ability to parent the child. *Id.* at 163. Thus, according to the Court, here the termination proceedings were not initiated solely because Mother was unable to provide the care the child required, but also because of Mother's refusal to cooperate with service providers as well as her failure to participate in counseling to address her own mental issues, thereby making herself both unable and unwilling to provide adequate care of the child. *Id.* at 163-64. The Court stated that it left unanswered, perhaps for the Legislature or DCS, the question of how the State would provide long-term care for a CHINS where, under the statute, parental rights could not be terminated, but where the parents, through no fault of their own, were unable and permanently incapable of becoming able to care for their special needs child. *Id.* at 164 n.2.

Trial court's finding that continuation of the parent-child relationship posed a threat to the child's well being was supported by clear and convincing evidence. *Id.* at 167. The Court held that the trial court's findings were supported by the evidence. The Court noted: (1) the psychologist's testimony as to how Mother struggled to meet her own personal and emotional needs; (2) specific examples of the child's repeatedly experiencing significant regression after spending unsupervised time at home with Mother; (3) testimony of the treatment facility's therapist as to Mother's difficulty managing her emotions so as not to affect the child; and (4) testimony of the GAL that there had been tension between Mother and the child not just based on the child's negative behavior and that she felt the child "would continue to struggle greatly if she [were] returned to" Mother's care. *Id.* at 166-67. The Court also opined that termination is proper where the child's emotional and physical development is threatened, and the trial court need not wait until the child is irreversibly harmed. *Id.* at 167.

Trial court's finding that termination of Mother's parental rights was in the child's best interests was supported by clear and convincing evidence. *Id.* at 170. The Court found that the trial court's findings in this regard were supported by the evidence. The Court noted that (1) at the time of the termination hearing, the child had been released from residential treatment and placed in therapeutic foster care where, during the nine months of the review, she had been making tremendous progress and was attending all-day public school; (2) the therapist testified that this speaks volumes for the child's progress in foster care; (3) the case manager testified the child was in need of a permanent place with a family that would take care of her special needs for the rest of her childhood; (4) the GAL testified that the services provided Mother had not gotten the situation any closer to reunification although Mother loved the child; and (5) at the time of the hearing, Mother was unemployed and still not participating in individual counseling. *Id.* at 169. The Court concluded Mother had failed to comply with and benefit from a number of dispositional goals put into place during the CHINS proceedings, and, while Mother may have a sincere desire to be reunited with the child, she had been unable and unwilling to provide the child with a safe and stable home environment. *Id.* at 170.