

Children's Law Center of Indiana



Termination of Parental Rights (TPR)

06/03/2008

In **In Re Term. of Parent-Child Relat. of A.B.**, 888 N.E.2d 231 (Ind. Ct. App. 2008), the Court reversed the trial court's termination of Parents' parental rights. On September 10, 2004, Mother took the then seven-month-old child to the hospital because one of her toes had become infected and had turned black despite the use of antibiotic ointment at home. Hospital staff called DCS and the investigating caseworker took emergency custody of the child on the basis of suspected medical neglect by Mother. At the detention hearing on September 21, 2004, at which the Mother was present but unrepresented, the trial court determined that there was probable cause to believe that the child and her three older siblings were CHINS. The child was placed at Nazareth Home and ordered to remain physically removed from the family home, but Mother was permitted to retain physical custody of the child's siblings. The trial court ordered Parents to participate in drug and alcohol evaluations, along with any resulting treatment recommendations, and parenting classes. All the children were subsequently found to be CHINS. Parents complied with all court orders and completed all ordered services. Before the CHINS proceedings, Mother, Father, and the children had been living with the paternal grandparents because of their poor economic circumstances. Paternal grandmother, who allegedly suffered from alcoholism and mental illness, would reportedly become verbally and physically abusive when not taking her medications. Parents decided to move out but were unable to find suitable housing because of their poor economic status and ineligibility for public housing assistance. Parents decided to relocate to Altoona, Pennsylvania, Mother's hometown, where they could rent a home from Mother's uncle. Parents requested that the children's wardships be dismissed so that the family could move, and the trial court dismissed them except as to the child. Because the child remained at Nazareth Home after Parents and the siblings moved to Pennsylvania, Parents did not visit the child from June 2005 through March 2006. Following their move, Parents missed two court hearings regarding the child, and at the second hearing, the trial court ordered the permanency plan changed from reunification with the parents to "reunification with the parents or termination of parental rights and adoption." Thereafter, Parents attended a review and permanency hearing on March 6, 2006, at which the trial court (1) ordered all visitation between the child and Parents be discontinued; (2) adopted a new permanency plan that called for termination of Parents' parental rights and subsequent adoption of the child; and (3) ordered the child be removed from Nazareth Home and placed in a pre-adoptive home. Mother stayed in Indiana and petitioned for a visitation rehearing while Father returned to Pennsylvania to care for the other children. During this time, Mother was not allowed to visit the child. The trial court denied Mother's request, and she eventually returned home to Pennsylvania. The caseworker stayed in contact with Parents and, in September 2006, initiated expedited proceedings, through the Interstate Compact on the Placement of Children (ICPC) for a background check and home study in order to determine whether the child could be reunited with Parents in Pennsylvania. In October 2006, Parents received the results of their background checks, which came back "clean,"

but when they contacted the Pennsylvania caseworker to proceed with the home study, they were told the home study could not be done because the case had been closed and could only be re-opened by authorities in Indiana. The licensed foster parent with whom the child was living was employed by the Lake County Juvenile Court as the Assistant Director of CASA. She had attended the initial detention hearing and had thereafter visited the child as part of her official duties. She testified that she then began visiting the child regularly, feeding and playing with her, and had become attached to the child. Upon learning that the child had been ordered placed into a pre-adoptive home, she requested consideration for possible placement, and the child was placed with her after a home study. Thereafter, DCS filed the termination petition and at the termination hearing, the child's foster parent testified that she wished to adopt the child. On August 29, 2007, the trial court issued its judgment terminating Parents' parental rights.

The trial court's determination that continuation of the parent-child relationships between Mother, Father, and the child posed a threat to the child's well-being was not supported by clear and convincing evidence, and the trial court did not conclude that the conditions resulting in removal of the child from Parents' care would not be remedied. *Id.* at 236, 239.

The Court noted that the record showed (1) following the child's removal from their care, Parents immediately complied with all court orders; (2) the caseworker testified that Parents had regular visitations with the child, there had been no problems, and, before relocating to Pennsylvania, Parents completed parenting classes, participated with counseling, and did basically whatever the trial court had asked of them; (3) all drug screens for Parents were negative; and (4) when the environment at the grandparents' home became too chaotic and dangerous for the children, the parents moved to Pennsylvania where they had requested and obtained employment transfers and where arrangements had been made for the family to rent a four-bedroom home owned by Mother's uncle. At the time of the termination hearing, according to the Court, Parents were continuing to improve their economic and residential circumstances while living in Pennsylvania: (1) Father who had an Associate Degree, was employed at Arby's and was being considered for promotion into a management position; (2) Mother had recently changed jobs in order to earn a higher salary; (3) Mother had received a certificate from the children's school thanking her for volunteering 123.75 hours in the classroom; (4) the child's older siblings, who were living with Parents, were enrolled in and succeeding academically at school and participated in the Head Start program, had medical coverage through Medicaid, and voluntarily attended summer school classes; (5) Mother's uncle had recently agreed to sell Parents the house they were renting from him; and (6) the paternal grandfather, who was retired, had divorced the paternal grandmother, was residing in the Pennsylvania family home, and was helping to care for the children when Parents were at work. *Id.* at 238. The Court found significant (1) the caseworker's testimony that she had no objection to the dismissal of the cases of the child's siblings so the parents could move to Pennsylvania, but the child's case had not been dismissed at that time "because of the problems in the home.... [B]ecause of the grandmom. And [the child's] toe still had [to have] that surgery. So we didn't want to put her in jeopardy;" (2) but, by the time of the termination hearing, these conditions had been remedied and thus were no threat to the child. *Id.* at 238-39. The Court observed that, at that time, (1) the family no longer lived with paternal grandmother, but was living in a four-bedroom home in Pennsylvania that had passed city inspection; (2) the child's surgery had been postponed indefinitely until the child was older and the toe really bothered her; (3) the "Child Care Abuse History" background checks performed by Pennsylvania indicated a "clean background" for Parents; (4) Parents testified that they would make sure the child received all the medical care

she needed, including any surgery she might need in the future, and that the child's medical expenses would be covered by Medicaid until she turned eighteen years old; and (5) when questioned whether he "believed that [the child] would be in some form of danger, if she were to live with her biological mother and father[.]", the GAL responded, "No." The Court opined that, although the caseworker and GAL recommended termination of the Parents' parental rights because they felt it was in the child's best interests to be adopted by the pre-adoptive foster mother, this alone may not serve as a basis for termination of parental rights, inasmuch as a parent's right to his or her children may not be terminated solely because a better place to live exists elsewhere. Id. at 239 (citation omitted).

The Court saved for another day the question of whether the Interstate Compact on the Placement of Children, (ICPC) IC 31-28-4-1, applies to the interstate reunification of children with their natural parents, because, as in Bester v. Lake County Office of Family and Children, 839 N.E.2d 143, 145 n.2 (Ind. 2005), neither party placed the issue before the Court. A.B. at 235 n.3. The Court cited the Indiana Supreme Court's observations in Bester that (1) no Indiana court had addressed the question of whether the ICPC applied to the interstate reunification of children with their natural parents; and (2) while many jurisdictions across the nation have concluded that the ICPC does apply under these circumstances, other jurisdiction have taken the contrary position. A.B. at 235 n.3.