

Children's Law Center of Indiana



Termination of Parental Rights (TPR)

01/12/2009

In ***In Re J.H.***, 898 N.E.2d 1265 (Ind. Ct. App. 2009), the Court affirmed the trial court's order terminating Father's parent-child relationship with the child. The child, born November 1, 2003, was adjudicated to be a CHINS on July 18, 2006. On June 21 2007, Allen County DCS (ACDCS) filed a termination petition seeking to terminate Father's parental rights. Following a CHINS review hearing, Father was served with a summons regarding the termination proceedings. The summons, which was attached to a copy of the termination petition, commanded Father to appear on October 15, 2007, at 1:30 p.m. at the Allen Superior Court, Family Relations Division, Room 208, for a termination trial and any further proceedings. Father signed, acknowledging receipt of service. At the termination hearing, Father objected to the court's jurisdiction on the grounds that he had not received proper service of process. The trial court denied the objection based on IC 31-32-9-1(d), which provides that service of summons is not required if the person entitled to be served attends the hearing. On March 4, 2008, the trial court entered an order terminating Father's parental rights.

On appeal, Father claimed that the summons was defective and deprived the trial court of personal jurisdiction over him because the summons did not comport with Trial Rule 4(C). Father further argued that IC 31-32-9-1(d) was inapplicable because it conflicts with the Indiana Trial Rules. The Court opined that the question of whether process was sufficient to permit a juvenile court to exercise jurisdiction over a party involved two issues: (1) whether there was compliance with the Indiana Trial Rules regarding service, and (2) whether such attempts at service comported with the Due Process Clause of the Fourteenth Amendment. *Id.* at 1268 (citations omitted).

DCS is not exempt from required compliance with the Indiana Trial Rules regarding service of process. *Id.* at 1271. The Court (1) was "unpersuaded" by ACDCS' argument that, pursuant to *In Re A.C.*, 770 N.E.2d 947, 949 (Ind. Ct. App. 2002), Trial Rule 4 did not apply to this case; and (2) was "reluctant" to accept ACDCS' argument that IC 31-32-9-1(d) dispensed with Father's challenge to the adequacy of the summons in this case. *J.H.* at 1269, 1270. The Court distinguished *A.C.*, in that here, unlike *A.C.*, Father's challenge was not to the adequacy of certain notice requirements after proper summons was made, but rather to the propriety of the summons to begin with. *J.H.* at 1269. As to ACDCS' argument that, because under IC 31-32-9-1(d) Father's presence at the termination hearing precluded the need for a summons, Father was not entitled to summons and that his objection to the form of the summons was therefore meritless, the Court recognized that there was potentially an impermissible incompatibility between the trial rules and IC 31-32-9-1(d). *Id.* at 1270. The Court opined that, (1) it is a fundamental rule of law in Indiana that in cases where procedural statutes conflict with procedural rules adopted by the Indiana Supreme Court, the procedural rules take precedence;

(2) when a statute conflicts with the Indiana rules of trial procedure, the rules of procedure govern, and phrases in statutes which are contrary to the rules of procedure are considered a nullity; (3) to be “in conflict,” the rule and the statute need only be incompatible to the extent that both could not apply in a given situation; and (4) a procedural statute may not operate as an exception to a procedural rule having general application. *Id.* (citations omitted). The Court found that, here, (1) IC 31-32-9-1(d), which provides that service of summons is not necessary for persons attending the hearing, arguably operates as an exception to the generally applicable procedural rules in Trial Rules 4(A) and (C) regarding service of process and the required substance of a summons; and (2) although ACDCS argued that juvenile jurisdiction and proceedings operate independently of the civil jurisdiction and proceeding prescribed by the trial rules, its argument is undercut by the very statute it cites, namely IC 31-32-9-2, which provides that in termination actions, service to parents must be in accordance with Trial Rule 4.1 or 4.13, both of which require a summons. *Id.*

ACDCS adequately complied with the rules to satisfy due process considerations. *Id.* at 1271. The Court reviewed ACDCS’ compliance with each of the requirements of Trial Rule 4. Further the Court noted that (1) Trial Rule 4.15(F) provides: “No summons or the service thereof shall be set aside or be adjudged insufficient when either is reasonably calculated to inform the person to be served that an action has been instituted against him, the name of the court, and the time within which he is required to respond;” and (2) in evaluating the adequacy of a summons in light of T.R. 4.15(F), there are due process protections which a defective summons must satisfy. In this regard, the Court opined (1) an elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections; and (2) when notice is a person’s due, the means employed must be such as one desirous of actually informing the respondent might reasonably adopt to accomplish it. *Id.* at 1270-71 (citations omitted). In this regard, the Court noted that, here, the notice was adequate in that (1) although Father’s address was not included in the summons, the summons was handed to him personally; (2) although the court’s street address and telephone number were missing, its location, namely the Fort Wayne Courthouse, Room 208, was included, and Father had been present at the CHINS proceedings in the same court; (3) the petition attached to the summons contained the required information regarding the DCS’ attorney; and (4) as for the summons’ alleged failure to indicate a time period for a response or a statement regarding the consequences of failing to respond, the summons listed the date and time of the termination trial and indicated the subject matter at issue was the termination of Father’s parent-child relationship with the child, from which information a simple inference demonstrates that the termination trial was the necessary deadline for a response, and the consequences of a failure to respond would be the termination of Father’s parental rights to the child. (However, the Court did encourage ACDCS to more plainly indicate in future summonses the required response time and the consequences of a failure to respond.) The Court observed that Father’s presence at the hearing was an important underpinning to the above findings, and that his presence there reinforced the Court’s conclusion that the defects in the summons did not run afoul of due process protections or indicate that it was not reasonably calculated to apprise him of the pendency and location of the termination action and the necessary time for a response. *Id.* at 1271. Thus, the Court held that pursuant to T.R. 4.15(F) and with due consideration for due process principles, it was convinced that process was sufficient to permit the trial court to exercise jurisdiction over Father. *Id.* (citation omitted).