

Children's Law Center of Indiana



Termination of Parental Rights (TPR)

05/20/2009

In ***In Re J.S.***, 906 N.E.2d 226 (Ind. Ct. App. 2009), the Court affirmed the trial court's order terminating the parent-child relationships of Mother and Father (Parents) with their son. The child was born December 18, 2006. Parents were not married, but lived together after the child's birth. On February 21, 2007, Vigo County DCS (VCDCS) received a referral that the child had been hospitalized with multiple fractures, and bleeding behind the hairline skull fracture. At the time of his injuries, the child had been in the sole custody of Parents. Mother left the child in Father's care for a short time. When later that day, the child awoke from his nap, he was unresponsive. He was taken to the local hospital and then transferred by ambulance to St. Vincent's Hospital. Neither parent could explain how the child's injuries were sustained, and neither admitted to causing the injuries. Later that same day the VCDCS investigating officer, in making an oral motion for emergency detention, informed the trial court that it was believed the child's physical condition was seriously endangered, and that his current injuries, which occurred while the child was in Parents' sole custody, were caused by either an act or omission of Parents. The motion for emergency detention was granted. On February 23, 2007, VCDCS filed a CHINS petition and Parents denied its allegations. The trial court found that continued out-of-home placement was necessary to protect the child's health and safety. At the conclusion of a June 12, 2007 CHINS factfinding hearing, the trial court applied the rebuttable presumption of IC 31-34-12-4 that the child was a CHINS because he was injured while in the care, custody, and control of his parents and his injuries would not ordinarily have occurred, except for an act or omission of the parents. Following a dispositional hearing held July 10, 2007, the trial court issued an order formally removing the child from Parents' custody and directing them to participate in a variety of services to achieve reunification with the child. On July 17, 2007, the child was placed in relative foster care with maternal grandmother, a licensed foster parent, and maternal step-grandfather, where he remained at the time of the termination hearing. Parents were initially compliant with the dispositional orders, but soon their participation became inconsistent. Thus, Parents regularly participated in supervised visitation, but the visits were often chaotic and volatile because of the couple's constant arguing and bickering, and on one occasion, the police had to be called because of Parents' hostile behavior toward visitation supervisors; Parents were unable to produce clean drug screens, either testing positive for marijuana or failing to show for their appointments after being notified of random screens; Parents failed to maintain steady employment; Parents declined to further participate in couple's counseling after only attending three sessions; and Parents refused to voluntarily pay any child support for the child. Following a January 29, 2008 permanency hearing, the trial court issued an order accepting VCDCS' recommendation to change the permanency plan from reunification to termination of Parents' parental rights. This recommendation was made because neither parent was fully cooperating with the case plan and because of the severity of the child's initial injuries. The termination petition was filed February 28, 2008; a termination factfinding hearing

was held July 14, 2008; and the trial court issued an order terminating the parental rights of each parent on July 29, 2008. Both Mother and Father appealed.

VCDCS presented ample evidence to support the trial court's determination that there is a reasonable probability the conditions resulting in the child's removal from Parents' care will not be remedied. *Id.* at 235. The Court opined: (1) When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for the child at the time of the termination hearing, taking into consideration evidence of changed conditions; (2) in so doing, the trial court may consider the parent's response to the services offered through DCS; (3) VCDCS is not required to rule out all possibilities of change, rather it need establish only that there is a reasonable probability that the parent's behavior will not change; (4) a pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, supports a finding that there exists no reasonable probability that the conditions will change; and (5) where there are only temporary improvements and the pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve. *Id.* at 232, 235 (citations omitted). The Court noted that, here, the finding was supported by specific evidence including that (1) the child was removed from Parents' care at two months of age because he received several serious fractures, including a skull fracture with bleeding beneath the fracture, while in Parents' care; (2) there was no explanation as to the cause of the injuries, but the medical diagnosis report indicated that all of the injuries happened within 24 to 48 hours of admission and were "non-accidental;" (3) although Parents' did participate in and even complete some of the court-ordered services, their participation was sporadic, often volatile, and ultimately unsuccessful; (4) the case manager testified that the results of the court-ordered psychological evaluations had raised more concerns about Parents' ability to appropriately care for the child, that she had a "somewhat pessimistic view" of their ability to parent without "intensive training, role modeling [and] community supports," that Parents were unable to apply the techniques they had learned in their parenting classes during their visits with the child, and she had not observed any decrease in Parents' fighting and arguing during their visits; (5) the visitation supervisor testified that there was no improvement in Parents' parenting styles from the beginning visits to recent visits and Parents' relationship was very volatile in that they argued during at least fifty percent of their visits with the child; and (6) evidence as to Parents' lack of successful participation and compliance with other dispositional orders such as obtaining employment and being drug free. The Court observed that, although Parents did participate in some services, including parenting classes and visitation with the child, simply going through the motions of receiving services alone is not sufficient if the services do not result in the needed change, or only result in temporary change. *Id.* at 23-35.

The Court also addressed Parents' argument that reversal is mandated here because, in its original termination order, the trial court stated that there is a reasonable probability that the conditions which resulted in the removal of the child have not been remedied, rather than that they will not be remedied, and, therefore, the court applied an improper standard and in so doing failed to strictly comply with the requirements of the termination statute. The Court observed that (1) the presumption that a trial court correctly followed the law is one of the strongest presumptions applicable to the consideration of a case on appeal; and (2) here, the fact that VCDCS' termination petition, submitted to the trial court prior to the termination hearing,

informed the court of the proper standard to be applied, together with the trial court's correct statement of the law in its April 2009 termination order and read in conjunction with all of the court's findings and conclusions, makes clear that the trial court was aware of and applied the correct standard in arriving at its decision to terminate Parents' parental rights to the child. Therefore, the Court agreed with VCDCS that the trial court's initial use of the word "have" was a typographical error and does not warrant reversal of the trial court's termination decision. *Id.* at 236 (citations omitted).

Based on the totality of the evidence, including the severity of the child's initial injuries and Parents' failure to offer an explanation as to how they were sustained, Parents' failures to complete or to benefit from the many services available to them, and the testimony from both the VCDCS case manager and the CASA recommending termination of parental rights, the Court concluded that there was sufficient evidence to support the trial court's findings and ultimate determination that termination of Parents' parental rights was in the child's best interests. *Id.* at 237. The Court opined: (1) in determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by DCS and to consider the totality of the evidence; (2) in so doing, the trial court must subordinate the interests of the parent to those of the child; (3) the court need not wait until a child is irreversibly harmed before terminating the parent-child relationship; and (4) the recommendations of the case manager and CASA to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. *Id.* at 236 (citations omitted). The Court specifically noted here (1) the case manager's recommendation that termination was in the child's best interests and excerpts of her testimony including that "It does not seem to me that there is stability in [the parents'] relationship, in employment. And I still feel like [the child's] safety would be jeopardized;" and (2) the CASA's recommendation in her report in favor of termination as well as other report excerpts including that "[the child] needs to be in a stable home environment where his physical and emotional needs are met in a loving manner." *Id.* at 237.