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The Children's Law Center of Indiana

Termination of Parental Rights

2/12/02

A.F. v. MCOFC, 762 N.E.2d 1244 (Ind. Ct. App. 2002)

In **A.F. v. MCOFC**, 762 N.E.2d 1244 (Ind. Ct. App. 2002), the Court affirmed the trial court's order terminating the father's parental rights to his fifteen year old daughter and eleven year old son despite the father's argument that the trial court's findings of fact were deficient.

The parents had a history with county child welfare officials in Broward County, Florida. They abandoned the children in Florida, and moved to Evansville, Indiana. Because the father refused to participate in court ordered services through Broward County, custody was given to the mother, and Broward County then released wardship. The children eventually moved in with the father after the mother abandoned the children again. After investigating allegations of sexual abuse, Vanderburgh County Office of Family and Children (VCOFC) entered into an informal adjustment with the father. During the informal adjustment period, VCOFC received a report of physical abuse by the father against the children. A CHINS petition was filed, the children were removed, and the father was subsequently convicted of battery. When the father failed to comply with the services ordered under the dispositional decree, VCOFC filed a petition to terminate his parental rights. In response to the petition, the father relocated to Indianapolis, where he submitted reports from service providers, none of whom had contact with VCOFC. Against the advice of the therapist for one of the children, the Vanderburgh County CHINS court placed the children back in the father's Marion County home and released wardship. Nearly three years later, the Marion County Office of Family and Children (MCOFC) entered into a service referral agreement with the father after the children repeatedly ran away, and father failed to retrieve them. The children continued to run away, and MCOFC eventually filed a CHINS petition. The children were adjudicated CHINS and removed from the father's custody. Under the dispositional decree, the father was ordered to participate in services including a drug and alcohol assessment, a parenting assessment, parenting classes, and home based counseling. He was also ordered to visit both children. However, visitation was stopped on the recommendation of the therapist, who noted the children did not want to participate. Both children stated repeatedly that they were abused in their father's home and did not wish to return. A termination of parental rights trial was held during which the court received proposed findings of fact and conclusions of law from all parties. The trial court adopted MCOFC's proposed findings verbatim and ordered the father's parental rights terminated. Father appealed.

The trial court's verbatim adoption of MCOFC's proposed findings of fact and conclusions of law was not, per se, improper in a termination of parental rights proceeding. The father argued that the trial court erred by adopting all of MCOFC's proposed findings and conclusions without revision. In so doing, the findings and conclusions were not the product of a disinterested mind, and, therefore, could not be used to support the trial court's judgment. The Court disagreed. Citing *Tri-City Plaza Bowl v. Estate of Glueck*, 422 N.E.2d 670, 674 (Ind. Ct. App. 1981), it noted that when the trial court signs



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the findings and conclusions, they become the trial court's findings and conclusions. The trial court is ultimately responsible for their correctness. Findings of fact and conclusions of law are not weakened because they are adopted verbatim. They will not be set aside unless they are clearly erroneous. *A.F. v. MCOFC* at 1249. More recently, the Indiana Supreme Court has said that a court's wholesale adoption of a party's findings of fact and conclusions of law is not prohibited, although the practice should be utilized sparingly. *Id.* (quoting *Wrinkle v. State*, 749 N.E.2d 1179, 1188 (Ind. 2001)). The Court thus concluded that in this case, the trial court's verbatim adoption of MCOFC's proposed findings of fact and conclusions of law was not improper. *Id.* at 1249.

Even if the trial court incorrectly based its decision to terminate parental rights on deficient findings, as long as some valid findings exist to support the trial court's conclusions, the erroneous findings will not prove fatal. The father did not specify which statutory elements under I.C. 31-35-2-4(b)(2) he believed MCOFC failed to prove. He simply stated that sixteen of the eighty-four findings were deficient or incompetent and that two of them were contradictory. The Court noted that findings of fact are not reviewed individually. They are reviewed in their entirety to determine if they support the court's legal conclusions or if they are an abuse of discretion. *Id.* at 1251 (quoting *Williams v. Rogier*, 611 N.E.2d 189, 196 (Ind. Ct. App. 1993)). Even if the father were correct in asserting that the trial court incorrectly relied on deficient or contradictory findings, the judgment will be affirmed provided there exist some valid findings to support the trial court's conclusions. *Id.* at 1251.

The trial court's findings of fact and conclusions of law were not clearly erroneous; evidence supported court's termination of parental rights order. The Court noted that it first must determine whether the evidence supports the findings and secondly, whether the findings support the judgment. In this case, the Court held that the trial court was correct in finding that MCOFC had met its evidentiary burden under I.C. 31-35-2-4(b)(2). There was no dispute that the children had been removed from the custody of their father for more than six months under a dispositional decree. The father's prior history of physically abusing and abandoning his children, combined with his chronic history of failing to participate in court ordered services, reflects an unwillingness to modify his behavior and allowed the trial court to conclude there was a reasonable probability that conditions which led to the removal of the children would not be remedied.

There was sufficient evidence to support the trial court's determination that terminating the father's parental rights was in the best interests of the children. Both children suffered severe physical and emotional problems. However, once removed from their father's care, their problems diminished, and their behavior, according to testimony, improved greatly. Both children repeatedly indicated they did not wish to return to their father's home. This evidence, combined with the father's failure to make any attempt to visit the children, plus the testimony of numerous individuals who favored termination, allowed the trial court to conclude that termination of parental rights was in the best interests of the children. Finally, MCOFC offered a satisfactory plan for the care and treatment of the children. According to the record, MCOFC had identified adoption plans for both of them.