



## Termination of Parental Rights (TPR)

6/28/2005

In **In Re R.J.**, 829 N.E.2d 1032 (Ind. Ct. App. 2005), the Court reversed the trial court's termination of Father's parental rights regarding the child. In June 2000, the Lake County Office of Family and Children (OFC) filed a petition alleging that the three-year-old child was a child in need of services, and the child was removed from Mother's custody and placed into foster care. Father was located and he established paternity of the child. Father completed the services required of him by OFC's case plan for him; Mother did not comply with her plan. Id. at 1034. After the child's placement in two foster homes, in August 2002, she was finally placed in the home of individuals who offered to adopt her, and where she remained during these proceedings. In July 2003, OFC filed a petition to terminate parental rights of Mother and Father. The trial court terminated their parental rights, and Father appealed. Id. at 1035.

**The Fourteenth Amendment to the United States Constitution protects the rights of parents to establish a home and raise their children. In re D.D., 804 N.E.2d 258, 264 (Ind. Ct App. 2004), trans denied. Parental interests are not absolute, however, and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. Id. at 264-65. "Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities." Id. at 265. "The purpose of terminating parental rights is not to punish parents but to protect children." Id.** The parties in this case appeared to agree that the only issue was whether the OFC presented clear and convincing evidence of one of the four requirements for termination of the parent-child relationship set forth in I.C. 31-35-2-4(b)(2). The disputed statutory requirement was the one requiring that the conditions resulting in the child's placement outside the home would not be remedied or that the continuation of the parent-child relationship posed a threat to the child's well-being. R.J. at 1035.

Father argued that several of the trial court's findings were not supported by the evidence. Id. Neither of the Appellees, the OFC and the Lake County CASA Program (CASA), specifically disputed Father's assertions that the evidence did not support the findings regarding drug use, support, behavior and mental health, and completion of the required services. Id. at 1037. (1) The Court agreed with the Father's suggestion that there was no evidence to support the trial court's findings that he was offered services but failed to accept them and that he "has substance abuse issues." The Court stated that by all accounts Father completed all of the services offered to him, including substance

abuse counseling, and, except for the initial drug screen, none of the random drug screens were positive. *Id.* at 1035-36. (2) The Court found that, inasmuch as there was no court order or other requirement that Father provide support for the child, to the extent that the trial court's finding that neither parent was providing support for the child implied that Father was in some way legally required to provide support for the child, the finding was unsupported by the evidence or, at best, misleading. *Id.* at 1036. (3) Regarding Father's argument that there was no evidence to support the trial court's finding that he has ongoing mental health issues and failed to effectively address the issues, the Court relied on Father's confidential psychological evaluation rather than the conclusions of a caseworker who testified that her evaluation of Father's mental health was "just her opinion." The Court noted that the psychological evaluation revealed that Father was oriented to person, place, and time; that his thoughts were organized and goal directed; that there was no evidence of unusual thought content including hallucinations, delusions, or obsessions; and that he was consistently respectful and cooperative throughout the evaluation. The Court further noted that Father was not diagnosed with any psychiatric disorders and OFC did not require further participation or completion of services by Father before the trial court terminated his parental rights. *Id.* at 1036-37.

**Contrary to CASA's contention of harmless error, the Court held that the trial court's finding containing a detailed recitation of threatening behavior with zero evidence in the record to support it, was not harmless.** Father contended that the trial court's finding that he engaged in erratic "homicidal" behavior and threatened to burn down a visitation site and shoot the drug screener was unsupported by the evidence. The Court agreed, stating that although this finding contained a very specific account of an incident, there was no evidence that Father engaged in any such behavior or that such an incident ever occurred. *Id.* at 1036.

**There is not clear and convincing evidence to support the trial court's findings that Father failed to provide safe and adequate housing or that he failed to provide a safe plan for the child's care while he was at work.** *Id.* at 1039. This appeared to be the primary issue of the appeal. The Court found no evidence that, at anytime before the hearing, the OFC ever required or suggested that Father obtain an apartment in a more suitable building, or that OFC suggested or otherwise implied that Father would not be unified with the child because of the apartment building in which he lived. In fact, Father initially rented a studio apartment in the building, and then, at the caseworker's insistence that the child could not be unified with him unless he obtained a larger apartment, Father secured a one-bedroom apartment in the same building. The Court held that, given Father's previous compliance with all of OFC's requirements and recommendations, it was inappropriate and unfair for OFC to request that Father secure a larger apartment and not inform him that the building itself was unsuitable until the hearing. The Court also noted that OFC provided no evidence that Father's apartment itself was unsafe or unsuitable for the child. To OFC's argument that "Drug environments are harmful," and that "Apartments with transients, heavy traffic and questionable residents can potentially be harmful," the Court responded that, although those statements were undeniably true, "we are contemplating the termination of [Father's] right to raise and nurture his own child. That right is constitutionally protected, and the evidence adduced by the OFC

here, in our view, falls substantially short of that necessary to involuntarily terminate [Father's] parental rights." Id. at 1037-38.

The Court also held that the trial court's finding that Father had failed to provide a plan for the child's care while he was at work was without evidentiary support. Id. at 1038. The Court cited In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999) trans denied (2000), cert denied, 534 U.S. 1161 (2002), for its holding that the trial court must judge parental fitness at the time of the hearing. The Court noted that OFC's evidence to support the proposition that Father had no child care plan was no more current than three months prior to the hearing and that other more current evidence presented at the hearing indicated that Father did have a plan. The Court stated, "The OFC not being aware of [Father's] plan and making no recent attempts to discover such is not the same as [Father] having no plan for R.J.'s care." Id.

The Court also found no evidence in the record to support OFC's contention that the amount of time the child had been in foster care was due to Father's continuing and unsuccessful attempts at completing his case plan. The Court noted that there was no indication of Father's unwillingness to cooperate with OFC or that he failed to promptly complete any of OFC's programs; rather during the time the child was in foster care the Father was located; established paternity; obtained steady employment and a one bedroom apartment; completed parenting classes, substance abuse counseling, and psychological evaluations; and maintained regular visitation with the child. Id.

**Parental rights cannot and should not be terminated on the potential for harm or because some hypothetical circumstance may come true. These types of speculative situations exist in many different environments, but are not bases for the termination of parental rights.** Id. at 1039. Many of OFC's witnesses recommended the termination of Father's parental rights because it was in the child's best interests. The Court found, however, that this alone is not a basis for termination of one's parental rights; it is only one of several factors a trial court must consider before granting an OFC's petition to terminate parental rights. Id. at 1038-39.

**Several of the trial court's findings are not supported by the evidence. Thus, its conclusions that the conditions resulting in the child's placement outside the home will not be remedied and that the continuation of the parent-child relationship poses a threat to the child's well-being are clearly erroneous.** Id. at 1039.