



Termination of Parental Rights (TPR)

8/10/2005

In **In Re Invol. Termn. of Par. Child Rel. A.H.**, 832 N.E.2d 563 (Ind. Ct. App. 2005), the Court affirmed the trial court's involuntary termination of Father's parental rights regarding the children. Father and Mother were married and had four children. Mother's parental rights were also terminated, but she did not appeal. On April 13, 2001, when the twin boys were seven years old, the middle child was five years old, and the youngest was three years old, all four children were detained by the Adams County OFC after it received a complaint that Mother was failing to supervise the children. At this time, Father was in prison serving an eighteen-month sentence for forgery. The children were returned to Mother several days later, but three days before Father was released from prison, Mother left the two oldest children at the OFC, claiming that she could not "handle them," and they were placed in licensed foster care where they continued to reside at the time of the appeal. All four children were adjudged to be CHINS on December 21, 2001. (During the investigation, it was determined that from August 1997 through December 1999, Wells County OFC had been involved with the family following reports regarding disciplinary problems and lack of supervision over the children. Wells County OFC had also removed the children from the home after a report that one of them had set a fire in the residence.) Mother and Father were ordered to participate in various services and counseling programs offered by OFC. On May 27, 2003, the two youngest children were detained by OFC as a result of Mother's physical abuse of the older of the two, and were placed in foster care with the two oldest children. Mother pleaded guilty to battery for this physical abuse. On June 30 2003, OFC petitioned for termination of parental rights with respect to Father and Mother and their four children. In its decision, the Court set forth evidence disclosed at the termination hearing. On November 15, 2004, Father's parental rights were terminated and he subsequently appealed.

The Court found that the interests of the children outweighed the confidentiality to which Father might have been entitled with regard to his psychological evaluation which was submitted into evidence. That said, the Court concluded that the trial court's noncompliance with the federal regulations governing the disclosure of Father's psychological evaluation was harmless, and that, even if the Court were to conclude that the evaluation was erroneously admitted, the remaining evidence presented at the termination hearing was more than sufficient to support the termination. *Id.* at 569.

Father argued that he had not signed a release for the admission into evidence of his psychological evaluation and the testimony regarding it, and, therefore, his right of privacy was violated pursuant to the 1996 Health Insurance Portability and Accountability Act (HIPAA). Inasmuch as there is no specific provision in HIPAA that permits the disclosure of

such records for the purpose of terminating parent-child relationships, Father urged that the trial court erroneously admitted the evaluation and the testimony regarding it. Id. at 567-68. The Court discussed Indiana legislation which it said was enacted apparently in response to HIPAA, which codified a number of provisions in an effort to bring this State into compliance with that Act. Id. at 568. The Court found no case addressing the issue of whether a trial court had erred in addressing the HIPAA provisions that concern mental health records with respect to termination of parental rights cases, but discussed two cases it found instructive. In Doe v. Davis County Div. of Children and Family Serv., 669 N.E.2d 192, 195-96 (Ind. Ct. App. 1996), confronted with the issue of whether the trial court erred in admitting medical records, exhibits, and testimony of health care providers regarding the mother's alcohol and drug treatment, the appellate court construed 42 U.S.C §290dd-3(d)(2)(C) and determined that the mother's right to the nondisclosure of alcoholism-related records and testimony by her counselor, had to give way to the court's duty to prevent harm and to safeguard the physical, mental, and emotional well-being of the child. In Doe, the appellate court decided that "the trial court respected and employed adequate safeguards to protect Mother's confidentiality. Any technical noncompliance with the federal regulations governing the disclosure of these records is harmless." A.H. at 568-69. In Carter v. Knox County Office of Family and Children, 761 N.E.2d 431, 438-39 (Ind. Ct. App. 2001) the appellate court (1) recognized that 42 U.S.C §290dd-3(d)(2)(C) permitted disclosure of medical records without the patient's consent if authorized by a court of competent jurisdiction; (2) found that the mother's rights were not violated under 42 U.S.C §290dd-3(d)(2)(C), as the mother's protected interests in her medical records must give way to the best interests of the child in the termination proceeding; (3) held that any technical noncompliance with the federal regulations governing the disclosure of the records was harmless; and, (4) therefore, found no error. A.H. at 569.

Elements of the termination statute were satisfied, and the evidence was sufficient to support the termination of Father's parental rights over his children: (1) Father's mental health impairment together with his habitual pattern of conduct clearly demonstrated that termination was in the children's best interests; (2) Father was unable to maintain a stable and suitable living environment for the children; (3) the record was replete with evidence that Father poses a threat to the well-being of his children; and (4) the children thrived after their placement in foster care and the OFC had developed a plan for the adoption of the children. Id. at 571. The Court set out the elements of I.C. 31-35-2-4 which the OFC must prove by clear and convincing evidence for an involuntary termination of parental rights, and discussed relevant cases interpreting that statute. Id. at 570. The Court noted the following record evidence: (1) a number of witnesses testified that Father suffers from a variety of mental health disorders that impair his ability to adequately parent even normally developed children; (2) the psychological report in evidence supports that testimony; (3) it was established that Father exhibited threatening and violent behavior to himself and others over a long period of time; (4) Father failed to complete the parenting programs and services in which he was ordered to participate; and (5) the foster care providers detailed the behavioral problems they experienced during Father's visitation with the children, as well as the manner in which the children behaved when Father failed to appear for scheduled visits. Id. at 570-71.