



Termination of Parental Rights (TPR)

1/20/04

In **J.M. v. Marion County OFC**, 802 N.E.2d 40 (Ind. Ct. App. 2004), the Court of Appeals affirmed the trial court's decision to deny mother's motion for continuance, holding that the denial was not an abuse of discretion.

The Marion County Office of Family and Children ("OFC") filed a petition alleging three of the mother's children were children in need of services ("CHINS") after one of the mother's older children molested one of her younger children, C.T. The CHINS petition alleged that while the mother was aware of the child's molest actions, she did nothing to prevent any further molestation of C.T. or to protect the younger children. OFC also alleged that the mother had mental health problems and that her house was in an inappropriate condition for the children because it was cluttered with clothes and garbage. By the time the CHINS petition was filed, the OFC had been involved with the mother on five previous occasions, three of which involved substantiated cases of abuse. As a result of the CHINS allegations, the trial court ordered the mother to complete certain services including drug and alcohol assessment and counseling sessions so that reunification might eventually become possible. Later, OFC filed a petition for the involuntary termination of the mother's parental rights as to all three of the children and the trial court ultimately set the cause for trial a year later. OFC alleged that the mother had not successfully completed the services that had been ordered.

Thereafter, the OFC, the guardian ad litem, and the mother filed a joint motion for continuance of the trial, requesting additional time in which to evaluate the mother's progress. However, the OFC asserted that it was not changing the permanency plan to reunification. The motion requested a ninety-day continuance because the mother was allegedly participating in services towards reunification with the children, had new housing, had secured stable employment, was attending counseling sessions and had maintained consistent visitation patterns. While the trial court denied the motion that same day, the parties renewed their requests for a continuance on the day of the trial. Before the trial began, the trial court conducted an "attorneys only" conference and again denied the motion to continue the final hearing. In its ruling, the trial court observed that it was a primary concern to achieve permanency for children quickly. Inasmuch as the trial court determined that another continuance would not achieve that goal, the request was denied.

The trial proceeded only with respect to J.M. as temporary custody of the mother's other two children was awarded to the children's father. At trial, it was demonstrated that while the mother had obtained employment, she had been on a personal leave of absence for nearly one month to resolve a claim with the company and had not received a paycheck from that job in about three weeks. The mother, however, was receiving some income from cleaning houses. The mother had cancelled visitations with one of the children three times in the seven weeks before the trial for various reasons. The assessor of the parenting program expressed concerns about the mother's inability to accept responsibility for her involvement with the OFC and the relationships regarding her children. Even though the mother had attended parenting classes, she had failed to do her homework for the instructor and did not show improvement in her parenting skills after completing the classes. OFC even removed the child the mother gave birth to during the proceeding and filed a petition alleging the newborn child was a CHINS. Evidence also showed that the mother lost her residence after she had completed a home based counseling program.

The guardian ad litem and two case managers recommended that the mother's parental rights be terminated. However, the guardian ad litem supported the plan of continued monitoring of the mother's progress because termination of her parental rights might be premature, and the two case managers were not aware that a motion for a continuance had been filed.

After taking the petition to terminate under advisement, the trial court issued an order terminating the mother's parental rights as to J.M.

Denying the mother's motion for continuance of proceeding on petition for termination of parental rights was not an abuse of discretion where the child had been placed outside of the mother's custody for nearly twenty-three months at the time of the termination hearing, the mother had not accepted responsibility for her situation or completed court-ordered services and programs, during this period of nearly two years, and there was no showing that grant of additional time would likely have aided the mother in her efforts to reunify with the child or that the mother was prejudiced by the ruling. The mother argued on appeal that the trial court erred in denying the joint motion to continue the termination hearing and therefore improperly terminated her parental rights. The ruling on a non-statutory motion for a continuance is within the sound discretion of the trial court, and a decision on a motion for continuance will be reversed only upon a showing of an abuse of discretion and prejudice resulting from such an abuse. Troutman v. State, 730 N.E.2d 149, 151 (Ind. 2000).

Turning to the merits of the mother's argument, the record shows that the child had been placed outside of the mother's custody for nearly twenty-three months at the time of the termination hearing. Thus, the mother had been granted nearly two years to complete the services and programs that the trial court had ordered her to attend. The mother made no showing that the grant of additional time, in and of itself, would likely have aided the

mother in her efforts to reunify with the child when she had already been afforded a significant period to complete the requirements. The mother failed to explain what evidence she might have proffered or a strategy that she could have employed had she been afforded additional time. Had the motion for a continuance been granted, the plan of the OFC was to simply allow additional time to monitor the mother's progress, not to change the plan to reunification.

The Court, in dicta, stated that the OFC joined in the motion for continuance at the trial court level, but on appeal asserted that the trial court did not abuse its discretion in denying the same. The Court stated that had the OFC articulated its reasons for joining in the motion, the Court's decision may very well have been different.

The Court stated that as established by the evidence presented at trial, the mother's failures were not premised upon her tardiness in completing services. Rather, the mother's failures centered on her inability to accept responsibility for her situation, coupled with her inability to benefit from services that she had previously completed. As demonstrated by the evidence presented at trial, it was entirely reasonable to conclude that the mother did not suffer adverse consequences merely because the motion for continuance was denied. It was apparent that the trial court was approving a plan of action for the OFC to pursue in an effort to further the best interests of the child. That plan included proceeding with the termination trial instead of allowing the permanency of the child to be further delayed. Thus, the Court could not say that the trial court's decision to deny the joint motion for continuance was clearly against the logic and effect of the facts and circumstances before the court.