



Termination of Parental Rights (TPR)

12/14/2005

In **Youngblood v. Jefferson County DFC**, 838 N.E.2d 1164 (Ind. Ct. App. 2005), the Court affirmed the trial court's order denying Mother's motion to correct error in which she petitioned the trial court to set aside her consent to the voluntary termination of her parental rights to her daughter. At the time of her birth, January 30, 2003, Mother's daughter (1) had blood and meconium in her amniotic fluid which is associated with cocaine use and suggestive of severe distress, respectively; (2) had a high heart rate; and (3) was irritable. Mother admitted to using alcohol, marijuana, and Zanax during the pregnancy, as well as to using cocaine during the first trimester. The day after the birth, the Jefferson County DFC filed a CHINS petition and the trial court authorized the DFC to take the child into immediate protective custody. The DFC offered services to the Mother who demonstrated a willingness to participate. Mother and child were reunited in April 2003. Two months later, the child was hospitalized with a rare heart condition and hospital staff expressed concern about Mother's ability to care for the child and meet her special medical needs. In August 2003, the child was removed from Mother's home because Mother was found intoxicated in the house with the child, and Mother had failed to give the child her heart medication. Over the next year, Mother suffered numerous relapses in her drug and alcohol addictions, failed to complete treatment programs, and engaged in several instances of self-mutilation. In April 2004, Mother gave birth to another baby who tested positive for cocaine. In October 2004, DFC filed a petition to involuntarily terminate Mother's parental rights to the first child. In November 2004, Mother appeared with counsel at a termination hearing and notified the trial court that she intended to consent to the termination of her parental rights "with the understanding that it be an open adoption and that matters be ... a visitation remain open between now and the time of the adoption as well as afterwards." The trial court (1) advised Mother of her rights and that her consent would be permanent and could not be revoked unless it was obtained by fraud or duress or unless she was incompetent; (2) noted that Mother had representation and the advice of counsel; and (3) asked Mother if she still intended to voluntarily consent to the termination. Mother responded that she did. That evening or the next day, Mother signed a "Consent to Termination of Parent-Child Relationship," in which she acknowledged that she had received a notice of rights form and "knowingly and voluntarily consent[ed] to the termination of [her] parental-child relationship with [the child]." Mother's attorney reviewed the documents with Mother and notarized the consent by affirming that Mother personally appeared before her and "stated that the representations therein contained [were] true." In December 2004, the trial court entered its order terminating Mother's parental rights to the child. In January 2005, Mother filed a motion to correct error in

which she petitioned the trial court to set aside her consent to terminate her parental rights because the consent was “obtained as a result of fraud, duress or mental incompetence.” The court held a hearing during which Mother testified that she “check[ed] out” or “blanked out” and did not understand what she was doing when she consented to terminate her rights. After hearing other evidence, the trial court denied Mother’s motion to correct error. Mother appealed.

The trial court did not abuse its discretion by denying Mother’s motion to correct error in which she petitioned the trial court to set aside her consent to the voluntary termination of her parental rights to her daughter in that Mother failed to show that her consent to terminate her parent-child relationship was executed under fraud or duress or while she was incompetent. *Id.* at 1172. The Court reviewed the statutes and case law regarding a parent’s voluntary termination of his or her parental rights and the parent’s ability to withdraw his or her consent to voluntary termination, as well as the legal meaning of “fraud,” “duress, and “incompetence.” Regarding Mother’s contention that her written consent was obtained by fraud because she believed that she would be able to see the child or get her back if she consented and because she was misled into believing a voluntary termination was something that it was not, the Court held that it was clear no representations that would constitute fraud were made to induce Mother’s consent. It further noted, among other things, that Mother had not alleged that she had been denied visitation with the child following the execution of her consent to terminate her parental rights. As to Mother’s contention that her consent was obtained under duress because “she was pressured by the caseworker,” the Court held that there was no evidence of any threatened violence or physical restraint to Mother and “emotions tensions, and pressure are ... insufficient to void a consent unless they rise to the level of overcoming one’s volition.” In re Termination of the Parent-Child Relationship of Infant Ellis, 681 N.E.2d 1145, 1152 (Ind. Ct. App. 1997). The Court noted that Mother failed to show that her free will was overcome when she signed the consent and that she was represented by counsel who reviewed the consent documents with Mother and notarized the consent by affirming that Mother personally appeared before her and “stated that the representations therein contained [were] true.” Mother’s incompetence contention was that, at the time she signed the consent, she was incompetent because she had “problems in the past” with drug addiction, she had attempted suicide one year earlier, and she was “confused on the day she signed the consent form” and “unaware that she was signing her rights away to [the child].” The Court stated that the statute did not define “incompetent” so it relied on the dictionary definition: “[o]f inadequate ability or fitness; not having the requisite capacity or qualification; incapable.” The Court held that Mother had failed to show that her consent was obtained while she was incompetent, noting that (1) Mother had appeared with counsel at the hearing; (2) counsel had reviewed the consent documents with Mother; (3) the case worker who had worked with Mother for two years testified that, other than the fact that Mother was “visibly upset” on the day of the termination hearing, there was nothing about Mother’s appearance that would lead her to believe that Mother did not understand what was happening; (4) Mother presented no argument that she was under the influence of drugs or suicidal at the time she consented to the termination; and (5) Mother’s claimed “confusion” did not rise to the level of a showing of incompetence that would require the trial court to set aside her consent to terminate her parental rights.