



Termination of Parental Rights (TPR)

1/19/2006

In **In Re Parent-Child Relationship of S.M.**, 840.E.2d 865 (Ind. Ct. App. 2006), the Court affirmed the juvenile court's order terminating putative Father's parental rights to his son, and, contrary to the argument of the Marion County Office of Indiana Department of Child Services (DCS), held that putative Father had standing to challenge the adverse decision in this involuntary termination proceeding regardless of whether he had taken steps to establish his paternity. The child tested positive for cocaine at his birth in August 2003. The Father was unknown at the time. Four days after the birth, Marion County Office of Indiana Department of Child Services (DCS) removed the child from the mother's care and filed a CHINS petition. At the CHINS hearing, the mother named Father as one possible father. The child has been in foster care throughout these proceedings. The juvenile court and DCS were unsuccessful in locating Father, who apparently had moved to Illinois where he lived throughout these proceedings. At some point after the August 2003 CHINS hearing, Father became aware that he might be the biological father of the child. On January 7, 2004, following notice to Father by publication, the juvenile court entered a disposition as to Father, who did not appear at the hearing, (1) ordering that the child be removed from Father's care and remain in his pre-adoptive foster home; and (2) directing DCS to offer no services to Father until he appeared before the court and DCS to "demonstrate a desire and ability to care for" the child. Father's only reported appearance before the court was at an initial hearing for the termination of his parental rights on October 6, 2004. The record indicates that Father had some phone contact with DCS before this date, and that on April 14, 2004, he called to inform the court that he would be unable to attend a hearing on the matter scheduled for that date due to transportation issues. Father also phoned his attorney at the start of a fact-finding hearing on February 24, 2005, to inform the court that he was unable to obtain transportation to the hearing; however, he also failed to attend the rescheduled final hearing on March 9, 2005, though he was represented by counsel there. Father never met or saw the child, but did ask his DCS case manager to arrange visitation, which the case manager told Father could be accomplished only after Father took steps to establish his paternity of the child. Nothing in the record indicates that Father was ever directly ordered by the juvenile court to participate in any particular services in order to demonstrate his desire or ability to parent the child. At the March 9, 2005 termination hearing, the case manager testified that (1) DCS informed Father that he would need to establish paternity and complete a parenting assessment and a drug and alcohol assessment if he wished to retain his parental rights to the child and to establish visitation rights; (2) Father told him he did not want to participate in any services until he established his paternity; (3) the case manager looked into services for Father in Illinois, specifically seeking to set up a parenting assessment through the Illinois DCS which could not be arranged because the Illinois DCS reported that it did not offer such a service; (4) the case

manager informed Father that he could undergo a parenting assessment in Indiana if he would report to DCS for one; (5) Father indicated that he had recently completed a drug abuse treatment program in Illinois; (6) the case manager notified Father that he would need to provide DCS proof of his treatment in that program, but Father never did; and (7) despite being informed of the procedure he must follow in order to establish paternity in this case, Father never followed through with his expressed intent to do so. Following the juvenile court's termination hearing, an order issued on March 16, 2005, terminating the parent-child relationship between Father and the child. Father appealed, contending that the juvenile court erred in determining that (1) the conditions that led to the child's removal would not be remedied and (2) continuation of the parent-child relationship posed a threat to the child's well-being.

The Court held that, where Father had failed to take any steps toward establishing his paternity or demonstrating his fitness as a parent, and where he had been aware of the steps he must take to do so for over a year, the Court could not say that the juvenile court erred in determining that there was a reasonable probability that the conditions resulting in the child's removal would not be remedied. *Id.* at 870. The Court stated that because the juvenile court's decision must be upheld if its determination as to either of Father's two issues was correct, it found it needed only to address the first issue. The Court noted that DCS presented substantial evidence that Father failed to fulfill the requirements set for him by DCS--that he establish paternity, undergo a parenting evaluation, and provide evidence of his drug abuse treatment—but Father continued to refuse to follow these recommendations which demonstrated a pattern of conduct indicating that Father was unlikely to comply with DCS or court recommendations in the future. Regarding Father's argument that he should not be held accountable for his failure to participate in services because DCS was not sufficiently diligent in attempting to arrange those services for him, the Court (1) noted that Father provided no authority to support its suggestion that DCS had a duty to coordinate services for out-of-state putative fathers with out-of-state service providers, and (2) found that, under the circumstances of this case, DCS' involvement with Father adequately informed him of the steps he needed to take to make a showing before the juvenile court that his parental rights to the child should not be terminated. The Court reviewed DCS' efforts regarding its three basic requests of Father—that he establish paternity, undergo a parenting assessment, and under go a drug and alcohol assessment or provide evidence that he recently completed a drug abuse treatment program—and Father's response, or lack thereof, in each of the three areas, concluding that DCS provided Father with the information he needed to take steps toward becoming a parent to this child, and he declined to make use of this information. To Father's argument that the juvenile court erred in finding that the circumstances which caused the child's removal had not been remedied because they involved only the mother's drug use and the fact that the child was born testing positive for cocaine, the Court responded that the circumstances warranting removal of the child from Father's custody were not so narrow and that the most apparent impediment to Father's parental relationship with the child was his questionable paternity of the child. *Id.* at 868-70.

Contrary to the argument of DCS on appeal, Father did have standing to challenge the decision of the juvenile court terminating his parental rights to his son. *Id.* at 872. The Court found that (1) in naming Father before the juvenile court—that is, in requesting that the

juvenile court assert its jurisdiction over Father—and by winning a judgment directly adverse to his interests, DCS had precluded itself from arguing that Father lacked standing; and (2) apart from being absurd, such a result would violate Father’s due process rights. The Court noted that DCS was asking it to apply I.C. 31-35-1-4.5, concerning the voluntary termination of parental rights, to a termination proceeding brought under I.C. 31-35-2, concerning proceedings where a child services agency seeks to terminate the parent-child relationship in the case of a delinquent child or a CHINS, and that this (1) was asking the Court to apply a statutory tool used to divest a putative father of his standing to challenge the voluntary termination of his parental rights to a situation where there was no question that his rights had been involuntarily terminated and (2) would “certainly violate a putative father’s due process rights.” The Court reviewed both statutes and the reasons for them. It noted that (1) I.C. 31-35-1-4.5 provided that a putative father’s consent to the termination of the parent-child relationship is irrevocably implied without further court action if the father failed to file a paternity action not more than thirty (30) days after receiving actual notice of the mother’s intent to proceed with an adoptive placement of the child; but (2) none of the statutes in I.C. 31-35-2 required that a putative father take any steps to establish his paternity in order to contest a termination action where an adoption is not pending. The Court explained that, where a child services agency has developed a plan for adoption of a child in a particular home, that agency is free to choose between these two statutory frameworks in proceeding with the termination of a putative father’s parental rights. (1) The first path, the one which DCS did not follow in this case, was to initiate adoption proceedings and, under I.C. 31-35-1-4.5, provide the putative father with notice of those proceedings. If the father were to then move to establish his paternity under the statute, he would acquire standing to contest the adoption and, in order to then go forward with an adoption, DCS would need to initiate a CHINS termination under I.C. 31-35-2, seeking to terminate the father’s rights over his objection. If successful, DCS could then proceed with its petition for adoption. On the other hand, if, after receiving notice of the adoption proceedings, a putative father failed to take steps to establish his paternity under I.C. 31-35-1-4.5, he would be presumed to consent to the adoption, and DCS could proceed unhindered by any claim he may thereafter bring. In such a case, I.C. 31-35-1-4.5 provides for the implied voluntary termination of a putative father’s parental rights and thereby essentially acts as a statutory mechanism to divest him of his standing to contest an adoption. (2) In this case, DCS chose to follow the second path by not initiating adoption proceedings but instead seeking termination of Father’s rights under I.C. 31-35-2 before petitioning for adoption by the child’s foster parents. Nonetheless, DCS argued on appeal that Father lacked standing to challenge the termination action and cited I.C. 31-35-1-4.5 to support its argument which follows:

Because he took no action for over a year preceding the termination trial to establish paternity and because had the proposed adoptive parents filed their petition to adopt after the mother’s parent-child relationship terminated thirty or more days prior to trial, Father should not have standing to contest the ending of whatever parent-child relationship he might have.

Id. at 870-72.

Judge Mathias concurred with opinion to emphasize the “core holding” that “as a respondent in these involuntary termination proceedings, [Father] clearly has basic constitutional standing to challenge the actions taken by the trial court.” Id. at 873.