



Termination of Parental Rights (TPR)

4/11/2006

In **Hite v. Vanderburgh Cty Office of Fam. & Chil.**, 845 N.E.2d 175 (Ind. Ct. App. 2006), the Court affirmed the trial court's order terminating Father's parental rights to his child. The child was born March 4, 1998, while Father was incarcerated. Father was released from the Department of Correction on September 13, 1999, but was arrested again on November 22, 1999. Father was convicted of attempted theft as a Class D felony and sexual misconduct with a minor as a class B felony. His expected release date is December 12, 2007. In June 2002, because of Mother's extremely unkempt and unsafe house, the Vanderburgh County Office of Family and Children (VCOFC) took the child and Mother's other children into protective custody and placed the child with his maternal grandparents. A CHINS petition was filed and, on July 10, 2002, Mother submitted the matter to the juvenile court based upon stipulated facts. The trial court found that the child was a CHINS. Father did not receive notice of the CHINS petition. On October 22, 2003, a petition to involuntarily terminate parental rights to the child was filed and Father was sent notice regarding the termination petition. On April 28, 2004, Mother agreed to terminate her parental rights and allow the child to be adopted. In September 2004, Father appeared in person and by counsel for a CHINS review hearing and an initial hearing on termination and denied the allegations of the petition to terminate. In January 2005, Father and counsel appeared for a pretrial hearing on the termination case, and Father again denied the allegations of the petition. In March 2005, Father's counsel appeared at a permanency review hearing for the CHINS case. On April 12, 2005, the trial court held a termination hearing at which Father was present and represented by counsel. The trial court granted the petition to terminate Father's parental rights and entered findings of facts and conclusions. Father appealed the termination arguing that, because Father did not receive notice of the CHINS petition, (1) the trial court never had subject matter jurisdiction; and (2) Father's due process rights were violated.

Because the VCOFC followed the statutory procedures when filing the CHINS petition, and Mother was present and admitted the allegations, the juvenile court had subject matter jurisdiction. *Id.* at 180. The Court reviewed the statutory procedure for the filing of CHINS petitions and distinguished In re Heaton, 503 N.E.2d 410 (Ind. Ct. App. 1986) which Father relied on to support his argument that the trial court never had subject matter jurisdiction. The Court noted that, here, unlike in Heaton, (1) the VCOFC filed a request for authority to file a verified petition alleging that the child was a CHINS and included a written intake report; (2) the trial court found probable cause to believe that the child was a CHINS; (3) the VCOFC then filed a petition alleging that the child was a

CHINS; (4) the petition stated that the juvenile court had jurisdiction pursuant to I.C. 31-30-1-1(2), which provides, “A juvenile court has exclusive original jurisdiction ... in ... [p]roceedings in which a child, including a child of divorced parents, is alleged to be a child in need of services under IC 31-34;” and (5) at this point, the juvenile court had exclusive original jurisdiction. Id.

Father’s argument regarding the effect of the CHINS proceeding on his due process rights is waived on appeal inasmuch as he never objected to the termination of his parental rights because he lacked notice of the CHINS proceeding. Id. Waiver notwithstanding, however, upon balancing the three factors enunciated in A.P. v. Porter County Office of Family & Children, 734 N.E.2d 1107, 1112 (Ind. Ct. App. 2000), *trans. denied*, the Court concluded that the trial court did not deny Father due process. Hite at 184. When the State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of the due process clause. J.T. v. Marion County Office of Family & Children, 740 N.E.2d 1261, 1264 (Ind. Ct. App. 2000) *trans. denied*, *abrogated on other grounds by Baker v. Marion County Office of Family & Children*, 810 N.E.2d 1035 (Ind. 2004). Due process in parental rights cases involves the balancing of three factors: (1) the private interests affected by the proceeding; (2) the risk of error created by the State’s chosen procedure; and (3) the countervailing government interest supporting use of the challenged procedure. A.P. at 1112. The Court noted that, here, both the Father’s private interest and the government’s countervailing interest were substantial. Regarding the factor of the risk of error, the Court saw the Father’s argument to be that the VCOFC failed to provide him with notice of the CHINS action and case plans, which resulted in a violation of his due process rights. The Court discussed Father’s reliance on A.P. which holds that “procedural irregularities in a CHINS proceedings may be of such import that they deprive a parent of procedural due process with respect to the termination of his or her parental rights.” A.P. at 1113. The Court observed that Father was alleging only that he failed to receive notice of the original CHINS action and copies of case plans, not that his due process rights were violated due to irregularities in the termination proceeding. The Court distinguished A.P. in that, here, unlike in A.P., (1) Mother was present and submitted the matter to the juvenile court based upon stipulated facts; (2) upon admission, I.C. 31-34-10-8 required the juvenile court to “[e]nter judgment accordingly” and to “[s]chedule a dispositional hearing;” (3) Father’s expected release date was December 12, 2007, and he could not participate in the VCOFC’s services due to his incarceration; and (4) the record revealed that Father did participate in the CHINS proceeding by his September 15, 2004 appearance in person and by counsel for a CHINS review hearing, his counsel’s March 16, 2005 appearance at a permanency review hearing, and his and his counsel’s presence at the April 12, 2005 termination hearing. Thus, the Court concluded that the risk of error was not substantial because Father was not denied the opportunity to be heard in the latter portions of the CHINS action and in the termination proceedings. Hite at 181-84.