

Children's Law Center of Indiana



Termination of Parental Rights

08/17/2007

In **Q.B. v. MCDCS**, 873 N.E.2d 1063 (Ind. Ct. App. 2007), the Court affirmed the trial court's termination of Father's parent-child relationship with his four children. Father's four children were living with Father, Mother, and three more of Mother's children by different fathers, on September 13, 2004 when Marion County Department of Child Services (MCDCS) filed a CHINS petition regarding the seven children and removed them from the home. On January 20, 2005, Father was ordered to attend parenting classes, participate in home based counseling, complete a substance abuse treatment program, submit to random drug testing, contact the caseworker weekly, and notify the caseworker of any changes in address or phone number within five days of the change. On April 21, 2005, the trial court suspended visitation because the parents were not participating in the ordered services. Supervised visitation was reinstated in June 2005; the social worker provided home therapy to both parents and the children with the goal of reuniting the family; and, in January 2006, the children were placed back in the home briefly. Father was arrested following an argument at the children's school with the principal. The children were back in the home in May 2006, until one of the younger siblings alleged sexual abuse by the oldest sibling. The trial court set a termination hearing for October 4, 2006, and MCDCS, sent an August 11, 2006 letter to Father in the Marion County Jail, but it was returned because Father was not there. MCDCS then re-sent the letter to the address where Father was incarcerated, and received no response or indication that Father did not receive it. The letter gave Father the telephone number of the case manager and the name and telephone number of the appointed public defender, and informed him of the October 4 termination hearing, directed him to attend, and stated that the trial court could hold the hearing without him. Because transport from the jail was not approved for the hearing date, the Father's public defender requested a continuance which was granted to November 30, 2006. On November 1, 2007, the case manager searched the DOC website for father's address and learned that he had been released October 27, 2006. The case manager requested Father's whereabouts from Mother by telephone message and in person. Mother responded that she had informed Father he could no longer live with her, had not heard from him since, and did not know his whereabouts. The case manager did not attempt to contact Father regarding the November 30 hearing, because she knew that his last known address was no longer valid and had no idea where to reach him. At the November 30 hearing, Mother signed consents for adoption of the children. Father did not appear at the hearing, and Father's public defender, who did not know the Father's whereabouts and whose last contact with Father had been in mid-September, requested a continuance. The Guardian ad Litem objected to the requested continuance and argued that it was in the children's best interest

to proceed with the termination hearing. The continuance request was denied. Following the hearing, on December 21, 2006, the trial court terminated Father's parental rights. Father appealed.

Adequate notice of the termination hearing was given Father, and Father's due process rights were not violated, especially considering that Father's whereabouts were unknown. *Id.* at 1068. The Court found adequate, under the circumstances, MCDCS's attempts at compliance with I.C. 31-35-2-6.5(b) which required them to send notice to Father at least ten days prior to the termination hearing date, November 30, 2006. *Id.* at 1067. The Court noted that sending notice to Father's last known address would have been futile. *Id.* The Court analyzed the case balancing the standard three factors addressed in due process claims in termination cases, as set forth in Lawson v. Marion County Office of Family & Children, 835 N.E.2d 577, 579-580 (Ind. Ct. App. 2005). The three factors are: "(1) the private interests affected by the proceeding; (2) the risk of error created by the State's chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure." *Q.B.* at 1067. The Court noted that (1) the GAL had objected to the continuance as not being in the children's best interest; (2) at the time of the hearing, the children had been in foster care for over two years; (3) unsuccessful attempts had been made to reunite the family; (4) the continuance request to delay the proceeding even further was caused by Father's own failure to keep others apprised of his whereabouts; (4) because of Father's absence he was unable to testify; and (5) Father's rights were not fatally compromised because he was represented by counsel who cross-examined witnesses and had the opportunity to review and object to any evidence tendered by the MCDCS or GAL. The Court held: "In balancing the parental interests of [Father] with those of the State and keeping in mind the minimal risk of error created by the challenged procedure, we conclude that notice was adequate and the termination hearing proceedings did not violate [Father's] due process rights." *Id.* at 1068.