

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

9/26/16

In **A.B. v. Indiana Dept. of Child Services**, 61 N.E.3d 1182 (Ind. Ct. App. 2016), the Court affirmed the trial court's order terminating Mother's parental rights to her two children and Father's parental rights to his child who was born from Father's relationship with Mother. *Id.* at 1191. The children are half-siblings, and Mother is the birth parent of both children. Father is the birth parent of the younger child. The older child was born on July 2, 2009, and the younger child was born on January 11, 2011. The father of the younger child died in 2012. On August 6, 2012, Mother was arrested and charged with Class B felony dealing in methamphetamine and Class D felony possession of precursors. She bonded out of jail, but within six months of being out on bond, two active methamphetamine labs were found in the home she shared with the two children. Mother pled guilty to Class B felony dealing methamphetamine, Class D felony possession of methamphetamine, and Class C felony neglect of a dependent. On June 11, 2013, Mother was sentenced to a total of fifteen years, with ten years executed and five years suspended to probation. Mother also pled guilty to Class D felony possession of precursors and was sentenced to two years in prison to be served consecutively to the other sentence. Mother has been incarcerated since February 4, 2013, and has not seen her children since her incarceration.

Shortly after Mother's incarceration in February 2013, the children were placed in Father's care. Father's two older children were placed in his care in the summer of 2013 by their mother. Father contacted DCS in March or April of 2014 because he was overwhelmed by parenting the four children, was unable to control his two older children who were involved in truancy mediation services, and was behind in paying his rent. DCS initially attempted to provide services to Father through a program of informal adjustment, but Father refused. DCS filed a CHINS petition on April 16, 2014. Following a detention hearing, the children were allowed to remain in Father's care so long as a safety plan was developed and Father allowed only caregivers approved by DCS to care for the children. On May 26, 2014, the children were removed from Father's home and placed in foster care because the younger child in the instant case had sustained second degree burns to his feet. Father had failed to seek medical care for the younger child, and had also left the children at home with his two older children, ages twelve and eleven, in charge.

The children were adjudicated CHINS on June 9, 2014. After the July 2, 2014 dispositional hearing, the trial court issued a detailed parental participation decree. Father was ordered to: (1) participate in visitation, Fatherhood Engagement, and individual therapy; (2) stay in contact

with DCS, and notify DCS of change in his address or employment; and (3) maintain safe housing. Due to her continued incarceration, Mother was ordered to maintain contact with DCS, participate in services offered during incarceration, and provide certificates of completion to DCS. Father initially cooperated to some degree with service providers. Relatively quickly, Father let his distrust of and anger toward DCS take over. Father repeatedly discussed the case with the children during visits and criticized or made negative comments about DCS, the court appointed special advocate, and the foster parents. At times, Father exploded in anger when redirected by visitation supervisors. Father also left profanity-filled, threatening voicemail messages for the case manager. By March 2015, Father “overtly refused to participate in services.” He was later evicted from his home and then refused to provide his new address to the court or DCS. Mother had limited services available to her due to her incarceration, and was unable to visit with the children. Mother testified that she completed several programs in prison, but she did not provide certificates of completion to DCS.

DCS filed termination petitions after the trial court entered on order on June 8, 2015, which changed the permanency plan to concurrent plans of reunification, guardianship, and termination of parental rights. The final termination hearing was held on August 31, 2015, and November 6, 2015. Parents’ older child was six years of age and the younger child was four years of age at the time of the termination hearing. The trial court terminated Mother’s rights to her two children and Father’s parental rights to his child on February 4, 2016. Mother appealed, focusing her claims on the sufficiency of the evidence presented by DCS. Father appealed, claiming that the trial court deprived him of due process when the court terminated his telephonic participation during the second day of the termination hearing.

The Court found that Father was given the opportunity to be heard at a meaningful time and in a meaningful manner, but his ultimate absence from the hearing was the result of his own disruptive actions and his decision not to appear in person despite a clear ability to do so. *Id.* at 1188. Father was represented by counsel at the termination hearing. Although he lived locally, Father obtained permission from the trial court to appear telephonically at the hearing. On the first day of the hearing, Father interrupted the trial court, the attorneys, and the witnesses on numerous occasions. The court warned Father that, if he continued, the court would hang up the phone. Despite this warning, Father persisted. At the conclusion of the first day of the hearing, when Father again sought to interject, the trial court expressly directed Father to work through his attorney. On the second and final day of the hearing, Father continued his disruptive behavior over the telephone, calling the DCS staff liars and threatening them. The trial court warned Father that, if he made one more outburst, the court would hang up the phone. Father indicated that he understood, and behaved himself during the testimony of the next witness. Father was then called as a witness by DCS. Father referred to DCS as “terrorists” and stated “you people are sneaky.” The trial court cautioned Father to “just answer” the questions being asked, but Father was generally unresponsive and hostile. The trial court ended Father’s rant by disconnecting the telephone line as previously warned. During the lunch recess, Father’s attorney spoke with Father, and when the hearing reconvened, Father’s attorney informed the court that Father had “cooled down” and would like “permission to present his case by telephone.” The court denied the request, but indicated that it would permit Father to appear in

person. Father refused to appear in person and, as a result, was unable to present testimony in its case in chief.

The Court found that the trial court initially extended Father a courtesy by allowing him, a local litigant, to appear telephonically rather than in person. Id. at 1187. The Court noted that the trial court aptly withdrew this privilege upon Father's relentless abuse of it, but the trial court indicated that Father would be permitted to testify in person. Id. at 1187-88. Quoting Vaughn v. State, 971 N.E.2d 63, 70 (Ind. 2012), the Court said that "a trial court judge also has the responsibility of managing the proceedings so proper order exists in the courtroom." A.B. at 1187. The Court concluded that the trial court did nothing to deny Father due process. Id. at 1188.

The Court found the trial court's conclusion that there was a reasonable probability that the conditions resulting in the children's removal and continued placement outside Mother's care would not be remedied was not clearly erroneous. Id. at 1191. Mother argued that the reasons for the children's removal would be remedied when she was released from prison, which Mother expected would occur on a date between seven months and nineteen months from the date of the termination trial. The Court found it was not clear that Mother's release date was imminent at the time of the hearing, noting: (1) Mother testified that her projected release date was June 2017, but she could be released as early as June 2016 *if* she earned all the time cuts she was working on; but (2) the Department of Correction website reflected a projected release date in July 2018 (emphasis in original). Id. at 1189. The Court also observed that Mother did not have a good track record on probation, having violated probation multiple times in the past. Id. The Court noted Mother's extensive criminal history, which included convictions for ten offenses in addition to those for which she was currently incarcerated and four violations of probation. Id. at 1189 n.2. The Court observed that Mother committed her most serious crimes after giving birth to her children, and she placed them in danger by raising them in a home with active meth labs. Id. at 1190. The Court also noted that, although Mother testified to a list of services she had completed, she failed to provide certificates of completion for any of them. Id. The Court observed that: (1) Mother had been in prison for the majority of her children's lives and would continue to be in prison for some time; (2) Mother had not yet adequately addressed her substance abuse issues, which appeared to be at the root of her criminal behavior; (3) in light of Mother's extensive criminal history, it was evident that Mother would have an uphill battle upon her release from prison. Id.

The Court opined that DCS sufficiently established that termination was in the children's best interests. Id. at 1191. Mother also argued that the children would benefit if Mother were given "one more chance" since her sentence was "almost served." The Court disagreed with Mother's argument, noting the following: (1) the evidence did not support Mother's claim that her twelve-year sentence was almost served; (2) at the time of the termination hearing, Mother had been incarcerated for three years and had not seen her children for nearly three years; (3) it could be two to three years before Mother was released from prison to probation; (4) both the DCS family case manager and the court appointed special advocate discussed the children's need

for stability and permanency and testified that termination Mother's parental rights was in the children's best interests. Id.