

Children's Law Center of Indiana



Termination of Parent-Child Relationship

3/12/10

In ***In Re A.B.***, 922 N.E.2d 740 (Ind. Ct. App. 2010), the Court reversed the juvenile court's termination judgment and remanded the case with instructions to give Mother a new opportunity to testify on her behalf. In April 2007, Mother contacted the Lake County Office of the Indiana Department of Child Services (LCDCS) to request that LCDCS take custody of her three children because Mother was unable to care for them and had no place to live. LCDCS took the children into custody and the juvenile court authorized the children's removal, found probable cause to believe the children were CHINS, adjudicated the children temporary wards of the state, and ordered LCDCS to provide services for Mother. The children were adjudicated CHINS in June 2007, when Mother admitted to several of the allegations in the CHINS petition. The juvenile court proceeded to disposition, ordered the children formally removed from Mother's care retroactive to the date of their initial removal in April 2007 and ordered LCDCS's Parental Participation Plan. The Plan directed Mother to participate in and successfully complete the previously ordered services which included a substance abuse evaluation, parenting classes, individual counseling, home-based services, and supervised visitation privileges, as well as obtaining and maintaining stable housing and employment to achieve reunification with her children. Mother completed parenting classes and participated in individual and family counseling, but failed to consistently visit the children or maintain stable housing and employment. Mother secured employment and leased a home in Lake County, for which LCDCS paid the security deposit and first month's rent, but Mother failed to comply with the family case manager's referrals for trustee assistance and home-based counseling. Mother was evicted for failure to pay rent, lost her job, and then moved to Indianapolis to live with Father. During her first six months in Indianapolis, Mother lived with Father at a mutual friend's house and failed to participate in any court-ordered services, including visitation. Mother eventually rented a townhouse in Indianapolis and contacted the family case manager, who travelled to Indianapolis and found the home clean and suitable. The family case manager informed Mother that she would consider changing her permanency recommendation from termination to reunification if Mother provided a signed copy of the lease and proof of employment. Mother failed to provide the requested information.

In February 2009, LCDCS filed petitions seeking the involuntary termination of Mother's parental rights. Mother attended an initial hearing, was assigned counsel, was ordered to attend a meeting with her attorney to discuss her case prior to trial, and was ordered to appear at court on July 7, 2009, at 8:30 a.m. for an evidentiary hearing on the termination petition. Mother initially

failed to appear for the termination hearing, which commenced at 9:44 a.m. The juvenile court was informed that Mother was not present, that she had failed to show for her attorney-client meeting and that she had never contacted her attorney. An oral motion for continuance was made, which the juvenile court declined. Mother's counsel asked for leave to withdraw her appearance, stating that she had never spoken with or met Mother. The juvenile court granted the motion for leave to withdraw, gave Mother's attorney permission to leave, and proceeded with the evidentiary hearing. The State called the family case manager as its only witness. After the case manager's testimony was concluded and she was dismissed from the witness stand, the bailiff informed the juvenile court judge that Mother had arrived at the courthouse at 10:05. The judge commented that Mother could see her former attorney, but stated that she was going forward and "[w]e're almost done here." Mother was never permitted to enter the courtroom. After asking the remaining attorneys if there was "anything else," to which the attorneys answered in the negative, the juvenile court granted LCDCS's petition to involuntarily terminate Mother's parental rights, and the hearing was adjourned. Later that same day, the juvenile court entered a written judgment containing findings of fact and conclusions thereon, and terminating Mother's parental rights. Mother appealed.

The Court concluded that the juvenile court violated Mother's constitutional right to due process of law when it prohibited Mother from participating in the termination hearing. *Id.* at 746. Mother asserted on appeal that her constitutional right to due process was violated because she was not afforded the opportunity to be present in the courtroom, enter evidence, or cross-examine witnesses. The Court quoted *In Re A.I.*, 825 N.E.2d 798, 804 (Ind. Ct. App. 2005), trans. denied, acknowledging that "[t]he traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *A.B.* at 744. The Court also cited *In Re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied, stating that parental rights are not absolute, and parental interests may be terminated when a parent is unwilling or unable to meet his or her parental responsibilities. *A.B.* at 744. The Court has previously recognized that, in addition to various statutory protections afforded parents, the Due Process Clause of the U.S. Constitution "prohibits state action that deprives a person of life, liberty, or property without a fair proceeding." *In Re B.J.*, 879 N.E.2d 7, 16 (Ind. Ct. App. 2008), trans. denied. *A.B.* at 744. The Court said that, when the State seeks to terminate a parent-child relationship, it must do so in a manner that meets the constitutional requirements of the due process clause. *Hite v. Vanderburgh County Office of Family and Children*, 845 N.E.2d 175, 181 (Ind. Ct. App. 2006). *A.B.* at 744. Assessing whether a parent's due process rights have been violated in a termination proceeding turns on 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 governmental interest supporting use of the challenged procedure. *In Re C.C.*, 788 N.E.2d 847, 852 (Ind. Ct. App. 2003), trans. denied. *A.B.* at 744. The Court said that, in termination cases, both the private interests of the parent and the countervailing governmental interests that are affected are substantial. *A.B.* at 744. Because Mother's interest in the care, custody, and control of her children has been repeatedly recognized as one of the most valued relationships in our society, Mother's interest in the accuracy and fairness of the termination hearing is "a commanding one." *In Re E.D.*, 902 N.E.2d 316, 321

(Ind. Ct. App. 2009), trans. denied. A.B. at 744-45. The Court said that the State's *parens patriae* interest in protecting the welfare of children is also significant, and that delays in the adjudication of a termination case impose significant cost to the lives of the children. Id. at 745. The Court also considered the risk of error created by the challenged procedure. The Court opined that the juvenile court acted within its discretion when it initially proceeded with the termination hearing in Mother's absence, having first verified that Mother had received proper notification of the date, time, and location of the hearing. Id. While acknowledging that a parent does not have a constitutionally guaranteed right to be physically present at a termination hearing, the Court concluded that the risk of error is substantial where, as here, the juvenile court terminates Mother's parental rights after conducting a short hearing during which only one witness for the State testifies, no cross-examination is conducted, Mother is not represented by counsel, and Mother is prohibited from attending the hearing and/or presenting evidence although present in the courthouse before the end of the hearing, albeit late. Id. The Court said that, under such circumstances, the juvenile court may not have had an accurate picture of the evidence before making its termination decision. Id. The Court warned that "[t]hese are very hard and unusual facts, and our opinion should not be broadly extended to other cases and circumstances." Id. at 746. The Court opined that "the slight delay, the small, additional cost and even any incremental emotional strain upon the children that may have resulted by permitting Mother to participate in the remainder of the evidentiary hearing are far outweighed by the fairness that Mother's participation would have ensured." Id.