

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

10/27/15

In **In Re A.G.**, 45 N.E.3d 471 (Ind. Ct. App. 2015), *trans. denied*, the Court affirmed the trial court's order terminating the parental rights of incarcerated Father. *Id.* at 480. Father was incarcerated in Florida for identity theft when Mother gave birth to the child on July 5, 2013. The child tested positive for cocaine and THC, and Mother admitted using numerous other harmful substances during her pregnancy. The child was in intensive care for the first two weeks of his life due to drug withdrawal. During that time, the child was adjudicated a CHINS and was placed in foster care upon his release. Mother supplied the names of two alleged fathers for the child, and DNA testing proved that Father was the child's biological father. Father meanwhile completed his sentence in the Florida prison and was transferred to Georgia to serve a different sentence for possession of a firearm as a felon. Father's paternity was established in September, 2014 when the child was fourteen months old. DCS determined that Father had three other children, for whom Father was providing no financial support. Father had also been incarcerated for four years and eight months during the most recent seven years. Father's parental rights were involuntarily terminated, and he appealed.

The Court held that the requisite time period for filing a termination petition was properly calculated from the time of the child's removal from his home. *Id.* at 478. The Court noted that a parent's interests must be subordinated to a child's interests when considering a termination petition. *Id.* at 476. Although Father only knew with certainty that the child was his for the four months preceding the termination hearing, the Court noted that the child had been removed from both his parents' care for the full eighteen months that he had been alive. *Id.* at 477. Father contended that he only knew with certainty that the child was his for about four months before the termination hearing and, therefore, DCS did not meet the statutory requirement of IC 31-35-2-4(b)(2)(A)(iii) for removal for at least fifteen of the most recent twenty-two months. The Court opined that the text of the statute indicates that the State is required to prove two things: (1) the child was removed from the parent; and (2) the child was under the supervision of DCS for at least fifteen of the most recent twenty-two months. *Id.* at 476. The Court said that: (1) first, there was no question that the child was constructively removed from Father; and (2) second, it was undisputed that the child was removed from his home and placed by DCS with foster parents for eighteen consecutive months. *Id.* at 476-77. The Court said that, with respect to the fifteen-month time constraint, in the federal and Indiana statutes, the focus of the inquiry is the length of time the child has been in temporary custody, not the length of time the child has been removed from a particular parent. *Id.* at 478. The Court observed that, "[to] implement legislative intent" of promoting adoptions for children who have been removed from their parental home for extended periods of time, "the focus of the inquiry under Indiana Code section 31-35-2-4(b)(2)(A)(iii) should also be the length of time the *child*

has been out of his home, and not the length of time since the child was removed from a particular *parent*.” (Emphasis in opinion). Id. The Court said that considering the statutory time period from the date of removal does not mandate termination, and, in cases where paternity is not immediately established, trial courts must look to the other statutory requirements to determine whether termination is appropriate. Id.

The Court found that Father’s history of incarceration, lack of support for all of his children, and lack of contact with the child throughout his life supported the trial court’s conclusion that there was a reasonable probability that the circumstances leading to the child’s removal would not be remedied. Id. at 479. The Court noted that the analysis for determining whether there is a reasonable probability that the circumstances leading to the child’s removal will not be remedied requires two steps. Id. at 478. First, the court must determine what circumstances led to removal; and second the court must determine whether there is a reasonable probability the circumstances will not be remedied. Id. at 479. The Court opined that the circumstance leading to the child’s removal from Father’s care was Father’s incarceration. Id. The Court considered Father’s long criminal history and his incarceration for four years and ten months of the previous seven years, as well as his failure to provide for any of his four children during his incarceration. Id. Noting that Father had never had any contact with the child throughout the eighteen months of his life, the Court determined that the trial court did not err in finding that the circumstances leading to the child’s removal were not likely to be remedied. Id.

The Court held that the trial court did not err in finding that termination was in the child’s best interests. Id. at 480. The Court noted that both the child’s case manager and the child’s court appointed special advocate recommended termination of Father’s parental rights. Id. The Court noted that these recommendations, in conjunction with the evidence of Father’s incarceration, his present lack of support for his other children, and his complete lack of contact with the child all indicated the conditions leading to the child’s removal were not likely to be remedied. Id. The Court concluded that the totality of the evidence supported the trial court’s determination that termination of Father’s parental rights was in the child’s best interests. Id.