

Children's Law Center of Indiana



Termination of Parent-Child Relationship

3/31/10

In **In Re A.K.**, 924 N.E.2d 212 (Ind. Ct. App. 2010), the Court concluded that clear and convincing evidence supported the trial court's judgment terminating Mother's and Father's parental rights and affirmed the termination judgment. The child was born on August 30, 2004, and Father's paternity was established shortly after her birth. Mother and Father were married, but the marriage was dissolved two years later. Father was awarded custody of the child and Mother was not allowed to have parenting time with the child until recommended by a licensed mental health professional and further order of the court. On March 22, 2007, Mother, Father, and the child were allegedly camping and the Walkerton Police Department was called to a convenience store due to a report of a domestic disturbance. When the police arrived, both parents were intoxicated and Mother told a police officer that Father had tried to attack her with a hatchet, that Father was homeless and had been molesting the child, and that she, Father, and the child had been living in their van. The contents of the van supported Mother's assertion, and the child was very dirty. Father had an outstanding warrant from Texas for "bail jumping" and was taken into police custody. The child was taken to the hospital and medical personnel determined that, although she was extremely dirty, there was no evidence of sexual abuse. On the date of removal, the child exhibited developmental delays, suffered from a urinary tract infection due to poor hygiene, acted aggressively toward other children and bit her fingernails until they bled. On April 4, 2007, the St. Joseph County Department of Child Services (DCS) filed a petition alleging that the child was a CHINS because Father had been arrested and extradited to Texas and Mother, who was homeless, did not have custody of the child. The child was adjudicated a CHINS on April 18, 2007. The court ordered Mother and Father to participate in the following services: complete a parenting assessment, a substance abuse program, and a domestic violence course, attend A.A. or N.A. meetings as recommended by a therapist, comply with drug screens, and participate in family therapy. Both parents were also ordered to maintain housing and employment and/or a stable source of income. Mother did not maintain consistent contact with DCS, but did attend N.A. meetings and completed a parenting class. Mother never visited the child and tested positive for cocaine in August 2008. Mother suffers from bipolar disorder and schizophrenia and is under the care of a mental health professional. Father completed parenting classes while in jail in Texas, but upon his return to Indiana in July 2008, DCS recommended he continue to participate in parenting classes. Father's mental health issues prevented him from completing the substance abuse evaluation. Father was referred for a psychiatric evaluation, but the results had not been received on the date of the termination hearing. Father did not complete a domestic violence class or attend A.A. or N.A. meetings. He

complied with some but not all of the drug screens. Father visited the child and attended family therapy. Father has resided with his step-father since he returned to Indiana, receives Social Security disability income and does “odd jobs.” The petition to terminate Mother’s and Father’s parental rights was filed on June 26, 2008. At the termination hearing, the Court Appointed Special Advocate (CASA) testified, inter alia, that she did not believe there is a bond between Father and child, that Father does not have “a basic knowledge of caring for a child,” that the child has indicated that she is afraid of Father, and that the CASA believes termination of Father’s and Mother’s parental rights is in the child’s best interests. The DCS caseworker testified, inter alia, that during visitations, Father did not interact with the child, the child’s behavior worsens after contact with Father, and that termination of parental rights is in the child’s best interests. The child’s therapist testified that the child acts out after visits with Father, that the child is cognitively and emotionally behind but improving and that the child’s interaction with her foster mother “is excellent.” The family consultant testified that Father generally did not interact with the child, that the consultant believes the child is frightened of Father, and that the bond between Father and child “is a bond [the child] would have with anybody that came to visit with her because the person is paying attention to her.” On April 16, 2009, the trial court issued an order terminating Mother’s and Father’s parental rights, but the order contained no findings of fact. Mother and Father filed an appeal. The Court issued an order directing the trial judge “to enter a revised final order that contains complete findings of fact and conclusions of law that are fully supported by the evidence and that provide an explanation as to how its factual findings support its order.” The judge faxed thirty findings to the Clerk of the Indiana Court of Appeals on February 11, 2010. The Court granted the parties thirty days to file a response to the judge’s revised final order. Father filed a response on March 15, 2010, but Mother failed to file a response. DCS failed to file an appellee’s brief.

The Court stated that it will not undertake the burden of developing arguments for the appellee (DCS), and may reverse the trial court if the appellants establish prima facie error. *Id.* at 219.

The Court held that, in termination of parental rights proceedings, trial courts must enter findings of fact that support the entry of the conclusions called for by Indiana statute and the common law. *Id.* at 220. The Court said that the trial court was not statutorily required to issue findings of fact in its judgment involuntarily terminating parental rights (emphasis in original), but the Court cited Parks v. Delaware County Dep’t of Child Servs., 862 N.E.2d 1275, 1278 (Ind. Ct. App. 2007), which states that termination of parental rights is such a serious matter that appellate courts must be convinced the trial court based its judgment on proper considerations. A.K. at 220. The Court stated, “[w]e believe that a judgment terminating the relationship between a parent and child is impossible to review on appeal if it is nothing more than a mere recitation of the conclusions the governing statute requires the trial court to reach. Indiana’s parents and children deserve more, and the basic notions of the due process inherent in our system of justice demand more.” *Id.* The Court opined that trial courts must treat

termination proceedings “with the constitutional gravity they clearly have” and enter findings of fact. Id.

The Court concluded that sufficient evidence supports the conclusions that continuation of the parent-child relationship between the child and Mother poses a threat to the child’s well-being and that termination of Mother’s parental rights is in the child’s best interests.

Id. at 221. Mother argued that because she was making some progress toward her case plan, the trial court should have dismissed the DCS’s termination petition and allowed the case plan to continue with the goal of family reunification, but the Court disagreed. Id. The Court noted the following evidence which is sufficient to support the conclusion that the continuation of the parent-child relationship poses a threat to the child’s well-being: (1) Mother is unable to remain drug free, manage her mental illness, and maintain stable housing; (2) Mother’s lack of communication with DCS and inability to meet the case plan requirements which would have allowed her visitation with the child demonstrate Mother’s lack of interest in maintaining a relationship with the child. Id. The Court also stated that the same evidence supports the conclusion that Mother is unable to adequately care for the child. Id. The Court quoted Castro v. State Office of Family and Children, 842 N.E.2d 367, 374 (Ind. Ct. App. 2006), trans. denied, which states that “[a] parent’s historical inability to provide adequate housing, stability, and supervision coupled with a current inability to provide the same will support a finding that termination of the parent-child relationship is in the child’s best interests.” A.K. at 221.

The Court concluded that DCS presented clear and convincing evidence that continuation of the parent-child relationship between Father and child poses a threat to the child’s well-being, that termination of Father’s parental rights is in the child’s best interests, and that there is a satisfactory plan for the child’s care and treatment.

Id. at 224. Father argued that the DCS caseworker’s opinion that Father denies his substance abuse problem is speculative and not supported by the evidence. The Court disagreed, finding that DCS had presented minimal evidence that Father has a substance abuse problem, including that: (1) Father tested positive for marijuana in September 2008; (2) Father failed to take two random drug screens. Id. at 222. The Court opined that Father’s refusal to participate in A.A. or N.A. reflects poorly on his stated goal of reunification with the child. Id. Father also challenged five of the trial court’s findings of fact as not supported by the evidence. The Court agreed that no evidence in the record supported the trial court’s findings that Father lacked stable housing or that either parent sexually abused the child. Id. The Court noted the following evidence, inter alia, which supported the trial court’s threat to well-being conclusion: (1) the DCS caseworker testified that Father did not complete a domestic violence class or an additional parenting class as ordered by the court; (2) both the CASA and family consultant stated that the child has indicated she is afraid of Father; (3) the child’s behavior problems escalate after visitation with Father; (4) the child’s foster mother testified that, after visitation with Father, the child acts aggressively, has nightmares, does not sleep well, and urinates in odd places; (5) the therapist testified that if reunification efforts continued between Father and child, it would be a “major interruption” in the child’s cognitive and emotional progress; (6) the child’s developmental delays and poor hygiene on the date she

was taken into DCS custody suggest that Father did not know how to properly care for the child, and Father still has not demonstrated that he has the knowledge to properly care for the child. Id. at 223-24. The Court also concluded that termination of Father's parental rights is in the child's best interests, noting the following evidence: (1) Father's familial bond with the child is tenuous and he has not demonstrated an ability to parent the child; (2) although the child still has behavioral issues, her behavior has improved except after visitation with Father, whom she fears; (3) the child requires stability the Father cannot provide; (4) continuation of reunification efforts would disrupt the progress the child has made both emotionally and cognitively. Id. at 224. The Court also rejected Father's argument that DCS failed to prove there is a satisfactory plan for the child's care and treatment, noting that the evidence established: (1) the foster parents have filed a petition to adopt the child; (2) on the date of the termination hearing, the child had resided with the foster family for almost two years; (3) the child has a strong bond with the foster family and her interaction with her foster mother is "excellent." Id.