

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

9/23/15

In **In Re B.H.**, 44 N.E.3d 745 (Ind. Ct. App. 2015), *trans. denied*, the Court affirmed the juvenile court's order terminating Mother's and Father's parental rights to their two children. *Id.* at 752. On April 30, 2013, law enforcement responded to a report that Father had stabbed the children's uncle in the presence of his two children, ages seven and five. DCS received a report about the incident on May 2, 2013. DCS discovered during its investigation that Father was an active methamphetamine user and Mother was staying with the children in a home previously investigated for use of methamphetamine. Mother was pregnant and refused to take a drug screen. DCS removed the children from Mother's care and placed them in relative care. DCS filed a petition alleging the children to be CHINS. The parents admitted that Father was incarcerated, Mother had recently used marijuana, and the older child had tested positive for methamphetamine while in the parents' care. The juvenile court adjudicated both children to be CHINS, and ordered Mother to, among other things, maintain stable housing; refrain from drug use; submit to random drug screens; and attend all scheduled visitations with the children. Because Father was incarcerated, the court did not order that he participate in any services. Mother repeatedly failed to take drug screens and was discharged from an Intensive Outpatient Program after failing to attend regularly. Mother continued to test positive on drug screens, and gave birth to another child in August 2014, who tested positive for methamphetamine and opiates. Mother also failed to maintain stable housing. Mother was homeless at one point and later moved in with a boyfriend who had a violent criminal history as well as a history of DCS involvement. Between June and November 2013, Mother attended only fifteen of the twenty-eight scheduled visits with the children. Although her visits became more regular in January 2014, the visitation supervisor had to intervene repeatedly because Mother was unable to manage the children's behavior. In July 2014, the children moved to Florida to live with their maternal grandparents. Mother was allowed to have two weekly telephone calls with the children, but, during five and one-half months, Mother called the children only eight times and spoke with them for about five minutes each time. Father was convicted of class B felony dealing in methamphetamines and class D criminal recklessness. Father received an eleven year sentence, with an earliest possible release date of November 1, 2019.

In October 2014, DCS petitioned to terminate Mother's and Father's parental rights. On December 18, 2014, at the first hearing for the termination petition, Mother filed a last-minute motion for continuance, alleging that she had to work and would be fired if she went to court. The juvenile court denied the motion. On March 3, 2015, the second day of the termination hearing, Mother again moved for a continuance at the last minute, citing transportation problems. DCS objected and the juvenile court denied Mother's motion. Both Mother's and Father's parental rights to the two children were terminated, and both parents appealed.

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The Court found no reason to conclude that Mother was denied a fair hearing, and declined to reverse the juvenile court's termination order because Mother's motions to continue the termination hearings were denied. Id. at 749. Citing Parmeter v. Cass Cnty. Dep't of Child Servs., 878 N.E.2d 444, 449 (Ind. Ct. App. 2007), the Court said a trial court's ruling on a motion to continue a trial date is reviewed for an abuse of discretion, with a strong presumption that the trial court properly exercised its discretion. B.H. at 748. Citing Danner v. Danner, 573 N.E.2d 934, 937 (Ind. Ct. App. 1991), the Court noted that the party seeking a continuance must show that he or she is free from fault. B.H. at 748. The Court noted that, on the morning of December 18, 2014, the first scheduled day of the termination hearing, Mother filed a motion to continue the hearing, alleging that she was unable to attend due to work and transportation issues, and that she had not received notice of the hearing. The Court observed that Mother's attorney was present at court on November 20, 2014 when the juvenile court stated the termination hearing would begin on December 18, 2014; therefore, Mother had notice of the hearing. Id. The Court found that Mother's own failure to make arrangements with work was not good cause for a last-minute continuance, especially when multiple witnesses had traveled from out of state to testify. Id. at 749. The Court found no abuse of discretion in the juvenile court's denial of Mother's December 18, 2014, motion for continuance. Id. On the morning of March 3, 2015, the second day of the termination hearing, Mother again filed a motion to continue the hearing, alleging that she was unable to attend the hearing because the person who was to transport her to court had been injured. DCS objected, stating that DCS would have provided transportation to Mother if she had notified DCS as soon as there was a problem. The juvenile court denied the continuance, and the Court found no abuse of discretion in this ruling. Id. The Court also noted that Mother was represented by counsel throughout all of the termination proceedings, and her attorney cross-examined witnesses and had the opportunity to introduce evidence on her behalf. Id.

The Court found that the evidence supported the juvenile court's conclusion that there was a reasonable probability that the conditions that resulted in the children's removal from Mother's custody would not be remedied. Id. at 750. The Court found that the children were removed as a result of Mother's admitted drug use and the older child's positive drug test for methamphetamine. Id. The Court noted the following evidence: (1) over the course of the CHINS case, Mother repeatedly failed to take a substance abuse intake assessment, and once she did so, she failed to complete the recommended Intensive Outpatient Program; (2) Mother repeatedly tested positive for opiates for which she did not have a prescription and failed to show up for multiple random drug screens; (3) during the CHINS proceedings, Mother gave birth to another child who tested positive for opiates and methamphetamine at birth. Id.

The Court found the evidence readily supported the trial court's conclusion that a continuation of the parent-child relationship with Mother posed a threat to the children's well-being. Id. at 750. The Court said that the evidence of Mother's ongoing substance abuse issues which had never been remedied and her inability to maintain stable housing supported the juvenile court's conclusion on this issue. Id. The Court noted that, while Mother's one time residence met minimal standards, her live-in boyfriend, a convicted violent felon with substance

abuse issues and prior DCS history, did not. Id. The Court also noted that Mother was homeless the month before the second termination hearing in March 2015.

Given Mother’s wholesale inability or refusal to address her issues and improve her parenting skills, the Court found the juvenile court did not err by finding that termination of the parent-child relationship was in the children’s best interests. Id. at 750. The Court found the following evidence to be supportive of the best interests determination: (1) Mother did not maintain consistent contact with the children, either in person when they lived in Indiana, or by telephone after they moved to Florida; (2) the children were in a loving, stable placement with their maternal grandparents, who planned to adopt them; and (3) Mother’s admitted drug use and inability to maintain housing. Id. at 750-51.

The Court found the evidence about Father’s incarceration and his other issues demonstrated that the juvenile court did not err by concluding that termination of his parental rights was in the child’s best interests. Id. at 752. Father argued that the order terminating his parental rights should be reversed because the sole reason supporting termination was the fact of his incarceration. The Court noted that Father’s children were five and seven years old when he stabbed their uncle in the children’s presence. Id. at 751. The Court also noted the following evidence in support of the juvenile court’s order terminating Father’s parental rights: (1) when the children were removed, Father was dealing in and using methamphetamine, which contributed to an environment that led to his seven-year-old’s positive test for methamphetamine; (2) Father’s release date was November 1, 2019, nearly five years away from the date of the termination hearing; (3) Father did not testify about his housing or employment plans following his release, or his completion of any substance abuse programs while incarcerated. Id. at 751-52. The Court cited In re K.E., 39 N.E.3d 641, 648 (Ind. 2015), which states that: (1) there is no bright line rule regarding when release from incarceration must occur to maintain parental rights; and (2) trial courts must consider whether other evidence, coupled with the expected release date, supports a termination order. B.H. at 752. The Court observed that, to the extent Father argued reversal of the termination order was warranted because DCS did not provide him with services during his incarceration, it is well established that DCS is not required to provide services before commencing termination proceedings. Id. at 752, n.3, citing In re H.L., 915 N.E.2d 145, 148 n.3. (Ind. Ct. App. 2009).