

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

8/29/11

In ***In Re D.D.***, 962 N.E.2d 70 (Ind. Ct. App. 2011), the Court reversed the trial court's order which terminated Mother's parental rights to her three children. The Court remanded the case for further proceedings consistent with this opinion. The Clark County Office of the Indiana Department of Child Services (CCDCS) first became involved with Mother and the three children, then ages eight, five, and one year, in December 2005. Mother had whipped the middle child with a belt, leaving bruises on the child's leg. An Informal Adjustment was signed by Mother in January 2006, and family preservation services were initiated. Additional services, including a psychological evaluation and individual counseling for Mother were requested later, because CCDCS continued to receive and substantiate neglect reports pertaining to the older two children for the next several months. In August 2006, the children were detained after CCDCS substantiated a report of physical abuse committed by either Mother or Maternal Aunt when belt marks were observed on the middle child's face, back, and arms. In September 2006, Mother admitted that the children were CHINS, and the trial court adjudicated all three children CHINS and made them wards of CCDCS. The court's CHINS orders allowed the children to return to Mother's physical care so long as Mother abided by her agreement to follow all psychiatric recommendations, including taking all prescribed medications, participating in individual and family counseling, refraining from using physical discipline with the children, and not allowing the children to have any contact with Maternal Aunt.

In November 2006 CCDCS requested, and the trial court granted, an Emergency Custody Order allowing CCDCS to take the children into emergency protective custody. The emergency order was requested due to growing concerns about the children's safety in that: (1) Mother had been allowing contact between Maternal Aunt and the children; (2) Mother had permitted at least two unknown men to spend the night in the family home in direct violation of a family safety plan that had been put in place; (3) Mother had not seen her therapist in over one month; (4) Mother had been having increasing problems with not getting the middle child to school on time; (5) the oldest child had recently been hospitalized expressing suicidal ideation with a well developed plan; (6) the home was dirty and disorganized, with food on the floors, and the children's bedrooms were "trashed"; (7) the case manager observed a substance appearing to be marijuana and a cigarette rolling paper in the home and also observed that the middle child had begun "cowering and hiding" from Mother when she woke up and "was obviously afraid" but would not tell the case manager why he was so scared. Although a detention hearing was held in

December 2006, and the children were never again returned to Mother's care, the trial court's Dispositional Order formally removing the children from Mother's care and custody was not entered until April 15, 2010. After the children's detention, Mother was offered a wealth of services designed to improve her ability to care for the children, but refused to participate in and/or successfully complete a majority of the court ordered reunification services and was never able to demonstrate that she could provide the children with a safe and stable home environment.

CCDCS filed its "Petition for Involuntary Termination of the Parent-Child Relationship" with regard to all three children's cases on April 19, 2010. The termination petitions, which alleged that the children had been removed from Mother's care for at least six months, were filed just four days after the trial court entered its Dispositional Orders in the CHINS case. The trial court commenced the evidentiary hearing on the termination petitions in July 2010 and concluded it in August 2010. At the time of the termination hearing, the children had been wards of CCDC for approximately forty-four months. On October 6, 2010, the trial court issued its judgment terminating Mother's parental rights. The order included in its findings of fact that the children had been out of the care, custody, and control of Mother since March 11, 2010, under a Dispositional Order.

The Court opined that CCDCS failed to satisfy the six-month statutory mandate of IC 31-35-2-4(b)(2)(A), and the trial court committed reversible error in granting CCDCS's involuntary termination petitions. *Id.* at 75. Citing *In Re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009), the Court noted that, before parental rights may be involuntarily terminated, the State must allege and prove, by clear and convincing evidence, each element contained in IC 31-35-2-2(b). *D.D.* at 73. The Court observed that subsection (b)(2)(A) of Indiana's termination statute provides that an involuntary termination petition "must allege" that one of the following is true:

- (i) The child has been removed from the parent for at least six (6) months under a dispositional decree.
- (ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required....
- (iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child[.]

Id. The Court cited *Platz v. Elkhart Cnty. Dep't of Pub. Welfare*, 631 N.Ed.2d 16, 18 (Ind. Ct. Ap. 1994), which states that the Indiana Department of Child Services "must strictly comply with the statute terminating parental rights." *D.D.* at 73. The Court said that if the trial court "does not find that the allegations in the [termination] petition are true, the court *shall* dismiss the petition." IC 31-35-2-8(b) (emphasis supplied). *D.D.* at 73-74. After reviewing the trial

court's findings concerning the children's removal from Mother since March 11, 2010, under the Dispositional Order, the Court opined that it is clear that CCDCS failed to follow the statutory dictates of IC 31-35-2-4(b)(2)(A). Id. at 74. Citing Platz, 631 N.E.2d 16, 18, which states that the statutory mandate is "clear and unequivocal", the Court said that the State must prove by clear and convincing evidence, that the child was removed from the parent for at least six months under a dispositional decree at the time the involuntary termination petition was filed. D.D. at 74. The Court said it is clear from the face of the documents that the termination petitions were fatally flawed. Id. The Court also observed that, although the trial court's termination judgment indicates that the children were removed from Mother's care on March 11, 2010, the Dispositional Order indicates that the hearing was held on March 15, 2010, and the Order was not signed, and thus did not take effect, until April 15, 2010. Id. at 74, n.4. The Court was not persuaded by CCDCS's arguments that the trial court's order of December 2006 required Mother to take parenting classes and that "numerous" subsequent orders were made "which everyone apparently considered [to be] modifications of the dispositional order. Id. at 75. The Court noted Wagner v. Grant Cnty. Dep't of Pub. Welfare, 653 N.E.2d 531, 533 (Ind. Ct. App. 1995) (concluding that child was "effectively removed" from father for purposes of the termination statute where father was incarcerated at time child was removed from mother) and In Re Robinson v. Madison Cnty. Dep't of Pub. Welfare, 538 N.E.2d 1385, 1387 (Ind. 1989) (Court said it would be "unrealistic" to say child was not removed from parent by dispositional decree merely because court did not expressly say so in its dispositional order). D.D. at 75. The Court concluded that, in examining the removal element under the particular facts and circumstances in the present case, such an inference may not be reasonably made in light of the trial court's clear and unequivocal finding that the children were not removed from Mother's care pursuant to a dispositional order until March 2010. Id.

The Court rejected CCDCS's assertion that this issue is waived simply because no objection was raised at trial. Id. at 75. The Court said that failure to ensure that the State has fully complied with all of the conditions precedent to the termination of parental rights "constitutes fundamental error", quoting In Re L.B., S.B., and S.C., 616 N.E.2d 406, 407 (Ind. Ct. App. 1993), *trans. denied*. D.D. at 75.