

Children's Law Center of Indiana



Termination of Parental Rights (TPR)

04/24/2009

In ***In Re G.Y.***, 904 N.E.2d 1257 (Ind. 2009), the Court reversed the trial court's order terminating Mother's parent-child relationship with her son. The Court of Appeals had affirmed the trial court in an unpublished memorandum decision at 895 N.E.2d 741 (Ind. Ct. App. Oct. 31, 2008). The child was born April 23, 2004; Mother was his sole caretaker during the first 20 months of his life; and there are no allegations that she engaged in any criminal behavior during this period, or was an unfit parent in any way. In April 2003, Mother had delivered cocaine to a police informant, for which offense she was arrested and incarcerated in December 2005, 32 months after the offense. On January 4, 2006, after the failure of Mother's multiple attempts to place the child with relatives and friends during her incarceration, the Marion County DCS (State) filed a CHINS petition alleging the child was a CHINS because Mother had been unable to make the appropriate arrangements for his care. The child was placed in foster care. In March 2006, Mother pled guilty to Dealing in Cocaine as a Class B felony and was sentenced to 12 years, with four years suspended to probation. In May 2006, with Mother's consent, the child was found to be a CHINS and the trial court ordered continued placement in foster care and "Reunification with parent(s)" as the permanency plan. The trial court subsequently issued a "Participation Decree" under which Mother was ordered, in part, to obtain a source of income and suitable housing, complete home-based counseling, a parenting assessment, parenting classes, and a drug and alcohol assessment, and to "[v]isit on a consistent, regular basis as recommended by counselor or caseworker." On May 18, 2007, the State filed a petition for termination of Mother's parent-child relationship with the child. On March 26, 2008, following a fact-finding hearing, the trial court terminated Mother's parental rights to the child. Mother appealed.

The Court held that the State did not present clear and convincing evidence to demonstrate that Mother's parental rights should be terminated. *Id.* at 1258, 1262. The Court reached this result after examining four reasons the trial court gave for concluding that termination of Mother's parental rights was in the child's best interests: (A) Mother will remain unavailable to parent because her pattern of criminal activity makes it likely that she will reoffend upon release; (B) to provide Mother additional time to be released from jail and try to remedy conditions would only necessitate the child being put on a shelf instead of providing paramount permanency; (C) the child has a closer relationship with his foster parents than he does with his mother; and (D) the child's general need for permanency and stability. *Id.* at 1262-65. Regarding reason A, the Court concluded that the likelihood of Mother reoffending was not a sufficiently strong reason, either alone or in conjunction with the trial court's other reasons, to warrant a conclusion by clear and convincing evidence that termination of Mother's parental rights was in the child's best interests. Prior to stating this conclusion, the Court noted that (1) all of Mother's criminal history consists of offenses committed before the child's conception

in 2003, and for the first 20 months of his life, the record gives no indication Mother was anything but a fit parent; (2) after her incarceration, Mother agreed her son was a CHINS; (3) the trial court ordered her to participate in treatment services and, despite the physical impossibility of completing some of the requirements, the record shows Mother took positive steps and made a good-faith effort to better herself as a person and parent; (4) at the time of the termination hearing, Mother had completed an eight-week drug rehabilitation program and was on a waiting list for phase II of the program; (5) Mother testified that participants in the drug rehabilitation program had their own individual counselors as well as attended large group classes and that even though she had a history of drug use, she had not used cocaine since 2003; (5) Mother also completed a 15-week parenting class and actively participated in “an inmate to work mate program through Arrowmarks” which results in an apprenticeship certification and job placement after release from prison; (6) Mother was also in the midst of her second semester working towards an associate’s degree, which when completed in May 2008 would result in her release date being moved up to May or June 2009; and (7) Mother had started a culinary arts certification program. Id. at 1262-63.

With respect to reason B, the Court found that the amount of time that it will likely take Mother to comply with the conditions of the court’s Participation Decree was not a sufficiently strong reason, either alone or in conjunction with the trial court’s other reasons, to warrant a conclusion by clear and convincing evidence that termination of Mother’s parental rights was in the child’s best interests. The Court took exception to the trial court’s use of the expression “put on the shelf,” but stated its understanding that the trial court meant to say the child would have to wait on Mother’s release and subsequent compliance with the requirements of its Participation Decree. The Court noted the trial court’s specific mention of its concerns over the requirements of a parenting assessment, parenting classes, drug treatment classes, “obtaining suitable housing and gainful employment,” and home-based counseling. The Court acknowledged that Mother will be serving four years of probation after her release and has yet to complete all the services required for reunification, but pointed out that the record shows she has made a good-faith effort to complete the required services available to her in prison. In this regard, the Court observed that (1) Mother had completed a drug treatment class, engaged in individualized drug counseling, and completed a parenting class; (2) she testified that she had secured a full-time job through “Arrowmark” and through “Our Vision,” and either her family or the “Bonner Program” would provide a house for her and the child to live in; (3) the trial court’s finding that Mother had not completed either a parenting assessment or home-based counseling was tempered by the fact that these services were not available to her while she was incarcerated; (4) in addition to completing those requirements for reunification that were available to her in prison, Mother took additional steps to provide permanency for the child upon her release; (5) when asked about her intentions after release, Mother testified that she will graduate with her associate’s degree by the time she leaves the “Inmates Workmate Program,” and she plans to start college and attain her bachelor’s degree; (6) Mother’s future plans also include completing a phase II substance abuse program and a culinary arts certification; and (7) when confronted with her criminal history, Mother acknowledged that before her most recent incarceration she had “low self-esteem ... and never pursued my education,” but “now that I’m doing it, I know ... that I’m better than the life that I live. And I ... have a very good support system. And everybody’s obligated to change ... and I’m not gonna lose my son over ... this stupid life that I was living, no. I’m not. I have kids that need me.” Id. at 1263-64

After reviewing the trial court's reason stated above at C, the Court concluded that the fact that the child currently has a closer relationship with his foster parents than with his Mother was not a sufficiently strong reason, either alone or in conjunction with the trial court's other reasons, to warrant a conclusion by clear and convincing evidence that termination of Mother's parental rights was in the child's best interests. The Court observed that the trial court found that "[the child] has resided in the same foster care placement since January of 2006, at which time he less [sic] than two years old. He is doing exceptionally well and is very attached to his foster parents and foster brothers," and "Mother has consistent visitation at her prison facility. Visitation is monthly for a one to two hour period. There have been no concerns raised by the monitoring case manager...." The Court opined that (1) the record shows that since her incarceration Mother has maintained a consistent, positive relationship with the child; (2) the State's caseworker testified that Mother "has been pretty consistent in maintaining that she wants to maintain contact with" the child, they had shared visitations with one another once a month for "at least a year," and the visits ranged from two to four hours; (3) the monitoring case manager who accompanied the child on five occasions to visit Mother, testified that "[t]he visits went well," and that she observed "a lot of interacting ... mom would sit with him and do whatever he was doing, and interact with him;" (4) the Guardian ad Litem observed the child's visitation with Mother for two hours and testified that "[t]heir interactions were appropriate. They were very playful with one another. They seemed to have a relationship;" and (5) Mother has sent cards, pictures, and letters to the child in an attempt to connect with him. The Court also attached significance to the evidence in the record of Mother's commitment to reunification with the child from the very point of her arrest: (1) within two days of her arrest, Mother had made arrangements for her sister to take care of the child while she was incarcerated; (2) during the CHINS proceedings, Mother attempted to arrange foster care first with her sister, and then with a friend, but those attempts failed when neither of these individuals completed the required foster care classes; (2) a "friend of the family" attempted to execute an "open" adoption which would have left it open for Mother to visit the child at her discretion, but this did not materialize because of the friend's medical condition; (3) Mother's sister then unsuccessfully filed for placement; and (4) Mother testified that it was in the child's best interest "to be with my family. To know his birth family ... To be taken care of and loved, and know that he's taken care of and loved by his family." *Id.* at 1264-65.

As to reason D, the Court did not find that the child's need for immediate permanency through adoption was a sufficiently strong reason, either alone or in conjunction with the trial court's other reasons, to warrant a conclusion by clear and convincing evidence that termination of Mother's parental rights was in the child's best interests. The Court stated that the trial court's reason stated above as reason D, was based on the testimony of the State's caseworker and the Guardian ad Litem (GAL) that termination was in the child's best interest because he needed "permanency" and "stability." The Court observed, however, that the GAL qualified her recommendation by testifying that "looking out for [the child's] best interest, I'd like to see some ... future agreement between the two parties that would include future visitation, contact with his biological mother, so he knows who she is," and the GAL's recommendation was based on her observation that "they appear to have a type of bond, a mother/child bond. They were very appropriate ... Interaction was generated on both sides. From [the child] to his mom, from mom to [the child] ... It would be nice for [the child] to know who his mother is in the future." The Court acknowledged that permanency is a central consideration in determining the best interest of a child, but concluded that, here, where the child is under the age of five and Mother's release

from prison is imminent, and given the highly positive reports about the quality of the placement, continuation of the CHINS foster care arrangement will not have much, if any, negative impact on the child's well-being. The Court stated its agreement with Mother that "there was no evidence presented to show that permanency through adoption would be beneficial to [the child] or that remaining as a foster care ward until he could be reunited with his mother would be harmful to [the child]." The Court opined that this is especially true given the positive steps Mother had taken while incarcerated, her demonstrated commitment and interest in maintaining a parental relationship with the child, and her willingness to continue to participate in parenting and other personal improvement programs after her release. Id. at 1265-66.

Boehm, J., dissented and filed an opinion.