

# Children's Law Center of Indiana



## Termination of the Parent-Child Relationship

11/23/15

In ***In Re J.E.***, 45 N.E.3d 1243 (Ind. Ct. App. 2015), *trans. denied*, the Court affirmed the trial court's order terminating Father's parental rights to his one-year-old child. *Id.* at 1249. Father was charged with class D felony synthetic identity deception in October 2013 and was released on recognizance. His girlfriend gave birth to their child in December 2013. Due to housing issues and Mother's past involvement with DCS, the two-day-old child was removed from Mother and Father and placed in foster care. Father visited the child once shortly after his removal. Father failed to appear at a pretrial hearing on his criminal case and was jailed pending trial. In March 2014, Father pled guilty and was sentenced to 1095 days, with 915 of those days suspended to probation. He attended a CHINS hearing on March 17, 2014, where the trial court found the child to be a CHINS and ordered Father to participate in home-based counseling, a father engagement program, and supervised visitation. Father visited the child once shortly after the CHINS hearing. In July 2014, Hamilton County revoked Father's probation for failure to report and remanded him to the Department of Correction (DOC). Father did not complete any of the services ordered at the CHINS hearing during the time he was out of jail or while he was incarcerated.

In October 2014, DCS filed a petition to terminate Father's parental rights. Father was served with the petition in January 2015, and requested court appointed counsel. Father was not present for the February 2015 pretrial hearing due to his incarceration, but his counsel was present and moved for a continuance, requesting that the termination hearing be reset for a date after Father's projected release from DOC in July 2015. DCS objected to the requested continuance, and the trial court denied Father's motion and scheduled the termination hearing on March 16, 2015. As an alternative to his motion for continuance, Father requested an order to transport him from the correctional facility in Edinburgh, Indiana, to the termination hearing in Indianapolis. The trial court denied Father's motion and ordered that he participate by video conference or telephone. When it was discovered that the correctional facility lacked the equipment for Father to participate by video conference, Father renewed his motion to be transported to the hearing. The trial court denied Father's motion, and ordered that he participate telephonically. Father again requested a continuance of the termination hearing until after his release from incarceration in July 2015, but the trial court denied Father's motion. At the termination hearing on April 29, 2015, Father was present by counsel and by telephone. Father's counsel renewed his request for Father to be transported to the hearing, which the trial court denied. On May 8, 2015, the trial court issued an order with findings of fact and conclusions of law thereon terminating Father's

parental relationship to the child. Father appealed, challenging the trial court's denial of his motion for continuance and his motion for an order to transport him to the hearing.

**The Court concluded that the trial court acted within its discretion in denying Father's request for a continuance until after his release from incarceration.** Id. at 1247. Citing J.P. v. G.M., 14 N.E.3d 786, 789-90 (Ind. Ct. App. 2014), the Court said that the decision to grant or deny a motion for continuance: (1) is within the sound discretion of the trial court; (2) an abuse of discretion occurs where the trial court reaches a conclusion that is clearly against the logic and effect of the facts or the reasonable and deductions that may be drawn therefrom; and (3) no abuse of discretion will be found where the moving party has not shown that he was prejudiced by the denial of his continuance motion. J.E. at 1246. Citing Rowlett v. Vanderburgh Cnty. Office of Family & Children, 841 N.E.2d 615, 619 (Ind. Ct. App. 2006) *trans. denied*, a termination of parental rights case, the Court noted that where the trial court denies a motion for continuance, an abuse of discretion will be found if the moving party has demonstrated good cause for granting the motion. J.E. at 1246. Father characterized the denial of his motion for continuance as a denial of his due process rights. Citing In Re C.G., 954 N.E.2d 910, 917 (Ind. 2011), a termination of parental rights case, the Court noted that due process affords parents the opportunity to be heard at a meaningful time and in a meaningful matter. J.E. at 1246. Citing In Re K.W., 12 N.E.3d 241, 248-49 (Ind. 2014), the Court also noted that this does not mean that parents have an absolute right to be *physically* present at the termination hearing (emphasis in opinion). J.E. at 1246. The Court observed that: (1) Father's counsel attended the termination trial on Father's behalf and requested that the hearing be continued until after Father's expected release date from DOC, which was about four months; (2) Father had been remanded to DOC based on his failure to adhere to probation reporting requirements; (3) in considering the efficacy of a continuance, the trial court reflected on Father's patterns with respect to attendance, communication, and participation when he was not incarcerated; (4) Father's lack of communication with his counsel showed that he had little interest in the preparation of his case. Id. at 1246-47. The Court noted that, during the termination hearing, the trial court cleared the courtroom and afforded Father the opportunity to consult privately with his counsel, which allowed Father the opportunity to assist in the presentation of his case. Id. at 1247. Finding that Father had failed to establish how he would have better assisted counsel in preparing and presenting his case if his continuance had been granted, the Court opined that Father had failed to demonstrate any prejudice stemming from the trial court's denial of his request for continuance. Id.

**The Court concluded that the trial court acted within its discretion in denying Father's motion to be transported to the termination hearing.** Id. at 1249. Citing In Re C.G., 954 N.E.2d 910 at 922, the Court observed that the decision on whether to permit an incarcerated parent to be transported to court in a termination proceeding is a matter within the trial court's sound discretion. J.E. at 1247. The Court looked to In Re C.G., 954 N.E.2d at 922-23, in which the Indiana Supreme Court adopted eleven factors that trial courts should balance in determining whether to transport an incarcerated parent. J.E. at 1247. In his appellate brief, Father discussed each of the eleven factors and decried the absence of a trial court finding on each of the eleven factors. The Court noted the trial court: (1) clearly stated it had considered the C.G. factors in

denying Father's transportation motions; and (2) specifically emphasized the factors it found compelling, namely, the cost and inconvenience factor and the availability of testimony by another reasonable means. Id. at 1248. The Court opined that the C.G. list is clearly not exhaustive and there is nothing in C.G. which indicates that the trial court must make findings on each and every factor in the list. J.E. at 1248. The Court did not read C.G. to require the trial court to specify that it did not find certain factors compelling or even relevant to Father's case. J.E. at 1248. The Court observed that: (1) Father's telephone participation allowed him to be connected such that he could hear witness testimony and counsel's arguments before the court, as well as the court's responses and pronouncements; (2) at one point, the court had to caution Father for interrupting an in-court witness during her testimony; and (3) the trial court cleared the courtroom to afford Father the opportunity to confer privately with his counsel by phone. Id.

Father posited that the outcome of the case hinged on a dispute between himself and the DCS family case manager as to whether Father was made aware of the services in which he was expected to participate. He asserted that the trial court abused its discretion by failing to consider that taking his testimony by telephone would affect the court's ability to judge his credibility. The Court was not persuaded by Father's claim that this case turned on the resolution of the dispute between himself and the case manager. Id. Quoting In Re B.D.J., 728 N.E.2d 195, 201 (Ind. Ct. App. 2000), the Court noted that "the law concerning termination of parental rights does not require [DCS] to offer services to the parent to correct the deficiencies in childcare." J.E. at 1248. The Court observed that, despite the disagreement between the Father and the case manager on who should have initiated contact regarding services, Father admitted that: (1) he remembered the CHINS court ordered him to participate in certain services; (2) the case manager was present, but he did not ask her how to complete the services; and (3) that he "should've asked her." Id. at 1248-49. The Court also noted that Father had visited the child only twice and admitted that he had decided to forego opportunities to visit the child. Id. The Court also found it unfortunate that Father, having made himself unavailable for these proceedings due to incarceration, had not appeared when he was free and ordered to do so. Id.