



This Case Law Update Provided by:

The Children's Law Center of Indiana

Termination of Parental Rights

1/17/01

In Re J.T., 742 N.E. 2d 509 (Ind. Ct. App. 2001)

In **In Re J.T.**, 742 N.E. 2d 509 (Ind. Ct. App. 2001), the Court affirmed the trial court's termination judgment despite the mother's two allegations of error. The child was removed from the mother and adjudicated a CHINS when the mother was living in a condemned house that had no running water or electricity. Substantial reunification services, including homemaker services, childcare and safety instruction, therapy, visitation and trial placement in the mother's home failed to produce sustained improvement. The mother had a borderline I.Q. of 79 and adult attention deficit disorder. The trial court found that there was a reasonable probability that the conditions that resulted in removal would not be remedied and that continuation of the parent-child relationship posed a threat to the child's well-being. The adjudicated father appeared at the involuntary termination hearing and consented to termination of his parental rights.

Sufficient evidence of only one of the two requirements of I.C. 31-35-2-4(b)(2)(B) is necessary to terminate the parent-child relationship.

The Court noted that I.C. 31-35-2-4(b)(2)(B) is written in the disjunctive; it requires the court to find only one of the two requirements of (B) by clear and convincing evidence. *Id.* at 512. The Court opined that, despite the mother's allegation that there was insufficient evidence that there was a reasonable probability that the conditions that resulted in the child's removal would not be remedied, the trial court's finding that continuation of the parent-child relationship posed a threat to the child's well-being satisfied the statutory requirements. *Id.*

Sufficient evidence to show reasonable probability that conditions were unlikely to be remedied was supported by evidence from numerous witnesses. Nevertheless, the Court reviewed the findings regarding reasonable probability. The Court noted testimony of the Child Protection Services caseworker, parenting skills service provider, family support worker, homemaker, O.F.C. case manager, court appointed special advocate, the mother's therapist, and a clinical psychologist who had evaluated the mother. In general, the assistance of the many service providers had resulted in little progress by the mother who could not understand the child's nutrition, health, and safety issues. The child experienced night terrors, refused to sleep in his own bed or sleep through the night, and regressed in toilet training after his visits with his mother. The psychologist opined, *inter alia*, that the mother was impatient, impulsive, had a low frustration tolerance, immature thought patterns, had difficulty perceiving her child's needs apart from her own, and her prognosis was poor because she did not believe she had any problems and therefore would not benefit from help.

Parental rights were not terminated due to mother's low I.Q. The Court was not persuaded by the mother's argument that her parental rights were wrongfully terminated due to her I.Q. of 79 and adult attention deficit disorder. The Court found that the mother's parental rights were terminated not because of her level of intelligence, but because of her persistent inability to provide her child's care and ensure his safety. *Id.* at 514. The trial court



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had also set out certain aspects of the mother's neurological dysfunction to illustrate that the mother's inability to get along with others prevented her from forming meaningful relationships and that her impatience and low frustration level negatively impacted her ability to parent effectively.

Trial courts should be wary of voluntarily terminating parental rights of non-custodial parent before adjudicating rights of custodial parent; matter should be taken under advisement. Although the mother's argument that the trial court had erroneously terminated father's rights voluntarily prior to the trial on the mother's involuntary termination was moot, the Court agreed that the mother's concern was legitimate. The Court stated that voluntarily terminating the non-custodial parent's rights before the parent's termination was determined "could materially affect the rights of the child to receive support in the event the custodial parent's rights are not terminated". *Id.* The Court found that the trial court correctly held the matter under advisement pending the resolution of the mother's case. *Id.*