

Children's Law Center of Indiana



Termination of the Parent-Child relationship

7/14/17

In ***In Re L.R.***, 79 N.E.3d 985 (Ind. Ct. App. 2017), the Court affirmed the trial court's judgment which terminated Mother's parental rights to her eight-year-old child. *Id.* at 992. The child was born in November 2008. On the night of January 1, 2014, Mother and the child were sitting in the living room of their apartment when they heard an explosion because Father, who was cooking methamphetamine in an adjacent bedroom, had blown up his lab. There was evidence that Mother had gone to a store that day to purchase meth ingredients and was accompanied by the child. DCS removed the child from Parents and placed her in foster care. The child was later placed with her maternal grandparents. In the summer of 2014, Father pled guilty to class B felony dealing in methamphetamine and was sentenced to serve fourteen years in prison, with an earliest possible release date in 2021.

DCS filed a CHINS petition for the child on January 3, 2014. The parties agreed to extend the statutory deadline for holding a CHINS factfinding hearing from sixty days to 120 days, as permitted by IC 31-34-11-1(a). The trial court set the hearing for April 15, 2014. On April 14, 2014, Father moved to continue the factfinding hearing, stating that the parties were "in negotiations regarding an admission." Father's motion indicated that Mother had no objection to the continuance. On May 5, DCS advised the court that the CHINS petition would be dismissed and refiled under another cause number because the parties were unable to come to a settlement agreement, and it was past the deadline date for scheduling the factfinding hearing. The parties, by counsel, consented to the procedure for dismissing and refiled the CHINS case. The Court explained in its order that all parties acknowledged the necessity for this procedure. DCS moved to dismiss its first CHINS petition on May 15, and on May 30, a new but virtually identical CHINS petition was filed under a new cause number. The trial court did not formally grant the motion to dismiss the first CHINS petition until September 2015. Parents admitted the allegations in the second CHINS petition. The trial court issued a dispositional order that required Parents to, among other things, enroll in and participate in any recommended program, obtain required assessments, keep all appointments, maintain suitable housing and a stable source of income, abstain from using alcohol or any illegal drugs, complete a parenting assessment and all services recommended therefrom, submit to random drug screens, and attend all scheduled visits with the child. Mother made little meaningful progress toward reunification.

During 2014 and the first part of 2015, Mother: (1) did not maintain contact with the case manager, who had to track Mother down; (2) was twice referred to counseling that she failed to complete; (3) missed appointments with her home-based counselor; (4) missed several scheduled visits with the child; (5) spent time with friends when she could have been with the child;

(6) drank alcohol; (7) lived in twenty different places, including several motels; (8) had at least four different boyfriends; and (9) obtained and lost four different jobs. On April 28, 2015 and again a week later, Mother tested positive for synthetic cannabinoids after smoking spice. On May 6, 2015, DCS filed a progress report in which it changed the child's permanency plan from reunification to termination of Parents' rights and adoption by relatives. The trial court approved the plan. On June 8, 2015, DCS filed the termination petition, in which it alleged, along with the other statutorily required elements, that the child had been removed from Parents and under DCS supervision for fifteen of the most recent twenty-two months. Between June 2015 and November 20, 2015, Mother began working full time at a factory, complied with all services, passed all of her drug screens, and began dating and then moved in with a supportive boyfriend. At the termination hearing, the guardian ad litem, the child's counselor, and the maternal grandmother all recommended termination of parental rights. The trial court took the termination petition under advisement, and continued to hold CHINS hearings. In the DCS progress report which was filed for the permanency hearing on October 20, 2016, DCS explained that Mother rarely contacted the case manager, occasionally presented herself for drug screens, and cancelled and rescheduled several supervised visits with the child. The visitation supervisor was recommending that the visits cease due to lack of progress by Mother and because the child had become more irritated with Mother. DCS continued to believe that termination of parental rights and adoption were appropriate. On November 21, 2016, the trial court issued its order terminating Mother's and Father's parental rights. Mother appealed.

The Court held the trial court did not err in concluding that the child had been removed from Mother and under DCS supervision for at least fifteen months when DCS filed the termination petition. *Id.* at 990. In the termination petition, DCS alleged only one of the three requirements of IC 31-35-2-4(b)(2)(A)(iii); namely, that "the child had been removed from the parent and under the supervision of a local [DCS] office or probation department for at least fifteen of the most recent twenty-two 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." Mother acknowledged that DCS removed the child and filed a CHINS petition in January 2014, seventeen months before the termination petition was filed in June 2015, but contended that the child's removal should be treated as having begun on May 30, 2014, the day when DCS filed its second CHINS petition. Under Mother's analysis, the termination petition was filed less than thirteen months after the child's removal, and the trial court should have dismissed it. The Court found the following problems with Mother's position: (1) IC 31-35-2-4(b)(2)(A)(iii) does not contain any language that the only CHINS action which can be considered in calculating the period of removal is the one that is pending when the termination petition is filed; and (2) DCS moved to dismiss the first CHINS petition and then refiled it as a means of addressing the 120 day deadline for holding the factfinding hearing, to which Mother did not object and for which she expressly acknowledged the need. *Id.* The Court opined that, while there may be situations in which removal related to a CHINS action that is later dismissed should not be counted when calculating the period of removal, this case was not one of them. *Id.*

The Court held Mother failed to establish that the delay in the trial court's issuance of its termination decision or other procedural irregularities deprived her of due process. *Id.* at

991. Mother contended that, even if the filing of the termination petition was timely, procedural irregularities deprived her “of her right to due process” under the Fourteenth Amendment to the U.S. Constitution. The Court held that, because Mother failed to make her due process claim in the trial court, it was waived. Id. at 990. Waiver notwithstanding, the Court was not convinced that Mother was deprived of due process. Id. The Court noted: (1) the trial court delayed in dismissing the first CHINS case, so that it was still pending when the second CHINS case was opened; (2) DCS and the trial court erroneously continued making filings in the first CHINS matter after the second CHINS matter was opened; and (3) Mother was correct that these were mistakes and were easily preventable mistakes. Id. The Court failed to see how these mistakes negatively impacted Mother. Id.

Mother also claimed that her due process was violated because the trial court did not issue the termination decision until a year after the termination hearing. The Court found Mother provided no reason to think she would have fared any better if the trial court had issued its termination judgment earlier. Id. at 991. The Court noted that the October 17, 2016, progress report from the CHINS case, which was the only evidence Mother offered, fully supported the trial court’s termination decision. Id.

The Court could not say that the trial court abused its discretion in terminating Mother’s parental rights, despite her recent period of relative stability. Id. at 992. Mother contended that termination of her parental rights was improper because, at the time of the termination hearing, she was in a relationship with a supportive boyfriend, had a steady place to live with her boyfriend, was employed full time, had clean drug screens, and was compliant with all services. The Court found a “very critical flaw” in Mother’s argument because her stability had not begun until the plan was changed to termination and had existed for only a few months at the time of the termination hearing. Id. at 991. The Court observed it was undisputed that Mother’s relative stability between June and November of 2015 was preceded by seventeen months of significant *instability* from January 2014 through May of 2015 (emphasis in opinion). Id. In In re K.E., 39 N.E.2d 641, 647 (Ind. 2016), the Indiana Supreme Court explained, “[c]hanged conditions are balanced against habitual patterns of conduct to determine whether there is a substantial probability of future neglect.” L.R. at 992. The L.R. Court opined that, while there was no question that things appeared to be more stable by the time of the termination hearing, trial courts have discretion to “weigh a parent’s prior history more heavily than efforts made only shortly before termination”, quoting In re E.M., 4 N.E.3d 636, 643 (Ind. 2014). L.R. at 992. The Court found the testimony of the guardian ad litem, the child’s counselor, and the maternal grandmother, all of whom recommended termination, weighed heavily in favor of the trial court’s best interests determination and its ultimate judgment. Id.