

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

3/10/15

In ***In Re M.N.***, 27 N.E.3d 1116 (Ind. Ct. App. 2015), the Court reversed the trial court's order dismissing Heartland Adoption Agency's petition to terminate Father's parental rights. *Id.* at 1122. The child was born on October 1, 2009, and paternity was established. Father has paid child support intermittently since the child's birth; as of the July 24, 2014 hearing on the termination petition, he paid a total of \$165 in 2014. Father's child support order is \$155 per week. Father has had minimal, sporadic contact with the child. The child is autistic, non-verbal, exhibits anxiety, and struggles with social interactions and sensory issues. The child receives Supplemental Security Income (SSI) due to her disability. Father's intermittent child support payments reduce the SSI payment in an amount greater than the amount of child support. Father's infrequent child support payments also result in burdensome paperwork that Mother must submit to government agencies in a short period of time so that the child can continue to receive SSI payments.

On April 16, 2014, Heartland Adoption Agency, a licensed child placing agency, filed a petition to terminate Father's parent-child relationship with the child. Mother's attorneys own Heartland Adoption Agency, and they filed the termination petition at Mother's request. On May 22, 2014, Father filed a voluntary relinquishment of his parent-child relationship to the child. Father alleged that it was in the child's best interests to terminate their parent-child relationship. The trial court appointed a guardian ad litem for the child. The guardian ad litem concluded that terminating Father's parental rights was in the child's best interests because Father "is not committed to being involved and getting to know his daughter's special needs."

The trial court held a hearing on the petition on July 24, 2014. The guardian ad litem, Mother, and Father testified that terminating Father's rights was in the child's best interest, that Father was not involved in the child's life, does not exercise parenting time, and does not consistently pay child support. The trial court questioned counsel on whether the termination petition was permitted under IC 31-35-1-4, and expressed concern that public policy might prevent the court from granting the petition. On October 2, 2014, the trial court issued findings of fact and conclusions thereon dismissing the petition to terminate Father's parental rights. The trial court concluded that to file a petition to terminate a parent's rights, (1) the licensed child placing agency must be acting within the scope of its statutorily defined duties, and (2) nothing in the statutes would allow a licensed child placing agency to file a petition to terminate the rights of one parent while maintaining the rights of the other parent when there is no issue of child

placement, supervision, or adoption. The trial court also noted that the attorneys who own Heartland Adoption Agency are also Mother's attorneys, and that there was a serious potential conflict of interest. Mother and Heartland Adoption Agency appealed the trial court's dismissal of the petition to terminate Father's parental rights.

The Court concluded that Heartland Adoption Agency's petition to terminate Father's parental rights met the statutory requirements of IC 31-35-1-4 and the trial court erred when it concluded that Heartland Adoption Agency acted outside the scope of its statutory authorization as a licensed child placing agency when it filed the petition to terminate Father's parental rights. *Id.* at 1121. The Court, citing *In Re B.D.J.*, 728 N.E. 2d 195, 199-2000 (Ind. Ct. App. 2000), noted that a parent's constitutional right to raise his or her child may be terminated when the individual is unable or unwilling to fulfill his or her parental responsibilities. *M.N.* at 119. The Court looked to IC 31-35-1-4, which governs a petition to voluntarily terminate a parent-child relationship, and states that, "if requested by the parents: (1) the local office [of the Department of Child Services]; or (2) a licensed child placing agency; may sign and file a verified petition with the juvenile or probate court for the voluntary termination of the parent-child relationship." *Id.* The Court also noted that Heartland Adoption Agency is a "child placing agency", defined at IC 31-9-2-17.5 as "for purposes of IC 31-27 means a person that provides child welfare services to children and families, including (1) home studies, investigations and recommendations of families for the purpose of placing, arranging, or causing the placement of children for adoption, foster care, or residential care; and (2) supervision of those placements." *Id.* at 119-20. The Court also noted that IC 31-9-2-19.5 states that "child welfare services" are services "provided under a child welfare program." *Id.* at 1121.

Appellants argued that the trial court ignored the plain language of IC 31-35-1-4 in reaching its conclusion that Heartland Adoption Agency was not authorized to file a petition to terminate parental rights when there was no issue of child placement, supervision, or adoption. The Court said that: (1) the interpretation of a statute is a pure question of law and is reviewed under a de novo standard; and (2) when a statute is clear and unambiguous, the Court need not apply any rules of construction other than to require that words and phrase be taken in their plain, ordinarily, and usual sense. *Id.* at 1120 (multiple citations omitted). The Court noted that IC 31-35-1-4 does not restrict a licensed child placing agency's reasons for filing a petition to voluntarily terminate parental rights. *Id.* The Court observed that: (1) Mother retained Heartland Adoption Agency, a licensed child placing agency, to file a petition to voluntarily terminate Father's rights to child; (2) Father agreed to voluntarily relinquish his parent-child relationship with the child; (3) importantly, and as required by IC 31-35-1-6, Father appeared in open court and consented to the voluntary termination of his parental rights. *Id.*

The Court said that this case presented a very unique set of circumstances in that Father was not in child's life but occasionally paid child support payments which negatively affected the amount of the child's SSI payment. *Id.* The Court noted that Mother, as the child's only caregiver, would rather forego any child support from Father in order to facilitate and protect the child's SSI payment. *Id.* The Court opined that Heartland Adoption Agency was providing "child welfare services" to the child and Mother by assisting them with maintaining the child's SSI payments.

Id. The Court noted that IC 31-26-3.5-2 states that one of the several purposes of a child welfare program is “[p]roviding services targeted to the assistance of children who are developmentally or physically disabled and their families, for the purposes of prevention of potential abuse, neglect, or abandonment of those children, and enabling the children to receive adequate family support and preparation to become self-supporting to the extent feasible[.]”. Id. at 1121 n.4. The Court inferred that, without the child’s SSI payments, Mother would struggle to provide for the child’s special needs. Id. at 1121.

The Court concluded that the trial court erred when it dismissed Heartland Adoption Agency’s petition to terminate Father’s parental rights because of a significant risk of conflict of interest. Id. at 1121. Appellants also challenged the trial court’s conclusion that there was a significant risk that the duty Mother’s attorneys owed to her might conflict with their financial interests in Heartland Adoption Agency and with their duty to act in the best interests of the child as the owners of Heartland Adoption Agency. The Court looked to Rule 1.7 of the Indiana Rules of Professional Conduct, which provides that: (1) “a lawyer shall not represent a client if the representation involves a concurrent conflict of interest” and (2) a concurrent conflict of interest exists where “there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client[.]” Id. at 1121. The Court said that Mother hired her attorneys and the adoption agency they owned to facilitate termination of Father’s parental rights because Father’s sporadic child support payments negatively affected the child’s SSI payments. Id. The Court specifically noted that Mother, Heartland Adoption Agency, the guardian ad litem, and Father all agreed that termination of Father’s parental rights is in the child’s best interests. Id. The Court observed that the trial court’s generalized concern that a conflict of interest could arise between Mother and Heartland Adoption Agency was well-taken. Id. The Court noted that Mother’s resources are clearly limited, and under the specific facts of this case, all parties were pursuing the same goal. Id. The Court said that Heartland Adoption Agency’s petition to terminate Father’s parental rights was the simplest and most expedient approach. Id. The Court remanded the case to the trial court with instructions to adjudicate the petition on its merits. Id. at 1122.