

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

4/26/16

In **In Re N.G.**, 51 N.E.3d 1167 (Ind. 2016), the Indiana Supreme Court affirmed the trial court's order terminating Mother's parental rights to three of her children. Id. at 1174. In September 2011 all three children were adjudicated Children In Need of Services (CHINS) because Mother: (1) was struggling with multiple mental health problems; (2) was not taking her prescribed medication; (3) had physically abused the oldest child; and (4) had not been compliant with a previous DCS case. On December 2, 2014 the trial court granted the involuntary termination of Mother's parental rights with respect to the three children. At the time of the judgment, the oldest child was eleven years old, and the two youngest children, who were twins, were eight years old. The Court of Appeals affirmed the termination of parental rights with respect to the oldest child, but reversed the termination of parental rights with respect to the two youngest children in **In Re N.G.**, 45 N.E.3d 379 (Ind. Ct. App. 2015). The Indiana Supreme Court granted transfer and affirmed the trial court's order.

The Court found that there was sufficient evidence to support the trial court's findings, including the finding that Mother was receiving little to no benefit from therapy. Id. at 1171. The Court concluded that the testimony of three different therapists and a psychologist was sufficient evidence to show that therapy was not benefitting Mother. Id. The evidence included testimony from all four of these professionals: (1) Mother's first therapist testified that Mother did not benefit from the therapist's services due to lack of participation; (2) Mother's second therapist testified that Mother would have to invest in her therapy sessions and apply them in order to benefit from them; (3) Mother's third therapist testified that she saw no change or progress in Mother's closed thinking patterns and distortion in her perception of events; and (4) Mother's psychologist testified that there should be some signs of improvement after three to six months of participation in cognitive behavioral therapy. Id.

The Court opined the trial court's conclusion that there was a reasonable probability that the conditions that resulted in the children's removal would not be remedied was supported by sufficient findings. Id. at 1172-73. The trial court predicated its termination of Mother's rights on IC 31-35-2-4(b)(2)(B)(i) which states that "[t]here is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied." Id. at 1172. The Court said that evidence of Mother's history of verbal and physical abuse towards the children, her failure to protect the oldest child from physical abuse, her history of not taking her prescription medicine, her history of not following the advice given by the oldest child's psychiatrist, her lack of progress in counseling, her lack of ability to control the children during visitation, the children's negative behavior and emotional distress after contact with Mother, the improvement in the children's behaviors after

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contact with Mother ceased, Mother's Child Abuse Potential Inventory invalid test results, and Mother's lack of understanding of her own mental health issues was sufficient evidence to support this conclusion. Id. at 1172-73.

The Court affirmed the trial court's conclusion that termination of Mother's rights was in the children's best interests. Id. at 1173. The Court concluded that the trial court's findings on the reasonable probability element, combined with its findings that the court appointed special advocate, the Guardian Ad Litem, and the oldest child's psychiatrist all agreed that termination of Mother's parental rights was in the children's best interests, constituted sufficient evidence to prove that termination was in the children's best interest. Id.

The Court found Mother's claim that her due process rights were violated by DCS's failure to produce a videotape of her children's counseling sessions was waived. Id. at 1173. In the trial court Mother did not object, did not join Father's oral motion, and Mother's attorney stated that the issue was resolved. The Court, referencing McBride v. Monroe Cty. Office of Family and Children, 798 N.E.2d 185, 194 (Ind. Ct. App. 2003), stated that if a party raises an issue for the first time on an appeal, then the party may waive the constitutional claim. In Re N.G. at 1173.