

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

9/11/12

In ***In Re Q.M.***, 974 N.E.2d 1021 (Ind. Ct. App. 2012), the Court reversed the trial court's judgment terminating Father's rights to his two children and remanded the case for further proceedings consistent with this opinion. Father is the biological father of two children, born in July 2007 and August 2009. The Dearborn County office of the Indiana Department of Child Services (DCDCS) became involved in March 2010 when Mother took the older child to Dearborn County Hospital for uncontrollable vomiting. Hospital personnel noticed that the older child had sustained multiple injuries, including a bruise to the tip of his penis, bilateral bruising on both hips, small bruises on his face, and a laceration to his chin. The child was transported to Cincinnati Children's Hospital where it was further discovered that the child had suffered damage to his small intestine requiring surgery to remove a portion of the intestine. The doctor who directed the hospital's Child Abuse Team informed the DCDCS case manager that the child's injuries were indications of abuse and the injury to the small intestine was the result of "blunt force trauma" that could have been caused by "a punch or a kick." DCDCS filed petitions seeking emergency custody of both children. The emergency custody petitions were granted, and CHINS petitions were filed thereafter. Although the perpetrator of the older child's injuries was never specifically identified, Father later signed a Stipulation of CHINS agreement wherein he acknowledged that the older child's injuries "would not have occurred but for the act or omission of a parent, custodian, or guardian." The children were adjudicated CHINS, and the trial court entered an order directing Father to participate in various services including a psychological evaluation, parenting classes, individual counseling, and therapeutic visits with the children. Initially, Father participated in several of these court-ordered services. He failed, however, to progress in his ability to incorporate the things he was learning into his daily life and interactions with the children. Father failed to complete counseling, and his therapist observed that Father's "thoughts" and "perceptions" were "distorted" to such a degree that it rendered him incapable of being "effective in any level of interaction with his children." Father also began expressing obsessive and aggressive behaviors with regard to Mother following the couple's break-up in October 2010, resulting in a restraining order against him with regard to Mother. The trial court also ordered Father to limit his contact with certain DCDCS case managers and service providers due to his unstable behavior and aggressive telephone calls and texts. Because

Father's behavior was viewed as a threat to the children, Father's visitation privileges were also eventually limited.

DCDCS filed petitions for the termination of Father's parental rights to both children on May 29, 2011. Although the children had been removed from the family home for approximately thirteen months, no dispositional order formally removing the children from Father's care and custody had been issued by the trial court at the time the termination petitions were filed. Upon discovering this oversight, DCDCS sought, and the trial court entered, dispositional orders formally removing the children from Father's care and custody in July 2011. A two-day evidentiary hearing on the termination petitions commenced in August 2011 and concluded in October 2011. DCDCS presented considerable evidence on Father's failure to complete a majority of the court-ordered reunification services and the children's needs, including the older child's diagnoses of post traumatic stress disorder, intermittent explosive disorder, and oppositional defiant disorder. Evidence was also presented that both children were thriving together in the home of a pre-adoptive foster family. On November 7, 2011, the trial court issued its judgment terminating Father's rights and he appealed. Mother signed voluntary consents for the children's adoption and was not a participant in the appeal.

The Court opined that the trial court committed reversible error in granting the termination petition since DCDCS failed to satisfy the mandates of IC 31-35-2-4(b)(2)(A). Id. at 1025. The Court observed that each element contained in IC 31-35-2-4(b) must be proven by clear and convincing evidence before parental rights may be involuntarily terminated. Id. at 1024. The Court noted that subsection (b)(2)(A) of Indiana's termination statute provides that an involuntary termination petition "must allege" that one of the following is true:

- (i) The child has been removed from the parent for at least six (6) months under a dispositional decree.
- (ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required....
- (iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the last twenty-two (22) 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[.]

Id. The Court said that because parents have a constitutionally protected right to establish a home and raise their children, the Indiana Department of Child Services "must strictly comply

with the statute terminating parental rights” (multiple citations omitted). Id. DCDCS acknowledged on appeal that it “did not file its dispositional decree until *after* it filed its termination petitions...”, and that the children had been removed from the family home and placed under the supervision of DCDCS for only thirteen rather than the requisite fifteen, of the most recent twenty-two months when the termination petitions were filed (emphasis in opinion). Id. The Court noted that DCDCS admitted that it did not satisfy the jurisdictional requirements of IC 31-35-2-4(b)(2)(A). Id. Citing In Re D.D., 962 N.E.2d 70, 74 (Ind. Ct. App. 2011) and Platz v. Elkhart Cnty. Dep’t. of Public Welfare, 631 N.E.2d 16, 18 (Ind. Ct. App. 1994), the Court said that the “statutory mandate when seeking the involuntary termination of a parent-child relationship is ‘clear and unequivocal.’” Q.M. at 1024. The Court found that it was clear that DCDCS failed to satisfy the statutory mandate. Id. at 1025.