

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

10/22/14

In **In Re R.A.**, 19 N.E.3d 313 (Ind. Ct. App. 2014), *trans. denied*, the Court reversed the trial court's order terminating incarcerated biological Father's parental rights to his son, who was two years old at the time of the termination order. *Id.* at 321-22. Mother gave birth to the child out of wedlock in October 2011. Because Mother lacked appropriate housing, DCS removed the child from Mother's care in January 2012, and a CHINS petition was filed. The trial court adjudicated the child to be a CHINS a short time later. Mother identified Father as the child's biological father, which was confirmed by DNA testing in October 2012. Father was incarcerated at the Johnson County Jail awaiting trial on sexual misconduct with a minor, theft, and possession of paraphernalia. He received a letter informing him that he was the child's father in December 2012. One month later, Father admitted that the child was a CHINS based on the child's previous CHINS adjudication and his inability to parent the child due to his incarceration. Father agreed to participate in a number of services upon his release.

Six months later, DCS petitioned to terminate Mother's and Father's parental rights. The trial court held hearings on the petition in September and November 2013. The majority of the evidence presented at the termination hearings pertained to Mother. Evidence presented on Father from the two DCS case managers who met with him showed that: (1) a case manager met with Father at the jail and he provided her with a list of relatives who might be willing to care for the child; (2) a case manager offered Father the Engaging Fathers Program, which provides parenting education in the jail, but Father declined to participate in this Program; (3) Father did not know he was the child's parent prior to the CHINS case, and had no involvement with the child; (4) Father told a second case manager that, when he was released from incarceration, he would find a place and get the things the child needed, like bottles and baby clothes; (5) Father did not express a knowledge of the child's developmental needs; (6) neither case manager had any knowledge of Father's parenting abilities. The child's court appointed special advocate, who had never spoken with Father, recommended terminating both parents' rights because she did not believe that Mother could be a good mother and Father wasn't going to be available for a while. Father testified that he would be willing to consent to his sister's adoption of the child, but otherwise opposed termination of his parental rights. At the time of the termination hearings, Father's sister and her husband had filed an adoption petition and begun visiting with the child. The trial court granted the termination petition and issued its order terminating both parents' rights in December 2013. The order included findings and conclusions. Father appealed.

The Court found that three of the trial court’s findings concerning Father were erroneous, and concluded that the remaining findings did not support termination of Father’s parental rights. Id. at 320. The Court examined Findings 37 and 38, which said that many of Father’s dispositional goals contemplated Father not being incarcerated, but the Fatherhood Engagement Program was a service specifically named in the dispositional order, was available to Father at the jail, and Father refused to participate in the Fatherhood Engagement Program when specifically asked to do so by the case managers. Id. at 319. The Court pointed out that Father was not ordered to participate in the Fatherhood Engagement Program until after his release from incarceration. Id. The Court also reviewed Finding 39, which stated that Father told the case manager he would buy the child baby bottles and clothes, and this reply demonstrated “a lack of knowledge as to the age-appropriate needs of the child.” Id. The Court observed that: (1) the case manager stated the child needed bottles and baby clothes when Father made this statement; (2) the trial court may have intended Finding 39 to reflect the case manager’s statement that Father “did not express a knowledge” of the child’s developmental needs, but there was no elaboration on this point; and (3) in light of Father’s plan to purchase things his child did in fact need, the Court could not say that Finding 39 was supported by the evidence. Id. at 320. The Court found that Finding 43, which stated that the court appointed special advocate recommended termination “based on the parent’s lack of participation in services and the length of time the child has been in foster care” was not supported by the evidence. Id. The Court observed that the court appointed special advocate based her recommendation for terminating Father’s parental rights solely on his incarceration and unavailability to parent for an undetermined length of time, not on his failure to participate in services. Id.

The Court summarized the case as follows: (1) Father learned that he was the child’s father while incarcerated awaiting trial; (2) Father was ordered to participate in a number of services after his release from incarceration; (3) just six months later, while Father was still incarcerated pending trial, DCS filed a petition to terminate his parental rights, and the court began hearing evidence on the termination petition one month later; (4) at the time of the termination hearings, Father’s sister was available to care for the child, and had already begun visiting him; (5) because Father remained incarcerated, his ability to parent the child was uncertain. Id. at 321. The Court said that the uncertainty of Father’s ability to parent, together with the unique facts of the case, particularly the six-month time frame from DNA testing to termination filing, the involvement of Father’s family, and the post-incarceration services requirement, led the Court to the conclusion that reversal of the termination judgment was warranted. Id. The Court observed that termination is intended as a last resort, available only when all other reasonable efforts have failed, and, although the child was currently living in a loving pre-adoptive foster home, a parent’s constitutional right to raise his or her own child may not be terminated solely because there is a better home available for that child. (multiple citations omitted). Id.