

Children's Law Center of Indiana



Termination of Parental Rights (TPR)

05/27/2008

In ***In Re R.H.***, 892 N.E.2d 144 (Ind. Ct. App. 2008), the Court reversed and remanded the trial court's termination of Father's parental rights with respect to his son. Father established paternity through the execution of a paternity affidavit when his son was born on October 19, 2002. Father and Mother lived together in Indiana from the child's birth until January 2003, when Father moved to Alaska to find work and be close to his father and stepmother, and they lived together in Alaska between May 2003 and November 2003 when Mother and the child moved back to Indiana, while Father stayed in Alaska. Father's mother and stepfather, who live in Indiana and with whom Father has a "strained relationship," became very active in the child's life after the child's return to Indiana, although Father had prevented them from seeing the child during the first three months after the child's birth. On August 3, 2004, DCS filed a petition alleging the child to be a CHINS. At that time, Mother was unemployed; Mother and child were living in a homeless shelter the staff of which had seen what appeared to be needle marks on Mother's arms; and Mother had attempted to tamper with a drug screen required of all people staying in the shelter. The child was removed from Mother's care and, in August 2004, was placed with Father's mother and stepfather, where the child has continued to live. Mother failed to visit the child, tested positive for cocaine, and failed to complete drug treatment programs several different times. DCS had no contact with Mother for two years. DCS, in an attempt to accomplish their reunification goal, hoped to encourage Father to relocate to Indiana to participate in reunification services and engage in a bonding process with the child. Although Father remained in Alaska during the CHINS proceedings, he completed all court-ordered services, attended all court hearings in person or telephonically, and spoke to the child's GAL by telephone between twenty and thirty times over the course of two years. Father (1) underwent a psychological evaluation which revealed that he was psychologically healthy and did not reveal any major problems that would impede reunification with the child; (2) attended two multi-week parenting classes; and (3) participated in a court-ordered bonding assessment. A home study on Father's residence found it to be suitable for the child. On May 23, 2006, DCS filed a petition to terminate the parental rights of Mother and Father. The petition alleged that Father lived in Alaska and had not attempted to reunify with the child, that he had not had contact with the child for more than two years, and that he had failed to complete court-ordered services. Thereafter, Father visited the child twice. Following a three-day hearing, the trial court terminated the parental rights of Father as well as Mother.

The Court held that, although evidence of Father's lackluster efforts to communicate and visit with his son, Father's refusal to relocate to Indiana, and his son's strong bond with his grandparents with whom he has lived since August 2004, would be relevant to a determination of custody and/or guardianship, it was insufficient on its own to support the radical act of severing the parent-child relationship. *Id.* at 151. The Court opined that the

termination order essentially rested on three conclusions: (1) Father had not made a sufficient effort to communicate and bond with his son; (2) Father had refused to move to Indiana; and (3) it would be traumatic to the child to have to leave his grandparents, to whom he is strongly bonded, to live with Father, with whom he is not bonded. The Court noted: (1) Father's efforts at communicating with his son showed him to be far from a model parent, but he had not abandoned his son, had done more than the bare minimum, and his efforts had increased markedly after the termination petition was filed; (2) Father's refusal to relocate to Indiana, relied on by DCS and the trial court, would be relevant to a custody and/or guardianship determination, but "we simply cannot conclude that a parent's mere refusal to uproot himself from his home, his life, his family, and his job and move across the country supports the drastic, permanent, and extreme sanction of forever severing the parental relationship;" and (3) although there is sufficient evidence to support the conclusion that it would cause great trauma to the son to leave his grandparents and move to Alaska to live with a father he barely knows, there is no reason to assume that denying DCS' request to terminate Father's parental rights necessarily means that the son would have to be uprooted from his grandparents and Indiana. *Id.* at 150. The Court also observed that, (1) Father completed all court-ordered services; (2) there were successful outcomes to those services in that his psychological evaluation revealed no problems, he completed two multi-week parenting classes, his residence was found to be a suitable place for his son to live, and he was found to have a suitable support system in Alaska consisting of his father and stepmother; (3) Father attended all hearings either in person or telephonically; and (4) Father stayed in touch with his son's case managers and GAL. *Id.* Accordingly, the Court found that the trial court's findings and conclusions did not support a decision to terminate Father's parental rights, and remanded the case, leaving the trial court with the option of holding a hearing to determine issues of custody and guardianship. *Id.* at 151.

Riley, J., dissented, stating that the State had met the criteria necessary to terminate the parent-child relationship by clear and convincing evidence, and the trial court's judgment was not clearly erroneous and was based on the evidence. *Id.*