

# Children's Law Center of Indiana



## Termination of the Parent-Child Relationship

8/16/16

In ***In Re R.S.***, 56 N.E.3d 625 (Ind. 2016), the Indiana Supreme Court reversed the trial court's order terminating Father's parental rights to his ten-year-old child. *Id.* at 631. In 2009, four years before the CHINS case was initiated, Father pled guilty to a Class B felony, and a no-contact order was entered between Father and Mother. During Father's incarceration, the child was cared for by Mother, but Father wrote weekly letters to the child and sent gifts to him. Father was released on probation in March 2013. In April 2014, DCS filed a CHINS petition because of Mother's drug use and Father's lack of involvement. Father requested that the child be placed with him, but DCS objected because the agency believed there was a no contact order between Father and the child. Father informed the court that there was not a no contact order between himself and the child, and had documentation to support his claim. The Court placed the child with his maternal Grandmother (Grandmother). The trial court initially ordered no parenting time for Father. On June 10, 2015, the guardian ad litem (GAL) brought to the court's attention that there was not a no contact order between Father and the child. The court then ordered that Father have supervised parenting time.

The child was found to be a CHINS. Father was ordered to participate in services, including parenting classes, a parenting assessment, and a Fatherhood Engagement Program. Father did not attend the dispositional hearing, and claimed to be unaware of any order to participate in services. Father also failed to appear for several of the subsequent court proceedings involving the child. While incarcerated, Father had completed various parenting and self-improvement programs, including Alcohol Substance Self Help Group, Inside Out Dads, Family Matters, Character First, Uncommon, Quiet Strength, Growth Responsibility Integrity Purpose (GRIP), and anger management. Father also successfully completed the Commercial Driver's License Course and, as of March 30, 2015, successfully completed probation, which included a substance abuse evaluation and treatment, fifty-two weeks of domestic violence counseling, and a mental health evaluation.

DCS filed a petition to terminate Father's parental rights on March 19, 2015. Father requested that he be referred to services, but his request was denied. Mother consented to the child's adoption. At the termination hearing, it became apparent that, during the CHINS proceedings, Father had been visiting with the child two to three times per week, taking him swimming and paying for swimming activities, exercising overnight visits with the child on weekends, and going to Grandmother's house upon her request to help resolve issues Grandmother was having with the child's behavior. The DCS case manager, the home-based therapist, and the GAL all agreed that adoption by Grandmother was in the child's best interests. There was a general consensus that the child and Father shared a close bond, and the GAL believed that continued

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visitation between the child and Father was in the child's best interests. The trial court made findings about Father's visitation with the child, the bond between Father and the child, and the programs in which Father had participated, but concluded that continuation of the parent-child relationship posed a threat to the child's well-being by depriving him of permanency. The trial court also found that termination of Father's rights was in the child's best interests. Father appealed the termination order, but the Court of Appeals affirmed the trial court's termination order in a memorandum opinion. The Indiana Supreme Court granted transfer, vacated the Court of Appeals opinion, and reversed the termination judgment.

**The Court held that the trial court's findings did not clearly and convincingly support its conclusion that termination of Father's parental rights was in the child's best interests.** Id. at 629. Quoting Neal v. DeKalb Cnty. Div. of Family and Children, 796 N.E.2d 280, 285 (Ind. 2003), which states "the parent-child relationship is 'one of the most valued relationships in our culture'", the Court said that the Indiana statute governing termination of parental rights sets a high bar for severing this constitutionally protected relationship. R.S. at 628. The Court found it "overwhelmingly apparent" through the trial court's own findings and testimony provided at the termination hearing that Father and the child love one another and have a close bond. Id. at 629-30. The Court also noted that Father exercised parenting time with the child two to three times per week, including overnights, and the trial court concluded that continued visitation with Father was in the child's best interests. Id. at 630. The Court said that Father's failure to attend every scheduled supervised visitation or attend CHINS hearings was not clear and convincing evidence that he was uninterested or unwilling to parent the child. Id. While the Court strongly encouraged parents to comply with the procedures and practices set out by the trial court and DCS when a child has been found to be a CHINS, the Court could not ignore the fostered relationship, parenting, and individual improvement efforts made by Father. Id. The Court found that termination of Father's rights was not in the child's best interests. Id. The Court noted that, since Father's release from incarceration, he had repeatedly demonstrated a desire to parent the child and had made progress by his successful completion of probation and maintaining clear drug screens. Id.

The Court observed that establishing permanency for the child was repeatedly expressed as a reason for terminating Father's rights. Id. The Court noted that the child currently had a stable home environment with Grandmother. Id. Citing Rowlett v. Vanderburgh Cnty. Office of Family and Children, 841 N.E.2d 615, 619, 623 (Ind. Ct. App. 2006), the Court opined that, when a child is in a relative placement, and the permanency plan is adoption into the home where the child has lived for years, prolonging the adoption is unlikely to have an effect upon the child. R.S. at 630. The Court said that, if in the future it becomes apparent that reunification of the child with Father is not a viable option, a subsequent petition for termination of parental rights or the appointment of a legal guardian could be pursued. Id. at 631. The Court observed that, given the child's bond with both Father and Grandmother, appointing a legal guardian defined IC 31-34-21-7.5(c)(1)(E) may be a suitable alternative. Id. Quoting In Re V.A., 51 N.E.3d 1140, 1151-52 (Ind. 2016), the Court said that, "[t]ermination is intended as a last resort, available only when all other reasonable efforts have failed." R.S. at 631. The Court did not believe that the R.S. case had reached the "last resort" stage. Id.