

Children's Law Center of Indiana



Termination of Parental Rights (TPR)

08/26/2008

In **In Re R.W., Sr. v. Marion Cty Dept. Of Child Serv.**, 892 N.E.2d 239 (Ind. Ct. App. 2008), the Court affirmed the trial court's termination of Mother and Father's parental rights to their respective children. Father is the biological father of youngest child of Mother who has two additional children, the oldest of whom was dismissed from the underlying cause so that her permanency plan could be changed from termination and adoption. Father and Mother are married. On or about April 24, 2004, they were living together with their three children and two other unidentified males when the police observed the youngest child, then three years old, wandering around the alley behind the family home, naked and unsupervised. DCS' investigation (1) indicated that the parents were unaware that the child was outside the house, Mother was asleep, Father had left the house and the two older children, ten and eleven years old, were staying with friends; and (2) disclosed numerous safety hazards in the residence. The youngest child was taken into custody that day, as were the other two children on the next day. The children were never returned to the parents whose parenting time never progressed beyond being supervised. Mother and Father signed an Agreed Entry admitting the children were CHINS and agreeing to participate in various services to achieve reunification with the children. Although the parents initially complied, compliance began to wane after commencement of the home-based counseling, the third attempt at which took place from January 2006 to February 2007, when, after about 151 hours of working with the parents towards reunification, the counselor closed the services as unsuccessful. During the home-based counseling, (1) conditions in the home did not improve; (2) despite the counselor's efforts to assist Mother with her severe hearing impairment in order to facilitate communication within the family, Mother refused to learn sign language and failed to maintain health coverage and keep appointments necessary to obtain the appropriate hearing aids; (3) Mother and Father continued to struggle with their ability to communicate and problem solve, in part, due to Mother's inability to hear; (4) the counselor observed Mother's oldest daughter "direct inappropriate 'flirtatious behavior' towards Father who failed to stop it or set appropriate boundaries" which resulted in the counselor recommending, and Father completing a psychosexual evaluation in November 2006, but Father failed to participate in the resulting recommended treatment program. After a failed attempt to terminate the parents' parental rights in November 2006, in February 2007, DCS filed another petition to involuntarily terminate Mother's and Father's parental rights. After a three-day fact-finding hearing in August and October 2007, on January 9, 2008, the trial court issued its judgment terminating both Mother's and Father's parental rights. Mother and Father each appealed.

The Court held that, although it may be preferable to have the signatures of both the Judge and the Magistrate on the final order terminating parental rights, it is not statutorily required. *Id.* at 244. The Court found that the clear and unambiguous language of IC 33-23-5-9

simply requires a magistrate to report his or her findings, following an evidentiary hearing, to the court; it does not prescribe a specific method for doing so such as in a signed final order as Mother contended was necessary. Id.

The trial court's determination that the reasons for the children's continued placement outside of Mother's and Father's care would not be remedied is supported by clear and convincing evidence and, thus, is not clearly erroneous. Id. at 249. Both Mother and Father contended on appeal that their current living conditions were not dangerous, unsafe, or a threat to the children. The Court opined that, when determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the trial court (1) must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions and must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the children; (2) may properly consider the services offered by DCS, and the parents' response to those services; and (3) might reasonably infer that, under the circumstances, the problematic situation will not improve, where there are only temporary improvements, and the pattern of conduct shows no overall progress. Id. at 246-47 (citations omitted). The Court noted that, here, the parents (1) were unable to appropriately supervise the children; (2) failed to complete home-based services; (3) failed to improve their ability to effectively communicate with each other; and, (4) at the time of the hearing, had not achieved the dispositional goal of securing and maintaining a safe and stable home in that were living with a mutual friend from church on an apparently temporary basis. Id. at 248.

Contrary to Mother's contention, the trial court did not base its decision to terminate Mother's parental rights upon the mere fact that she has a hearing disability, but rather properly considered Mother's refusal to take readily available steps to bridge the communication gap caused thereby – a communication gap that seriously hindered Mother's ability to effectively care for her children. Id. at 249.

Contrary to Father's contention, the evidence was sufficient to support the trial court's determination that termination of Father's parental rights was in his child's best interests. Id. at 250. The Court opined that, in determining the best interests of the children, (1) the trial court is required to look beyond the factors identified by DCS and look to the totality of the evidence; (2) the purpose of terminating parental rights is not to punish the parents but to protect the children involved; (3) the trial court must subordinate the interests of the parents to those of the children; and (4) the trial court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. Id. at 249 (citations omitted). The Court noted the evidence demonstrating that (1) the DCS case manager was concerned with reunification in that there were issues of some domestic violence, no stable housing, lack of parenting abilities, and Father's child was very bonded and attached to his pre-adoptive relative foster parent; (2) Father had failed to complete court-ordered services; and (3) Father's child was happy, bonded with, and doing well in his pre-adoptive foster home where he had spent more than one-half of his life. Id. at 250.