

Children's Law Center of Indiana



CHINS
11/15/16

In ***In Re Tr.S.***, 63 N.E.3d 1065 (Ind. Ct. App. 2016), the Court dismissed Mother's appeal of the trial court's Order Approving Permanency Plan and On Review Hearing. *Id.* at 1069. The order suspended Mother's parenting time and other reunification services, modified the previous dispositional order, and changed the permanency plan for Mother's two youngest children from reunification to termination of the parent-child relationship and subsequent adoption. Mother and Father are the parents of two children, who were born on March 4, 2012 and June 5, 2013. In November 2014, Mother and Father were arrested for heroin possession and drug use. DCS removed the children on December 1, 2014 and filed CHINS petitions on December 4, 2014. After a factfinding hearing at which Mother admitted routine illegal drug use, the children were adjudicated CHINS. On August 10, 2015 the court entered a dispositional order requiring Mother to participate in individual therapy, substance abuse assessments, random urinalysis, and home based case management services. Mother was permitted weekly supervised visitation with the children. On November 18, 2015 DCS filed a Motion to Suspend Visitation between Mother and Children. On December 28, 2015 the court held a hearing on DCS's motion. The DCS case manager and the children's therapist testified. The therapist testified that the younger child was not eating and the older child was "expressing fear" after a visit with Mother. The therapist recommended that visitation be suspended. The court suspended Mother's visitation. On February 11, 2016 the trial court held a review and permanency hearing, and found that Mother had not complied with the dispositional order. The trial court ordered: (1) visitation between Mother and the children remained suspended; (2) DCS was no longer required to provide reunification services to Mother, with the exception of random drug screens; (3) the permanency plan was changed from reunification to termination of the parent-child relationship and subsequent adoption; (4) in the best interests of the children, DCS should initiate proceedings for termination of the parent-child relationship; (5) the projected date for finalization of the permanency plan was July 31, 2016; (6) a permanency and review hearing would take place on August 11, 2016.

The Court dismissed Mother's appeal of the review and permanency hearing order because it was not an appeal from a final appealable judgment and Mother had not followed the proper procedure to seek a discretionary interlocutory appeal. *Id.* at 1069. Mother contended that the trial court's February 11, 2016 permanency and review hearing order was a final, appealable judgment. DCS argued that Mother's appeal should be dismissed for lack of subject matter jurisdiction. Citing *In Re D.W.*, 52 N.E.3d 839, 841 (Ind. Ct. App. 2016), *trans. denied*, and Ind. Appellate Rule 5, the Court observed that its authority to exercise appellate jurisdiction is generally limited to appeals from final judgments, certain interlocutory orders, and agency decisions. *Tr.S.* at 1067. The Court looked to Ind. Appellate Rule 2(H), which states that

a judgment is final if: (1) it disposes of all claims as to all parties; (2) the trial court expressly determines under Trial Rule 54(B) or Trial Rule 56(C) that there is no just reason for delay and expressly directs the entry of judgment (i) under T.R.54(B) as to fewer than all the claims or parties, or (ii) under T.R.56(C) as to fewer than all the issues, claims, or parties; (3) it is deemed final under Trial Rule 60(C); (4) it is a ruling on either a mandatory or permissive Motion to Correct Error which was timely filed under Trial Rule 59 or Criminal Rule 16; or (5) is otherwise deemed final by law. *Id.* at 1067. The Court opined that the trial court's February 11, 2016 order met none of the above requirements. *Id.* The Court has repeatedly held that such orders are not final, appealable orders, citing *In Re D.W.*, 52 N.E.3d 839, 841 (Ind. Ct. App. 2016), *trans. denied*, and *In Re K.F.*, 797 N.E.2d 310, 315 (Ind. Ct. App. 2003). *Tr.S.* at 1067-68.

The Court observed that Mother was essentially appealing the denial of reunification services, which she contended would not be an issue available for review in a subsequent appeal from the involuntary termination of her parental rights. *Id.* at 1068. The Court said that Mother could challenge the trial court's decision to terminate reunification services by filing an interlocutory appeal. *Id.* The Court looked to Indiana Appellate Rule 14(B), which outlines the certification procedure for parties who are pursuing an appeal from an interlocutory order. *Id.* The Court noted that Rule 14(B)(1)(c)(iii) contemplates the very situation Mother described; namely, "that the remedy by appeal is otherwise inadequate." *Id.* Because Rule 14(B) provides Mother an opportunity to bring her case before the Court, the Court declined to adopt her reasoning to consider the trial court's order a final judgment. *Id.* Although Mother claimed the trial court ordered her to file a Notice of Appeal, and her attorney was not ordered to pursue a discretionary interlocutory appeal, the Court responded that it is the role of the attorney, not the role of the trial court, to assess and determine the appropriate course of action in pursuing an appeal. *Id.* at 1068 n.6. The Court noted that an appellant merely needs to determine what kind of order he or she is appealing, either a final judgment or an interlocutory order, and proceed accordingly under Ind. Appellate Rule 9(A). *Id.* at 1069. The Court suggested that, if an appellant is unsure, he or she could err on the side of caution and request certification. *Id.* The Court concluded that it lacked subject matter jurisdiction, and accordingly dismissed Mother's appeal. *Id.*