

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

2/18/16

In ***In Re V.A.***, 51 N.E.3d 1140 (Ind. 2016), the Indiana Supreme Court reversed the trial court's order terminating Father's parental rights. *Id.* at 1153. The Court emphasized the high burden on DCS in proving that termination is appropriate, in light of constitutional protections of parental rights as well as the clear and convincing standard of proof. *Id.* at 1144-45. Mother and Father were married and living together and raising their child, who was two years old, when Mother contacted DCS in July 2012, and stated that she was overwhelmed by caring for the child while Father worked. DCS involvement revealed that Mother had untreated mental health issues which prevented her from caring for the child. Father told the case worker that he was willing to do whatever was needed to keep the child in the parents' home. Father complied fully with the DCS safety plan and participated in Daybreak Services, which offered alternate child care solutions to prevent the child from being alone in Mother's care. The plan worked successfully for over a month. DCS then removed the child from the parents' home, placed her in foster care, and she was adjudicated a CHINS on December 3, 2012. At the factfinding hearing, the trial court determined that Mother suffered from schizo-effective disorder. The dispositional order included a Parent Participation Plan for Father and Mother with the goal of reunification with the child, who remained in foster care. On July 31, 2013, the trial court modified the child's permanency plan to termination of parental rights. On April 28, 2014, following a four day trial, the court terminated both parents' parental rights. At the time of the termination hearing, Father continued to reside with Mother in a three bedroom house that he rented with an option to purchase. The trial court concluded that Mother and Father had failed to recognize or successfully cope with Mother's mental illness and that Father did not have the ability to ensure the child's safety when in Mother's company. Father appealed. Mother did not contest the termination judgment and did not appeal. The Court of Appeals affirmed the trial court's judgment in a memorandum decision, and the Indiana Supreme Court granted Father's petition for transfer.

The Court held that Father's unwillingness to live separately from Mother, who suffered from mental illness, was an insufficient basis, without more, upon which to terminate *his* parental rights (emphasis in opinion). *Id.* at 1147. The Court said that it could not consider the conditions leading to the child's removal from Mother, since to do so would unfairly hold Father responsible for Mother's conduct. *Id.* at 1146. The Court noted that the DCS caseworker testified at trial that Father was compliant with the safety plan and that the child was eventually removed based on concerns regarding Mother's mental health and the child's safety while in the home with Mother. *Id.* at 1147. The Court observed that a custodial parent's mental disability, standing

alone, has long been recognized as insufficient to support termination, and determined that cohabitation with a mentally ill relative was no more satisfactory as the basis to terminate parental rights. Id. at 1147-48.

The Court found that Father’s inability to induce Mother to take her prescribed mental health medication and his inability to supervise the child while in Mother’s care was insufficient to demonstrate a reasonable probability that the conditions leading to the child’s removal would not be remedied. Id. at 1151. The Court noted evidence that: (1) Father successfully completed the parenting skills building services program; (2) Father actively participated in counseling with Mother for seven months, during which time the therapist worked with parents on their marital relationship; (3) the therapist testified that Father and Mother demonstrated and reported progress in their marital relationship. Id. at 1150-51. The Court found that evidence that Mother posed a substantial risk of physical harm to the child was speculative, and the record lacked any evidence that Father could not *physically* protect the child (emphasis in opinion). Id. at 1149-50. The Court noted the trial court determined Father lacked the ability to provide supervision for the child while in Mother’s presence, but that DCS had failed to provide referrals for Father so that he could gain this skill, despite its inclusion in the Parent Participation Plan. Id. at 1150-51. The Court noted that Father should not be held accountable for failing to take action which he had not previously been required by the court to take. Id. at 1151.

The Court held that although a child’s need for permanency is a factor to consider in determining whether to terminate parental rights, the child’s need for immediate permanency is insufficient alone to terminate those rights where a parent has established a relationship with the child and has taken positive steps toward reunification. Id. at 1152. The Court also noted that the child had no definite preadoptive home, and therefore terminating Father’s parental rights would not necessarily further the child’s permanency. Id. at 1152-53. The Court noted that Father had maintained a relationship with the child, provided for her, maintained employment, acquired housing, and complied with DCS requirements of him during the CHINS case. Id. at 1153. The Court suggested guardianship as an alternative in the event reunification between Father and the child was not possible. Id. Quoting In Re C.G., 954 N.E.2d 910, 916 (Ind. 2011), the Court emphasized that involuntary termination of parental rights should be a “last resort when all other reasonable efforts have failed.” V.A. at 1153.