

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

7/11/14

In ***In Re Z.C.***, 13 N.E.3d 464 (Ind. Ct. App. 2014), *trans. denied*, the Court affirmed the trial court's order terminating Mother's parental rights to her child. *Id.* at 470. The Court found that DCS presented sufficient evidence that the conditions under which the child was removed from Mother's care would not be remedied, and that termination was in his best interests. *Id.*

The child was born on July 7, 2012 with controlled substances in his blood stream. Mother admitted to using heroin, morphine, Xanax, and Oxycotin. Due to the severe withdrawal symptoms he was experiencing, the child was hospitalized for a number of weeks. Prior to the child's release from the hospital, Mother was arrested on federal drug charges and incarcerated in Kentucky. The State obtained an emergency order to take custody of the child on August 22, 2012, and the child was released from the hospital and placed in relative care. In September 2012, the court held a hearing on the CHINS petition filed for the child. Mother admitted she was unable to take care of the child because of her incarceration and because she would need "services to address her substance abuse" when she was released. The child was found to be a Child in Need of Services, and the court entered a dispositional order requiring Mother to complete services when she was released from incarceration. In August 2013 the court approved a permanency plan calling for termination of parental rights. The court held a hearing on the termination petition, and entered an order granting the termination petition. The order included the following findings: (1) Mother never had the child in her exclusive care or custody, had no contact with the child since the child's detention by DCS on August 22, 2012, and was unable to care for the child due to her incarceration; (2) Mother admitted to the family case manager that she had used illegal and non-prescribed controlled substances daily, including marijuana, suboxone, hydrocodone, morphine, and heroin, during her pregnancy with the child; (3) Mother remained incarcerated in Kentucky since August 22, 2012 as a result of federal charges for conspiracy to deal heroin to which she admitted guilt through a plea agreement; (4) Mother's attorney testified that Mother's sentencing date and terms of incarceration were unknown; (5) Mother had a lengthy adult criminal history beginning in 2001 for offenses relating to illegal drug use, theft, and conversion; (6) Mother admitted to the DCS case manager that her drug abuse began when she was twelve years old, and her longest period of sobriety was one year in 2007, despite having received substance abuse treatment on six occasions; (7) Mother had misrepresented the identity of the child's putative father from August 2012 until April 2013 because Father was incarcerated at the time DCS initiated its assessment; (8) the child had been residing in relative care since his release from the hospital, was bonded with the relatives, they

were willing to adopt him, and the court appointed special advocate believed this adoption was in the child's best interests.

The Court found the evidence supported the trial court's conclusion that the conditions resulting in the child's removal from Mother's custody would not be remedied. Id. at 469.

The Court noted that: (1) the child came into the State's custody because Mother was arrested on drug charges before the child, who was born with controlled substances in his system, was released from hospitalization after birth for drug withdrawal symptoms; (2) Mother admitted that the child was a CHINS because she was incarcerated and would need substance abuse treatment when released; (3) Mother's criminal defense counsel testified that Mother had agreed to plead guilty to conspiracy to deal heroin; (4) at the time of the termination hearing, Mother's sentencing date and the length of her sentence were unknown. Id. at 469. Although Mother also asserted that the trial court should not have concluded the reasons for the child's placement outside her care would not be remedied because she needed to participate in services upon her release from incarceration, according to the parental participation order, the Court noted: (1) at the time termination proceedings commenced, the services offered to Mother as part of the CHINS adjudication ceased; and (2) the Court was unable to address the alleged inadequacy of services offered to Mother during the CHINS proceeding because that issue was unavailable during a termination appeal. Id. at 469-70.

The Court disagreed with Mother's claim that the trial court erred when determining that termination of her parental rights was in the child's best interests. Id. at 470. The Court noted that both DCS and the child's court appointed special advocate believed termination of Mother's parental rights was in the child's best interests. Id. The Court observed that the testimony of such individuals supported the Court's findings and conclusions. Id.

The Court declined to find that Mother's allegations of procedural irregularities as to Father had violated Mother's due process rights to family integrity. Id. at 470. The Court noted that Mother misrepresented the identity of the child's putative father to the Court and DCS during the CHINS case because Father was incarcerated and she thought it would look worse for her if she named an incarcerated man as the child's father. In her appeal of the subsequent order terminating her parental rights, Mother asserted that a number of procedural irregularities as to Father violated her due process rights to family integrity. The Court declined to find a due process violation, as it was Mother who misled the trial court regarding Father's identity for over six months. The Court opined that Mother could not assert error in the termination of her rights based on an alleged denial of due process to Father. Id. at 470. Quoting Rumple v. Bloomington Hospital, 422 N.E.2d 1309, 1314 (Ind. Ct. App. 1981), the Court noted that litigants are normally barred "from asserting the rights or legal interests of others in order to obtain relief from injury themselves." Z.C. at 470.