



## Termination of Parental Rights (TPR)

10/14/2005

In Lawson v. Marion County OFC, 835 N.E.2d 577 (Ind. Ct. App. 2005), the Court reversed the trial court's judgment terminating the father's parental rights and remanded the case with instructions to hold a proper termination hearing. The father and the mother had two children together. The Marion County Office of Family and Children ("OFC") investigated the mother's home and removed two children based upon neglect. The younger of the two children, who had been removed by Youth Emergency Services, at the age of four months, ultimately died from sepsis as a result of diaper rash. The other three year old female child was determined to be a Child in Need of Services (CHINS) and placed into foster care. The father, who had been living separately from the mother at the time of the CHINS action, was referred by OFC for services. He completed initial parenting and drug and alcohol assessments, but he did not consistently undergo the drug screens, nor did he complete the recommended drug treatment program or parenting classes. The father also did not maintain contact with the OFC case manager as required however, the father's visitation with the three year old child was relatively consistent.

In July of 2005, OFC filed a petition to terminate the parental rights of mother and father. The father was represented by counsel at the final hearing, but did not personally appear. After OFC called two witnesses, the case manager and the child protection services case worker, the father's attorney stated: "Your Honor, if none of (OFC's) further evidence relates to my client, may I be excused?" Counsel for OFC made no comment and the trial court excused the father's counsel. Despite the implication that OFC had concluded its evidence against the father prior to the departure of father's counsel, OFC then presented additional evidence against the father including the submission of a parenting assessment report and direct testimony of the report's author. The mother also testified that the father was abusive to her and the children. At the conclusion of the case the trial court entered an order terminating the father's parental rights and included in its order two findings which were directly based on the father's sixteen-page parenting assessment and the assessment author's direct testimony which had not been cross-examined by the father's attorney. The father appealed, contending that he had been deprived of his right to due process when the trial court admitted evidence against him after his attorney was excused from the hearing.

**The Court concluded that, although the State may have been seeking to protect the child's welfare by resolving the impermanence of the child's legal status, there was risk of substantial error associated with a judgment entered after a hearing in which evidence against a parent was admitted when the parent's attorney was not present. Thus, the father's due process rights were significantly compromised by his inability to cross examine the parenting assessment author and the mother. Id. at 582.**

The nature of due process in a termination of parental rights proceeding turns on the balancing of three factors: (1) the private interests affected by the proceeding; (2) the risk of error created by the State's chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure. In re C.C., 788 N.E.2d 847, 852 (Ind. Ct. App. 2003). I.C. 31-32-2-3(b) provides that a parent in a termination of parental rights action is entitled to cross-examine witnesses and introduce evidence on the parents behalf.

The trial evidence presented prior to the father's attorney's departure showed that the father had not complied in full with the OFC case plan. However direct evidence in the form of the assessment and testimony by the assessment author and mother, proffered by OFC to substantiate not returning the child to her father was submitted to the court after the father's attorney had left the hearing.