



Termination of the Parent-Child Relationship

10/2/17

In **Matter of N.C.**, 83 N.E.3d 1265 (Ind. Ct. App. 2017), the Court affirmed the trial court's order which terminated Father's parental rights to his child. *Id.* at 1268. Father and Mother were arrested on methamphetamine charges on March 21, 2015, and their child was removed from their care. On June 2, 2015, the child was adjudicated a Child in Need of Services. Parents were ordered to participate in reunification services. Father remained incarcerated in Kentucky awaiting trial on federal drug charges and was unable to participate in services. On August 11, 2016, DCS filed a petition to terminate Father's and Mother's parental rights. A hearing on the termination petition was conducted on March 21, 2017, which was 222 days after the filing of the termination petition. On April 18, 2017, the trial court entered its findings of fact, conclusions thereon, and order terminating Father's parental rights. Father appealed, challenging the denial of his motion to dismiss the termination petition because the termination hearing was not held timely. Mother voluntarily relinquished her parental rights and was not an active party to Father's appeal.

Father waived his right to challenge the setting of the termination hearing date, which fell outside of the 180 days as specified by IC 31-35-2-6, so he was afforded no relief on his appeal. *Id.* at 1267. The Court looked to IC 31-35-2-6, which sets forth the timelines for conducting termination hearings. IC 31-35-2-6(a) provides that the court shall: (1) commence a hearing on the termination hearing not more than ninety days after petition is filed; and (2) complete a hearing on the petition not more than 180 days after the petition is filed. IC 31-35-2-6(b) states that if a hearing is not held within the time frame set forth in subsection (a), upon filing a motion with the court by a party, the court shall dismiss the petition to terminate the parent-child relationship without prejudice. *N.C.* at 1266. Citing *In re Adoption of M.L.*, 973 N.E.2d 1216, 1223 (Ind. Ct. App. 2012), the Court explained that: (1) the interpretation of a statute presents a question of law, which the Court reviews de novo; and (2) when interpreting a statute, the Court gives words and phrases their plain and ordinary meaning. *N.C.* at 1267. The Court noted that the termination trial was not commenced within 90 days of the hearing request or completed within 180 days of the filing of the termination petition. *Id.* The Court opined that the plain language of IC 31-35-2-6(b) contemplates the filing of a motion with the court. *Id.* The Court observed that Father filed no written motion; rather, he orally moved for dismissal at the outset of the termination hearing. *Id.*

The Court also found that Father acquiesced to the termination hearing date when his counsel agreed with that March 21, 2017 was a "good" date to schedule the termination hearing. *Id.* Quoting *Plank v. Cmty. Hospitals of Ind., Inc.*, 981 N.E.2d 49, 53 (Ind. 2013), the Court explained that in general, "waiver" connotes an "intentional relinquishment or abandonment of a

known right.” N.C. at 1267. The Court agreed with DCS that Father waived his challenge to the date of the termination hearing, although the hearing fell outside the 180 days. Id.

The Court declined the invitation of DCS to construe the word “shall” appearing in IC 31-35-2-6(b) as “directory” as opposed to “mandatory.” Id. at 1268. DCS requested that the Court determine that the word “shall” preceding “dismiss” in IC 31-35-2-6(b) is “directory” or “mandatory”. DCS cited the Court’s holding in Parmeter v. Cass Cty. Dep’t of Child Servs., 878 N.E.2d 444, 447 (Ind. Ct. App. 2007), a CHINS case, which stated the statutory requirement to complete a CHINS factfinding hearing within sixty days and to complete a CHINS dispositional hearing within thirty days after the CHINS adjudication was “directory” and that the CHINS court did not lose jurisdiction when the statutory timelines were not met. N.C. at 1267. In reaching its decision, the Parmeter Court observed, “If we were to hold otherwise, CHINS cases would have to be dismissed where a continuance beyond the statutory timeframe was necessary and legitimate, an absurd and unjust result.” Parmeter at 448. N.C. at 1267-68.

The Court declined the DCS’s invitation to extend the statutory construction of Parmeter to termination cases because: (1) Father presented no reviewable issue; (2) disposition of the N.C. case did not rest upon whether the word “shall” is mandatory or directory; (3) Parmeter involved a separate, although interlocking, statutory scheme; (4) the statutes examined in Parmeter did not include a specific enforcement mechanism for non-compliance, as does IC 31-35-2-6(b). N.C. at 1268. The Court opined that it was not within its province to construe a statute simply to avoid repetitive filings. Id. The Court explained that it deferred to the Legislature, the entity best suited to balance competing interests and allocating limited judicial resources while giving due regard to parental rights, which are of a constitutional dimension. Id.