

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

7/30/14

In **S.E. v. Indiana Dept. of Child Services**, 15 N.E.3d 37 (Ind. Ct. App. 2014), trans. denied, the Court affirmed the trial court's judgment terminating Mother's parental rights to her daughter, who had resided in foster care for over twenty-seven months. *Id.* at 40. Mother was born with hearing loss and became deaf as an adult. Mother had a serious and complicated medical history, including diagnoses of fibromyalgia, degenerative disk disease, irritable bowel syndrome, attention deficit disorder, borderline personality disorder, depression, and anxiety. She had been hospitalized more than fifty times, and had attempted suicide more than twenty times. Mother gave birth to the child on January 4, 2011, and began living in a homeless shelter a few months after the child's birth. Shelter staff contacted DCS with concerns about Mother's ability to care for the child, and a short time later, DCS filed a CHINS petition on the child. DCS allowed the child to remain in Mother's care, and Mother moved into the home of the child's maternal grandmother. The child was adjudicated a CHINS in June 2011 and was removed from Mother. Mother was ordered to do a number of things designed to facilitate reunification, including obtaining and maintaining appropriate housing and a source of income, and successfully completing: (1) a parenting assessment; (2) home-based therapy; (3) individual counseling; (4) mental health evaluation and medication management services. Mother was also ordered to attend all scheduled parenting time with the child. Mother's compliance with the trial court's order was sporadic and ultimately unsuccessful.

Because Mother attended parenting time inconsistently, her parenting time was suspended in October 2012. Two months later, the trial court suspended all services due to Mother's noncompliance. In March 2013, DCS filed a petition to terminate Mother's parental rights, and the trial court held three hearings on the termination petition in July and September 2013. Mother's multiple service providers, including a psychologist, two social workers, and a therapist, testified they were unable to provide services to Mother because she was confrontational, accusatory, or noncompliant. The only service provider who was working with Mother at the time of the termination hearings was a second psychologist, Dr. Castner-Rector, who described Mother's progress as "mild" and testified that Mother would need ongoing mental health services "for an extended period of time [,] if she's motivated to participate in services." The case manager testified that: (1) Mother completed none of the services successfully other than the psychological evaluation; (2) the necessity for supervised visitation never ended; (3) the number of supervised visits decreased; and (4) the child was "happy" and "content" in her foster placement. The case manager recommended terminating Mother's parental rights. The child's

guardian ad litem (GAL) testified that: (1) she did not believe the child would be safe in Mother's care; (2) the child had adjusted to her foster home and was happy there; (3) she recommended terminating Mother's parental rights. Before Mother took the witness stand, the trial court and Mother's counsel discussed how she would testify due to her deafness. A sign language interpreter was present. Mother indicated that she would prefer to speak instead of using sign language and the interpreter. The trial judge stated that the interpreter would be needed if the judge could not understand Mother's speech. After listening to Mother's oral testimony about her name and her relationship to the child, the trial judge determined that the interpreter was needed. Mother then gave her testimony through the interpreter. In December 2013, the trial court entered a twenty-seven page order with findings terminating Mother's parental rights. Mother appealed, contending that: (1) the trial court denied her due process by requiring her to use sign language when she testified at the termination hearing and (2) there was insufficient evidence to support the termination order.

The Court found that the trial court did not violate Mother's due-process rights by requesting her to testify by signing to an interpreter. *Id.* at 44. The Court noted that Mother had not challenged this procedure at the trial level; instead, she raised this argument for the first time on appeal. *Id.* at 43. Citing Castro v. State Office of Family and Children, 842 N.E.2d 367, 375 (Ind. Ct. App. 2006), *trans. denied*, the Court said the State must satisfy the requirements of the Due Process Clause of the Fourteenth Amendment to the United States Constitution when it seeks to terminate the parent-child relationship. *S.E.* at 43. Citing In Re C.G., 954 N.E.2d 910, 917 (Ind. 2011), the Court observed that due process in parental rights cases involves 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 government interest supporting the use of the challenged procedure. *S.E.* at 43. The Court focuses on the risk of error created by DCS's actions and the trial court's actions because the State and the parent have substantial interests affected by the proceeding. *Id.* Citing McBride v. Monroe County Office of Family and Children, 798 N.E.2d 185, 194-95 (Ind. Ct. App. 2003), the Court said that a parent may waive a due-process claim in a CHINS or termination proceeding by raising that claim for the first time on appeal. *S.E.* at 43-44. The Court found that Mother never objected to the interpretation procedure used by the trial court; therefore, she had waived this challenge. *Id.* at 44.

Even though the issue was waived, the Court could not agree that Mother was denied due process when the trial court required her to testify through an interpreter. *Id.* Interpreters serve not only defendants, but the trial courts as well. *Id.* Quoting Arrieta v. State, 878 N.E.2d 1238, 1242-44 (Ind. 2008), the Court observed that a proceedings interpreter may be required during "the taking of testimony" to ensure "that the finder of fact hears all probative testimony, some of which might otherwise be unavailable or misconstrued." *S.E.* at 44. The Court noted that in this case, the trial court initially agreed to allow Mother to testify orally, but stopped her when the judge could not understand her testimony and determined that an interpreter was necessary. *Id.*

The Court found the evidence supported the trial court's conclusion that there was a reasonable probability that the conditions resulting in the child's removal or the reasons

for the placement outside Mother's home would not be remedied. *Id.* at 47. Citing *In Re E. M.*, 4 N.E.3d 636, 643 (Ind. 2014), the Court said that trial courts: (1) should first identify the conditions that led to removal or placement outside the home and then determine whether there is a reasonable probability that those conditions will not be remedied; (2) should judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions, and balancing any recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation; (3) may weigh a parent's prior history more heavily than efforts made only shortly before termination; and (4) may find that parents' past behavior is the best predictor of their future behavior. *S.E.* at 46. The Court noted the trial court's findings about Mother's extensive mental health issues, which had existed since Mother was ten years old, Mother's treatment by numerous providers which had been unsuccessful, and Mother's refusal to participate with DCS services, including her active undermining and sabotaging of services "for multiple superficial reasons." *Id.* The Court noted the following evidence which supported the trial court's findings: (1) multiple service providers testified they were unable to provide services to Mother because she was confrontational, accusatory, or noncompliant; (2) the lone provider who was still working with Mother at the time of the hearings, Dr. Castner-Rector, characterized Mother's progress as mild; (3) the case manager testified that Mother made essentially no progress while the case was pending. *Id.* The Court found Mother's argument that she could provide financially for the child through social security disability not persuasive, stating that "even if Mother is capable of providing financially for [the child] as she claims, that does not mean that Mother is capable of parenting [the child]." *Id.* at 47. The Court opined that the trial court's extensive findings showed, and Mother did not dispute, that Mother's mental health problems were not resolved at the time of the termination hearings, despite DCS's efforts. *Id.*

The Court concluded that the evidence supported the trial court's determination that termination of Mother's parental rights was in the child's best interests. *Id.* at 48. The Court looked to *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*, which states, "we have previously held that the recommendations of both the case manager and the child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that terminating is in the child's best interests." *S.E.* at 47. The Court noted the case manager and GAL both recommended terminating Mother's parental rights. *Id.* at 47. The Court also noted the following findings by the trial court: (1) the child had been removed from Mother since June of 2011, a time period of approximately twenty-seven consecutive months; (2) the child had resided with her current pre-adoptive foster family since August of 2012; (3) the child identified her foster parents as her mother and father; (4) it would be devastating to the child to be removed from the foster family; (5) the foster family had identified and overcome multiple physical and psychological issues the child had when she came into their home; and (6) the foster parents were loving and diligent, provided the child with her physical and emotional necessities, and were clearly an appropriate final placement for the child. *Id.* The Court disagreed with Mother's request that the child remain in foster care until Mother was ready to parent her, stating that, after twenty-seven months in foster care, the child should not be forced to wait any longer to see if Mother would resolve the issues that led to the child's removal. *Id.*