

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

1/3/18

In **Matter of Termination of B.L.P.**, 91 N.E.3d 625 (Ind. Ct. App. 2018), the Court reversed and remanded the trial court's order which terminated Father's parental rights to his twelve-year-old child. *Id.* at 634. The child was born to unmarried parents on March 21, 2005, and lived with Mother after he was born. The child began living with his maternal grandmother (Grandmother) after both parents were incarcerated. Grandmother intervened in the child's paternity action and became the child's legal custodian in September 2007. In 2008, Father moved to Atlanta, Georgia because he needed a "change of scenery" and had family members who lived in Georgia. Father was convicted for "selling and dealing in cocaine" in Georgia in May 2012, and was incarcerated for that offense until May 2014. The child had significant behavioral issues and multiple mental health diagnoses and began acting out in October 2013. Grandmother became unable to care for the child due to his behavioral issues and her own physical and mental health issues and financial limitations. In October 2013, the Department of Child Services (DCS) filed a CHINS petition for the child. The CHINS petition was based on Grandmother's inability to care for the child, Mother's substance abuse and instability, and Father's incarceration. DCS removed the child from Grandmother's custody and placed him in foster care. On November 13, 2013, the trial court found the child to be a CHINS. Mother and Grandmother admitted to the CHINS allegations. Father, who participated in the CHINS hearing telephonically, admitted that he was incarcerated and unable to care for the child. The trial court also held the dispositional hearing and ordered Father to participate in a diagnostic evaluation within thirty days of his release from incarceration and to follow the recommendations of the evaluation. The court also authorized supervised visitation with the child.

After Father was released from incarceration, Father began having regular telephone contact with the child. In August 2015, Father and the child began participating in supervised Skype calls. The call supervisor testified that Father participated in about 75% of the calls, the missed calls were the result of technological problems, the interactions between Father and the child were positive, and there were no concerns about Father and the child being in each other's presence. Because DCS had no contracts with service providers in Georgia, the case manager recommended a provider to Father, but Father was required to pay for the evaluation himself. Father had to pay \$300 for each evaluation session and could not afford to complete the evaluation. The provider told Father the portions of the evaluation that Father had completed would not be released until the entire evaluation was completed. The DCS case manager testified that the provider told her that Father had not signed for DCS to have access to the portions of the evaluation which had been completed. In 2016, DCS requested an evaluation of Father's life and home to be completed under the Interstate Compact on the Placement of Children (ICPC). The evaluator did not recommend the child be placed with Father because Father was living in a

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duplex and there were signs of fire damage to the apartment next door, and Father had recent criminal history. Because of financial constraints and a demanding work schedule, Father did not travel to Indiana to see the child. On two occasions the child's foster parents traveled to Georgia with the child, which enabled the child to interact with Father in person.

DCS filed a petition to terminate the parent-child relationship on July 18, 2016. The termination hearing took place on December 8 and 16, 2016. Father participated in the hearing telephonically. Father testified: (1) he had fulltime employment as a carpenter, and had maintained consistent employment since May 2013; (2) he had moved from a position as a laborer to a position as a carpenter and was on the path to management as a safety carpenter; (3) he had moved from the duplex to a three bedroom home, which he shared with his girlfriend and her two sons; (4) he was also paying rent to a cousin for a bedroom for the child in case the child was permitted to move to Georgia and live in relative care; (5) he had made some bad decisions, but had made a new life, working six days per week, and wanted to show his son the benefits of hard work. On April 11, 2017, the trial court issued an order granting DCS's petition to terminate the parent-child relationship. The court concluded that: (1) Parents had failed to remedy the reasons for the child's removal and continued placement in foster care; (2) Father had been unable to provide stability for the child, including being inconsistent with court ordered supervised therapeutic visitations over video conferencing and not following through with services; (3) as a result of Father's failure to comply, the continuation of the parent-child relationship posed a threat to the child's well-being; and (4) termination of parental rights and placement for adoption would provide the child with required protection and care, so termination was in the child's best interests. Father appealed.

The Court held that the Interstate Compact on the Placement of Children (ICPC), IC 31-28-4-1, does not apply to placement of a child with an out-of-state parent. *Id.* at 631. Quoting *D.B. v. Ind. Dep't. of Child Servs.*, 43 N.E.3d 599, 604 (Ind. Ct. App. 2015), *trans. denied*, the Court noted it squarely held that “the ICPC *does not apply to placement with an out-of-state parent.*” (Emphasis in *B.L.P.* opinion). *B.L.P.* at 630. The Court observed that “apparently, DCS is still requesting—and trial courts are still granting—ICPC evaluations for out-of-state parents.” *Id.* Although DCS directed the Court's attention to the rules and regulations that have been promulgated under the ICPC by the Compact Administrator, the Court opined that rules and regulations “do not and cannot trump the plain statutory language enacted by our General Assembly.” *Id.* The Court looked to Article III of the ICPC, which specifically provides that the ICPC applies only to the placement of a child in foster care or placement of a child in a preadoptive home. *Id.* at 631.

The Court found the trial court's conclusion that there was a reasonable probability that the reasons for the child's placement outside of Father's custody would not be remedied was not supported by clear and convincing evidence. *Id.* at 633. The Court noted the child was removed from Father's care and custody because Father was incarcerated when Grandmother became unable to care for the child. *Id.* at 632. The Court also noted that Father was no longer incarcerated, had successfully completed probation and/or parole, had maintained full-time employment for over two years, and had stable housing with room for the child to be

placed in his care. Id. The Court quoted K.E. v. Ind. Dep't of Child Servs., 39 N.E.3d 641, 643 (Ind. 2015), which held that “incarceration is an insufficient basis for terminating parental rights.” B.L.P. at 632. The Court observed that Father and the child did not yet have a strong bond because Father had not been as involved with the child as he should have been. Id. The Court found that, during the CHINS case, Father had worked within his limitations to get to know the child by participating regularly with the child in telephone and Skype calls. Id. DCS sought to “fault” Father for being unable to visit the child in Indiana, but the Court responded that Father would have jeopardized his employment by traveling to Indiana. Id. The Court found DCS’s assertion that Father could have flown from Georgia to Indiana, visited the child, and flown back to Georgia on the same day did not acknowledge the “exorbitant cost that such a trip would incur.” Id. The Court opined that “[b]y expecting Father to accomplish tasks that are not realistic for most people, DCS set Father up to fail from the start.” Id.

The Court found the record did not hold clear and convincing evidence of a reasonable probability that the continuation of the parent-child relationship posed a threat to the child’s well-being. Id. at 634. The Court noted: (1) Father participated in 75% of the supervised interactions with the child and missed the remaining calls due to technological difficulties; (2) the visitation supervisor testified that all interactions between Father and the child were positive, and the child exhibited no inappropriate behavior following the calls; (3) the visitation supervisor had no concerns about Father and the child being in each other’s presence aside from the fact that they had limited face-to-face interactions. Id. at 633. The Court agreed that Father’s limited ability to interact with the child in person made this case particularly challenging, but opined that “to terminate a parent-child relationship because a parent lives out of state, works full-time, and cannot afford to fly to another state and home again in the same day is to punish a parent for their geographic location and economic wherewithal.” Id. The Court shared Father’s confusion about the multi-session diagnostic evaluation process, for which Father was paying \$300 per session, and the Court did not believe that Father’s failure to complete the evaluation led to the conclusion that continuing the relationship posed a threat to the child’s well-being. Id. at 633-34. The Court noted it was undisputed that Father was cooperative with DCS throughout the CHINS case, and participated telephonically at all major hearings and any conferences as requested by DCS. Id. at 634. The Court opined that nothing in Father’s current circumstances or behavior throughout the CHINS case suggested that the child’s well-being was at risk if the parent-child relationship was maintained. Id.

The Court found the record did not hold clear and convincing evidence that termination was in the child’s best interests. Id. at 634. The Court noted Father had not historically provided stability and consistency for the child and had made a series of compounding bad decisions over the years which led to a lack of a relationship with the child. Id. The Court also noted that since he was released from incarceration, Father had made every effort to better himself and become a suitable caregiver for the child. Id. The Court observed that, while the child had thrived in foster care, it was not clear that his foster mother intended to adopt him, and “back[ed] away” about wanting to adopt the child when he had behavioral issues. Id. The Court concluded it was uncertain whether termination of the parent-child relationship would lead to stability, consistency, and permanency for the child. Id.