

Children's Law Center of Indiana



CHINS

6/18/2018

In **Matter of A.Q.**, 104 N.E.3d 628 (Ind. Ct. App. 2018), the Court held that (1) a change in permanency plan from reunification to termination is generally not suitable for interlocutory appeal, since a showing of actual harm is unlikely; (2) there was sufficient evidence to support the change in permanency plans; (3) Father's constitutional rights were not violated; (4) there was no error in declining to have concurrent permanency plans.

Mother and Father have three children together, and DCS substantiated claims of abuse against the oldest two children. Two months later, DCS again substantiated abuse against the children. The two older children were removed from the home, adjudicated CHINS, and after Mother and Father engaged in services, they were returned to the home. Less than two years later, the oldest child, A.Q. was the subject of another substantiated abuse allegation. The evidence of her physical injuries included large black bruises on her face and head that were the result of substantial force. Mother and Father denied knowing the cause of the injuries. DCS removed A.Q. and the other child; at this time, Mother was pregnant with the youngest child. The two older children were adjudicated CHINS. Mother was charged of a Level 5 felony battery of a child less than fourteen years old, and a no contact order was issued. Because of the CHINS adjudications of the other older two children, the youngest child was removed from Parents at birth. All children were placed with a foster parent, services were ordered, and the permanency plan for the older two children was reunification. A.Q. then disclosed that Father sexually abused her, and DCS moved to cease all parenting time between Parents and the children. The Court order ceased parenting time between A.Q. and Parents, and ordered supervised parenting time between Parents and the other two children.

An interlocutory appeal of a change in permanency plans is generally a premature appeal, as parents cannot show actual harm at that point; however, even though Parents' appeal was premature, DCS only raised the issue for the first time in its appellate brief, after the parties had all fully briefed the issue, and so the Court would address all the issues on appeal. *Id.* at 633. DCS argued that the appeal was premature, and that Parents could not appeal the order changing the permanency plan, as the changes to the permanency plans had not caused Parents actual harm. *Id.* The Court noted *In re K.F.*, 797 N.E.2d 310, 315 (Ind. Ct. App. 2003), which held in part that the change in a permanency plan from reunification to termination is not an appealable final judgment because parents "are not prejudiced by the permanency plan" because the change does not terminate parents' rights and parents "may challenge the propriety of terminating their parental rights and hold [DCS] to the stricter burden of proof required in such cases." *A.Q.* at 633. The Court determined that the same reasoning applied in this case; the

change in plan did not prejudice the parents, as there would still be an evidentiary termination hearing, at which time the burden was on DCS to present evidence sufficient enough to support its termination petition, which is a much higher burden than DCS has to show in order to change permanency plans. Id. However, despite the premature appeal, DCS did not respond to Parents' request for the trial court to certify its order for interlocutory appeal, did not respond to Parents' motion for the Court to accept jurisdiction, and only raised this issue for the first time in its appellate brief, after all the issues had been fully briefed by the parties. Id. Because of this, the Court determined it would address Parents' other arguments. Id.

There was no error in changing the permanency plan from reunification to termination; there was sufficient evidence to support the change, and there was sufficient evidence to show that DCSs provided adequate services aimed at reunification. Id. at 634. The parties agreed that the review standard for the changing of a permanency plan should be for clear error. Id. at 633. Parents argued that the evidence was insufficient to support the trial court's order changing the permanency plan, noting testimony indicating that they were compliant with services. Id. However, the Court noted the trial court's findings showing that Parents were only in partial compliance with many services, as well as their lack of progress. Id. at 633-34. The Court also noted evidence of their lack of progress in therapy, their inability to accept responsibility for the child's injuries, and their continued blaming of other for their current situation. Id. The Court found this was sufficient to support the trial court's finding that Parents were not progressing with services, therapy, and home-based services to maintain permanency plans of reunification. Id. at 634. Parents also argued that DCS did not provide adequate services aimed at reunification. Id. However, the Court noted that DCS provided Mother and Father with individual therapy, couples therapy, home-based services, and supervised visits, and the child was given individual therapy to address her fears about reunification. Id. Parents also argued that DCS replaced service providers who were recommending reunification and that this constituted non-proviso of necessary services. Id. The Court opined that while it would be concerning to see the replacement of service providers who recommend reunification, when examined in context in this case, these actions were not alarming, since DCS also replaced service providers who were recommending that Parents not receive visitation. Id. The Court also noted that the service providers who were recommending reunification also later on testified that Parents were unwilling to accept responsibility. Id.

Father's constitutional rights were not violated by keeping A.Q. from him and Mother, as Father had been given a fair, multi-day hearing to address reunification with the child, and the evidence supported the trial court's conclusions. Id. at 635. Father argued that his constitutional right to raise his child was being violated, asserting that he did everything DCS asked to him to do but was never given a chance to even see A.Q. Id. at 634. The Court noted that parents' constitutional rights to raise their children are not absolute, and must give way to the children's interests when their emotional and physical well-being are threatened. Id. (internal citations omitted). The Court opined that Father had a fair multi-day hearing, that evidence repeatedly showed that Parents were unwilling to take responsibility for the reasons the children had been removed from the home, were unwilling to acknowledge the source of A.Q.'s injuries,

and that the trial court entered a no-contact order for A.Q. because Father had sexually abused her. Id. at 635.

The trial court’s decision to not adopt concurrent permanency plans was not in error. Id. at 635. Mother argued that the trial court erred in not having a concurrent plan of reunification; Mother argued DCS should have provided a concurrent plan because Parents were active participants in services. Id. IC 31-9-2-22.1(b) deals with concurrent planning and provides that it “requires the identification of two (2) permanency plan goals and simultaneous reasonable efforts toward both goals with knowledge of all participants.” Although IC 31-9-2-22.1 allows for concurrent planning, the statute does not require DCS to make a concurrent permanency plan or that the court adopt a concurrent permanency plan. Id. The Court also noted that reunification services do not terminate just because the permanency plan switched to termination, and that Parents would still receive reunification services. Id. “Regardless of the time it takes for the termination proceeding to be completed, Mother and Father are able to participate in services and make the necessary progress to regain custody of their children.” Id.