

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

CASA/GAL

7/31/18

In **Z.B. v. Ind. Dept. of Child Services**, 108 N.E.3d 895 (Ind. Ct. App. 2018), the Court held that a child's Court Appointed Special Advocate ("CASA") is able to independently prosecute a petition to terminate parental rights ("TPR"), and that the evidence supported the termination of the parent-child relationship. The matter was remanded for scrivener's error, with instructions.

The five children in this matter were removed from Mother's care in 2015, and despite two years of services and interventions, Mother was deemed unable to safely care for her children by all of her providers. The grounds for removal and for the CHINS adjudications included: (1) Mother's agreement to enter into an informal adjustment with DCS due to educational neglect, substance abuse, home conditions, and lack of supervision; (2) Mother's testing positive for methamphetamines and other illicit substances such as, but not limited to, heroin, methamphetamines, and prescription narcotics; (3) the conditions in Mother's home were barely livable, and Mother struggled to maintain appropriate living conditions; and (4) Mother struggled to control one child's destructive, violent behaviors, and he injured the other children.

DCS filed to terminate the parental-child relationship with respect to the four younger children, who were in foster care and eligible for adoption. DCS did not file for termination on the oldest child, Ma.B., because she was placed with her biological father and stepmother, and DCS felt that safe placement with a parent did not necessitate termination. Ma.B.'s CASA disagreed, and filed for termination without the support DCS. DCS and Mother moved to dismiss the petition concerning Ma.B., arguing that the CASAs could not prosecute a petition to terminate parental rights where DCS did not support the petition. The trial court consolidated the DCS and CASA petition, denied DCS's and Mother's motion to dismiss the CASA's termination petitions, and ordered termination of Mother's rights to all the children in late 2017.

A CASA has the statutory authority to independently file and thus prosecute a petition to terminate parental rights; therefore, it was not improper for the CASAs to prosecute the termination petition concerning the oldest child, despite DCS's opposition to that particular termination petition. *Id.* at 899-900. The Court first noted that the question of whether a CASA could prosecute a petition to terminate parental rights when DCS opposes the petition was an issue of first impression; thus, the statute would be interpreted *de novo*. *Id.* at 898. If the statute is deemed clear and unambiguous, then all language in the statute is given its clear and plain meaning; if the statute is open to judicial construction, then it is open to more than one reasonable interpretation. *Id.* at 898-99. A CASA, a guardian ad litem, or both must be appointed for a child when a parent opposes a petition to terminate parental rights. IC 31-35-2-7(a). The CASA's role is to represent and protect the child's best interests in the termination proceedings. IC 31-35-2-7(b). CASAs have the statutory authority to sign and file petitions to terminate parental

rights for a child who has been adjudicated as a CHINS. IC 31-35-2-4(a). DCS clearly represents the State's interests in termination proceedings, as is set forth by IC 31-35-2-5. Mother and DCS argued that these statutes prohibited proceedings on a termination petition whenever DCS opposes the petition; that allowing termination proceedings that DCS does not support is burdensome; that allowing a CASA to prosecute a termination petition was the same as allowing a child to prosecute a termination petition against their parent; and adoption caselaw provides that statutes are strictly construed to preserve the parent-child relationship. *Id.* at 899. The Court opined that despite DCS's and Mother's arguments, the statute clearly provides CASA the ability to file a petition to termination parental rights, and the authorization to do so cannot reasonably be read to in some way prohibit prosecuting that petition. *Id.* The Court noted that this is no way affects the elements or burdens of proof for termination. *Id.* The Court said that DCS also had a statutory mechanism by which it could express its opposition to a termination petition. IC 31-35-2-4.5(d)(1) would allow DCS to file a motion to dismiss the petition, asserting a compelling reason as to why termination was not in the best interests of the child. *Id.* at 899-900.

There was sufficient evidence supporting the trial court's termination of the parent-child relationship between Mother and all the children; the evidence favorable to the trial court's decision showed that the children would not be safe in Mother's care, and that termination would serve the best interests of all the children. *Id.* at 903. The Court noted that clear and convincing evidence was required, and that findings or judgments will not be set aside unless they are clearly erroneous. *Id.* at 900. The Court noted the following evidence supporting the order terminating Mother's parental rights to all the children: (1) Mother's therapist's concerns about her mental health and cognitive abilities; (2) Mother's disabilities impacted her day to day living, her ability to solve problems, impaired her judgment, and made it difficult for her to assist her children; (3) Mother had a lack of empathy towards her children and unrealistic expectations; (4) Mother was unable to adequately supervise the children even during supervised visits, and was unable to intervene when incident of physical aggression broke out between the children; (5) the oldest child made significant improvements once visits with Mother were suspended; and (6) Mother failed to make significant improvement despite ongoing treatment and missed appointments and classes. *Id.* at 900-903. The Court noted that although cognitive disabilities alone are not a proper basis for parental rights to be terminated, it may play a factor in a termination proceeding when a parent is incapable or unwilling to fulfill their parental obligations to their child. *Id.* at 902.

There are no different statutory standards for children placed in foster care versus those placed in the care of another parent; given the extent of the oldest child's trauma and Mother's continuing inability to care for the oldest child, it was not inappropriate to terminate the parent-child relationship between Mother and the oldest child, even if the oldest child was placed with Father. *Id.* at 903. Mother and DCS argued that there was no threat to the oldest child, Ma.B., because Father had physical custody, and as such, termination of Mother's rights was not appropriate because Ma.B. could safely live with Father. *Id.* The Court noted that "our legislature has not articulated different termination standards for children placed with a parent and for children placed in foster care—and the evidence indicates that Mother remained unable to safely care for Ma.B., even after participating in extensive services aimed toward reunification." *Id.* The trial court found that it would be extremely traumatic for Ma.B. to ever be returned to Mother's care; as such, the Court was not convinced that the current

custody arrangement with Ma.B. living with Father made any harm to Ma.B. too speculative to support terminating Mother's rights. Id.