

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

CHINS

9/11/2018

In **Matter of C.M.S.T.**, 111 N.E.3d 207 (Ind. Ct. App. 2018), the Court held that the procedural difficulties in underlying CHINS cases contributed to Mother's and Father's noncompliance with some services, such that termination of parental rights amounted to denial the parents' of due process rights.

Mother and Father had a child, C.M.S.T., together while married. Mother and Father had a domestic violence related altercation, which eventually resulted in the child being removed from Mother's and Father's care, as well as Mother's other child, T.M. The children were placed with their grandmother, but then were removed and placed in foster care. The children were adjudicated CHINS. C.M.S.T. was placed with Father but removed shortly thereafter due to Father's alcohol and prescription medication use. Family Case Manager (FCM) Neal submitted a false report stating that Father had made a scene at C.M.S.T.'s school and tried to take C.M.S.T. Based on this report, Father was required to participate in supervised visitation with C.M.S.T. and banned from the school. DCS fired FCM Neal, who was eventually replaced by FCM Ginanni. Father and FCM Ginanni began exchanging sexually explicitly Facebook messages, and engaged in a sexual relationship. FCM Ginanni gave Father advance notice of drug screens and told him he did not need to continue engaging in services. Father eventually testified that FCM Gianni told him he would be reunified with C.M.S.Y. and that she would live with him and help him obtain custody of his other child, T.M. C.M.S.T. was again placed with Father for a trial home visit, during which time Father failed a drug test. FCM Ginanni assured Father she would "take care of it", but Father failed a another drug test the next day. C.M.S.T. was removed from his care, Father was arrested for violating his probation, and informed DCS of his relationship with FCM Ginanni. FCM Ginanni was fired. Mother was compliant with services and stopped using methamphetamines. Mother requested a trial placement with the children to prepare for the birth of their new sibling. Her request was denied by the FCM, but the FCM did allow overnight visits with Mother on the weekend. Later, the children were paced with Mother on a trial basis, but Mother eventually left the children with other people so that she could use methamphetamine's. Mother self-reported her use, and all three children were removed from her care. Mother requested placement at an inpatient substance abuse treatment center and was placed at Serenity House. The treatment manager at Serenity House became unable to manage the program, and Mother requested another placement; the FCM gave Mother a list of palaces but told Mother it was her responsibility to get into the placement. Mother moved in with her father and lost her job. DCS filed petitions to terminate both parents' rights to their respective children. Mother was subsequently arrested for possession of methamphetamines, and was incarcerated during the termination trial. The children's paternal grandmothers filed petitions to intervene, but those petitions were denied, and Mother's and Father's parental rights were terminated.

Mother's and Father's due process rights were violated in the CHINS cases through DCS's chaotic and unprofessional handling of their case; the wrongs were so egregious that reversal of the termination of Mother's and Father's parental rights was warranted. Id. at 212-213. The trial court had found that while there "procedural" problems with the case, those problems could not be the trial court's deciding factor in terminating Mother's and Father's rights. Id. at 212. The trial court opined it was mere speculation as to what might have happened if the DCS FCMs had properly handled the cases. Id. The Court disagreed with the trial court's assessment, opining that the egregious behavior of the DCS employees contributed to Mother's and Father's noncompliance with at least some of services, highlighting evidence showing that FCM Ginanni told Father to discontinue services, escalating a trial home placement for Father, and denying Mother the same opportunities. Id. at 212-213. The Court cited prior case law in examining the long history of due process rights given to parents in a termination of parental rights case. Id. at 212. The Court further noted that DCS conceded that Mother's and Father's due process rights had been violated. Id. at 213. Termination judgments are reviewed with great deference, evidence is not rejudged nor credibility reweighed, and judgments are only reversed if they are clearly erroneous. Id. at 211. Although parents have a traditional and constitutional right to the care, custody, and control of their children, trial courts must subordinate the parents' interests to that of the children when evaluating a termination of parental rights case. Id.