

Children's Law Center of Indiana



TPR

2/19/2019

In **Termination of the Parent-Child Rel. of R.L.-P.**, 119 N.E.3d 1098 (Ind. Ct. App. 2019), the Court held that Father was not permitted to file a motion to dismiss the termination of parental rights petition, that termination of Father's parental rights was in the child's best interests, and that adoption was a satisfactory permanency plan for the child's care and treatment.

DCS filed a CHINS petition on the child when the child was born, due to the child testing positive for marijuana at birth. Mother admitted the child was a CHINS, but Father failed to appear at the factfinding hearing. At the factfinding hearing, the trial court found that there was domestic violence between Mother and Father, Father was not staying in contact with DCS and had not appeared in court, Father had no stable housing and had not participated in services, and Father showed no willingness to parent the child. The child remained in Mother's home while Mother engaged in services, but was eventually placed in foster care. Father was incarcerated during the CHINS proceedings for robbery and methamphetamine possession. The reunification plan was changed to adoption due to the parent's inability to comply with the case plan, Father's paternity was established, and the child was moved into an adoptive placement. The trial court ordered more services for Father, but Father told the service provider he wanted the child placed with Paternal Grandfather. DCS performed a home assessment with Paternal Grandfather, but eventually, DCS determined that Paternal Grandfather was not able to answer questions as adequately as the adoptive foster parents. DCS filed a petition to terminate Father's parental rights, and the child's foster parents filed a petition to adopt her. Father filed a petition to dismiss the termination petition, alleging that Mother and Father executed consents for Paternal Grandfather to adopt the child. Father argued that since there were adoption petitions pending, it was not necessary for the trial court to have a hearing to determine whether termination was in the child's best interests, as the only remaining dispute was over where the child should be placed. The trial court dismissed Father's motion.

At the termination trial, Father's counsel renewed Father's motion to dismiss the termination proceedings, arguing that since the parents had consented, the termination hearing was unnecessary and the adoption and placement should be left to the adoption court. The trial court denied Father's renewed motion to dismiss, determining that DCS was not required to accept Father's consent, DCS had a satisfactory plan for permanency, and that the adoption court could determine the appropriate placement for the child. After a trial, the trial court terminated Father's parental rights. Father appealed.

The trial court did not err in denying Father’s motion to dismiss the termination petition; Father was not authorized to file a motion to dismiss the termination proceeding under IC 31-35-2-4.5(d) or IC 31-35-2-4(a), which collectively provide that only a DCS attorney or a child’s CASA or GAL may file a motion to dismiss a termination proceeding. Id. at 1103.

Father was not a person authorized to file a motion to dismiss a termination petition under IC 31-35-2-4.5(d). Id. This statute provides that only a person authorized by IC 31-35-2-4(a) may file a motion to dismiss a termination petition if one of several circumstances apply. Id. IC 31-35-2-4(a) provides that an attorney for DCS, a child’s CASA, or a child’s GAL may file a motion to dismiss termination petition. Id. The statute was clear and unambiguous; the Court gave the statutes their plain and ordinary meaning and determined that Father was not authorized to file his motion to dismiss the termination petition. Id. The Court also noted that there was no authority in the statute for the trial court to *sua sponte* dismiss the termination petition. Id.

There was no error in the trial court’s determination that termination was in the child’s best interests. Id. at 1105. Although termination of parental rights is an extreme sanction and one of last resort, the Court noted that parental rights are not absolute and those rights can be terminated when parents are unwilling or unable to meet their parental obligations. Id. at 1104. Regarding Father’s argument that termination was not in the child’s best interests, the Court noted the following evidence: (1) Father was incarcerated for the vast majority of both the CHINS and TPR proceedings; (2) Father was not employed before or during the proceedings; (3) Father had not addressed the substance abuse or domestic violence issues which resulted in the CHINS and TPR proceedings; (4) Father did not engage in programs or services; (5) Father had not seen the child for a year and a half and would not be available to parent the child until 2020; (6) the child was thriving in the preadoptive home and was well bonded with her foster family; (7) the GAL believed adoption by the foster family was in the child’s best interests. Id. at 1104-5. The Court declined to reweigh the evidence. Id. at 1103.

There was no error in terminating Father’s parental rights on the basis of not placing the child with Paternal Grandfather. Id. at 1105. Father argued that termination was not necessary because the child should have been placed with Paternal Grandfather during the CHINS proceeding, thus avoiding the need to terminate Father’s parental rights. Id. at 1103. Father based this argument on CHINS statutes which mandate that a relative be considered for placement and DCS’s internal policy favoring relative placements. Id. at 1105. The Court noted that Father’s paternity was not established until a year and a half after the CHINS proceedings started, and Paternal Grandfather had no legal role in the child’s life until then. Id. There was no evidence that Paternal Grandfather had any contact or bond with the child, and when Paternal Grandfather first became an option for placement, he told DCS he was unable to accept full time care of the child. Id. The child continued in her preadoptive placement, bonding with the family and thriving, until Paternal Grandfather at a later date wished to be considered for placement. Id. At that point, DCS assessed Paternal Grandfather, and found that the preadoptive foster home was a better situation for the child. Id.

Since DCS has a plan of adoption for the child, the trial court did not err in concluding that a satisfactory plan existed for the child’s care and treatment. Id. at 1106. In order for a trial

court to terminate a parent-child relationship, there must be a satisfactory plan, which does not need to be detailed, but must offer a general sense of the direction of the plan for the child after the parent-child relationship is terminated. Id. at 1105 (internal citations omitted). The permanency plan for the child was adoption, which is generally an acceptable plan. Id. Father argued this plan was insufficient because DCS failed to follow its own policy directives with respect to relative placement and adoption. Id. at 1105-6. The Court noted it had already dismissed Father's arguments regarding placement, and further opined that Father did not identify any statutes or written DCS policies relating to adoption which were violated by DCS in this case. Id. at 1106. The Court said Father appeared to insinuate there was something improper about the GAL bringing the prospective adoptive family to DCS's attention, but the Court found that concern to be unfounded. Id.