

Children's Law Center of Indiana



Termination of Parental Rights

3/6/2019

In In re Termination of S.S., 120 N.E.3d 605 (Ind. Ct. App. 2019), the Court affirmed the trial court's termination of parental rights with regard to both parents, Sa.S. ("Father") and L.M. ("Mother").

The child was born in June 2013, and tested positive for THC at birth. The child was reunited with Father after a period of informal adjustment and a CHINS filing. However, in May 2016, DCS received a report of child neglect and drug use in the child's presence. During the DCS investigation, Mother refused a drug screen and Father tested positive for several substances. Parents then fled to Florida with the child, though Father returned several weeks later with the child, who was then removed and placed with paternal grandfather for care. DCS filed a CHINS petition in June 2016, and efforts to reunify child and parents continued until a termination of parental rights petition was filed in December 2017. A TPR hearing was held in June 2018, where the trial court terminated the parental rights of Mother and Father with 160 findings of fact. Both parents appeal.

The Court here finds no abuse of discretion on the part of the trial court in finding that the reasons for removal would not be remedied, observing that “[s]ubstance abuse is the underlying issue in this case and Mother has failed to complete a substance abuse program despite being counseled to participate in such a program for over a year and a half. Accounting for the fact that the Child tested positive for THC at birth in 2013, Mother has failed to complete a substance abuse program for over five years and the record is also absent of any voluntary efforts Mother has made with the aim of improving her substance abuse issues.” Id. at 611. Mother and Father “contend DCS failed to prove by clear and convincing evidence that the circumstances leading to removal would not be remedied.” Id. at 610. In examining this contention, the Court analyzes the parents separately. In reviewing the case against Mother, the Court observes that the child was removed due to drug use, Mother refused to cooperate with DCS efforts to end her drug use, and ultimately continued to use drugs throughout the case. Mother produced a few clean screens in December 2017 and finally completed a substance abuse assessment the week before the TPR trial, and so Mother argues that the trial court failed to consider her recent progress.

In reviewing the case against Father, the Court observes that while Father made some promising efforts early on, the trial court found that substance abuse continued and so termination was appropriate. Id. at 611-12. Father argues this is in error, relying upon *In re J.M.*, 908 N.E.2d 191 (Ind. 2009), in which termination of parental rights was found

inappropriate in circumstances of parental efforts and rehabilitation. This Court analyzes *J.M.* and finds the situation at hand not comparable:

“Contrary to Father’s assertion, however, **almost none of the factors considered by our supreme court in J.M. are applicable here**. First, to the extent Father contends he was employed at the time of the TPR hearing, the juvenile court found that he was not. See Appellant’s App., Vol. II at 60, ¶ 99. Indeed, Father’s own testimony at the TPR hearing established that he was unemployed. See Transcript, Volume 2 at 120. Second, despite the similarity between Father’s two arrests and the arrests of the parents in *J.M.*, both of which were after their children’s birth, Father has consistently refused help with his substance abuse issues and has failed to take any significant steps to obtain sobriety—unlike the number of self-improvement programs completed in *J.M.*” _____.

Thus, both Mother and Father’s termination of parental rights were upheld upon appeal.