

Children's Law Center of Indiana



TPR

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In **Termination of S.K.**, 124 N.E.3d 1225 (Ind. Ct. App. 2019), the Court affirmed the trial court and held that: (1) the hearsay provided by the children's therapist was not inadmissible hearsay, and to the extent that the trial court may have erred in admitting certain statements, the admission was harmless; (2) DCS's failure to offer reunification services did not constitute a deprivation of his due process rights in this case; and (3) there was sufficient evidence to show that there was a reasonable probability that the conditions that resulted in the children's removal or the reasons for their placement outside Father's home will not be remedied.

Father's three children were removed from his care after he was arrested and charged with murdering Mother. The children were placed with Maternal Grandmother, and Father never saw the children again after the removal. Father admitted the children were CHINS due to his incarceration, and he was ordered to complete services upon his release. Father was sentenced to serve sixty-five years, though he appealed this decision. The children were under the care of a therapist, and the children expressed anger, fear, and trauma over the murder of Mother by Father. The oldest child suffered panic attacks around court dates. At the factfinding hearing, the therapist testified that visits between Father and the children would only further traumatize them, and their best interests were served by lowering anxiety and providing stability. The CASA and the GAL indicated that the children need stability, and recommended terminating Father's parental rights. DCS intended for Maternal Grandmother to adopt the children. The children were doing well in school, they were bonded to her, and they were receiving all necessary care. Father indicated he would voluntarily relinquish his parental rights if Maternal Grandmother adopted the children. The trial court entered an order terminating Father's parental rights.

Although the initial statements to the therapist may have been inadmissible hearsay, any admission was harmless due to being supported by substantial independent evidence. *Id.* at 1232. Father objected to statements made by the children's therapist concerning whether the children were aware that Father killed Mother, and whether they understood that they could visit Father. *Id.* at 1231. Although hearsay statements are not admissible, several exceptions to this rule may apply. *Id.* Indiana Evidence Rules 803(4) provides for one such exception, which allows for statements made for the purpose of medical diagnosis or treatment to be admitted into evidence; these statements must be made by the person seeking medical diagnosis or treatment; must describe medical history, past or present symptoms, pain, or sensations; may describe the inception or general character of the cause or external source as long as it is relevant to diagnosis or treatment. *Id.* In order for statements to qualify as exceptions to the hearsay rule under the medical diagnosis exception, the declarant must be motivated to provide truthful information in

order to promote diagnosis and treatment, and the content of the statement must be of a kind that an expert in the field would reasonably rely upon in giving a diagnosis or treatment. Id. The Court noted that when the declarant is a young child, it must be established that the child understands the nature of the examination, the purpose of the examiner, and the necessary link between telling the truth and receiving accurate treatment. Id. at 1231-32. Evidence to show that a child understands this link can be testimony from the child, foundational testimony from the medical professional describing how the medical professional explained their role and whether the child indicated they understand the explanation. Id. The therapist testified to her opinions based on conversations she had with the children on the day Father killed Mother, as well as statements made during therapy. Id. at 1232. The Court opined that when the children initially interacted with the therapist, they likely did not understand they were making statements to the therapist for the purpose of diagnosis or treatment. Id. However, the Court noted that the improper admission of evidence is harmless when it is supported by sufficient other evidence. Id. The Court noted that while some of the therapist's testimony was inadmissible hearsay, the rest of her testimony was based on her observations of the children, the treatment plan and goals, and statements made during the course of therapy. Id. Under the facts of this case, the admission of any hearsay was harmless. Id.

DCS is generally required to make good faith efforts towards preservation and reunification of families during a CHINS case; however, in determining what efforts are reasonable and appropriate, a child's health and safety are of the utmost concern. Id. at 1232-33, citing IC 31-34-21-5.5. Father argued that DCS did not make a good faith effort to reunify Father with the children because DCS failed to make referrals for services geared towards reunification. Id. at 1232-33. Father further argued that it was possible his conviction would be reversed; however, the Court noted that he was incarcerated for the next sixty-five years, and due to this length of time, DCS was unable to offer services. Id. The Court also noted that Father was incarcerated for killing Mother, and as such, their failure to offer him service was not a deprivation of due process. Id.

There was sufficient evidence supporting the trial court's judgment terminating Father's parental rights to the children. Id. at 233. There was a reasonable probability that the conditions resulting in the children's removal and placement outside Father's home would not be remedied; therefore the Court did not need to address other factors under IC 31-35-2-4(B)(2)(B). Id. The Court noted that DCS carried its burden of proof in showing that Father was current incarcerated for murder and arson, and would not be available to parent the children for at least sixty-five years. Id.

There was sufficient evidence to show that termination was in the best interests of the children. Id. at 1234. Termination of the parent-child relationship is proper when a child's emotional and physical development is threatened, but a trial court does not need to wait until a child is irreversibly harmed to terminate the parent-child relationship. Id. A child's need for permanency is a central consideration, and a decision to terminate a parent-child relationship may be supported by testimony from service providers. Id. The Court opined that Father destroyed his relationship with the children by murdering Mother and burning down their home;

this was significant harm and trauma. Id. Even if Father's convictions were reversed on appeal, the children need stability. Id. The trial court's judgment was supported by the evidence. Id.