



## Termination of the Parent-Child Relationship

12/19/2019

In **In Re K.T.**, 137 N.E.3d 317 (Ind. Ct. App. 2019), the Court reversed the trial court's judgment terminating D.T.'s ("Father") parental rights; the Court held that Father's failure to fully participate in services and visitations was an insufficient basis on which to predicate the termination of his parental rights, and that there was insufficient evidence to show that Father's continued relationship the Child would pose a threat to her well-being.

H.B. ("Mother") and Father were never married but Father established paternity as to the Child. The Indiana Department of Child Services ("DCS") received information that the Child had sustained injuries including black eyes, bruises and second-degree burns while the Child was in Mother's care. DCS substantiated the allegations as to Mother. DCS found the allegations of neglect and/or abuse against Father to be unsubstantiated due to the fact that he was not in Father's care at the time and Mother was the Child's sole caregiver. DCS removed the Child on January 13, 2017 and filed a petition alleging the Child to be a Child in Need of Services ("CHINS"). The Child was adjudicated as CHINS on April 11, 2017 and the trial court ordered the Child remain in care out of the home and that parents participate in services. On February 28, 2018, the trial court modified the permanency plan from reunification to termination of parental rights ("TPR"). In its order, the trial court noted that Father had partially complied, but had only recently begun participating in services. On March 13, 2018, DCS filed a petition to terminate both Mother's and Father's parental rights. Mother voluntarily relinquished her rights. A fact-finding hearing was conducted on August 13, 2018, in which various service providers testified that Father had failed to fully comply. Initially, he missed four months of visitation with the Child, but since January 2018, he had attended almost 80% of visits. Father testified that he had missed some visitation due to his work schedule and obligations to his other child, but he had recently increased his visits due to a change in employment. On June 3, 2019, the trial court granted the TPR petition, noting that the conditions that led to removal were not likely to be remedied and Father had not adequately engaged in services.

**The trial court committed clear error when it found that Father's failure to fully participate in services was alone sufficient to support the conclusion that the conditions that resulted in the Child's removal would not be remedied.** In determining whether Father's parental rights should be terminated, the trial court entered specific findings. The Court first noted that the removal was a removal from both parents, even though the Child only resided with Mother; however, in considering the probability that the reasons for removal will not be remedied, the Court must only consider the reasons that can be attributed to Father. *Id.* at 326-27. In **In re I.A.**, 934 N.E.2d 1127, 1134 (Ind. 2010), the Indiana Supreme Court held that the reasons the child was removed from Mother were not relevant when determining whether non-custodial Father's rights should be terminated. However, a court can consider conditions that emerge subsequent to a removal that would contribute to ongoing removal such as concerns with

alcohol abuse, stability, and criminal history. In re I.A. at 806. However, in the present case, there was no evidence to suggest that Father abused alcohol or consumed it in the Child's presence, or that he was ever convicted of a crime or committed one in the presence of the Child. K.T. at 328. The Court found that there was no evidence to support reasoning for continued removal from Father. Id.

While the trial court was correct in finding that Father had failed to fully participate in services, that finding alone was not sufficient to sustain a termination. Id. at 328. Although a trial court can consider participation in services as evidence regarding whether problematic conditions will be remedied, there must also be some proof of the underlying problematic conditions which led to the services requirement. Id. (internal citations omitted). "The State may not remove a child from a biological parent without proof of a reason for the removal (or, in this case, proof of the reason for failure to place Child with Father after removal from Mother), order the parent to participate in services to remedy some unsubstantiated reason for removal, and then terminate the parent's rights to the child solely because the parent did not comply with those services." Id. Finally, the Court noted that evidence that Father missed visits with the child is also insufficient to support the conclusion that the reasons for removal will not be remedied. Id. Father had missed some visits at the beginning of the CHINS case because he obligations to another child and a full-time job that required him to drive around the state; Father subsequently attended eighty percent of the visits. Id. The Court noted that finding he was unwilling to parent and uninterested in doing so was directly contravened by Father's visits and continued request for custody. Id. While the Court did not approve of noncompliance with services or visitations, the trial court's findings were not supported by the evidence. Id. at 328-29.

**The trial court erred when it concluded that a continuation of the parent-child relationship would pose a threat to the Child; this finding was not supported by the evidence. Id. at 329.** The Court noted there was no evidence to show that Father had alcohol or anger issues impacting the child, and no evidence to show that Father's criminal record impacted the child negatively. Id. The evidence did show that Father's visits were progressing and improving in both quantity and quality. Id. The only negative comments about Father's parenting were that he was a permissive parent, but a difference in parenting styles is an insufficient reason to terminate a parent's parental rights. Id.