



Termination of the Parent-Child Relationship 6/21/2019

In **In re A.B.**, 130 N.E.3d 122 (Ind. Ct. App. 2019), the Court reversed the trial court's order terminating C.B.'s ("Mother") parent-child relationship with A.B. ("Child") and held that there was insufficient evidence to support the conclusion that the conditions which resulted in removal were likely not to be remedied, that the continuation of the parent-child relationship threatened the well-being of Child, and that termination was in Child's best interest.

Child was born in January 2011 to Mother and B.B. ("Father"). On April 18, 2017, the Department of Child Services ("DCS") and law enforcement officers went to Mother's house after receiving a call that Child's half-sibling was being neglected. Upon arrival, they found the half-sibling wandering down the street and Mother passed out inside. Mother was charged with neglect of a dependent. On April 19, 2017, DCS filed a petition alleging both children were children in need of services ("CHINS"). After a factfinding hearing, Child was adjudicated as a CHINS and ordered Mother to participate in a number of services. Mother completed a substance abuse assessment where she indicated she had been using alcohol, methamphetamine, and opiates. The treatment provider recommended an intensive outpatient program that Mother was discharged from for failure to comply. On August 30, 2017, the juvenile court stated that Mother's visits could continue so long as she submitted to all requested drug screens and did not test positive for methamphetamine. Subsequently, Mother did test positive for methamphetamine and the juvenile court suspended her parenting time. DCS denied Mother visitation with Child in October 2017 and June 2018 citing potential detriment to Child and the length of time that had passed since Mother's last visit. Mother's parenting time was never reinstated during these proceedings. Mother was also incarcerated a number of times throughout the proceedings. In the three months leading up to the termination hearing, Mother consistently participated in drug screenings, all of which were clean. Child also participated in services that revealed Child had Attention-Deficit Hyperactivity Disorder and impulse-control disorder. Child's Court Appointed Special Advocate ("CASA") testified that Child had made significant improvements since removal. Furthermore, since being removed from Mother, Child was in relative placement in Florida and her caregivers were willing to adopt her. On April 4, 2018, DCS filed a petition to terminate Mother's parent-child relationship with Child. DCS stopped funding services for Mother in June 2018 citing her failure to participate. Both the Family Case Manager and CASA testified that termination would be in Child's best interest because Child was doing well in her current placement and Mother had not participated in services. On November 21, 2018, the trial court entered an order terminating the relationship.

The trial court erred when it admitted exhibits regarding Mother’s drug screens into evidence because DCS did not provide expert testimony and the exhibit is inadmissible hearsay. Id. at 129. Although neither party raised the issue on appeal, the Court noted that the trial court admitted and relied upon drug test results. Id. at 128. DCS submitted evidence of Mother’s drug screens which included affidavits from a “Certifying Scientist and Custodian of Records” for a toxicology lab. Id. The Court opined that, pursuant to prior case law, drug screens do not fall under the business records exception to the rule against hearsay. Id. at 128-29. Although Mother did not make a hearsay objection, the exhibit should have been inadmissible hearsay. Id. at 129. Admission of this evidence would have required expert testimony and an opportunity to cross-examine. Id.

The trial court erred when it concluded that there is a reasonable probability that the conditions which resulted in removal would not be remedied. Id. at 130. Mother was incarcerated twice during the proceedings and suffered a relapse with her drug abuse; however, at the time of the termination hearing, Mother had completed a mental health assessment, a substance abuse assessment, and a psychological evaluation. Id. at 129. She had also complied with her criminal case and maintained her sobriety for at least three months. Id. Furthermore, Mother was employed, had applied for health insurance, and was addressing her mental health issues with a doctor. Id. Mother’s failure to participate in many services and drug screens was largely due to her incarceration. Id. The Court noted that it is well established that incarceration is not a sufficient basis for terminating parental rights. Id., citing K.E. v. Indiana Dep’t of Child Servs., 39 N.E.3d 641, 643 (Ind. 2015). Lastly, the Court found no evidence on the record to contradict Mother’s testimony that she has had or will have appropriate housing. Id.

The trial court erred when it concluded that there is a reasonable probability that continuation of the parent-child relationship posed a threat to Child’s well-being. Id. at 130. The Court noted that the trial court failed to cite specific facts as to why the continuation of the parent-child relationship is a threat to the child’s well-being, and noted that the trial court simply stated that the child needed stability and involved and caring parents. Id. After examining the record, the Court opined that although Mother’s visits were suspended after she continued to test positive for methamphetamine, it was clear that she wanted to maintain the bond she had with Child and DCS refused to allow her to do so. Id. The Court noted that Child was moved from placement to placement, but that DCS and the trial court cited the need for stability in denying Mother visitation; the Court found this logic to be disingenuous, as the constant changing of placements was undoubtedly traumatic. Id. There was no clear and convincing evidence to suggest that continuation of the relationship poses a threat to Child’s well-being. Id.

The trial court erred when it concluded that termination would be in Child’s best interest. Id. at 131. The Court noted that throughout the proceedings, Mother made significant improvements and clearly wanted a relationship with Child. Id. There was no evidence in the record to suggest that Child would be harmed if termination were delayed to give Mother a chance to maintain sobriety and resume visitation. Id. Furthermore, there was no evidence to

suggest that delaying the termination would affect Child's current caregivers willingness to adopt. Id. In sum, there was no clear and convincing evidence that termination of the parent-child relationship would be in Child's best interest. Id.

DCS failed to establish by clear and convincing evidence the statutory prerequisites for termination of a parent-child relationship. Under IC 31-35-2-4(b)(2), a petition to terminate parental rights must allege that one of the following is true: (1) there is a reasonable probability that the conditions that resulted in removal will not be remedied; (2) there is a reasonable probability that continuation of the parent-child relationship poses a threat to the well-being of the child; (3) the child has been adjudicated as CHINS on two separate occasions. Id. at 128. DCS was unable to carry its burden on these statutory points. Id.