



CHINS; TPR

10/31/2019

In **In re T.W.**, 135 N.E.3d 607 (Ind. 2019), Father appeals the trial court's termination of his parental rights to his child, T.W. The Court of Appeals agrees with Father, finding that the Department of Child Services did not make reasonable efforts toward reunification with Father, and "reversed and remanded with instructions to reopen the CHINS case, reexamine the requirements for Father's reunification with Child, and enter a new dispositional order outlining the services Father must comply with to effect reunification." Id. at 618.

T.W. was born on March 6, 2017, and DCS filed a CHINS petition on March 7, 2017 because Mother had an open CHINS case with another child, and it wasn't going well. Father was incarcerated at the time of T.W.'s birth, but had contacted DCS prior to the birth because he was certain the child would be CHINS. *Id.* He acknowledged paternity and requested that T.W. be placed with paternal grandmother in Kentucky. DCS began the process to place with paternal grandmother, but T.W. was placed into foster care and the relative placement was never completed. A year later, on March 23, 2018, Father was released and placed on probation. Father called the FCM six days later, on March 29, and provided a temporary address. Father met with the FCM on April 6, 2018, and the FCM told him to establish paternity, get a substance abuse assessment, and the FCM would provide a parent aide to assist Father with housing and employment issues. To establish paternity, Father went to the county clerk, where he was told to fill out his part of the paperwork and to give it to DCS to complete and return due to confidentiality issues. Father did so, but the FCM never turned in the paperwork. Instead, he told Father to do it, and when Father did not take the paperwork, the FCM stuck it in his folder and did nothing further with it. The FCM admitted that, at this point in the case, he decided that T.W. was better off with someone else, not Father.

With regard to other offered services, the FCM never referred Father to a parent aide. As for substance abuse referrals, the FCM set up drug screens but never advised Father that he did so. Id. Instead, the FCM mailed the information to the temporary address provided by Father during their initial call, despite having a current phone number for Father and knowing he was no longer at that address. As such, Father never completed any drug screens. Lastly, the FCM eventually set up supervised parenting time sessions for T.W. and Father at an agency in April 2018. Father arrived early for the first visit and waited for almost an hour, and when no one else showed up, was eventually told that the FCM had cancelled the visit two days earlier. *Id.* When asked why, the FCM advised that "I decided to cancel that referral because [Child] had never met [Father]. And I felt [that] if we went ahead and started a visit and started forming that bond and then if things didn't go well, ... and he just disappeared, then that would have had psychological effects on [Child]. So I did call [the agency] and cancel the visit . . ." The FCM admitted at trial that

he The FCM had no further communication with Father from then until late August 2018, when Father violated his probation and was sent to work-release.

DCS filed for termination of Father's rights in August 2018, four months after he was released from incarceration. The termination hearing was held in January 2019, at which time Father had employment, had completed a substance abuse evaluation and was in counseling, and was taking classes to work toward more stable employment and housing. In February 2019, the trial court terminated Father's parental rights, and he appealed.

In order for a parent's due process rights to be properly protected in a termination case, DCS must have made reasonable efforts to preserve or reunify the family in the CHINS case, unless an exception applies. Id. at 615. The Court noted that "we [have] held that procedural irregularities in the CHINS case—such as multiple FCMs, inappropriate behavior by FCMs, and apparent bias of FCMs—contributed to the parents' non-compliance such that termination of their parental rights amounted to a denial of their due process rights." Id. at 613, citing Matter of C.M.S.T., 111 N.E.3d 207, 213 (Ind. Ct. App. 2018). The Court engaged in extensive analysis of due process rights in CHINS and termination proceedings, noting that when the state seeks to terminate a parent's rights, it must comply with many due process requirements. Id. at 613. The Court also noted prior case law, which held that due process protections must be applied in CHINS proceedings, since CHINS proceedings lead into termination proceedings. Id. When due process irregularities in CHINS proceedings occur, it taints both the CHINS proceedings and any subsequent termination proceedings. Id. Lastly, when a state imparts a due process right, such as the right to reasonable efforts, then it must actually give that right. Id. at 614.

What constitutes "reasonable efforts" will vary from case to case, and may not always include providing services to parents; however, in this case, DCS did not meet the threshold of providing reasonable efforts. Id. at 614. First, despite Father's requests to be involved and establish paternity for T.W. from pre-birth, the FCM did not make reasonable efforts to assist Father to complete and return the paperwork. Id. at 615. The FCM referred Father for substance abuse services, but never told him so despite having a current telephone number, and instead sent paperwork to an address he knew was no longer good. Id. at 616. The FCM then set up supervised visits for Father, then unilaterally cancelled them without informing Father, without any cause other than the FCM's own opinions. Id. at 617. Lastly, the FCM never set up the parent aide he'd promised, who ultimately may have been a guide for Father as he navigated the referrals and child welfare requirements, improving the likelihood of his success. Id. Instead, the FCM left Father adrift to navigate alone, ultimately setting him up for failure. Id. The Court ultimately found that "FCM Meredith decided, almost from the outset, that Child would be better off in foster care, making no genuine efforts to provide Father with the support and services he so desperately needed." Id. at 618. In light of this, the Court reflects that "[w]hen stepping back and looking at this situation in its totality, we can only conclude that DCS did not make reasonable efforts to reunify Father with Child. Likewise, we can only conclude that the insufficient process employed in the CHINS case created a risk of the erroneous filing of a petition to terminate Father's parental rights to Child, in violation of Father's due process rights." Id.