



Termination of the Parent-Child Relationship

12/23/2019

In **In re Termination S.K.**, 138 N.E.3d 329 (Ind. Ct. App. 2019), the Court affirmed the trial court's involuntary termination of T.K.'s ("Father") parental rights as to S.K. ("Child."). The Court held that the record was insufficient to establish that the child was an Indian child under ICWA, and that ICWA did not apply in this case.

On June 17, 2016, the Indiana Department of Child Services ("DCS") filed a petition alleging that the Child was a child in need of services ("CHINS.") Father informed the court in an initial hearing that the Child's mother is Canadian and belongs to an Indian Tribe in Canada. DCS confirmed this but found the tribe to be one that is not covered by the Indiana Child Welfare Act ("ICWA.") On November 29, 2019, DCS filed a petition for involuntary termination of Father's rights. Father filed a motion to dismiss arguing that ICWA applied. Father failed to appear for the hearing on his motion dismiss and the trial court denied the motion. Father filed a motion to reconsider on February 27, 2019. The trial court granted the motion to reconsider and ordered the parties to appear on April 9, 2019. On April 9, 2019, the parties set a factfinding hearing for May 20, 2019. Father failed to appear on May 20, 2019 and DCS presented its case. On July 8, 2019, the trial court terminated Father's parent rights as to the Child finding that the tribe the Child belongs to is not one recognized by the federal government and DCS did not have to comply with ICWA. In the order, the trial court detailed Father's issues with instability, substance abuse, unsuitable housing, criminal involvement, and failure to comply with services. Ultimately, the trial court found that there was a reasonable probability that the conditions which led to removal would not be remedied, that a continuation of the parent-child relationship posed a threat to the Child, a termination of the relationship was in the best interest of the Child, and there was a satisfactory plan in place for the care of the Child.

Father did not demonstrate that Child was an Indian child as defined by ICWA, and failed to show that ICWA applied to this case; consequently, the trial court properly determined it had jurisdiction to hear the case. Id. at 335. Father argued that the trial court lacked jurisdiction pursuant to ICWA and that DCS failed to send notice to the tribe. Id. at 333. Father asserted that the tribe Child belongs to in Canada is a part of the Chippewa Nation whose homeland is in Minnesota. Id. Furthermore, Father argued that the court erroneously applied the "clear and convincing evidence" standard when it should've applied the "beyond a reasonable doubt" standard which is required by ICWA. Id. The Court first noted the policy reasons behind ICWA, as well as the heightened procedural rights afforded to Native American tribe members. Id. at 334. In examining the definition of who qualifies as an "Indian child" under ICWA, the Court concluded that Father had not shown evidence indicating that the child was covered by ICWA. Id. at 334-35. Father was unable to show that the tribe to which the child belonged in Canada was the same as a registered tribe in the United States. Id. The Court noted evidence in

the record indicating that the tribe to which Father alleged the child belong was not a federally recognized tribe, and as such, ICWA did not apply. Id. at 335.

Since Father did not challenge other findings of fact regarding the termination of his parental rights, those findings stood as proven. Id. at 336.