



Termination of the Parent-Child Relationship

3/11/2020

In **In re the Termination of the Parent-Child Rel. of M.M.E.**, 146 N.E.3d 922 (Ind. Ct. App. 2020), the Court held that procedural irregularities in Father's case deprived him of due process, reversed the termination of his parental rights, and remanded the matter for further proceedings. **Id.** at 923.

Father molested his stepdaughter ("Mother") and she gave birth to a child a few weeks after she turned sixteen. DCS filed a CHINS petition on the child a few months after the child was born after the child was hospitalized with injuries consistent with being shaken. Mother initially identified another man as the father, but a few months into the CHINS proceedings, Mother admitted that Father could potentially be the father, as he had been sexually abusing her since she was eleven. Father was charged with child molesting and sexual misconduct with a minor and was incarcerated. DNA evidence confirmed that Father was the father of Mother's child. In 2016, DCS served Father with notice and a CHINS petition where he was incarcerated; Father did not appear at the hearing, was not represented by counsel, and the trial court did not appoint him counsel. Neither DCS nor the trial court took any further action regarding Father in the CHINS case; there was no amended petition naming Father or including allegations against him, Father was not included in any case plans, there was not factfinding hearing as to Father, there was no dispositional decree as to Father, and Father was never given any more notice or orders from the case. In January 2018, Father was sentenced to twelve years in prison; DCS moved to terminate Mother's and Father's rights, and a termination hearing was held in August 2019. Father was still incarcerated, unrepresented by an attorney, and was not transported to the hearing. The trial court terminated Mother's and Father's rights.

The procedural irregularities in Father's CHINS case were so pervasive that he was deprived of due process in the CHINS and subsequent termination proceedings. Id. at 925. Procedural irregularities in CHINS proceedings can ultimately result in a deprivation of due process in termination proceedings. **Id.** at 924. The Court and Father noted the following procedural problems: (1) There was no amended CHINS petition identifying Father as a parent or alleging why the child was a CHINS as to Father; (2) the initial/detention hearing concerning Father was not timely held, as required by IC 31-34-10-2; (3) the trial court did not enter a denial on Father's behalf and there was no factfinding hearing for Father, contrary to IC 31-34-10-6; (4) Father had no dispositional hearing or decree; and (5) Father received no case plans. **Id.** DCS conceded the problems but argued that Father waived his due process claims by failing to raise them in trial court. **Id.** The Court noted that it retained discretion to determine whether to hear waived claims; the Court chose to hear those claims because the irregularities were not isolated or minor, and because the trial court did not appoint counsel for Father. **Id.** at 924-25. The procedural due process violations were sweeping and large-scale, and if the trial court had appointed counsel for Father, as it was required by law to do, perhaps the due process violations

would have been raised at the trial court level. Id. at 925. DCS lastly argued that Father was not harmed by the CHINS procedural irregularities because the odds of Father being reunified with the child remained incredibly slim, given the disturbing facts and Father's incarceration. Id. The Court opined that while Father's actions were horrific, even fathers like him were entitled to due process, and the due process given to him in this case was utterly inadequate. Id.

The Court remanded the matter for further proceedings in the CHINS case, starting with the filing of a new amended CHINS petition with the allegations against Father; the Court further noted that “reasonable efforts may not be required in this case under IC 31-34-21-5.5(b). Id. at 925. The Court noted that even though the matter had to be remanded for further CHINS proceedings, DECS could potentially move quickly to termination. Id. The Court highlighted that Father was convicted of sexual misconduct with a minor, and Mother was the victim. Id. Although DCS usually must make reasonable efforts to reunify parents and children, these efforts are not needed if the trial court finds that a parent of a CHINS has been convicted of, among other things, sexual misconduct with a minor against a victim who is the other parent of the child. Id., citing IC 31-34-21-5.5(b) and IC 31-34-21-5.6(b)(1). If the trial court makes such a finding, DCS can immediately file a termination petition. Id., citing IC 31-35-2-4(b)(2)(A)(ii). The Court noted that no matter what course DCS took in the CHINS case, Father has a right to counsel in all future CHINS and termination proceedings. Id., citing IC 31-34-4-6(a)(2)(A); IC 31-32-2-5; IC 31-32-4-1; and IC 31-32-4-3.