



Termination of the Parent-Child Relationship

5/7/2020

In **Matter of the Invol. Term. of the Parent-Child Rel. of F.A.**, 148 N.E.3d 353 (Ind. Ct. App. 2020), the Court held that DCS did not make all reasonable efforts to reunify Parents with Children; the Court reversed the trial court's order and remanded the matter for reinstatement of the CHINS cases and reassessment consistent with the Court's opinion. Id. at 359.

The children subject to this opinion were born in 2008, 2009, 2012, 2013, and 2014. De.A. and A.A. were also children of Parents but were not the subjects of this termination case. In September 2016, DCS was notified that some of the children, De.A. among them, had missed excessive amounts of school. A home visit revealed unsanitary living conditions, and the children were found to be CHINS based on the home conditions and Parents' admissions that the children missed excessive amounts of school (seventy-five percent of school days). The trial court issued parent participation orders. Some of the children who were removed from the home were returned back in December 2016, but the children were again removed in March 2017 after the home was alleged to be unsafe for children. A July 2017 progress report indicated that Parents had attended all visits and counseling sessions, and that DCS was seeking mental health assistance for Mother, which included a partial hospitalization. A January 2018 order reflects that parents were complying with the children's case plan and engaging in services, but that there were still some issues with the mental health hospitalization program with which DCS was assisting Mother. The children were returned to Parents in stages in 2018, and various orders of the trial court along the way indicated that the home was safe, that Parents were engaged in services, that Parents were cooperative, and that things were going well. All of the children subject to this case were returned home by November 2018, and a report indicated that the children were happy, adjusted, and that DCS was requesting closure of the case. The projected date for permanency was March 15, 2019.

In January 2019, Mother had an altercation with twelve-year-old De.A., where Mother yelled at De.A., used profane language, threatened to knock her out, and struggled with her over an electronic device which resulted in cuts on De.A.'s fingers. The following day, the trial court terminated the home placement, and DCS moved to terminate parental rights for the children on February 5, 2019, but the case was dismissed. The trial court approved a change in the permanency plan to adoption on April 30, 2019, and DCS filed again to terminate Parents' parental rights on May 1, 2019. At the August 2019 termination hearing, a home-based service provider testified that Mother was appropriate with the children, and the house was clean and organized. Mother's counsel pointed out that DCS had asked for case closure, all of the children subject to this case were home, and DCS was basing termination on a single altercation with no extra services provided to remedy any problems. The trial court terminated Parents' parental rights, finding that Parents did not show the ability to provide adequate care or supervision, did not show their ability to provide a home that was safe, that they were evicted from their home

after the final removal, that Father did not protect the children from domestic violence, and that he would be unable to care for five children while working a low paying full time job that did not cover necessities.

Given the totality of the circumstances, DCS did not make reasonable efforts to reunify Parents with the children following the altercation between Mother and her daughter. Id. at 359. Mother argued that her due process rights were violated because DCS decided to terminate her parental rights based on a single altercation with her daughter without offering her services to remedy the issue. Id. at 357. Father argued that his due process rights were similarly violated. Id. DCS contended that while the altercation between Mother and De.A. was the final straw, the evidence overall showed that numerous and reasonable attempts were given to Parents to achieve reunification, but Parents refused services or refused to benefit from the services. Id. Although DCS is not required to provide services prior to seeking termination, parents facing termination proceedings are entitled to due process protections. Id. at 357-58. Furthermore, CHINS and TPR proceedings are deeply intertwined, such that errors in a CHINS proceeding may infect a subsequent TPR proceeding and deprive a parent of due process. Id. at 358. The Court noted that DCS’s policy manual provides that DCS will give family services to all children and families with an open case, will make appropriate referrals, and will assess the needs of the child and family throughout the life of the case and make adjustments to services when necessary. Id. The Court noted prior case law holding that a “court must judge a parent’s fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions,” and that a court must “must evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child and may consider a parent’s prior” actions and records. Id. (internal citations omitted). The Court opined that the case clearly moving smoothly towards reunification, until DCS abruptly changed course after the altercation. Id. at 358-59. The Court stated that while the altercation was clearly serious, DCS did not follow its own policies and reassess the needs of the children and the family and adjust services; instead, DCS moved directly to termination. Id. at 359. The Court noted that termination of parental rights is an extreme sanction of last resort and should only be used when reasonable efforts have failed. Id.