



TPR

1/23/2020

In **In Re Termination of the Parent-Child Rel. of B.F.**, 141 N.E.3d 75 (Ind. Ct. App. 2020), the Court of Appeals reverses the termination of Mother's parental rights, noting that because the CHINS case remained open for Father and the children remained in kinship care, termination of Mother's rights did not establish permanency for the children.

In June 2015, B.F. and C.F. were deemed CHINS and removed from Mother's care after she left the children home alone, and subsequently overdosed and was hospitalized. Mother admitted the allegations, and was ordered at disposition to participate in parenting, substance abuse, and psychological assessments and comply with any recommendations, submit to random drug screens, obtain stable housing, and participate in supervised visitation. Father was not living with the children at the time of removal but was included in the CHINS. The children were placed in kinship care. After a period of sporadic cooperation, by December 2017 Mother was complying with all services, was employed at Purdue University, and had secured housing. However, DCS had lingering concerns about Mother's ability to sustain her situation, because her employment options were limited by her seizure disorder, and her housing options were limited due to a past felony conviction. Despite these concerns, DCS placed the children with Mother on a temporary basis in February 2018. DCS found childcare for B.F. and C.F. while Mother worked, but they were not placed together, and the care centers were on opposite sides of town. Mother cannot drive due to her seizure disorder and taking public transportation to and from the care centers and work meant Mother was on the bus for six hours each day. This caused her to have to decrease her hours at work, and eventually Mother stopped working due to Purdue's summer break. She stopped taking the children to daycare and lost the spots. Service providers worked with Mother to find employment, but it was a challenge to find something that fit. In July 2018, Mother was at risk of eviction and so DCS placed the children back in kinship care. In October 2018, DCS filed a TPR petition seeking to terminate Mother and Father's rights to the children.

The termination hearing took place in April 2019. At hearing, Mother reported a full-time job at Wendy's, where she had worked for the last nine months. Mother had continued visits with the children and was doing well, except she had not secured stable housing and was staying with her Pastor. Mother indicated that she was struggling to secure housing but wanted to do so and bring her children home. The trial court terminated Mother's parental rights, but not Father's, finding that he had secured stable housing and employment, was strongly bonded with the children, and that terminating his relationship was not in the children's best interest while reunification still seemed likely. Mother appealed.

At the present moment, it was not in the children's best interests to terminate Mother's parental rights; termination did not achieve permanency or stability, given that Father's

rights remained intact and the children remained in a placement outside the home, and the children were able to safely continue their relationship with Mother. Id. at 82-83. The Court on appeal focuses on the required elements for termination within I.C. 31-35-2-4(b)(2), and specifically analyzes the requirement that DCS show that termination is in “the best interests of the child.” Id. at 82. The Court acknowledges the amount of effort put forth by DCS to assist Mother, and the amount of time that the children have spent in care. However, the Court goes on to note that Mother’s seizure disorder contributed to her difficulties, and that overall Mother has worked with DCS and been successful, apart from stable housing. The Court goes on by observing that the DCS case was not resolved at trial, since Father’s rights were not terminated, and the kinship placement continued. Termination of Mother’s rights did not establish permanency for the children, as they remain involved with DCS. Specifically, the Court explains that “[i]t may be that in a vacuum, the evidence in the record related to Mother’s history of housing and employment, as well as her reluctance or unwillingness to fully take advantage of the services in place would support a termination order. But here, the time she spends with her children is appropriate and there is no reason that visitation could not continue.” Id. at 83.

The Court reverses and remands, noting that “[e]ven though Mother was not in a place at the time of the termination hearing where she was able to be a safe and appropriate caregiver for the Children, we simply cannot conclude that termination is in their best interests so long as reunification with Father is an option.” Id. at 83. Further, reflecting upon DCS’ admission that termination did not establish permanency for the children and that there were other avenues that could have been explored, the Court rules that “[i]f there are ‘other ways’ the Children’s well-being can be assured and ‘less restrictive means’ of achieving that than terminating their relationship with their mother, then the judicial system is obligated to explore those options before arriving at the last resort of termination.” Id.