



TPR

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In **In Re Termination of the Parent-Child Rel. of C.D.**, 141 N.E.3d 845 (Ind. Ct. App. 2020), the Court of Appeals affirms the trial court's order terminating the parental rights of J.H. and W.D., finding no merit in Mother's arguments that the rulings of the trial court were clearly erroneous, and both Parents' argument that the deprivation of the ability to choose the adoptive parents for their child is a denial of their parental rights.

The child was born in September 2017. The child and Mother both tested positive for marijuana, and DCS filed a CHINS petition two days later, requesting placement for the child due to being born drug positive, but also because Mother had an open CHINS case for another, older child. The petition was granted, and C.D. was placed with paternal grandmother. C.D. remained in paternal grandmother's care until September 2018, when grandmother allowed an unsupervised visit with Mother and Father, which resulted in the police being called. DCS petitioned to remove C.D. from grandmother's care, which was granted, and D.C. was then placed in foster care. DCS subsequently reversed course in February 2019, when they requested that the child be re-placed again with Grandmother pending adoption, along with the support of the GAL. The foster parents opposed this motion, introducing evidence that C.D.'s needs were not met in the care of Grandmother, and the court ruled that the child should stay in foster care

Mother and Father were substantially noncompliant with court-ordered services throughout this time and were discharged unsuccessfully from all providers. As such, when DCS petitioned for termination in March 2019, much evidence was presented regarding Mother and Father's inability to remedy the situation at hand. The hearing was continued to a second date, and during the interim period, the GAL filed a motion to reconsider the DCS motion to place C.D. with her grandmother. The GAL provided evidence that C.D.'s needs had been properly met while in grandmother's care, and that a kinship placement, pending adoption, was in C.D.'s best interest. The trial court never ruled on the motion, rendering it denied. The trial court held the second day of the termination trial in April 2019, and entered orders terminating Mother and Father's rights in May 2019. Both parents appeal.

The Court rejected Mother's argument that the conditions that resulted in her daughter's removal were remedied by placement with Grandmother; a child's placement is not the focus of this inquiry, but rather, the focus is on whether the parent has improved the conditions to a point where the child can be safely returned. Id. at 853. The Court first analyzes Mother's arguments that the trial court erred in concluding that the conditions that led to removal would not be remedied. Id. The Court finds no merit in this argument, after noting a long history of missed and substance positive drug screens, and even referred to Mother's own testimony that she has not

remained sober. Id. As such, the Court finds no error in the trial court's conclusion that the conditions leading to the removal had not been remedied. Id.

Mother's arguments regarding best interests were little more than requests to reweigh the evidence, which the Court will do not; the Court found there was ample evidence supporting the trial court's determination that termination was in the child's best interests. Id. at 854. The Court, after analysis of the case history, found no error in this determination, considering the age of the child, the parents' compliance with services, and the child's need for permanency. Id. at 853-54. The Court noted that a recommendation by a child advocate or a GAL to terminate parental rights can be sufficient to show by clear and convincing evidence that termination is in a child's best interests. Id. The trial court found that it would be best for the child to have parental rights terminated so that should be adopted into a permanent home; Mother's arguments regarding the superiority of Grandmother as a placement to Foster Parents, and how termination would cut off contact between the child and Grandmother were unsuccessful. Id. at 854. The Court also referenced Mother's long-standing substance abuse problem, failure to participate in services, and general lack of stability. Id.

Mother's third argument, that the trial court erred in finding that DCS had a satisfactory plan for the child, also fails, as the Court noted that adoption is a suitable permanency plan in these matters. Id. at 855. Mother argued that adoption by Foster Parents was not a suitable plan for permanency for the child, again alleging that Foster Parents were doing an inadequate job of taking care of the child. Id. at 854. The Court characterized this as an attempt to reweigh the evidence and noted that even Mother admitted that adoption itself is, per Indiana law, a suitable permanency plan. Id. at 854-55. The Court also noted that the trial court found that adoption was a suitable plan for permanency, not that adoption by Foster Parents was a suitable plan for permanency. Id.

Finally, both Parents argue that by terminating their parental rights, the trial court has deprived them of the fundamental parental right to choose adoptive parents, and who will raise C.D. in the future. Id. at 855. The Court acknowledges parents have a Fourteenth Amendment right to raise their children as they see fit, referring to In re G.Y., 904 N.E.2d at 1259-60, which typically does include a right to choose adoptive parents. Id. However, in situations like the one at hand, the Court finds Parents' argument without merit because it "puts the cart before the horse" Id. Here, the Court notes that **"termination cannot be improper because it deprived the Parents of their right to consent to Daughter's adoption. Termination is proper because they failed to address their substance abuse problems and because termination is in Daughter's best interests. The result of this is that all of Mother and Father's parental rights, including the right to consent to adoption, have been terminated. This fact is not grounds for reversing the termination, it is a consequence of the termination."** Id.

Lastly, Parents argue that the trial court erred in failing to find that Grandmother should be the adoptive parent of C.D. Id. at 856. The Court here declines to find error, noting that **"[w]ho will ultimately be permitted to adopt Daughter is a question for the adoption court, not the termination court. In re A.S., 17 N.E.3d at 1007 ("[I]t is within the authority of the adoption court, not the termination court, to determine whether a particular adoptive placement is appropriate.");** see also In re D.J., 755 N.E.2d 679, 685 (Ind. Ct. App. 2001) (noting, in response

to mother's concerns regarding foster family adopting children following the termination of her parental rights, that "if the foster family desires to adopt the children, the home will have to be approved as an appropriate and suitable environment for the children."), *trans. denied.*" Id.