



## Termination of the Parent-Child Relationship

6/10/20

In **In re Invol. Term. of the Parent-Child Rel. of D.C.**, 149 N.E.3d 1222 (Ind. Ct. App. 2020) *trans. rqst. pending*, the Court held: (1) with respect to Father, there was sufficient evidence supporting the trial court's conclusion that the conditions resulting in the child's removal would not be remedies; (2) with respect to Father, there was sufficient evidence to show termination was in the child's best interests; and (3) with respect to Mother, there was insufficient evidence to show that Mother received the required statutory notices which must be provided prior to a voluntary termination of parental rights.

The child was born to Mother and Father in 2013, and in December 2017, DCS filed a CHINS petition based on Mother's in-home methamphetamine use. Mother tested positive and was on probate for related drug charges. Father was incarcerated at that time, and DCS removed the child from Mother's care. The child was adjudicated to be a CHINS. The initial plan was reunification with both parents. Father was ordered to stay in contact with the FCM and participate in services as ordered or recommended by the FCM. Father was to obtain a substance abuse assessment and participate in the program. The trial made other orders for Father which included: (1) keep all appointments with service providers; (2) refrain from using illegal substances; (3) submit to random drug screens; (4) complete a substance-abuse assessment and successfully complete all treatment recommendations; (5) attend all scheduled visitations with Child and comply with all visitation rules and procedures; (6) secure and maintain a stable source of income; and (7) maintain safe and stable housing. The child remained in foster care with supervised visits. By February 2019, the trial court found that Mother and Father had not been compliant with the permanency plan and changed the plan to reunification with a concurrent plan of adoption. In March 2019, DCS filed a termination petition for both parents, and hearings were held in May 2019 and August 2019. Mother did not appear at the August 2019 hearing and the trial court was given Mother's Voluntary Relinquishment of Parental Rights. Mother's counsel indicated he had reviewed Mother's rights and the results of termination and signed it in front of him. Counsel indicated Mother was not present because she became physically ill after signing it. The trial court granted DCS's oral motion to terminate Mother's parental rights based on the form. Father's parental rights were ultimately terminated based on the following evidence: (1) Father's conviction of auto theft; (2) Father's violation of his probation; (3) Father's ongoing positive drug tests for illegal drugs; (4) Father's substance abuse assessment at Cummins, which resulted in no treatment recommendations initially; (5) Father's subsequent positive drug test, resulting in services through Cummins, which Father was discharged from unsuccessfully; (6) Father's failure to attend another substance abuse assessment; (7) Father's second arrest and incarceration; (8) Father's failure to engage in other services or follow recommendations; (9) Father's missed visits with no explanation; and (10) Father's failure to bond with the child and his inappropriate communication with the child.

**There was sufficient evidence supporting the trial court's determination that the conditions resulting in the child removal would not be remedied; this was true even though the initial removal pertained to Mother's drugs use, and Father's parental rights were at issue. Id. at 1230.** Father challenged the sufficiency of the evidence supporting the finding that there was a reasonable probability that the conditions resulting in the child's removal or out of home placement would not be remedied. Id. at 1228. When a trial court evaluates the likelihood of remedied conditions, it must consider the parent's fitness at the time of the termination hearing and evidence of changed conditions; however, evidence of changed conditions may be balanced against a parent's habitual patterns. Id. (internal citations omitted). Habitual patterns may include, but are not limited to, a parent's criminal history, drug and alcohol abuse, history of neglect, failure to provide support, lack of proper housing or employment. Id. at 1228. With respect to services, a court may consider what services were offered and the parent responded to those services; before lack of compliance of services may be relied upon for termination, there must be evidence of the underlying unfitness that led to the specific services. Id. (internal citation omitted).

The Court noted the following evidence: (1) the child was removed because of Mother's in-home methamphetamine use; (2) Father participated in a substance abuse assessment, and shortly thereafter tested positive for methamphetamines and amphetamines; (3) Father was discharged unsuccessfully from substance abuse treatment; (4) Father was referred to Hamilton Center for an intake, which he failed to do; (5) Father continued to test positive for illegal drugs; and (6) Father did not acknowledge the child was removed for drug use or his ongoing problem. Id. 1229-30 Father attempted to argue that the FCM was confused about whether Father had tested positive for illegal drugs, but the Court noted that the testimony showed that the FCM answered affirmatively that Father had tested positive, and the FCM knew Father had done so in Mary 2019. Id. The Court called this a request to reweigh the evidence. Id. at 1230. Father argued that Mother, and not Father, was the cause for the removal due to drug use; however, the Court noted that the evidence supported the finding that there was a substantial probability of future neglect by Father, and the child would be subjected to the same threats and neglect as before due to Father's continued use of illegal drugs. Id. The Court opined that it did not need to address Father's other arguments regarding remedied conditions, as the record contained evidence of unaddressed and unremedied issues with respect to substance abuse. Id.

**The Court held that there was sufficient evidence supporting the findings that it was in the child's best interests to terminate Father's parental rights. Id. at 1232.** Father challenged the sufficiency of the evidence supporting the finding that termination was in the child's best interests. Id. at 1230. The Court noted that in addressing children's best interests in termination cases, trial courts may look at a wide variety of factors. Id. One of those factors may be permanency, but it is not "reason enough to terminate parental rights where the parent has an established relationship with his/her child" and has "taken positive steps" in accordance with the plan for reunification." Id. citing In re V.A., 51 N.E.3d 1140 1152 (Ind. Ct5. App. 2016).

The Court noted the following evidence: (1) Father was initially unable to care for the child due to his incarceration; (2) Father committed a criminal offense during the CHINS case and was again incarcerated; (3) Father continued to use illegal drugs during the case; (4) Father failed to comply with some services target at his use of illegal drugs; (5) Father failed to take a drug test

and his refusal was part of a larger pattern of refusal to follow through with important reunification steps; and (6) when the CASA outlined the steps Father would need to take immediately to achieve reunification, Father followed through on only a few of those steps. Id. at 1230-31. Father challenged the finding that he failed to comply with the services in the dispositional order; this argument largely hinged on whether the court directly ordered the second assessment at Hamilton Center. Id. at 1231. However, the Court noted the dispositional order also included language ordering Father to comply with services and programs recommended by the FCM, which this undoubtedly was. Id. The Court also opined that it was not unreasonable for the FCM to require a second substance abuse assessment after Father tested positive for illegal drugs and had been unsuccessfully discharged from the first assessment. Id. Father challenged the finding that the visitation supervisor saw no bond, supervision, or appropriate communication and relationship between Father and the child. Id. The Court noted that the testimony and evidence did support this finding, including the child's failure to return affection to Father, testimony that lack of a bond can lead to trust issues, and Father's speaking to the child about his bills, lack of housing, and time spent in jail. Id. Regarding the supervision Father provided, the Court noted that Father never progressed to unsupervised visits, Father often missed visits with no explanation, and there was evidence of Father's unfitness. Id. at 1331-32. Both the FCM and the CASA testified that termination was in the child's best interests. Id. at 1232.

**There was no evidence indicating Mother received one of the required statutory notices in order to voluntarily terminate her parental rights; the Court remanded the matter for further hearing regarding whether Mother received the ninth statutory advisement. Id. at 1234.** In for a parent's rights to be voluntary terminated, IC 31-35-1-6 requires specific findings; among many others, they include that the parents were advised in accordance with IC 31-35-1-12. IC 31-35-1-12 provides that parents must be advised that a parent's consent cannot be based on a promise regarding the child's adoption or any type of postadoption contact with the child after the parents voluntarily give up their parental rights and the rights are terminated. Mother's evidence included the written consent form, which includes eight of the required advisements, but did not include the above mentioned ninth advisement. Id. at 1233. DCS also conceded that the advisement was no on the form. Id. Mother challenged the sufficiency of the findings based on her failure to receive this advisement. Id. The Court noted that the trial court indicated in its findings that Mother's attorney indicated they reviewed her rights with her, and DCS pointed out that a similar affirmation from Mother's lawyer. Id. DCS argued that this was sufficient indication that Mother received the advisement of the ninth item, even if it was not in the form. Id. The Court opined that despite this suggestion, there was no actual evidence that Mother was properly informed of all items, specifically the ninth item; the law requires clear and convincing evidence, which is not supported by an assumption. Id. at 1234. Termination by consent is only proper if all elements of IC 31-35-1-6 have been satisfied, and this element of advisement was not satisfied. Id. Although the statutory requirement was not satisfied, a parent may only avoid written consent when the consent was involuntary. Id. (internal citations omitted). Mother argued that her consent was not voluntary due to her drug addiction and illness; however, the Court found that this made her consent incomplete, not necessarily involuntary. Id.