



Termination of the Parent-Child Relationship 2/24/2020

In **Matter of L.H.**, 142 N.E.3d 977 (Ind. Ct. App. 2020), the Court reversed the trial court's termination of E.H.'s ("Father") parental rights as to L.H. ("Child") due to procedural error by the Department of Child Services ("DCS").

Child was born in 2016 to Father and A.C. ("Mother"). Shortly after Child's birth, Father moved to Florida with the intention of moving Mother and Child to Florida once he was settled. While Mother was still living in Indiana with Child and her other children, she was removed from a homeless shelter and had no housing. Mother contacted DCS stating that she could not care for Child. On November 17, 2016, DCS filed a petition alleging Child to be a child in need of services ("CHINS"). After DCS filed the CHINS petition, Father sought custody of Child. DCS advised Father that before Child could be placed with him, a home inspection would need to be conducted in accordance with the Interstate Compact on the Placement of Children ("ICPC"). Before the home inspection could be completed, Child was adjudicated as CHINS and the trial court ordered DCS to submit an ICPC for Father. Furthermore, Father was ordered to keep in touch with the Family Case Manager ("FCM"), participate in programs recommended by DCS, attend all scheduled visitations, maintain suitable housing, and refrain from use of any illegal substances. On March 15, 2017, FCM received a letter that the ICPC home investigation process was not completed because Father advised them that he would be moving back to Indiana. Father returned to Indiana sometime in March 2017 and was residing with someone that DCS identified as having substance abuse issues. Father participated in some, but not all, services. On April 9, 2019, DCS filed a petition for involuntary termination of Father's parental rights. On June 27, 2019, a termination factfinding hearing was held. Two former FCMs testified as to their concerns about Father having adequate housing, his drug use, and his ability to give Child adequate attention. One of the former FCMs testified that Child had not been placed with Father because Father was in Florida but cited the reason for termination as failure to remedy the conditions that led to removal. During testimony, one FCM testified that it is DCS policy to comply with ICPC, although it is not actually required by law. On July 26, 2019, the trial court entered an order terminating Father's parental rights.

DCS's requirement that Father comply with ICPC resulted in the improper termination of Father's parental rights to Child. Id. at 984. At the time the trial court ordered to DCS to submit the ICPC process for Father, this Court had already handed down *In re D.B.*, 43 N.E.3d 599, 604 (Ind. Ct. App. 2015) which held that the ICPC does not apply to placements with an out-of-state natural parent. Id. Despite this ruling by the Court, DCS continually reaffirmed its policy of complying with ICPC. Id. The law on this issue of application of ICPC to natural parents is well settled. Id. The Court noted it was dismayed by DCS's failure to comply with

settled law and noted that DCS does not have the authority to set policy that contradicts the law. Id.

DCS's requirement that Father comply with ICPC was a violation of Father's due process rights and tainted the proceedings. Id. at 985. The Fourteenth Amendment of the United States constitution provides a safeguard for families against unwarranted government intrusion. Included in this is a parents' right to direct the "care, custody, and control of their children." Id., citing *In re S.A.*, 15 N.E.3d 602, 607-08 (Ind. Ct. App. 2014). This right is not absolute but can be interfered with where it is necessary to protect the safety and wellbeing of a child. Id. *Matthews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L.Ed.2d 18 (1976) held that due process in termination proceedings is balanced among three factors: the private interests affected by the proceeding; the risk of error created by the State's chose procedure; and countervailing governmental interest supporting use of the challenged procedure. As to the first factor, the private interest affected by the proceeding is the fundamental right to parent as one chooses. L.H. at 985. As to the second factor, the termination order makes it clear just how significant DCS's failure to place Child with Father was during these proceedings. Id. There was a great deal of testimony about the lack of a bond between Father and Child. Id. However, this was likely due, in part, if not wholly, because of DCS's failure to place Child with Father. Id. The trial court placed a great deal of emphasis on the absence of a bond and this error by DCS was a significant contributing factor to the termination. Id. Finally, while the government has authority to interfere, it is only allowed to do so when it is necessary. Id. This procedural error by DCS robbed Father of his due process rights. Id.