



Termination

4/1/2020

In **Matter of J.C.**, 142 N.E.3d 427 (Ind. 2020), the Court affirmed the trial court and held that a parent is not entitled to dismissal of a termination of parental rights petition (TPR) due to a juvenile court's failure to complete the hearing within the statutorily required 180 days when the parent affirmatively waives the requirement and invites the error. The Court affirmed the lower court's opinion on the issues of drug screen results and sufficiency of the evidence. *Id.* at 429.

J.C. and R.C. (the "Children") were removed from Mother's home in May 2016 after she overdosed on prescription medication and was found unresponsive in her home. After the Children were deemed to be CHINS, Mother was ordered to participate in a number of services including therapy and submitting to random drug screens. The permanency plan was initially reunification of the Mother with the Children. Mother had difficulty complying with the services and home-based services were closed as unsuccessful. Mother also frequently failed to appear for visitation with the Children. Many of Mother's problems were related to her continued use of illicit drugs and she failed to appear for many drug screens. Mother was arrested twice in 2018 and was ultimately sentenced to six years (three years home detention and three years probation). In March 2018, DCS filed petitions to terminate Mother's rights as to the Children. The hearings were initially set for the Fall of 2018; the termination trial was set for half-day sessions on September 26 and October 10, 2018, without objection by Mother's counsel, and with an explicit waiver of the 180-day requirement. Mother made no objection in September 26, or on October 10. The hearing was set for additional time on October 11, and at the beginning of the day on Oct 11, Mother made an oral motion to dismiss the termination proceedings due to failure to comply with the 180-day requirement. The trial court denied this, and at the end of day on October 11, more time to present evidence was required. Mother did not object and asked for additional time, and a final hearing date was set on November 26. Mother later filed a written motion to reconsider the denial of her oral motion to dismiss, which was denied. The final day of hearing was held on November 26, 2018 and on January 14, 2019 the trial court entered an order terminating Mother's parental rights. Mother appealed arguing the trial court improperly denied her motion for dismissal of the termination petition, the trial court abused its discretion in submitting her drug tests as evidence, and that the termination orders were not supported by sufficient evidence. The Court declined to address the issues of drug screens and sufficiency of the evidence, and summarily affirmed the Court of Appeals opinion on those matters. The Court granted transfer to address the issue of the 180-day time frame.

Mother's argument that prior CHINS case law dictated dismissal of her termination case failed; although the CHINS case law could inform the similar termination statute, the present case was easily distinguishable from the prior case law due to Mother's affirmative waiver of the 180-day time requirement. *Id.* at 431-32. IC 31-35-2-6 provides that, subject to an exception not applicable in this case,

“(a) ... the person filing the petition shall request the court to set the petition for a hearing. Whenever a hearing is requested under this chapter, the court shall: (1) commence a hearing on the petition not more than ninety (90) days after a petition is filed under this chapter; and (2) complete a hearing on the petition not more than one hundred eighty (180) days after a petition is filed under this chapter.

(b) If a hearing is not held within the time set forth in subsection (a), upon filing a motion with the court by a party, the court shall dismiss the petition to terminate the parent-child relationship without prejudice.

Mother argued that since the proceeding did not conclude with the statutorily required 180 days, the trial court erred in failing to dismiss the matter. *Id.* at 429-30. Mother invited the Court to apply prior CHINS case law dealing with statutorily required timelines to hearing completion to TPR cases. *Id.* at 430, citing *In re J.R.*, 98 N.E.3d 652 (Ind. Ct. App. 2018), *trans. not sought*; and *In re T.T.*, 110 N.E.3d 441 (Ind. Ct. App. 2018), *trans. not sought* (collectively holding the juvenile court shall complete a factfinding hearing within 60 days after the CHINS petition is filed, though the court may extend the time to complete the hearing for an additional 60 days if all parties consent to the additional time; it also provides that if the hearing is not held within those times, the court, on motion, “shall dismiss” the case without prejudice). The Court determined that given the two statutes similarity, it was not unfair that “opinions decided under one statute should inform a court when applying the other”. *Id.* at 431 The Court noted that these two cases, read in conjunction with *In re M.S.*, 140 N.E.3d 279, 283-84 (Ind. 2020) (holding that despite the deadlines in the CHINS statute, Indiana Trial Rule 53.5 allows a court, for good cause shown, to continue a hearing beyond those deadlines), were easily distinguishable from the present case. *Id.* at 432-32 In the present case, Mother affirmatively waived the 180-day requirement and did not object until after the hearing was well underway. *Id.* at 432. The Court also noted that in light of the recent opinion in *M.S.*, *In re J.R.* and *In re T.T.* may have been decided differently. *Id.*

Mother invited error by affirmatively waiving the 180-day requirement. *Id.* at 432. Invited error is a doctrine providing that a party may not take advantage of an error they commit or invite, as it is a natural consequence of their own neglect or misconduct. Invited error is not reversible. *Id.* The Court noted that while the hearing was completed more than 180 days after the filing of the TPR petitions, the record specifically indicated that all parties waived the 180-day requirement. *Id.* at 430. The Court also noted that Mother failed to object numerous other times, and even after objecting once, then requested more time. *Id.* Mother even acknowledged she affirmatively waived the 180-day requirement; having explicitly and affirmatively done so, she could not later invoke it as a reason for reversal. *Id.* at 432.