



Termination

10/21/20

In **Termination of O.G. and K.T.**, 159 N.E.3d 36 (Ind. Ct. App. 2020) *trans. denied*, the Court reversed the termination of Mother's parental rights, and remanded the matter. The Court instructed the trial court to hold a hearing on how to best proceed with a quick and safe reunification with Mother, with specific, detailed plans.

Mother's rights were terminated and reversed once before in *In re O.G.*, 65 N.E.3d 1080 (Ind. Ct. App. 2016), *trans. denied*. The Court ultimately held that Mother showed improvements and progress over the course of the CHINS case, so the Court could not say the evidence established that the conditions leading to the child's removal were unlikely to be remedied. The Court also did not find clear and convincing evidence that a continuation of the parent-child relationship posed a threat to the child's well-being. The Court noted that "any reasons for Child's removal and continued placement outside the home—domestic violence, drug use, instability, and concerning mental health—had been addressed and improved by Mother." Significantly, the Court had opined that "that the decision to deny Mother's parenting time despite her substantial progress was 'DCS setting her up for failure'... While acknowledging the hardship Child had been through and his need for stability, we stated 'that need cannot trump a parent's fundamental constitutional right to parent her child; nor can it trump the substantial bond that still existed between Mother and Child.'" Facts relating to that case may be found at that opinion.

No progress was made towards reunification after the 2016 opinion. The permanency plan was changed to reunification in February 2017, by which point, Mother and the child had not seen each other in two years. Mother repeatedly requested visitation with the child, and these requests were denied throughout all of 2017. The Child and Family Team planned for therapy for the child with the stated goal of building a relationship with Mother, but the therapy for the child focused almost entirely on coping skills. The therapist reported the child was unsure when talking about Mother, and the foster parents reported that after therapy began, the child began exhibiting behavioral issues. The therapist continued to not recommend parenting time despite knowing DCS was waiting on her approval and did not provide Mother with updates. Six months after the plan was changed to reunification, the therapist showed the child a prerecorded video of Mother; when the child did not react positively, the therapist ceased all contact attempts. DCS sought a second opinion, and Dr. McIntire recommended either ceasing or immediately ramping up attempts, because the methods employed by the first therapist were only increasing the child's anxiety. In early 2018, the trial court allowed Mother to have supervised visits. Mother only received three hours of supervised parenting time in 2018, despite numerous attempts; the child was unwilling to participate, and DCS kept trying the same manner of visits, despite Mother offering alternative that may have worked better. The child's new therapist opined in July 2018 that she had failed to form a good relationship with the child and ceased therapy; DCS did not assign a new therapist until 2019. In August 2018.

The plan switched to adoption and DCS petitioned to terminate Mother's rights. The termination trial occurred in May, August, and October 2019. DCS pointed to child's regressing behavior and behavioral problems, health problems surrounding visits, that removing him from the foster family would be devastating, that he identified as a member of the foster family, and that it was in his best interests to be adopted by them. The GAL indicated it was more of a concern for the child, and not anything Mother had done at this point. Other witnesses pointed out the insufficient reunification efforts, calling DCS's efforts inconsistent, infrequent, and lacking planning and support. Evidence regarding Mother showed her stability, her employment her fitness, and her willingness to parent. The trial court terminated Mother's rights.

Mother was not unfit, and the evidence showing that the parent-child relationship posed a threat to the child's well-being was entirely premised on problems that DCS had created in allowing the adoption to proceed and in their missteps in reunification. Mother argued, and the Court agreed, that she was a fit parent and terminating her parental rights was contrary to the termination statutes and case law. The Court noted that the trial court had not mentioned Mother's fitness, which the record indicated she was indeed a fit parent. The Court opined that the trial court focused entirely on the child's struggle's with prior reunification efforts, and the child's comfort with his foster family; however, that was insufficient weighed against Mother's obvious willingness and ability to parent. There were no allegations of Mother's unfitness, and the 2016 opinion had indicated Mother's improvements and determination to correct mistakes. The Court noted that since this opinion, Mother had only shown further improvement and stability; there are no concerns about housing, employment, domestic violence, substance abuse, or mental health. Services providers indicated they have no concerns, and that Mother is a good parent and dedicated to the child. Instead of finding Mother unfit, the trial court found that the child's relationship with Mother poses a threat to the child's well-being because the child has suffered anxiety and behavioral problems and the child has strongly expressed a desire to avoid contact with Mother. The Court opined that this was insufficient to show a threat to the child's well-being such that Mother's rights should be terminated, especially since the behavioral problems the child experienced after remand were not the result of Mother's behavior, but rather, compounded by DCS's "lackluster" attempts at reunification. The Court opined that DCS's missteps made reunification impossible. DCS argued that the trauma the child suffered as a result of the adoption failing meant that the child should remain with the foster family; however, the Court noted DCS played a key role in allowing the adoption to go forward while an appeal was pending, contrary to statute, and that Mother played no role in this trauma.

The trial court's finding that DCS made reasonable efforts towards reunification was clearly erroneous. The trial court changed the permanency plan to reunification in February 2017; instead of focusing on restoring the strong bond that Mother and the child had, services were focused on coping skills for a year while Mother went without seeing the child. When parenting time was finally ordered one year after the plan was changed to reunification, DCS's efforts to follow through were minimal. Visits did not occur because of the child's resistance to attending the visits, and although Mother suggested ways in which visits could be eased into, DCS kept trying the same method, failing each time. Even though there were three successful visits, DCS requested to suspend parenting time. The Court opined that the emotional trauma the

child suffered was not caused by Mother, but by DCS, their wrongful severing of the bond between the child and Mother, and their inconsistent efforts at reunification.

The trial court erred in finding termination to be in the child's best interests, when it based those best interests on termination meaning the child would be freed for adoption. The trial court found "termination to be in the Child's best interests because it would mean Child could be 'adopted into a stable and permanent home where his needs will be safely met.' However, a fit parent's rights cannot be terminated solely so the child can be adopted by another family." The Court acknowledged the importance of stability and permanency, but those concerns alone cannot trump a parent's fundamental constitutional right to care and custody of their children. The Court noted that the trial court terminated Mother's rights because she had no bond with the child, while ignoring the fact that Mother was only given four non-consecutive months to have parents time, and ignoring the fact Mother and the child had a strong bond prior to DCS's interference. "Allowing DCS to remove a child from its fit parent, stall reunification until there is no relationship left, and then claim reunification cannot occur because of the lack of relationship would set a terrifying precedent."

The Court acknowledged that this would have serious mental health and emotional ramifications for the child but could not allow DCS to wrongly withhold a child from a fit, loving parent and then ask the Court to affirm the injustice.