



Termination

10/21/20

In **Termination of O.G. and O.G.**, 159 N.E.3d 13 (Ind. Ct. App. 2020), the Court affirmed the termination of Father's parental rights. There was sufficient evidence supporting the termination of his rights, even with some erroneous findings.

Father'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 the evidence did not support the juvenile court's conclusion that Father was unwilling to be a parent to the child, or that termination was in the child's best interests. The Court noted evidence that: (1) the case manager repeatedly failed to contact Father; (2) DCS changed its own internal case plan to reunification with Mother when Parents ended their relationship; (3) the case manager did not keep Father apprised of the CHINS case or notify him about team meetings; and (4) DCS and the juvenile court declined to offer new services to Father. Id. at 1095-96. The Court also noted that Father completed a parenting class while he was on work release, completed an anger management class while incarcerated, had obtained a job the day before the termination hearing, and was living with his grandfather. Id. at 1096. The Court said that, while Father's own record was "far from sterling", the evidence established that, when he was not incarcerated, Father made multiple attempts to contact the case manager and engage in services and participated in services available to him. Id. The Court opined that in this case, it could not be said that all other reasonable efforts had failed because DCS made an explicit internal decision that it would exercise no effort whatsoever to reunify Father with the child and followed through with that plan. Id.

In February 2017, the trial court changed the permanency plan back to reunification; that same month, Father was incarcerated for strangulation and felony escape for attacking a random woman. The FCM visited him to update him on the case and referred him Fatherhood Engagement Services. Father completed a domestic violence course and worked with a case worker. Father was released in January 2018 but did not notify DCS of his release. A new FCM attempted to contact Father at various phone numbers but could not reach him, and Father was again incarcerated for a few days in April 2018. Father was also incarcerated from July 2018 to August 2018, August 2018 to October 2018, and for a week in December 2018. Father contacted DCS in December 2018 and sporadically engaged in services and programs. He continued to be incarcerated for short periods of time in 2019.

The termination trial occurred in May, August, and October 2019; the primary focus of the trial was the child's behavioral issues that developed during reunification attempts with Mother. FCM Mosby testified that Father had failed to show he could provide a safe and stable environment for the child, and it was not in the child's best interests to reunify with a parent he had no relationship with. The GAL recommended termination since the child and Father had not seen each other since 2012 or 2013, and Father had demonstrated no ability to have a safe, stable,

loving home for the child. The trial court terminated Father's parental rights, and Father appealed.

Pursuant to IC 31-35-2-4(b)(2), DCS must show by clear and convincing evidence that one of the following is true: "(i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied. (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child. (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services". DCS must also show that termination is in the best interests of the child, and that there is a satisfactory plan for the care and treatment of the child.

Even without the inaccurate or misleading findings, there was sufficient evidence to support the trial court's ultimate conclusion and termination of Father's parental rights.

Father argued that the evidence did not support several of the trial court's findings. The Court agreed that the finding which indicated that the child had witnessed domestic violence was misleading, as the child had not but the trial court offered a recitation of the child's statements. The Court noted that this is why recitations of statements are poor findings of fact, because it is true that he person made the statement, but the statement itself is not necessarily true. The Court ultimately found this misstatement harmless, since there was significant other evidence regarding Father and domestic violence. Father and Mother had a long history of domestic violence, he was incarcerated for domestic violence or battery multiple times, and at least one of these incidents occurred in the child's presence. Regarding the, so the finding was inaccurate. Other findings which had some inaccuracies included: (1) Father being in and out of jail in 2016 and never reaching out to DCS, which was inaccurate; (2) Father failing to appear for parenting time, which was inaccurate, as Father was never given parenting time; (3) a finding of domestic violence actually occurred in April 2013 rather than April 2014; and (4) a finding of the Fall 2017 evaluation and its goal to develop a plan for reunification between the child and parents, which DCS conceded that this was focused on Mother and not on Father. Father alleged errors in four other findings, and the Court agreed, but noted the errors were very minor and did not affect the substantial rights of Father.

Evidence of Father's ongoing problems with domestic violence, his failure to partake in services related to domestic violence, and his inability to provide a safe, stable home due to incarceration was sufficient to show that continuing the parent-child relationship between Father and the child posed a threat to the child's well-being.

Father argued that the trial court erred in determining that continuing Father's parental rights posed a threat to the child's well-being; Father alleged that "(1) any emotional stress or anxiety Child suffered was caused by DCS's missteps rather than Father and (2) Child's fears of Father were 'unfounded.'" The Court opined that the trial court clearly found that Father was a threat to the child's well-being because of his repeated and on-going domestic violence issues, and this was sufficient to support the determination. Father's domestic violence prompted the initial removal, and his subsequent assaults on Mother continued the out of home placements. The Court noted that at this point, Father had been given a genuine chance to parent and he had failed. He did not complete the batterer's intervention program, continued to be involved in domestic violence incidents, and had

failed to provide a stable home. This all supported a finding that the continuation of the parent-child relationship posed a threat to the child.

The trial court did not err in determining that termination was in the child's best interests.

In determining best interests, a trial must look at the totality of the evidence and subordinate the interests of the parent to those of the child; termination is proper where a child's physical, mental, or development is threatened, and a trial court does not need to wait until these things are permanently impaired before termination. Lastly, permanency is an utmost concern in best interests determinations. The trial court here found permanency to be urgent, particular because the child had been a ward for nine years. Father was never able to provide a safe and stable home, had a lengthy criminal history and ongoing incarcerations, and ongoing domestic violence problems. Father and the child have no relationship and have not seen each other since the child was two years old.

The Court opined that while it prefers not to terminate one parent's rights while leaving the other's intact, the circumstances here warranted doing so. The differences between Mother's behaviors and Father's behaviors was stark, given Mother's prior strong bond with the child, her consistent commitment to reunification, and her determination to provide a safe and stable home was remarkable next to Father's lack of these items.