



Termination

10/20/20

In **In re Term. of the Parent-Child Rel. of R.S.**, 158 N.E.3d 432 (Ind. Ct. App. 2020), the Court held that: (1) the judgment of the trial court was a judgment on the merits and not a default judgment; (2) Father was not denied due process over the trial court's denial of his motion to continue; and (3) the evidence supported the trial court's determination that there was a reasonable probability that the conditions which resulted in the child's placement outside Father's home would not be remedied.

Because DCS presented evidence, and because the trial court relied on this evidence it was a judgment on the merits and not a default judgment. Father argued that the trial court abused its discretion in denying his motion to vacate the "default" judgment. The Court noted that although the trial court referenced a default judgment, the trial court's order was actually a judgment on the merits, and not a default judgment. A parent's absence from a hearing does not automatically the judgment a default judgment; here, DCS presented evidence from the FCM and of Father's drug screens, and the trial court issued findings of fact and conclusions of law.

Father's arguments about denial of due process over a denied continuance failed. Father argued that the trial court violated his due process rights when it denied his motion for a continuance, relying on **In re Tre.S.**, 149 N.E.3d 310 (Ind. Ct. App. 2020). The Court found the present case to be distinguishable; here, the trial court did not change the date of the hearing, and there was no emergency motion for continuance. Father's counsel was present, and cross-examined DCS's witness. Father had simply failed to appear at hearing despite his counsel's expecting him to appear. The Court found that the prior case law did not support Father's argument, and Father's due process rights were not denied over the lack of continuance.

The evidence supported the trial court's determination that there was a reasonable probability that the conditions which resulted in the child's placement outside Father's home would not be remedied. Father argued that there was insufficient evidence to support the termination. 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 prove that termination is in the child's best interests and that there is a satisfactory plan for the care and treatment of the child. 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.** 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). DCS did not need to rule out all possibility of change, and only needed to show that there was a reasonable probability of no change. *Id.* The Court noted the following evidence: (1) the child was removed because of Mother's cocaine use and homelessness; (2) the child was not placed with Father because he was in a community corrections center; (3) Father tested positive for meth after his release; (4) Father was charged with two felonies for acts occurring in 2018; (5) Father pled guilty to a misdemeanor from 2018 and spent five months in jail before the termination hearing; (6) DCS offered Father drug screens, but Father refused; (7) Father did not secure housing or employment; and (8) Father did not complete parenting assessment recommendations.