

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

11/10/16

In ***In Re A.W.***, 62 N.E.3d 1267 (Ind. Ct. App. 2016), the Court reversed the trial court's order terminating Mother's parental rights to her two children, who are half-siblings. *Id.* at 1269. Mother and Father were married and had one child together, who was born on May 6, 2011. Mother also had an older child from a prior relationship, who was born on January 19, 2008. The birth father of Mother's older child had not had contact with his child since she was five months old. On March 18, 2014, Mother, Father, and the children were staying at the Comfort Inn in Crawfordsville when Mother and Father got into a fight. The police were called and arrested both parents. Mother was arrested for possession of heroin and Father was arrested for violating a restraining order Mother had obtained against him. DCS took the children into protective custody and placed them with Father's mother.

DCS filed a CHINS petition on March 20, and both children were adjudicated CHINS on May 14, 2014. The court's dispositional order required Mother to participate in individual therapy, home-based case management, and a substance abuse assessment. The order also required Mother and Father to submit to drug screening and to allow DCS to enter their home whenever requested. In July 2014, Mother was sentenced to probation in her criminal case. She had the "standard terms of probation" plus additional terms that she: (1) complete the court referral program and follow all recommendations; (2) complete mental health counseling; and (3) comply with all DCS recommendations and corrections. DCS recommended that Mother have supervised visitation with the children, begin intensive outpatient (IOP) treatment, and meet with a home-based case manager. In October, 2014, Mother's probation was revoked for failing multiple drug screens, missing meetings with her probation officer, failing to complete IOP treatment, and committing a new criminal offense. Mother was sentenced to jail and remained incarcerated until December, 2014, when she was released on probation for a second time. Mother's new probation terms included a no-contact order with Father, enrollment in drug-treatment therapy, attendance at ninety Narcotics Anonymous or Alcoholics Anonymous (NA/AA) meetings in ninety days, obtaining employment, and compliance with all DCS recommendations. On May 22, 2015, the Court found that Mother had violated probation for a second time by contacting Father and sporadically attending NA/AA meetings and therapy sessions. The Court revoked Mother's probation, and she was incarcerated with an anticipated release date of October 14, 2016. Father was released from incarceration in May, 2014. Despite DCS's orders forbidding Mother and Father from living with Father's mother, Father moved in with his mother, with whom DCS had placed the two children. DCS discovered that Father was living in the home of his mother with the children, and placed the children in foster care on December 22, 2014.

On August 20, 2015, DCS filed a petition for involuntary termination of Mother's and Father's parental rights to the younger child and also filed a petition to terminate the parental rights of Mother and the birth father to the older child. The court held hearings on the termination petitions on January 20, and March 17, 2016. Mother was still in prison at the time of both hearings. Testimony at the hearings included: (1) DCS service providers stated that Mother and Father were appropriate in their supervision and interaction with both children and there were no concerns with their parenting; (2) the service providers, the court appointed special advocate, and the case manager expressed concern that Mother's and Father's relationship had a volatile history and would remain unstable in the future; (3) Mother testified that the parents' volatile history was due to drugs; (4) Mother testified she had been sober for ten months, attending bi-weekly AA meetings while in prison; (5) Mother stated she had completed IOP substance abuse treatment, participated in weekly mental health counseling, two parenting classes, and a family class, and was one of two prisoners who had been given clearance to clean the prison superintendent's and assistant superintendent's offices; (6) Mother had maintained her relationship with the children through visitation and telephone calls; (7) Mother and Father intend to stay together when she is released from prison. Testimony from the foster mother, case manager, and Father indicated that the two children are closely bonded, and remaining together is in their best interests. Father testified that he was prepared to separate from Mother if she uses drugs and that there will be no drug use around the children.

On March 29, 2016, the trial court entered its Findings of Fact, Conclusions of Law, and Judgment. The trial court did not terminate Father's parental rights, concluding that DCS had not proven by clear and convincing evidence that there was a reasonable probability that the conditions resulting in the younger child's removal would not be remedied. The trial court also did not find evidence that termination of Father's rights to the younger child was in the child's best interests. The court terminated Mother's parental rights to both children, but did not preclude Mother from seeing Father or the younger child. The court also terminated the parental rights of the older child's birth father. The court noted that its order "might well result in [the children's] being separated as siblings and that this important sibling bond may be broken." The court concluded that DCS's plan to have the younger child adopted by her foster parents was satisfactory. Mother appealed the termination orders. DCS did not appeal the trial court's denial of the termination petition for the younger child, so the decision on Father's parental rights was not an issue on appeal.

The Court concluded that DCS did not prove by clear and convincing evidence that the reasons for the children's removal from Mother would not be remedied. *Id.* at 1273. Citing *In Re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014), the Court noted: (1) to determine whether the conditions resulting in the children's removal will not be remedied, the trial court engages in a two-step analysis; (2) first, the court identifies the conditions that led to the removal and then determines whether there is a reasonable probability that those conditions will not be remedied; (3) the second step requires the trial court to judge a parent's fitness at the time of the termination hearing, taking into consideration evidence of changed conditions, and balancing any recent improvements against "habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation"; (4) trial courts have discretion to weigh

a parent's prior history more heavily than efforts made only shortly before the termination proceeding, and the court may find that a parent's past behavior is the best predictor of future behavior. A.W. at 1273. The Court opined that, given the circumstances, the fact that the trial court terminated Mother's rights to the children but did not terminate Father's rights to the younger child undermined the finding that the conditions leading to the children's removal would not be remedied. Id. The Court said that, while the Indiana Code does not prohibit terminating only one parent's rights to a child, terminating only one parent's rights in this case is incongruous. Id. The Court noted that: (1) Mother was scheduled to be released from prison seven months after the termination hearing; (2) Mother and Father remained married and both testified to their intent to stay together; (3) after Mother's release from prison, the parents would live together with the younger child; (4) despite the court appointed special advocate's concerns about the historically toxic relationship between the parents, the trial court did nothing to prevent Mother and Father from living together with the younger child. Id. The Court opined that allowing Mother to live with the younger child supported the conclusion that DCS failed to prove by clear and convincing evidence that Mother's drug problem was unlikely to be remedied. Id. The Court observed that if Mother continues to use drugs, then Father has a duty to separate himself from Mother and keep her away from the younger child. Id. at 1273-74 n.4. The Court explained that Father's duty is the same regardless of whether Mother's rights are terminated, and Father's parental rights might be in jeopardy if Mother relapses and Father fails to protect the younger child from Mother. Id.

The Court concluded that DCS had failed to prove by clear and convincing evidence that terminating Mother's rights to both children, thus separating the children, was in the children's best interests. Id. at 1275. The Court observed that the trial court had allowed Mother, Father, and the younger child to reunite, but had left the older child, who is seen as Father's daughter, separated from her family. Id. at 1274-75. Citing In Re A.G., 45 N.E.3d 471, 479 (Ind. Ct. App, 2015), *trans. denied*, the Court explained that, to determine what is in the child's best interests, the trial court must look at the totality of the circumstances. A.W. at 1275. The Court examined evidence that: (1) the case manager and the foster mother testified it was in the children's best interests to remain together; (2) Father testified that the children had been together their entire lives and would "hurt dearly" if separated; (3) the trial court called the children's relationship with one another an "important sibling bond." Id.