Children's Law Center of Indiana

CHINS

02/27/2007

In **In Re G.R.**, 863 N.E.2d 323 (Ind. Ct. App. 2007), the Court affirmed the juvenile court's dismissal of a petition seeking grandparent visitation and the subsequently filed motion to correct error. On September 20, 2004, the child was hospitalized with two broken arms, cuts, and bruises after having spent the day with Maternal Grandmother and Maternal Aunt. The next day, the child was removed from Mother's home and placed in foster care, DCS filed a petition alleging the child to be a CHINS, and the juvenile court ordered that the child remain in foster care. On October 7, 2004, Maternal Grandmother attended the initial CHINS hearing at which Mother and Father denied that the child was a CHINS. On November 4, 2004, at a pre-trial conference, Mother and Father admitted that the child was a CHINS, Maternal Grandmother requested, and the juvenile court ordered, that she be considered for placement of the child, and the juvenile court scheduled a dispositional hearing for January 7, 2005. Foster Care Services, Inc. (FCS), which was assigned to conduct a relative placement home study, sent letters to schedule the home study to Grandmother at an erroneous address, twice in November 2004, and once in January and February, 2005, but received no response. Grandmother did not attend the January 7, 2005 dispositional hearing, but contacted the case manager on February 1, 2005 and again requested that the child be placed with her. On February 3, 2005 the case manager contacted FCS to request a relative placement home study and Grandmother advised the case manager that she had contacted a private attorney and planned to attend the scheduled March 3, 2005 review hearing. Although Grandmother did not attend the review hearing, at it the juvenile court again ordered that she be considered for placement. In June 2005, when the case manager contacted Grandmother in an attempt to locate Mother, Grandmother informed her that Grandmother's doctor had recommended that Grandmother remove herself from the situation to avoid unnecessary stress. On July 13, 2005, DCS filed a petition to terminate the parental rights of Mother and Father because of their failure to comply with various orders for reunification. On August 14, 2005, Grandmother left a voice mail message for the case manager indicating that she had heard the child was being adopted, but Grandmother did not respond to the case manager's return voice mail message indicating that the case manager would be willing to meet to discuss Grandmother's interest and concerns. In December 2005, a few weeks after Step-Grandfather had been charged with domestic battery against Grandmother, Grandmother again contacted the case manager to express her interest in having the child placed with her. On April 28, 2006, the juvenile court terminated Mother's parental rights as to the child, and later that day Grandmother and Step-Grandfather filed a petition for grandparent visitation rights and a motion to intervene. On May 16, 2006, before the June 2 hearing set for these motions, the grandparents filed a motion for opportunity to review juvenile files which the juvenile court denied on May 23, 2006. At the June 2, 2006 hearing, without allowing the

grandparents to present evidence, the juvenile court determined that the grandparents lacked standing to seek visitation, denied their petition for visitation and failed to rule on their motion to intervene, in essence denying it. On June 22, 2006, the grandparents filed a motion to correct error which the juvenile court denied. On August 4, 2006, the grandparents filed a petition for placement of child with kin which the juvenile court also denied.

The moment Mother's rights were terminated, Maternal Grandmother no longer had standing to pursue visitation rights pursuant to IC 31-17-5-1. Id. at 326. The Court noted that prior to the termination of Mother's parental rights, Grandmother who was then the parent of the child's parent, would presumably have had standing to seek visitation rights under IC 31-17-5-1 which sets forth specific circumstances in which "a child's grandparent may seek visitation rights." IC 31-9-2-77 defines "[m]aternal or paternal grandparent" as including: "(1) the adoptive parent of the child's parent; (2) the parent of the child's adoptive parent; and (3) the parent of the child's parent." Id. The Court distinguished In Re Groleau, 585 N.E.2d 726 (Ind. Ct. App. 1992) in which the court had held that a paternal grandmother's visitation rights were not extinguished by the father's stipulated termination of his parental rights, noting that, there unlike here, the grandmother had already been granted visitation rights when the termination occurred. G.R. at 326.

The Step-Grandfather would not have had standing to pursue visitation rights even if the grandparents had filed the petition prior to the termination of Mother's parental rights because a step-grandparent does not fall within any of the definitions of "maternal or paternal grandparent" set forth in IC 31-9-2-77. Id. at 327.

The Court found that for the same reasons, the grandparents lacked standing with regard to their motion to intervene and their motion to review juvenile files. Id.

Because Mother's parental rights were terminated prior to the filing of the grandparents' petition for placement, grandmother was no longer the child's grandparent and the juvenile court was therefore not required to consider her for placement under IC 31-34-4-2(a) or any other CHINS statute. Id. at 328. IC 31-34-4-2(a) states: "If a child alleged to be a child in need of services is taken into custody under an order of the court under this chapter, the court shall consider placing the child with a suitable and willing blood or adoptive relative caretaker, including a grandparent, an aunt, an uncle, or an adult sibling, before considering any other out-of-home placement." The Court also held that Step-Grandfather was not a grandparent to the child under the CHINS statutes because he had never been her blood or adoptive relative. Id.