Termination of the Parent-Child Relationship

3/25/15

In **In Re J.W., Jr.**, 27 N.E.3d 1185 (Ind. Ct. App. 2015), the Court affirmed the trial court's termination of Parents' parental rights. Id. at 1187. The trial court adjudicated Parents' three children to be Children in Need of Services on September 11, 2012. The court issued a dispositional decree thereafter and ordered Parents to participate in parenting aid services, supervised visitation, and random drug screens. On July 2, 2013, DCS filed a petition to terminate Parents' parental rights. On August 13, 2013, the trial court suspended that part of its dispositional order that required Parents to participate in services and visitation. On December 17, 2013, the trial court dismissed the termination petition as prematurely filed, and reinstated the suspended requirements for Parents to participate in services and visitation. On January 14, 2014, DCS filed its second petition to terminate Parents' parental rights. After a fact-finding hearing, the trial court terminated Parents' parental rights. The trial court found that: (1) the children had been removed from Parents' care for at least fifteen of the most recent twenty-two months; (2) Mother and Father had been unemployed and been unable to maintain employment throughout most of the CHINS proceedings; (3) both Mother and Father were homeless throughout most of the CHINS proceedings and were homeless at the time of the termination hearing; (4) Mother and Father admitted at the termination hearing that they were not in a position to take custody of the children; (5) Mother and Father had repeatedly failed to cooperate with, attend, or make progress in the parenting aid services, visitation, and drug screens when those programs had been made available to them. Parents appealed.

On this issue of first impression, the Court held that IC 31-35-2-4(b)(2)(A)(iii) simply requires DCS to comply with the statutory waiting period; namely, that a child has been removed from a parent for fifteen of the most recent twenty-two months. The Court opined that the statute does not condition the waiting period on whether DCS provided or made available any type of services to the parent. Id. at 1187. Quoting In Re G.Y., 904 N.E.2d 1257, 1260-61(Ind. 2009), the Court observed that DCS's "burden of proof in termination of parental rights is one of 'clear and convincing' evidence." J.W., Jr. at 1188. The Court noted that IC 31-35-2-4(b)(2)(A) states, in relevant part, that DCS is required to allege and prove that one of the following is true: (i) The child has been removed from the parent for at least six (6) months under a dispositional decree; (ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or (iii) *The child has been removed from the parent and has been under the*

supervision of a local office [of DCS] or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child (emphasis in opinion). Id. The Court said that, according to Parents, the calculation of the children's removal for fifteen of the most recent twenty-two months should have been tolled by the number of months that services were suspended by DCS in accordance with the prematurely filed July 2013 termination petition. Id. at 1189. The Court noted Parents conceded that (1) absent their proposed tolling, fifteen of the relevant twenty-two months had passed, and (2) DCS had demonstrated all of the other elements required to terminate their parental rights. Id.

The Court found that Parents' argument presented a case of first impression, and required the Court to interpret IC 31-35-2-4(b)(2)(A)(iii). Id. Citing Curley v. Lake Cnty. Bd. of Elections & Registration, 896 N.E.2d 24, 34 (Ind. Ct. App. 2008), *trans. denied*, the Court observed that statutory interpretation is a question of law and is reviewed de novo. J.W., Jr. at 1189. Quoting State v. Prater, 922 N.E.2d 746, 750 (Ind. Ct. App. 2010), *trans. denied*, the Court said that "we are obliged to suppose that the General Assembly chose the language it did for a reason." J.W., Jr. at 1189. The Court found that the language of IC 31-35-2-4-(b)(2)(A)(iii) is unambiguous and does not condition the waiting period for filing a termination petition on whether the DCS provided services or whether the parent successfully or unsuccessfully participated in any services. Id. at 1190. Quoting S.E.S. v. Grant Cnty. Dep't. of Welfare, 594 N.E.2d 447, 448 (Ind. 1992), the Court observed that the Indiana Supreme Court has long recognized that, in "seeking termination of parental rights", the DCS has no obligation "to plead and prove that services have been offered to the parent to assist in fulfilling parental obligations." J.W., Jr. at 1190. The Court said it has stated on several occasions that, although "[the] DCS is generally required to make reasonable efforts to preserve and reunify families *during the CHINS proceedings*, that requirement in our CHINS statutes "is not a requisite element of our parental rights termination statute, and a failure to provide services does not serve as a basis on which to directly attack a termination order as contrary to law." In Re H.L., 915 N.E.2d 145, 148 (Ind. Ct. App. 2009) (emphasis added in J.W., Jr. at 1190). The Court said that Parents' argument amounted to "a request to make the providing of services by DCS a basis on which to directly attack a termination order, contrary to our case law, and reads into our termination statutes a provision that our legislature has not seen fit to include." Id.