Termination of the Parent-Child Relationship
5/27/2020

In **In re the Termination of the Parent-Child Rel. of Tre.S.**, 49 N.E.3d 310 (Ind. Ct. App. 2020), the Court held that Mother's due process rights were violated when the trial court denied her attorney's emergency motion to continue the termination hearing and held the hearing without Mother or her attorney being present. Id. at 311.

DCS filed petitions to terminate Mother's parental rights to her children; the trial court appointed counsel for Mother and set a termination factfinding for October 1, 2019. DCS requested the trial court to move the hearing forward because the prospective adoptive parents wished to finalize the adoption before October, and on August 6, 2019, the trial court rescheduled the hearing for August 21, 2019 at 1:30 pm. The CCS did not indicate if Mother or her attorney were notified of the change. On August 8, 2019, DCS served Mother with the ten-day notice of the termination hearing but the CCS did not reflect whether the notice was sent to Mother's attorney. At 1:17 pm on August 21, Mother's attorney filed an emergency motion for a continuance, stating that she believed the hearing was still set for October 1, 2019 and that she was at an all-day mediation and could not attend the August 21 termination hearing. When the August 21 hearing started, neither Mother nor her attorney were present, and DCS objected to any motion to continue. The trial court noted on the record it believed that it would be a due process problem if it had the hearing without Mother and her counsel, but DCS objected to the October 1 hearing date because the FCM was on vacation. The trial court then asked DCS if they felt comfortable defaulting Mother for failure to appear for her termination hearing, and DCS indicated that they agreed, and that Mother had been given the ten-day notice. The trial court conducted the hearing and terminated Mother's parental rights without Mother or her attorney present. Mother appealed. DCS moved to remand and conceded that Mother's due process rights were in fact violated and asked the Court to dismiss the appeal without prejudice. The Court denied DCS's motions and ordered it to file an appellee's brief.

Mother's due process rights were violated by failing to grant her attorney's emergency motion to continue, and by conducting the termination hearing without Mother or her attorney being present. Id. at 313. The Court noted the timeline of events, the apparent lack of notice given to the attorney, and the attorney's emergency motion to continue in reversing the trial court's order. Id. The Court also noted that both the trial court and DCS were aware of the due process implications and decided to proceed with knowing disregard for Mother's rights. Id. The Court reminded both trial level attorneys and trial courts that they have a duty to ensure that parents' due process rights are not violated in termination proceedings. Id.

The Court admonished DCS for continuing its practice of moving for remand and conceding due process violations. Id. at 312. The Court noted that in July 2018, it issued an order under 18A-JT-527, discussing DCS's pattern of conceding due process violations and

moving for remand. Id. In that order, the Court noted that by requesting remand, DCS had often limited the issue to granting remand, and the cases had not resulted in formal opinions from the Court on the due process issues at stake. Id. "By filing a motion to remand, DCS has successfully avoided defending repeated, significant violations of due process in termination of parental rights cases. The increasing frequency of these motions suggest that there are repeated, significant violations of due process occurring in termination of parental rights cases throughout this state." Id. at 312-13, citing 18A-JT-527. The Court commended DCS for acknowledging its error but pointed out that this trend of requesting remand indicated that there continued to be significant violations of parental due process rights in termination cases. Id. at 313.