



Termination of the Parent-Child Relationship

3/2/22

In **In re I.L.**, 181 N.E.3d 974 (Ind. 2022), the Indiana Supreme Court summarily affirmed the Indiana Court of Appeals decision that the evidence presented at the termination hearing was sufficient to prove the statutory requirements for termination and the minor errors that occurred during the remote hearing did not amount to a due process violation. The Court further expressly adopted and incorporated by reference Part I of the Court of Appeals' opinion as Supreme Court precedent. Mother appealed the Court of Appeals ruling where it determined her due process rights were not violated when the termination trial occurred via a "remote videoconferencing platform." (Mother did not seek transfer regarding her sufficiency argument.)

Mother had four Children in her custody. In 2014 and 2017, Mother entered an Informal Adjustment with DCS to address her ongoing substance abuse. One month after entering the second Informal Adjustment, Mother was found caring for one of the children while intoxicated and the children were removed and adjudicated CHINS. At the dispositional hearing, the Children were placed with Mother and Mother was ordered to abstain from drugs and alcohol, submit to drug screens, participate in home-based counseling, complete a domestic violence assessment and substance abuse treatment. For two years, Mother complied on-and-off. She was discharged from several programs and treatment courses for attendance failure. She also missed several drug screens and often tested positive for THC and alcohol, and amphetamine twice. DCS removed the children from Mother's care in 2019 due to "ongoing substance abuse, failure to regularly participate in substance abuse treatment and related services, and the ongoing domestic violence in the home." DCS filed its petition to terminate Mother's rights in November 2019. The termination hearing occurred in January 2021, during the ongoing COVID-19 global pandemic. In accordance with the Indiana Supreme Court's Emergency Order Permitting Expanded Remote Proceedings, the hearing was conducted via Zoom. Before the hearing, Mother argued "something as significant as a termination of parental rights" should not be handled by remote hearing because it would not "fully allow the parents to exercise their constitutional rights" to see and hear witnesses and communicate with their attorneys. Mother further argued there would be "confidentiality issues" due to the inability to monitor whether witnesses are reviewing notes or in the presence of third parties, and the difficulty in lodging objections remotely. The trial court overruled the objection and found good cause to hold the hearing remotely, citing the severity of the pandemic, that the courtroom would not allow for proper social distancing, and that the "litigants can receive a full and fair hearing without the dangers of face-to-face confrontation." At the hearing, Mother's substance abuse counselor testified from a car with another person in it. The trial court stopped his testimony and allowed him to testify the following day when he could be alone. Similarly, the children's foster mother initially appeared on camera with another person in the room, but confirmed that person left before she began her testimony. Mother's therapist referenced notes to answer a question, but the trial court admonished him to testify only from memory. Two other witnesses admitted to referencing notes and both times the trial court immediately admonished the witnesses to testify only from memory. At one point, while a witness was testifying, the State attempted to object but

was muted. The trial court noticed and interrupted, allowing the State time to lodge the objection. Mother's feed froze during her testimony, but the trial court stopped the proceedings until Mother's feed was active again and Mother continued testifying from the point where she had left off. The trial court issued an order terminating Mother's parental rights to all four children and she appealed.

The remote termination hearing did not violate Mother's due process rights. *Id.* at 976. The court immediately admonished each witness who referenced notes to testify from memory only. When other persons appeared present in the room where a witness was testifying, the court instructed and confirmed that testimony could not continue until others had left the room. Lastly, when testimony was inaudible, the court alerted the witness that their audio feed was frozen or muted and instructed the witness to repeat the inaudible portion of the testimony. The court found that Mother's specific issues argued on appeal did not rise to the level of a due process violation. Parents do not have a constitutional right to be physically present at a final termination hearing. *In re C.G.*, 954 N.E.2d 910 (Ind. 2011). Mother was afforded substantially similar procedures as would have been available to her at an in-person hearing; including representation by counsel who entered exhibits, cross-examined witnesses, and presented live testimony. She also had the opportunity to consult privately with counsel during the Zoom proceedings. Thus, holding the hearing by Zoom did not violate Mother's due-process rights.

The evidence presented at the termination hearing was sufficient to prove the statutory requirements for termination. *Id.* The children were removed from Mother's care due to her substance-abuse and domestic-violence issues, both of which persisted throughout the CHINS case, as well as her unwillingness to consistently engage in services. The children were first removed from Mother in 2017, after she was caring for I.L. while intoxicated. Although the children were soon returned to her care, Mother either tested positive for alcohol, THC, and amphetamine or refused to submit to screens. Furthermore, Mother and boyfriend continued to engage in incidents of domestic violence, some in front of the children. Eventually, the children were again removed from her care due to her substance abuse and ongoing domestic violence in the home. Thereafter, Mother continued to refuse drug screens, test positive for THC when she did comply, and engage in domestic violence with her boyfriend. Throughout the four-year CHINS case, Mother continued this disregard for following the court's orders and failed to demonstrate that she could care for the children. Thus, the evidence presented was sufficient to terminate Mother's parental rights.