



Termination  
1/13/21

In **In re Termination of K.E.**, 162 N.E.3d 565 (Ind. Ct. App. 2021), the Court reversed and remanded the trial court decision and held that Mother did not receive the proper and necessary advisements to the voluntary termination of her parental rights; the matter was remanded for further factfinding as to whether the Mother received an advisement under IC 31-35-1-12(9).

Child was born to Mother and Father in February 2013, and in November 2017, DCS received a report of child abuse and neglect due to domestic violence between Mother and others in the home. The CHINS factfinding hearing was eventually held in June 2018 and the child was adjudicated a CHINS despite Mother's denial. The child's placement changed to a maternal cousin's home and the child remained there, with a permanency plan of adoption. In January 2019, the trial court held a hearing on the change in permanency plan. Mother attended with counsel, signed a voluntary relinquishment of parental rights form, and testified she wished to relinquish her parental rights. The trial court found that Mother signed the paperwork, that she had done so voluntarily, that Mother received and signed the advisement of rights paperwork, and that Mother understood her rights and what she was signing. Mother appealed.

**Mother's voluntarily relinquishment of parental rights was invalid; DCS conceded that Mother was not advised in accordance with IC 1-35-1-12(9), and thus, the trial court erred in finding Mother had voluntarily relinquished her parental rights to the child. Id. at 571.** IC 31-35-1-6 provides that before allowing parental to consent to voluntary termination, the must give their consent before a legally authorized person, be advised of their rights in accordance with IC 31-35-1-12, and be advised that if they choose to appear in open court, the only issue before the court is whether their consent was voluntary. The parties do not dispute that the Voluntary Relinquishment of Parental Rights Form that Mother signed lacked an advisement pursuant to IC 31-35-1-12(9), which provides that parental considering voluntarily relinquishing their parental rights must be advised that their consent "cannot be based upon a promise regarding the child's adoption or contact of any type with the child after the parents voluntarily relinquish their parental rights of the child after entry of an order under this chapter terminating the parent-child relationship." Id. at 570. Even statutory requirements that seem minor or technical have particular importance when they protect a parent's fundamental parental rights. Id. (internal citations omitted). The Court discussed the recent case of Matter of D.C., 149 N.E.3d 1222 (Ind. Ct. App. 2020), *reh'g denied*, which also addressed a missing IC 31-35-1-12(9) advisement. Id. at 570-71. DCS attempted to distinguish D.C. by arguing that (1) the D.C. Mother was not present at the voluntary TPR hearing, whereas Mother in this case was present; (2) that the timing of the relinquishment was significant, as the D.C. Mother did not agree until a TPR was filed whereas the Mother here did so during the CHINS; and (3) that an IC 31-35-1-12(9) was irrelevant because there were no current preadoptive homes with whom Mother could form some kind of understanding about postadoption contact. The Court characterized these distinctions as immaterial, because the statute plainly requires adherence to all the advisements. Id. at 571.