

INDIANA SUPREME COURT

A.K.G. v. Ind. Dep't of Child Servs.

92 N.E.3d 1083 (Ind. 2017) · Decided November 8, 2017

SUMMARY

The Indiana Supreme Court denied transfer in a parental-rights termination case, with Chief Justice Rush dissenting and Justice David concurring. The dissent argued that the termination order was unsupported by clear and convincing evidence because the trial court relied on stale evidence and the Indiana Department of Child Services lacked a viable permanency plan for the child.

CASE DETAILS

COURT	Indiana Supreme Court
WRITING FOR THE COURT	Rush, C.J.; David, J.; Goff, J.; Massa, J.; Slaughter, J.
JURISDICTION	Indiana
DECIDED	November 8, 2017
DISPOSITION	writ_denied
PROCEDURAL POSTURE	The Indiana Supreme Court denied A.K.G.'s petition to transfer jurisdiction after the Indiana Court of Appeals affirmed the trial court's order terminating her parental rights. Chief Justice Rush dissented from the denial of transfer, and Justice David concurred in the dissent.
STANDARD OF REVIEW	The appellate court reviews the trial court's findings and conclusions in a termination-of-parental-rights case by determining whether the evidence clearly and convincingly supports the findings and whether the findings clearly and convincingly support the judgment. The trial court's judgment is set aside only for clear error, but appellate deference is not a substitute for meaningful review.
PRECEDENTIAL VALUE	The decision is not precedential as to the dissent's substantive analysis because the Supreme Court denied transfer; the operative disposition is the denial of transfer.
PARTIES	A.K.G. v. Indiana Department of Child Services

TOPICS

- termination of parental rights
- parental rights
- family law procedure
- appellate procedure
- standard of review

PRACTICE AREAS

family law

termination of parental rights

child welfare

QUESTIONS PRESENTED

1. Whether stale evidence and the absence of a viable permanency plan could clearly and convincingly support a determination that terminating the mother's parental rights was in the child's best interests.
2. Whether the trial court clearly erred by relying primarily on outdated evidence concerning the mother's past circumstances rather than current evidence.
3. Whether the Department's general adoption plan, without a realistic likelihood of adoption, supported termination as being in the child's best interests.

HOLDINGS

1. In Chief Justice Rush's dissent, stale evidence and the Department's lack of a viable permanency plan did not clearly and convincingly establish that termination was in the child's best interests; the dissent would have granted transfer and reversed the termination order.
2. The dissent states that appellate review requires determining whether the evidence clearly and convincingly supports the findings and whether the findings clearly and convincingly support the judgment; deference to the trial court does not permit rubber-stamping a termination order.

KEY QUOTATIONS

"We examine the trial court's findings and conclusions, determining "whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly and convincingly support the judgment."" (at 1084)

"termination findings based primarily on stale (versus probative) evidence are necessarily both incomplete and misleading, and they certainly cannot clearly and convincingly support a conclusion that termination is in daughter's best interests." (at 1084)

"a permanency plan must nonetheless have some likelihood of coming to fruition-otherwise it cuts against a determination that termination is in the best interests of a child." (at 1085)

FACTUAL BACKGROUND

The child was adjudicated a Child in Need of Services after her stepfather slapped her during an isolated sibling dispute; after violating a no-contact order, he was imprisoned and the child entered foster care. Approximately two years later, the Department of Child Services sought termination of the mother's parental rights. At the termination hearing, current witnesses testified that the mother was pursuing reunification, complying with placement requirements, participating in visitation and therapy, and improving her employment and housing, while much of the Department's adverse evidence came from providers who had not worked with the family for one to two years. The child had experienced multiple placements and the Department had been unable for several years to locate an adoptive home.

PROCEDURAL HISTORY

The trial court terminated A.K.G.'s parental rights after a termination hearing. The Indiana Court of Appeals affirmed in a majority opinion, with Judge Bailey dissenting. The Indiana Supreme Court denied transfer under Indiana Appellate Rules 56(B) and 57; the reported opinion consists of Chief Justice Rush's dissent from that denial, joined by Justice David.

DISPOSITION

writ_denied

CASES CITED

- In re A.K.G., No. 02A03-1608-JT-1869, 83 N.E.3d 157, 2017 WL 1021936 (Ind. Ct. App. Mar. 16, 2017)
- In re Bi.B., 69 N.E.3d 464, 465 (Ind. 2017)
- In re R.S., 56 N.E.3d 625, 628, 631 (Ind. 2016)
- In re E.M., 4 N.E.3d 636, 642 (Ind. 2014)
- In re C.M., 963 N.E.2d 528, 529 (Ind. Ct. App. 2012)
- In re G.Y., 904 N.E.2d 1257, 1258, 1264-65 (Ind. 2009)
- In re D.D., 804 N.E.2d 258, 268 (Ind. Ct. App. 2004), trans. denied

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