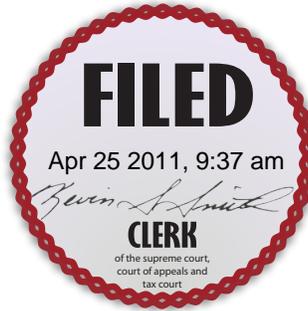


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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In the Matter of the Termination of the )  
Parent-Child Relationship of K.V., Minor Child, )  
and P.V., Mother, )

Appellant-Respondent, )

vs. )

STATE OF INDIANA, DEPARTMENT OF )  
CHILD SERVICES )

Appellee-Petitioner. )

No. 64A04-1004-JT-236

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APPEAL FROM THE PORTER COUNTY CIRCUIT COURT, JUVENILE DIVISION

The Honorable Mary R. Harper, Judge  
The Honorable Edward J. Nemeth, Magistrate  
Cause No. 64C01-0808-JT-1066

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**April 25, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

P.V. (“Mother”) appeals the termination of her parental rights to her child, K.V. In so doing, Mother claims the trial court erred in determining that she freely and voluntarily relinquished her parental rights to K.V.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Mother is the biological mother of K.V., born in February 2004.<sup>1</sup> The facts most favorable to the trial court’s judgment reveal that in September 2008, the Porter County office of the Indiana Department of Child Services (“PCDCS”) filed a petition seeking the involuntary termination of Mother’s parental rights to K.V. In its petition, PCDCS indicated, among other things, that: (1) K.V. had been removed from Mother’s care and custody in November 2007 due to unsafe and unsuitable conditions in the family home; (2) despite reunification services offered to Mother, the conditions leading to K.V.’s removal and continued placement outside Mother’s care had not been and were not likely to be remedied in the near future; and (3) termination of parental rights was in K.V.’s best interests.

An evidentiary hearing on the involuntary termination petition commenced in May 2009 and was continued on November 9, 2009. At the beginning of the November hearing, Mother, through counsel, notified the trial court that she wished to voluntarily relinquish her parental rights to K.V. Mother also tendered a document entitled, “Voluntary Relinquishment of Parental Rights.” *Ex., Vol. 1*, at 4. The trial court

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<sup>1</sup> The parental rights of K.V.’s biological father, F.S., were involuntarily terminated by the trial court in its Order Granting Termination of Father’s Parental Rights in February 2010. Father does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Mother’s appeal.

thereafter engaged in a lengthy discussion with Mother, advising her of her constitutional and other legal rights, and informing Mother of the irrevocable consequences of such a decision.

Throughout this exchange, Mother repeatedly indicated that she understood her rights and still wished to proceed with her request to voluntarily terminate her parental rights to K.V. The trial court took Mother's request for voluntary termination under advisement, and proceeded with the involuntary termination proceedings as to K.V.'s biological father. On February 8, 2010, the trial court issued an Order Granting Mother's Voluntary Termination of Parental Rights.

On March 2, 2010, Mother filed a letter with the trial court requesting that the court appoint her pauper counsel so that she could appeal the court's termination order. In so doing, Mother alleged she had been told she would be allowed to see and/or visit with K.V., as well as receive pictures of the child, if she signed the voluntary termination form. Mother was assigned counsel following a hearing in April 2010. This appeal ensued.

### **DISCUSSION AND DECISION**

Mother does not challenge the sufficiency of the evidence supporting the trial court's judgment regarding the statutory elements of Indiana's termination statute. *See* Ind. Code § 31-35-2-4(b). Rather, Mother's sole allegation on appeal is that the trial court erred in finding Mother's "Voluntary Termination of Parental Rights was made freely and voluntarily made and without duress." *Appellant's App.* at 9.

The voluntary termination of a parent-child relationship is controlled by statute. *Neal v. DeKalb Cnty. Div. of Family & Children*, 796 N.E.2d 280, 282 (Ind. 2003). In order for the trial court to accept a parent's voluntary consent to the termination of parental rights, Indiana Code section 31-35-1-6(a) provides that:

[T]he parents must give their consent in open court unless the court makes findings of fact upon the record that:

- (1) the parents gave their consent in writing before a person authorized by law to take acknowledgments;
- (2) the parents were notified of their constitutional and other legal rights and of the consequences of their actions under section 12 of this chapter; and
- (3) the parents failed to appear.

*Youngblood v. Jefferson Cnty. Div. of Family & Children*, 838 N.E.2d 1164, 1168-69 (Ind. Ct. App. 2005), *trans. denied*. Thus, under this statute, when a parent executes a written consent to the voluntary termination of her parental rights and appears in open court to acknowledge her consent to the termination, that consent will be deemed valid. *See, e.g., Neal*, 796 N.E.2d at 285 (holding that for purposes of subsections 6 and 8 of Indiana Code chapter 31-35-1, written consent to voluntary termination of parental rights is invalid unless parent appears in open court to acknowledge consent to termination).

A parent's ability to withdraw consent to the voluntary termination of his or her parental rights is "extremely limited." *Youngblood*, 838 N.E.2d at 1169; *see also* Ind. Code § 31-35-1-12 (stating parent's consent is permanent and cannot be revoked or set aside unless consent obtained by fraud, duress, or unless parent is incompetent). Indeed, we have held that "[a] parent who executes a voluntary relinquishment of parental rights is bound by the consequences of such action, unless the relinquishment was procured by

fraud, undue influence, duress, or other consent vitiating factors.” *In re M.R.*, 728 N.E.2d 204, 209 (Ind. Ct. App. 2000), *trans. denied*. If competent evidence of probative value is presented, however, indicating either (1) fraud or duress was present when the written consent was given, or (2) the parent was incompetent, the trial court shall dismiss the petition or continue the proceeding. Ind. Code § 31-35-1-7(c)

Here, the record reveals that on November 9, 2009, Mother appeared with counsel in open court, notified the court of her desire to voluntarily relinquish her parental rights to K.V., and tendered a written, signed consent to do so. The trial court subsequently engaged in a lengthy conversation with Mother, during which the court asked Mother relevant questions regarding her current mental state, ability to read and write the English language, possible intoxication, and any disabilities she might have. In response, Mother confirmed that she was not “under the influence of any alcohol or other drugs,” that she could “read, write, and understand the English language,” and that she was not currently “suffering from any mental illness or disease” that affected her understanding of the proceedings. *Tr.* at 5.

The trial court also verified that Mother had, in fact, read the Voluntary Termination of Parental Rights form, that she had sufficient time to consult with her attorney before executing her consent, and that she understood all her constitutional and legal rights, as well as the permanent consequences of termination proceedings. In so doing, the following exchange took place:

[Court]: Your consent to the termination of the parent-child relationship is permanent, and cannot be revoked, or set-aside unless it was obtained by fraud or duress, or unless the Court

finds you were not competent at the time you gave your consent. Do you understand this?

[Mother]: Yes.

[Court]: When the Juvenile Court terminates the parent-child relationship, all rights, powers, privileges, immunities, duties, and obligations, including any right to custody, control, visitation, or support pertaining to that relationship are permanently terminated, and your consent to the child's adoption is not required. Do you understand this?

[Mother]: Yes Sir.

*Id.* at 6. Notwithstanding Mother's repeated affirmations in open court that she "understood and appreciated" her legal rights, as well as the "permanent nature and effect of termination" proceedings, she nevertheless contends on appeal that her consent to voluntarily terminate her parental rights to K.V. was obtained by fraud because "she was told by [her attorney] that if she did so she would be able to see and be around K.V. and would receive pictures of her." *Appellant's Br.* at 9; *Tr.* at 9.

The elements of actual fraud are: (1) material representation of past or existing facts by the party to be charged (here, PCDCS) which; (2) was false; (3) was made with knowledge or reckless ignorance of the falseness; (4) was relied upon by the complaining party; and (5) proximately caused injury to the complaining party. *Youngblood*, 838 N.E.2d at 1169-70. During the November 2009 evidentiary hearing, the trial court informed Mother that she was entitled to representation of counsel "throughout [the] proceedings to terminate," and inquired as to whether Mother was "satisfied with the services of [her] attorney." *Tr.* at 8. Mother replied, "Oh yeah. Yes." *Id.* The court further explained that after this evidentiary hearing, the court may take the matter under advisement, the involuntary proceedings against Father may continue, and at any time during those proceedings Mother could "allege that [her] consent was not voluntarily

given,” to which Mother answered, “I understand that, but everything is clear.” *Id.* at 8-9.

Later, when the trial court asked Mother whether PCDCS “or any other person or agency promised [Mother] anything, including visitation, or coerced [Mother], threatened [Mother], or tricked [Mother] into consenting to the termination of the parent-child relationship,” Mother first answered, “No,” and then asked her attorney, “[D]id they?” *Id.* at 10. The attorney replied, “Not through me they didn’t,” and Mother again answered, “No.” *Id.* Moreover, during PCDCS family case manager Melissa Johnson’s in-court testimony, Mother’s attorney questioned Johnson as follows:

[Atty]: Just so there is no confusion, Melissa, if the foster mom adopts, as we anticipate she will, there has been some discussion regarding post-adoptive contact. Right?

[Johnson]: Yes.

[Atty]: Okay. It’s been discussed that that’s not a contingency upon my client’s voluntary relinquishment of her parental rights. Right?

[Johnson]: Correct.

*Id.* at 14-15. In addition, in recommending termination of Mother’s parental rights as being in K.V.’s best interests, court-appointed special advocate (“CASA”) Regina Cross acknowledged that she was “familiar also with the matter that Attorney Osan addressed with respect to the possibility of some contact[,] post-adoption[,] between [Mother] and the child in the event that adoption does occur by the current care giver,” and indicated she had “[n]o objections” to that possibility. *Id.* at 16.

Based on the foregoing, it appears that all parties concerned contemplated that post-adoption visitation between Mother and K.V. might be a possibility, should the child’s current foster parent adopt K.V. Contrary to Mother’s assertions on appeal,

however, it is clear from the testimony cited above that post-adoption visitation privileges between Mother and K.V. were never guaranteed, nor was Mother's decision to relinquish her parental rights to K.V. ever made contingent upon Mother receiving post-adoption visits with K.V. Any such arrangement would require, among other things, the consent of the adoptive parents. *See* Ind. Code § 31-19-16-2(3). Our review of the record leaves us convinced that no false material representations were made to induce Mother to consent to the voluntary termination of her parental rights to K.V. Mother thus has failed to show that her consent to terminate was obtained by fraud. *See Youngblood*, 838 N.E.2d at 1170; *see also In re Infant Ellis*, 681 N.E.2d 1145, 1150-51 (Ind. Ct. App. 1997) (holding that mother failed to establish her consent to termination of parental rights was obtained by fraud where there was no material misrepresentation presented), *trans. denied, abrogated on other grounds by Neal*, 796 N.E.2d at 280.

We now turn to Mother's assertion that her consent to terminate her parent-child relationship with K.V. was obtained under duress. In so doing, Mother points to the facts she "executed [the] Voluntary Relinquishment of Parental Rights forms on November 9, 2009, just prior to the continuation of the final [termination] hearing," and that she "hesitated" on several occasions during the hearing stating, "I think so" when the court questioned her concerning some of the advisements listed in Indiana Code section 31-35-1-7. *Appellant's Br.* at 12-13.

"[I]n order to avoid a contract on the basis of duress, there must be an actual or threatened violence of restraint of a man's person contrary to law, to compel him to enter into a contract or discharge one." *Youngblood*, 838 N.E.2d at 1170. In deciding whether

a person signed a document under duress, “the ultimate fact to be determined is whether or not the purported victim was deprived of the free exercise of his own will.” *Id.*

Here, there is no evidence whatsoever of any threatened violence or physical restraint to Mother. Moreover, the fact that Mother signed the voluntary consent forms shortly before the second evidentiary hearing in the involuntary termination proceedings, does not, in and of itself, prove duress. We have previously explained that “emotions, tensions, and pressure are . . . insufficient to void a contract unless they rise to the level of overcoming one’s volition.” *Id.* Such does not appear to be the case here. Moreover, Mother was represented by counsel, who reviewed the voluntary consent form and provided Mother with legal advice, before she executed the document and tendered it to the trial court.

Mother has failed to show that her free will was overcome when she signed the consent. We therefore conclude that the trial court did not err in accepting her voluntary consent to relinquish her parental rights to K.V. *See In re M.S.*, 551 N.E.2d 881, 884 (Ind. Ct. App. 1990) (rejecting mother’s contention that her consent to termination of parental rights was obtained by duress where mother’s proof was that she was “emotionally upset”), *trans. denied, cert. denied.*

This court will reverse a termination of parental rights “only upon a showing of “clear error” – that which leaves us with a definite and firm conviction that a mistake has been made.” *Matter of A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting *Egley v. Blackford Cnty. Dep’t of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)). In the present case, Mother was appropriately advised of her constitutional and legal right

before the trial court accepted her voluntary relinquishment of parental rights. In addition, Mother failed to show that her consent to terminate her parental rights to K.V. was obtained by fraud and/or duress. We therefore find no error.

Affirmed.

MATHIAS, J., and VAIDIK, J., concur.