

Children's Law Center of Indiana



Termination of Parental Rights (TPR)

02/27/2007

In **Prince v. Department of Child Services**, 861 N.E.2d 1223 (Ind. Ct. App. 2007), the Court affirmed the trial court's termination of Mother's parental rights to her five children. In 1999, Mother left her children, then one to six years old, unattended in her residence and they were removed from her care. In August 2000, after Mother complied with services, the children were returned to her care. In 1999, Mother admitted to having a history of drug and alcohol abuse and of involvement with Child Protective Services in Lake and Allen Counties. In December 2003, Mother's children were removed from her care when she left them unattended from December 19 to 21, 2003. At the initial CHINS hearing which was held on January 27, 2004, Mother admitted to leaving the children unattended, to using alcohol and crack cocaine while away from home, that she had a drug and alcohol problem, and that she had failed to fully benefit from services provided to her previously. At the January 27, 2004, dispositional hearing, the Mother was placed under a Parent Participation Plan, a part of which required Mother to refrain from criminal activity, but on July 6, 2004, Mother was convicted of possession of marijuana and was placed on probation. At that time she was already on probation for operating while intoxicated. On April 15, 2005, Mother admitted to violating the terms of her probation; on April 29, 2005, her probation was extended for one year beyond the original one-year probation period; and she was ordered to seek treatment at the Hope House. Mother failed to appear for a hearing in the criminal court and was consequently jailed from March 24 2005 through March 28, 2005. Under the Parent Participation Plan, Mother was also referred for services and participated from April of 2004 until November of 2004, during which she missed approximately eleven random visits as well as scheduled and she tested positive for drugs nine times. She was referred for drug assessment which she did not complete. In May 2005, Mother began participation with the Hope House as required by the criminal proceedings and completed that counseling in December 2005. Mother was ordered by the Parent Participation Plan to, and did participate in supervised visitation with the children, but at times had difficulty interacting with them. Mother began complying with the terms of the Parent Participation Plan in May 2005, about two months before the termination proceedings began and continued compliance for about nine months. The trial court found, however, that this period of compliance "does not outweigh the mother's long and habitual pattern of substance abuse, her history of engaging in criminal activity, her history of involvement with [DCS] in both Lake and Allen Counties, her history of relapses, as well as a demonstrated inability to benefit from services on a sustained basis." The trial court held that DCS had proven by clear and convincing evidence that termination of the parent-child relationship was in the children's best interests. Mother appealed arguing that the court's findings that she had been sober for nine months should

have compelled the court to conclude the circumstances resulting in the children's removal had changed.

The Court held that, in light of Mother's past failure to maintain sobriety and her admission that she failed to fully take advantage of the services offered her, it could not say the trial court erred when it concluded the circumstances resulting in the children's removal had not changed. Id. at 1231. The Court opined that there are fact patterns under which it might find reversible error in a trial court's failure to conclude nine months of compliance with a Participation Plan demonstrated a change in circumstances, but Mother's was not such a fact pattern. Id. at 1230. The Court noted that Mother's failures to begin treatment prior to the filing of the termination petition and without threat of imprisonment by the criminal court are two of the facts that make her situation different from one in which it might find nine months of sobriety a "change in circumstances" making termination improper. Id. at 1230 n.3.

The Court held that in light of Mother's six-year history of involvement with DCS and her failure to demonstrate she would remain sober if not under compulsion from the criminal court, it could not say the trial court erred when it concluded termination was in the children's best interests. Id. at 1231.