

Children's Law Center of Indiana



Termination of Parental Rights (TPR)

02/29/2008

In **A.J. v. Marion County Office of Family**, 881 N.E.2d 706 (Ind. Ct. App. 2008) the Court affirmed the trial court's termination of the parental rights of both Mother and Father with regard to their respective children. The Mother had eight children, the oldest of which was not included in this case because she was to be emancipated after she completed an independent living program. Father is the biological father of only the youngest of these children. Mother's seventh child, born April 14, 2003, tested positive for marijuana at birth. Consequently, Marion County Department of Child Services (MCDCS) entered into an Informal Adjustment whereby Mother was to receive substance abuse counseling while the children remained in her custody. On September 26, 2003, however, MCDCS filed a CHINS petition regarding all seven children and the trial court made them wards of MCDCS with placement to continue at the Guardian's Home and also authorized relative or foster care. Mother signed an agreed entry obligating her to participate in services. MCDCS subsequently placed the children with Maternal Grandmother. Mother attempted to comply, but, on October 9, 2004, her eighth child tested positive for marijuana at birth. MCDCS removed the eighth child from Mother and filed a CHINS petition regarding her which identified the child's Father. The Father admitted to the specific allegations. The eighth child was placed with Grandmother also. Father, Mother, and the five alleged fathers of the other children signed the necessary consents for Grandmother to adopt the children and MCDCS no longer offered them services from July 2004 until February 2006, while the children remained with Grandmother pending her adoption of them. On February 28, 2006, MCDCS removed all eight children from Grandmother's custody and placed seven of them in three different foster homes. The oldest child was placed in a therapeutic residential facility. The children were removed because of substantiation of abuse allegations against Grandmother. Upon learning of the children's removal from Grandmother's custody, Mother requested services from MCDCS. On March 30, 2006, Mother completed a parenting assessment. On May 18, 2006, MCDCS filed a petition to terminate Mother's parental rights to all of her children. In June 2006, Mother tested positive for THC and it was recommended that she participate in an Intensive Outpatient Drug Treatment Program (IOP), which Mother began in June 2006. After three classes, Mother was hospitalized for problems associated with her pancreas and she was subsequently discharged from the IOP due to lack of participation. Mother failed to participate in services thereafter, until November 2006, when she contacted MCDCS and stated that she had started services on her own and requested a new IOP referral. Mother successfully completed the second IOP and was participating in the aftercare program at the time of the termination fact-finding hearing which commenced on March 14, 2007 and was continued on March 15, and April 9, 2007. On May 16, 2007, the trial court issued its

judgment terminating the parent-child relationships between Mother, Father, and the remaining seven children.

Based on the record before it, the Court held that it could not say that the trial court's termination of Mother's and Father's parental rights to their respective children was clearly erroneous. *Id.* at 719. The Court noted: (1) "While there is abundant evidence supporting the trial court's termination of Father's parental rights to the youngest child, the case in favor of terminating Mother's parental rights is less compelling;" (2) Mother had made significant progress in dealing with her substance abuse problem and appeared to have a genuine desire to maintain a relationship with her children; (3) MCDCS had legitimate and substantial concerns regarding Mother's failure to timely complete court-ordered services, her significant history of substance abuse, and the danger such a problem posed to the children; and (4) perhaps the more prudent course would have been to continue the case for an additional seven weeks in order to establish whether Mother completed the IOP program and remained drug free. *Id.*

The trial court's determination that the reason for removal and continued placement of the children outside Mother's care would not be remedied is supported by numerous unchallenged findings of the trial court. *Id.* at 715. The Court noted that Mother's argument that two of the trial court's findings supporting this determination might not be supported by the evidence in that (1) the trial court had counted the time Grandmother was pursuing adoption within the time period during which Mother had failed to avail herself of the services provided by MCDCS, and (2) the caseworker had testified that the parents were not engaged in services toward reunification during this period because the plan had changed to adoption. *Id.* Nevertheless, the Court held that the determination was supported by numerous other findings. In this regard, the Court observed that the evidence most favorable to the judgment indicated that (1) Mother had about thirteen months after she learned of the children's removal from Grandmother in February 2006 to complete services; (2) during this time, Mother tested positive for THC during her drug and alcohol assessment and was discharged from her first attempt at IOP for lack of participation in June 2006, but did not re-initiate services until November 2006; and (3) the children were originally removed from Mother in 2003 because she had failed to provide them with a stable, drug-free living environment, and at the time of the final hearing in April 2007, notwithstanding her recent progress in combating her drug addiction, Mother still had to complete seven weeks with the IOP aftercare program, as well as complete home-based counseling which could not begin unless or until Mother successfully completed the IOP. *Id.* at 715-16.

The trial court's determination that the reasons for the youngest child's removal and continued placement outside Father's care would not be remedied was clearly supported by the evidence. *Id.* at 717. In this regard, the Court held that the evidence most favorable to the judgment revealed: (1) although Father admitted paternity of the child, he failed to legally establish paternity; (2) at the time of the hearing, Father had failed to maintain regular contact with MCDCS caseworkers, participate in any parenting classes, and pay any of the court-ordered support for the child; (3) Father failed to participate in any of the court-ordered drug treatment services, including an IOP drug treatment program, drug counseling, and random drug screens; and (4) during his drug assessment, Father admitted to having used marijuana for about seventeen years and that he had previously participated in drug treatment programs

during which he had stayed clean for about six months and then started using marijuana again. Id. at 716-17.

The recommendations of the family caseworker and the GAL, coupled with the evidence of Mother’s extensive drug history, her incompleteness of court-ordered services, and testimony that the children were happy and doing well in their pre-adoptive foster homes was sufficient to support the trial court’s determination that termination of Mother’s parental rights is in the children’s best interests. Id. at 718-719. The Court held that the trial court’s finding that the children needed permanency and stability that the parents were unable to provide, was supported by the testimony of the children’s MCDCS caseworker and GAL. The GAL testified that she thought (1) the behavior problems, as well as some of the other problems, would be rectified if there was a permanency with these children; (2) the children needed to be somewhere they knew they were going to stay and feel comfortable; and (3) the parents had not been engaged with the children, had not been visiting them, and had not moved forward on reunification over this long period of time. The caseworker testified that (1) termination was in the children’s best interests because they needed a permanent home; (2) the children needed stability and a “forever family;” and (3) the children had waited a long time in hopes of the parents completing services or for some form of reunification and that had not happened. Both the GAL and caseworker testified that they had visited the children in their pre-adoptive foster homes and the child were doing well; and that the foster parents were committed to adoption, engaged in the children’s lives, and were addressing the children’s emotional needs. Id. at 717-18.

In view of the evidence, the Court held that it could not conclude that MCDCS’ plan of adoption for the care and treatment of the children was unsatisfactory, albeit in different homes. Id. at 719. The caseworker testified that (1) the plan for the care and treatment of the children was adoption; (2) all seven children were currently in pre-adoptive homes and were doing well; (3) the three older boys were placed in a pre-adoptive home together, the next youngest child was placed in a separate home because she was struggling with some of her siblings, and the three youngest children were placed together in a third pre-adoptive foster home. Id.