

# Children's Law Center of Indiana



## Termination of Parental Rights (TPR)

08/07/2009

In **In Re J.G.**, 911 N.E.2d 36 (Ind. Ct. App. 2009), the Court reversed and remanded the trial court's order that DCS pay the fees of Mother's court-appointed attorney.

**The Court found that, notwithstanding a recent revision of the relevant statutes, the General Assembly did not intend for DCS to bear the burden of court appointed legal services in termination proceedings and that the county should continue to be responsible for these costs.** *Id.* at 37. Contrary to DCS' contentions, the Court concluded that, inasmuch as the decision to appoint counsel to represent an indigent parent in a termination proceeding is not discretionary, the statute governing the discretionary appointment of counsel to indigent parties in civil proceedings (IC 34-10-1-2 (noting at subsection f that attorney fees shall be paid from money appropriated to the court appointing the attorney or the court from which the actions was transferred)) is not directly applicable here, but is a helpful analog. *Id.* at 38-39. The Court observed that IC 31-32-4-4, the statute regarding appointment of counsel in termination proceedings, provides that payment for counsel shall be made under IC 31-40, and reviewed the language of IC 31-40-1-2 as it was before and after 2009 amendments to it. The Court noted that (1) with some exceptions, the changes included a shifting of the responsibility for the payment of the "cost of any child services ... for any child or the child's parent guardian or custodian" from the county to DCS;" (2) that to determine whether DCS is required to pay for appointed counsel in termination proceedings, consideration must first be given to whether court appointed counsel constitutes "services" within the meaning of the statute; (3) the substance of the definition of "services" at IC 31-40-1-1.5(c); and (4) that the Court could not conclude that court appointed legal services are analogous to the "services" mentioned in the definition at IC 31-40-1-1.5(c), in that those "services" include programs and types of assistance traditionally offered and overseen by DCS, and legal services are not the types of services traditionally administered by DCS for children and parents. The Court concluded that it, therefore, was not evident that the General Assembly intended that legal services be included in the definition of "services." *Id.* at 39-41. After reviewing the way in which the cost of court appointed attorneys is managed in other parts of the Indiana Code and discussing the recent decision in **In Re N.S.**, 908 N.E.2d 1176 (Ind. Ct. App. 2009), the Court found that it is evident that as a general rule, the legislature prefers for the counties, rather than the State, to be responsible for the cost of legal services; nothing contained in IC 31-40-1-2 shows that the General Assembly intended to depart from that general rule in termination proceedings; and there is no line item or statute directing DCS to appropriate money for the purpose of covering the cost of legal services for parents involved in termination proceedings. Thus, the Court held that it could not conclude that the legislature intended a radical overhaul of the way in which costs for legal services have always been allocated – and are allocated elsewhere in the Code – given that no explicit language to that effect has been included in the statute. *Id.* at 41.

Barnes, J., dissented with an opinion which concluded that IC 31-40-1-2 requires DCS, not counties, to pay for the appointment of counsel in termination proceedings.