

# Children's Law Center of Indiana



## Termination of Parental Rights (TPR)

02/27/2009

In ***In Re H.T.***, 901 N.E.2d 1118 (Ind. Ct. App. 2009), the Court reversed and remanded with instructions to vacate the trial court's order terminating Father's parent-child relationship with the child. On August 29, 2003, about four months before the child's birth, Father was incarcerated after violating the terms of his probation. Prior to his incarceration, Father had been in a relationship with the child's mother, and he attended birthing classes with her. While Father was incarcerated, Mother began a relationship with another man and they had a child, born October 15, 2005. Father called from prison roughly once a week and spoke with the child. While he was in prison, (1) Father learned he could obtain an early release if he participated in certain programs; (2) he participated in these programs with the intention of being released and fathering his daughter; (3) he earned a BA from Ball State University and the attendant three-year deduction in his sentence; and (4) he completed a substance abuse program and parenting classes. On August 10, 2006, Marion County DCS (MCDCS) filed a CHINS petition regarding the child and her half-sister, and they were removed from the home and placed with the half-sister's paternal grandparents (Foster Parents). Because Father was incarcerated, he could not provide care to the child at the time, but he sent letters and cards to the child and sent letters to the Foster Parents in an attempt to get to know them, to maintain a long distance relationship with the child, and to thank them for their assistance with the child. Foster Parents did not respond to Father's letters, and withheld the letters and cards from the child. On November 15, 2007, MCDCS filed a petition for involuntary termination of Father's parental rights. Father began communicating with the child's GAL, and, on April 28, 2008, sent a letter to MCDCS informing them that he was to be released from prison on May 1, 2008. One hour after being released from prison, Father appeared at the GAL's office, a fact that left the GAL "very impressed." Father called MCDCS to ask when he would start court-ordered services and was informed they did not want to meet with him and MCDCS would not provide services because such services were not in the child's "best interest." The case manager testified that DCS determined that, in the best interest of the child, they would not be offering services to Father. Following a June 4, 2008 termination hearing, the trial court terminated Father's parental rights. Father appealed, contending that the trial court had clearly erred in determining that continuation of the parent-child relationship posed a threat to the child's well-being.

**Inasmuch as there is no need for the extreme measure of permanently terminating Father's right to be a parent to his daughter, the trial court clearly erred in concluding that the State had proven that the child's well-being is threatened by her Father's involvement in her life.** The Court held that the trial court erred in concluding that Father's efforts were "too late." *Id.* at 1122. The Court reviewed the case law and statutory framework in which termination cases are decided, including the four specific requirements described at IC 31-35-4-2 which the State must prove by clear and convincing evidence in order to obtain termination of parental rights, including IC 31-35-4-2(b)(2)(B) which provides: "there is a reasonable

probability that: (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child." Here, according to the Court, (1) the trial court did not base its termination order on IC 31-35-2-4(b)(2)(B)(i) because the condition that resulted in placement outside Father's custody, his incarceration, had been remedied by Father's release from prison; (2) instead, the trial court based its termination order on IC 31-35-2-4(b)(2)(B)(ii); and (3) the trial court also found that termination was in the best interest of the child under IC 31-35-2-3(b)(2)(C) and that there was a satisfactory plan for her care and treatment, the adoption of the child by Foster Parents. *Id.* at 1120-21. The trial court's findings regarding IC 31-35-2-4(b)(2)(B)(ii), as quoted by the Court, include:

Continuation of the parent-child relationship poses a threat to the well-being of [the child]. [The child] is in a stable home with her half-sibling where she has been for the last twenty-one months. Continuing the parent-child relationship between [Father] and [the child] would require [the child] to establish a relationship with a person she has never met and would deny her permanency as she waited for him to complete services. Although [Father's] intentions to comply with services appear sincere, they come too late, as [the child] has bonded with her foster parents and has a close relationship with her half-sister. Leaving [the child] in limbo as [Father], an alleged [sic] father and complete stranger, attempts to complete services, poses a threat to the emotional well-being of [the child].

*Id.* at 1121. According to the Court, the trial court concluded that the child's well-being would be threatened if she were not immediately adopted by Foster Parents. *Id.*

The Court found this case very similar to Rowlett v. Vanderburgh County OFC, 841 N.E.2d 615 (Ind. Ct. App. 2006) in which the Appeals Court reversed the determination that a father, who had been in prison while his children thrived in foster care with the maternal grandparents, should be deprived of his parental rights. H.T. at 1121-22. Regarding Rowlett, the Court (1) stated: "In other words, the trial court determined, among other things, that permanency was a determining factor;" and (2) quoted from the decision, including the following:

[W]e see little harm in extending the CHINS wardship until such time as Father has a chance to prove himself a fit parent for the children. This is not a case where the children are in a temporary arrangement pending termination of parental rights. Rather, in this case, continuation of the CHINS wardship will have little, if any, impact upon them.

841 N.E. 2d at 623 (citations omitted). H.T. at 1122. The Court noted: (1) here, as in Rowlett, the child is not in a temporary arrangement pending termination of her Father's parental rights and continuation of the CHINS wardship will have no negative impact; (2) the primary concern expressed by MCDCS and the GAL, that the child will not have a relationship with her step-sister appears to be unfounded in that Father testified, "If I was to be in [the child's] life, she could see her sister as much as she wanted;" (3) as to the concern of MCDCS, the trial court, and the GAL that the child has not had a face-to-face meeting with Father, there was contact between him and the child before removal, lack of post-removal contact while he was in prison was not due to him but to the inaction of others, and the lack of face-to-face contact after his release was occasioned by the filing of the termination petition, not by Father; (4) while the father's fitness was in question in Rowlett, the trial court in the present case found that Father is willing and able to complete any services and become the custodial parent of his daughter, and (5) this is not a case like In Re Campbell, 534 N.E.2d 273 (Ind. Ct. App. 1989), where a child is put on the shelf while waiting for the transformation of a parent who is incapable of or unwilling to care for the child. H.T. at 1122.