



This Case Law Update Provided by:

## The Children's Law Center of Indiana

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### Termination of Parental Rights

2/05/01

#### **In Re T.F., 743 N.E. 2d 766 (Ind. Ct. App. 2001)**

In **In Re T.F.**, 743 N.E. 2d 766 (Ind. Ct. App. 2001), the Court affirmed the order terminating the parent-child relationship between the parents and their two children, then ages three and six years old. The children had been removed from the parents and a CHINS petition was filed due to the following reasons: police observed that the six month old infant was bleeding from the mouth with noticeable swelling of the mouth; witnesses had observed the father repeatedly cursing and striking the infant with a closed fist; the father was arrested for battery, child neglect and criminal recklessness; the home had a distinct foul order with dirty dishes, bottles, and trash scattered throughout; the three year old had bruises, insect bites, head and body lice; another infant (who subsequently died in foster care) was lying dirty and unattended in a bassinet; the parents had failed to meet the requirements of a previous Service Referral Agreement. After the CHINS adjudication, the father pleaded guilty to battering the surviving infant but stated that a criminal gang injured the child by throwing a rock through the window; the mother refused to believe the father had struck the infant; the mother continued to live with the father despite her awareness that the children could not live with her if she were residing with the father; the parent's home remained cluttered and filthy for thirteen months despite constant prompting from the home based counselor.

**Parents failed to establish that the one procedural irregularity of failure to provide case plan deprived parents of their due process rights.** The Court was unpersuaded by the parents' argument that the termination judgment was void due to the failure of the Marion County O.F.C. to provide copies of the case plan as required by I.C. 31-34-15. The parents based their argument on the Appellate Court's ruling in **A.P. v. PCOFC**, 734 N.E 2d 1107 (Ind. Ct. App. 2000). The Court distinguished **T.F.** from **A.P.** because the record in **T.F.** did not contain a case plan nor did it reflect whether the case plan was ever prepared or given to the parents. Another distinction was that in **A.P.** the differences in requirements between the case plans and the court orders heightened the importance of providing case plans to the parents. Further, the Court noted that in **T.F.** the evidence showed that the parents were provided notice of what conduct could lead to termination; specifically the parents were provided with a predisposition report and a parental participation decree, which outlined requirements. The Court stated that proof of a case plan is not an element enunciated in termination proceedings under I.C. 31-35-2-4. Id. at 772.

**Evidence was sufficient to show reasonable probability that conditions resulting in removal or reasons for placement outside the home would not be remedied.** The Court declined to reweigh the evidence or assess the credibility of witnesses and opined that the evidence supported the trial court's finding that there was a reasonable probability that the conditions which resulted in removal would not be remedied. Among the problems noted by the Court were: the mother's pattern of conduct in continuing to live with the abusive father; the parents' failure to maintain a clean, safe home for the children's return; the mother's denial of access to the home by the case manager due to the home's unclean condition. Id. at 775.



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**Evidence was sufficient to show termination was in children's best interests.** The Court found that the record contained sufficient evidence that termination of the parents' parental rights was in the children's best interests. The Guardian ad Litem and Family Case Manager testified that the parents had not demonstrated an ability to effectively use the services recommended to them for proper child care. *Id.* at 776. The Court also noted that the mother had failed to place her children's best interests before her own interests by failing to separate from the abusive father.