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Termination of Parental Rights (TPR)

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In **K.E. v. MCOFC**, 812 N.E.2d 177 (Ind. Ct. App. 2004), the Court affirmed the trial court's denial of the mother's motion to set aside its July 2001 decision terminating the mother's parent-child relationship with two of her children. Five years prior to the mother's August 4, 2003, filing of the motion to set aside, the Marion County Office of Family and Children (MCOFC) filed a petition alleging that the two children, then one and three years old, were CHINS. The children were subsequently adjudicated CHINS and, fifteen months after the filing of the original CHINS petition, the MCOFC filed a petition seeking the involuntary termination of the parent-child relationship between the mother and the two children. Eighteen and twenty-one months later, two days of hearing were held where the mother was present and represented by counsel, and evidence was heard from the mother and a variety of social services workers who had interacted with the mother and the children. Seven days after the last day of hearing, on July 9, 2001, the trial court issued a decision terminating the mother's parental rights. In the fall of 2002, the two children, along with two of their siblings, were adopted by the same family.

The mother was represented by a public defender at the January 2004 hearing held on the motion to set aside. At the time the mother filed the motion, she was incarcerated, serving a six-year sentence for dealing narcotics. The motion did not specifically seek relief under Indiana Trial Rule 60(B), or any other rule, but at the hearing the mother's counsel implied that a T.R. 60(B) foundation could be laid to set aside the July 2001 order. At the hearing, the mother testified that she was appealing the termination of her parental rights, she was unaware when the July 2001 order issued that she had thirty days to appeal, she hoped to be released from jail in May 2004, she desired to reintroduce herself into her children's lives, and she would do the necessary things to be a part of their lives. The mother testified that a friend was building a house for her; she was on good terms with her mother; she was able to work; she had not maintained contact with the children; she was unaware of their current circumstances in school, counseling, or with their adoptive parents; and she did not know if the children even wanted to have contact with her. The trial court denied the mother's motion to set aside, holding too much time had passed for the mother to appeal the July 2001 order.

As the mother's two-year delay in challenging the July 2001 termination of her parental rights was not reasonable under the circumstances and she offered no meritorious claim or defense, the trial court did not abuse its discretion in denying her motion to set aside. *Id.* at 180. The Court agreed with the MCOFC that the proper

issue to address on appeal was whether the trial court properly denied the motion to set aside the judgment terminating the mother's parental rights under T.R. 60(B). Thus, the mother failed in her attempt to frame the issue as a direct appeal of the July 2001 order terminating her parental rights. *Id.* at 179. Noting that the mother did not specify which of T.R. 60(B)'s eight enumerated reasons for relief her motion was based upon, the court considered her claim under T.R. 60(B)(8), which provides that a party may seek relief from a judgment for "any reason justifying relief." The Court found that (1) two years was not a reasonable time to delay challenge to a judgment terminating parental rights, especially when during that time the children at issue had been adopted and had presumably established a sense of stability in their new family; (2) drug and incarceration hardly provided a justifiable basis for the two-year gap in the mother's challenge, especially since both reasons were within the mother's control; (3) the mother offered no evidence demonstrating that, if a hearing on termination were retried on the merits, a different result would be reached; (4) the mother offered no new evidence to contradict any testimony offered at the previous two-day hearing that culminated in the termination of her parental rights; and (5) in balancing any alleged injustice suffered by the mother against the interests of the MCOFC and society in general, the balance weighed against the mother in that the MCOFC's interest in the placement of the children in a stable home environment coupled with society's interest in the finality of litigation involving such placement, counseled in favor of denying the motion to set aside. *Id.* at 180.