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## **Termination of Parental Rights (TPR)**

9/8/2004

In **In Re D.L.**, 814 N.E.2d 1022 (Ind. Ct. App. 2004), the Court affirmed the trial court's decision to terminate the Mother's parental rights to her-four-year old child, C.L., reversed the trial court's decision not to terminate her parental rights to her eight-year-old child, D.L., and remanded to the trial court to enter an order terminating the Mother's parental rights to D.L. In November 1997, before C.L. was born, the Mother entered into a Service Referral Agreement with the MCOFC based on the neglect or endangerment of D.L. by having exposed the child to the use of an inhalant, toluene, in their home. In February 2001, the MCOFC filed a Children in Need of Services (CHINS) petition with regard to five-year-old C.L. and nine-month-old D.L., alleging the mother's (1) lack of adequate supervision of the children in that she had left them with various caregivers for long periods of time without picking them up as scheduled, (2) failure of two drug tests since December 2000, and (3) involvement in criminal proceedings. The Mother admitted to the CHINS petition's allegations and the children were placed in foster care with a family where they have remained since. The MCOFC, after nearly a year, decided that the Mother was not going to live a drug free lifestyle for the children and changed the permanency plan from one of reuniting the Mother and children to one of adoption of the children by their foster parents. In January 2002, The MCOFC filed a Petition for Involuntary Termination of the Parent-Child Relationship. Following two days of hearing in June and August 2003, the trial court, in October 2003, issued an order terminating the parental rights to C.L., but finding the evidence to be insufficient to terminate with regard to D.L. The trial court made specific findings of fact with respect to C.L., but not with respect to D.L. The Mother appealed the termination of her parental rights to C.L., and the MCOFC and GAL cross-appealed the trial court's denial of the petition for the involuntary termination of the parent-child relationship with respect to D.L.

**I.C. 31-35-2-4(b)(2)(B) requires the trial court to find, by clear and convincing evidence, only one of the two requirements of subparagraph (B): (1) the conditions that resulted in the children's removal will not be remedied, or (2) the continuation of the parent-child relationship poses a threat to the well-being of the children. Id. at 1027.** Here, with regard to C.L., the trial court and Court addressed both.

The Court opined that, to determine whether the conditions that resulted in the child's removal will be remedied, the trial court must look to the Mother's fitness at the time of the termination proceeding. See In re Termination of Parent-Child Relationship of

L.V.M., 799 N.E.2d 63, 69 (Ind. Ct. App. 2003). In addition, the court must look at the patterns of conduct in which the parent has engaged to determine if future changes are likely to occur. Id. When making its determination, the trial court can reasonably consider the services offered to the parent and the parent's response to those services. Id. In this case, the Court found that the MCOFC proved by clear and convincing evidence that there is a reasonable probability that the conditions that resulted in C.L.'s removal will not be remedied. The Mother failed to follow the recommendations of her drug and alcohol assessment by missing scheduled sessions of her drug treatment programs and testing positive for drugs, as recently as a month before the June 2003 termination hearing. The Mother has her own house, but did not have a job at the time of the hearing and was relying on others to pay her mortgage and utilities. D.L. at 1027-28.

The Court also found that the MCOFC had presented clear and convincing evidence that there was a reasonable probability that the continuation of the parent-child relationship posed a threat to the well-being of C.L. The Court observed that the Mother (1) is a drug abuser who did not, during the over two years in evidence, get her life together and stop using drugs; and (2) has not maintained a stable source of income with which to support her children. The Court found that the inevitable conclusion from the evidence was that, when the Mother abuses drugs, she endangers her children in a variety of ways. Id. at 1028-29.

**In determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Office of Family and Children and to the totality of the evidence. In re Termination of Parent-Child Relationship of D.D., 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*; McBride v. Monroe County Office of Family & Children, 708 N.E.2d 185, 203 (Ind. Ct. App. 2003). In doing so, the trial court must subordinate the interests of the parent to those of the child involved. A child's need for permanency is an important consideration in determining the best interests of a child. D.L. at 1030. The Court found that the denial of the petition for involuntary termination of the Mother's parental rights to D.L. was clearly erroneous for the reasons that (1) the Mother has not demonstrated that she can live a drug-free lifestyle, (2) D.L. needs the permanency that adoption can provide, (3) separating D.L. and C.L. would be extremely detrimental to both of the children, and (4) the differences between D.L. and C.L. do not support different results. Id.**