



## Termination of Parental Rights (TPR)

8/3/2005

In **In Re T.W.**, 831 N.E.2d 1242 (Ind. Ct. App. 2005), the Court affirmed the trial court's involuntary termination of Mother's parental rights regarding the child. The child was born on August 6, 2002. On May 13, 2003, while holding the child. Mother stabbed Father with a knife. The child was blood-spattered but not physically injured. Mother was arrested and the child was taken into custody by the Marion County Office of Family and Children (MCOFC). On July 8, 2003, the trial court found the child to be a CHINS. On February 18, 2004, the MCOFC filed a petition seeking the involuntary termination of the parent-child relationship. Mother was appointed counsel. Several hearings were scheduled, but continued because Mother failed to appear and/or was in jail. On November 4, 2004, the trial court held a termination hearing at which Mother and her attorney were present and Mother testified that she was not in a position to meet the child's needs. In closing arguments, Mother's attorney argued that the MCOFC had failed to provide Mother with notice of the termination hearing. The trial court terminated the parent-child relationship. Mother appealed.

**Based on Mother's representation, testimony at the fact-finding hearing, and ability to tender her own findings of fact, the Court could not say that Mother was denied the opportunity to be heard. Thus, Mother was not denied her due process rights.** *See, e.g., In re C.C.*, 788 N.E.2d 847, 856 (Ind. Ct. App. 2003). *T.W.* at 1246-47. Mother's sole issue on appeal was whether the order terminating her parental rights was clearly erroneous because the MCOFC did not prove that it provided Mother with notice of the termination hearing, which resulted in a violation of her due process rights. *Id.* at 1244-45. The Court noted with cited cases that it has repeatedly found that the right to raise one's children is more basic, essential, and precious than property rights and is protected by the Due Process Clause of the United States Constitution. *Id.* at 1245. Mother did not argue that she was not provided with notice. Instead she argued that the termination should be reversed because the MCOFC failed to provide proof that they provided her notice. *Id.* at 1245 n.5. Mother's attorney admitted that Mother was informed of the hearing date at the beginning of the hearing and raised the argument of lack of notice only at the end of her closing argument. *Id.* at 1246. The Court found that, even assuming arguendo that the MCOFC was required to provide proof of notice to Mother of the termination hearing at least ten days prior to the termination hearing, such procedural irregularity did not violate Mother's due process rights. Mother was present, represented by counsel, and testified. Further, Mother did not show any prejudice to her by the lack of notice. The Court held that Mother's argument that "[i]t is unknown from the record whether Mother's failure to present a defense was the result of lack of advance notice of the hearing, or the result of other factors" did not constitute a showing of prejudice. *Id.* at 247.