

# Children's Law Center of Indiana



## Termination of Parental Rights

09/13/2007

In **In Re E.E.S.**, 874 N.E.2d 376 (Ind. Ct. App. 2007), the Court reversed the trial court's termination of Mother's parent-child relationship with her three children.

**The Court reversed the trial court's termination of Mother's parental rights because Bartholomew County Office of Family and Children (BCOFC) failed to uphold its end of the agreement with Mother that in exchange for the parents' admitting to the allegations contained in the CHINS petitions, BCOFC would maintain and support the family bond until Mother was released from prison and had an opportunity to engage in services.** *Id.* at 381-82. The Court stated that it disapproved of such agreements because they restricted the OFC from acting pursuant to the termination statutes or in the best interests of the children; however, neither could the Court "allow an OFC to ignore such an agreement when the parent's consideration for the agreement was, in essence, waiver of the right to due process at the CHINS proceeding." *Id.* at 382.

The Court acknowledged that (1) the circumstances that led to the removal of the children had not been remedied because Mother was still incarcerated, and the maternal grandparents were still unable to provide a proper environment for the children; (2) the record facts demonstrated that termination of Mother's parental rights was in the best interests of the children; and (3) this is a case where the Court normally would affirm the termination. *Id.* at 381. In deciding to the contrary, the Court noted that, (1) although they were not referred to a written agreement, the language in the trial court's order on the initial hearing indicated that BCOFC's commitment was to support the family bond until Mother was released from prison and had an opportunity to engage in services; and (2) Mother might not have consented to the CHINS finding without a hearing absent the BCOFC offering to support reunification until she was released from prison and given the opportunity to carry out the case plan. As to BCOFC's argument that it did not have to wait to seek termination of Mother's rights because she delayed her release from prison by violating prison rules, the Court opined that Mother's expected release date of September 2007 fell within the "two to three years" of incarceration contemplated at the time of the initial hearing in November 2004. *Id.* at 381-82. Additionally, regarding BCOFC's argument that it had no choice to file the petition to terminate Mother's parental rights in January 2006 because it was required by I.C. 31-35-2-4.5 to comply with the federal Adoption Assistance and Welfare Act, the Court stated that (1) BCOFC was presumed to have known of the statutory requirements when it entered into the agreement with Mother; (2) despite that statutory requirement, BCOFC entered into the agreement with Mother without putting any constraints on the agreement; and (3) "BCOFC cannot avoid its agreement with [Mother] by feigning lack of control." *Id.*