

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

11/3/14

In **D.B.M. v. Indiana Department of Child Services**, 20 N.E.3d 174 (Ind. Ct. App. 2014), *trans. denied*, the Court affirmed the trial court's order terminating Father's parental rights. *Id.* at 182. The child was born in July 2003, and was removed from Mother's care in January 2012. The child was adjudicated to be a CHINS in February 2012 due to: (1) Mother's previous involvement with DCS; (2) Mother's personality and intellectual disorders; (3) Mother's recent hospitalization for mental health concerns; (4) the child's frequent hospitalizations, which were based on Mother's unsubstantiated claims that the child was being poisoned; and (5) the use of Mother's home, where the child resided, for drug trafficking. The parents were not living together at the time of the CHINS adjudication, and Father and the child had little to no contact with each other. To facilitate reunification, the trial court ordered both parents to do a number of things, including refrain from criminal activity, maintain appropriate housing, cooperate with caseworkers, obtain a family-functioning assessment, and participate in services recommended by the assessment. Father was also ordered to establish paternity.

Father failed to fully comply with the trial court's order. In September 2013, DCS filed a petition to terminate his parental rights. The trial court held a hearing on the termination petition in March 2014. Father did not attend. Family Case Manager Byers, who had worked on the child's case, did not attend the hearing because she was on maternity leave. At the hearing, the DCS supervisor testified that: (1) although Father maintained contact with DCS for a time after the CHINS adjudication, he eventually stopped communicating with DCS; (2) DCS did not have a valid address for Father on a multitude of occasions; and (3) Father failed to notify DCS of any housing or employment changes. At this point, Father's attorney objected, arguing that the DCS supervisor lacked firsthand knowledge of these matters, and was trying to bootstrap the anticipated testimony of the case manager who was on maternity leave. After DCS's attorney established that the supervisor had personal knowledge of the case, Father's attorney clarified that his objection was actually that the supervisor's testimony was hearsay. The trial court overruled Father's objection. The DCS supervisor went on to testify that: (1) Father had failed to comply with the trial court's order to participate in services recommended by the family-functioning assessment; (2) Father had not exercised any parenting time with the child

throughout the case; and (3) the child was thriving in his foster care placement. Case manager Norris, who replaced case manager Byers, also testified that Father did not complete recommended services, did not visit with the child, and the child was flourishing in his foster care placement. The guardian ad litem recommended termination of Father's parental rights and testified that the child needed permanency, and had been in the care of DCS for twenty-six months, which was "way too long." The guardian ad litem also testified that the child and Father did not have much of a relationship before DCS became involved, the child had not had contact with Father, Father had not shown interest by visiting, maintaining contact with DCS or the child's foster family, or attending court hearings, and Father never followed through with the family-functioning assessment recommendations. The trial court issued its order terminating Father's parental rights in April 2014. Father appealed. Mother voluntarily relinquished her parental rights and did not participate in the appeal.

The Court opined that any error in admitting the DCS supervisor's testimony was harmless. *Id.* at 180. Father contended that the DCS supervisor's testimony was inadmissible hearsay, and, without the supervisor's testimony, there was insufficient evidence to support the trial court's termination order. Quoting *In Re A.J.*, 877 N.E.2d 805, 813 (Ind. Ct. App. 2007), *trans. denied*, the Court observed that "[t]he admission of evidence is entrusted to the sound discretion of the trial court" and "[t]he fact that evidence was erroneously admitted does not automatically require reversal, and we will reverse only if we conclude the admission affected a party's substantial rights." *D.B.M.* at 179. The Court also quoted *In Re Paternity of H.R.M.*, 864 N.E.2d 442, 450-51 (Ind. Ct. App. 2007), which states, "[i]n general, the admission of evidence that is merely cumulative of other evidence amounts to harmless error as such admission does not affect a party's substantial rights." *D.B.M.* at 179. The Court noted that the supervisor based her testimony on documents prepared by the case manager Byers and others, and the testimony was admitted to prove the truth of the matter asserted; therefore the testimony constituted hearsay. *Id.* The Court said that, to the extent the supervisor's testimony was based on records in DCS's possession, it would likely be admissible pursuant to the hearsay exceptions for business or public records, Ind. Evidence Rules 803(6) and 803(8). *Id.* The Court noted that Evid. R. 803(6) "unequivocally requires the proponent of business records to establish, by testimony of the custodian or other qualified witness, that the records are regularly made." *Id.*, citing *J.L. v. State*, 789 N.E.2d 961, 965 (Ind. Ct. App. 2003). The Court noted that Evid. R. 803(8), the public records exception to the hearsay rule, does not contain several of the foundational requirements for business records found in Rule 803(6). *Id.* at 180. The Court concluded that it need not decide whether the trial court erred in admitting the supervisor's testimony because it was cumulative of other evidence from case manager Norris and the guardian ad litem. *Id.*

The Court concluded that the evidence supported the trial court's determination that there was a reasonable probability that the conditions resulting in the child's removal or the reasons for his placement outside Father's home would not be remedied. *Id.* at 182. Father challenged the sufficiency of the evidence supporting the trial court's judgment. The Court, citing *In Re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014), said that in determining whether the conditions

that resulted in removal or placement outside the home will not be remedied, the Court first identifies the conditions that led to removal or placement outside the home and then determines whether there is a reasonable probability that the conditions will not be remedied. D.B.M. at 181. The Court said that the second step requires trial courts to judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions, and balancing any recent improvement against "habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation." D.B.M. at 181, quoting E.M., 4 N.E.3d at 643. The Court also noted that trial courts have discretion to "weigh a parent's prior history more heavily than efforts made only shortly before termination," and courts may find "that parents' past behavior is the best predictor of their future behavior." D.B.M. at 181-82, quoting E.M., 4 N.E.3d at 643.

The Court noted the following findings by the trial court: (1) Father's whereabouts were currently unknown; (2) the child had been removed from the home for fifteen months, and Father had no contact with the child, had not paid child support, and had not otherwise provided for the necessities of a suitable home for raising the child; (3) Father completed a family-functioning assessment, but did not comply with the recommendations; (4) Father's continued lack of involvement in the child's life and continued failure to provide materially or financially for the child's well-being were conditions which existed at the time of the initiation of the CHINS proceedings, and continued to exist at the time of the termination hearing. Id. at 182. Citing the testimony of case manager Norris and the guardian ad litem, the Court held that the evidence presented at the termination hearing supported the trial court's findings. Id.