

Children's Law Center of Indiana



CHINS

4/15/15

In **G.E. v. Indiana Dept. of Child Services**, 29 N.E.3d 769 (Ind. Ct. App. 2015), the Court affirmed the trial court's denial of Birth Mother's expungement petition. *Id.* at 770. On or about December 15, 2000, the Lake County Superior Court, juvenile division, entered an order terminating Birth Mother's parental rights to her children. The juvenile court found that: (1) the children were removed from Birth Mother in 1995 due to neglect; (2) Mother's home was filthy, and the children had poor school attendance; (3) Mother had a history of drug abuse, attended two drug treatments programs, and relapsed after both programs; (4) it was in the best interest of the children and their health, welfare, and future that the parent-child relationship be forever fully and absolutely terminated.

In June of 2013, Birth Mother began working as a cook at Pinnacle Family Child Care (Pinnacle) in Gary. After about two months, Pinnacle informed Birth Mother that she could no longer work there because of the substantiated report of neglect regarding her children. Pinnacle eventually allowed Birth Mother to return and ensured that she did not have direct contact with children.

On November 13, 2013, Birth Mother filed a petition to expunge the records of her CHINS case pursuant to IC 31-33-27-5. The juvenile court held a hearing on February 7, 2014. The only evidence presented was Birth Mother's testimony that: (1) she had not used any controlled substances since 2003; (2) she was in contact with all of her children and some of her grandchildren; (3) she had no further contact with the juvenile courts and had not committed any crimes. DCS relied on the CHINS and termination cases. The juvenile court also took judicial notice of the order terminating Mother's parental rights. The juvenile court denied Birth Mother's expungement petition and her Motion to Correct Errors. Birth Mother appealed.

The Court found that Birth Mother had not shown by clear and convincing evidence that (1) there was little likelihood that she would be a future perpetrator of child abuse and neglect; and (2) that there was insufficient probative value to justify the retention of her records by DCS for future reference. *Id.* at 773. The Court observed that this was its first review of IC 31-33-27-5, the expungement statute, which was enacted by the legislature in March of 2012. *Id.* at 771. The Court noted IC 31-33-27-5(e) states that the court *may* grant the petition for expungement if the court finds, by clear and convincing evidence, that: (1) there is little likelihood the petitioner will be a future perpetrator of child abuse or neglect; and (2) the information has insufficient *current* probative value to justify its retention in DCS records for future reference (emphasis in opinion). *Id.* The Court noted that the interpretation of a statutory scheme is a question of law reserved for the Courts. *Id.* Quoting **Garcia v. State**, 979 N.E.2d 156,

The Derelle Watson-Duvall Children's Law Center of Indiana - A Program of Kids' Voice of Indiana
9150 Harrison Park Court, Suite C • Indianapolis, IN 46216 • Ph: (317) 558-2870 • Fax (317) 558-2945
Web Site: <http://www.kidsvoicein.org> • Email: info@kidsvoicein.org

158 (Ind. Ct. App. 2012), the Court said that, when determining the legislature's intent, the Court looks at "the plain language of the statute and attribute[s] the common, ordinary meaning to terms found in everyday speech." G.E. at 771. Citing In Re Marriage of Huss, 888 N.E.2d 1283, 1245 (Ind. 2008), the Court noted that, because Birth Mother's burden of proof was clear and convincing, on appeal the Court would not impose its view on whether the evidence met this standard. G.E. at 772. The Court considers only the probative evidence and reasonable inferences supporting the trial court's decision to determine whether clear and convincing evidence was presented. Huss at 1245. G.E. at 772. The Court concluded that, because Birth Mother's burden of proof was clear and convincing evidence, and that burden is greater than a preponderance of the evidence, it was not unreasonable for the juvenile court to deny her expungement petition where the only evidence presented was her testimony. Id. at 772. The Court noted that, even if Birth Mother's testimony alone established by clear and convincing evidence that she no longer posed a threat to children, the juvenile court still did not err. Id. The Court observed that IC 31-33-27-5(f) also required Birth Mother to show that her substantiated report of child neglect and abuse no longer had *current* probative value to keep in DCS's records (emphasis in opinion). Id. The Court said that Birth Mother's choice to work at a child care center made her history of child neglect and substance abuse relevant, since IC 31-33-26-2 through IC 31-33-26-16 require DCS to maintain a database of perpetrators and make that database available to child care providers. Id. The Court opined, that, given the potential risk to Pinnacle's child care licensure, the statutory and administrative schemes governing the operation of child care providers made clear that Birth Mother's records had probative value. Id.