

# Children's Law Center of Indiana



## Termination of Parental Rights (TPR)

10/02/2008

In **In Re A.D.W.**, 907 N.E.2d 533 (Ind. Ct. App. 2008), the Court affirmed the trial court's order terminating the parent-child relationships of Mother with her two children. The two children, born August 20, 1992 and November 17, 1995, were removed from the home following Mother's stay in a hospital emergency room for a panic attack, during which she tested positive for methamphetamines, benzodiazepine, and cocaine. The CHINS petition was filed December 1, 2005 and the children were determined to be CHINS on December 6, 2005. The children had been declared wards of DCS on four previous occasions. Services were ordered, but Mother failed and evaded drug tests; did not complete the substance abuse treatment programs as ordered; consistently failed to attend the ordered day treatment program which resulted in her case being closed by the treatment facility; failed to properly use the court-ordered resources provided by Parent Aide, but instead used them to help her run errands; and missed approximately fourteen scheduled visits with her children between February 2006 and September 2006 and created numerous problems during other visits with her inappropriate behavior. On November 29, 2006, the trial court approved a permanency plan for the children which included termination of Mother's parental rights. The termination petitions were filed December 20, 2006. Both parties requested and received a number of continuances. On February 8, 2007, Mother was incarcerated for possession of cocaine, on October 24, 2007, she was released, and on November 28, 2007, she requested CHINS services and visits with her children which requests were denied by the trial court. On December 18, 2007, Mother tested positive for morphine, hydrocodone, hydromorphone, and alpha-hydroxy alprazolam, for which she did not have valid prescriptions. On January 3, 2008, (1) Mother again requested a continuance and parenting services from DCS, both of which were denied; and (2) the trial court held a factfinding hearing on the termination petitions. Mother's parental rights were terminated by the trial court on February 26, 2008.

**The trial court did not abuse its discretion in denying Mother's motion for a continuance or in its denial of her motion for parenting services.** *Id.* at 538. With regard to the trial court's denial of Mother's continuance motion, the Court distinguished both Rowlett v. Vanderburgh County Office of Family & Children, 841 N.E.2d 615 (Ind. Ct. App. 2006) and In Re A.J., 881 N.E.2d 706 (Ind. Ct. App. 2008), cases relied upon by Mother. The Court observed that, unlike in Rowlett, here, Mother was not incarcerated at the time of the January 3, 2008 termination hearing which she was requesting to continue, she had been released for over two months at that time, and, although Mother had the opportunity to demonstrate her ability to assume parental duties, she chose not to do so and continued the same pattern of inappropriate behavior, as demonstrated by her positive drug test on December 18, 2007. The Court noted that, in A.J., the mother had made significant improvements in addressing her substance abuse problems and appeared to have a genuine desire to maintain a relationship with her children; but

here, Mother had made no such improvements at the time of the hearing, Mother tested positive for numerous drugs on December 18, 2007, and Mother sent her daughters inappropriate gifts and an inappropriate letter after being released from incarceration in October 2007. The Court concluded that, here, Mother had demonstrated no significant progress with regard to her parenting skills. Additionally, the Court found even more important with regard to A.J., was the appeals court's ultimate determination to affirm the judgment of termination. A.D.W. at 537-38.

As to Mother's challenge to the denial of her motion for parenting services, the Court observed that IC 31-34-21-5.8 provides that DCS is not required to provide services for reunification if it is contrary to the permanency plan adopted by the trial court. Here, the trial court had changed the permanency plan for each child from reunification to termination of parental rights before Mother's motion for parenting services, the denial of which Mother was challenging on appeal. Id. at 538.

**Indiana does not permit the use of the Americans with Disabilities Act arguments as a defense to the termination of parental rights because to allow parents to do so would elevate the rights of parents above the rights of children, which is an undesirable result.** Id. at 538. Thus, the Court found that Mother's claim fails.

**Contrary to Mother's contentions, there was sufficient clear and convincing evidence to support the trial court's conclusions that there was a reasonable probability that conditions that led to the removal of the children would not be remedied, that the continuation of the parent-child relationship would pose a threat to the well-being of both children, and that terminating Mother's parental rights was in the best interests of the children.** Id. at 539-40. On appeal, Mother argued that the trial court failed to take into account changed circumstances when it determined that conditions that led to the removal of the children would not be remedied. The Court opined that when determining whether the conditions will be remedied, the trial court must judge the parent's fitness to care for the children at the time of the termination hearing, taking into consideration evidence of changed conditions; however, a parent's habitual patterns of conduct must also be evaluated to determine the probability of future negative behavior. Id. at 539 (citations omitted). The Court noted that here, Mother (1) has exhibited a habitual pattern of drug abuse and neglect of her children; (2) did not cooperate with the drug treatment facility personnel and failed to complete the program; (3) missed sixteen court-ordered drug tests; (4) had her children declared wards of DCS on four previous occasions; (5) misused Parent Aide; (6) did not successfully follow through with supervised visitation; and (7) tested positive for morphine, hydrocodone, hydromorphone, and alpha-hydroxy alprazolam as recently as December 18, 2007, which was after the trial court had approved a permanency plan that included termination of Mother's parental rights. Accordingly, the Court concluded that it could not say the trial court's conclusion that conditions would not be remedied was clearly erroneous. Id.

The Court pointed out that, although DCS did not have to prove both that conditions that led to the removal of the children would not be remedied and that the continuation of the parent-child relationship would pose a threat to the well-being of both children, the trial court had concluded both. Thus, the Court stated that, given the evidence previously discussed, it could not say the trial court's determination that the continuation of the parent-child relationship would pose a threat to the well-being of the children was clearly erroneous. Id. at 540.

Mother also argued that DCS failed to prove that terminating her parental rights was in the best interests of the children. In this regard, the Court opined that, when determining whether termination of parental rights is in the best interest of the child, the trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development are permanently impaired before terminating the parent-child relationship. *Id.* (citation omitted). The Court noted that, here, (1) the trial court concluded that termination was in the children's best interest because "[t]he child[ren] need [ ] stability, permanency, and a safe environment, none of which can be provided by the mother;" (2) the DCS family case manager testified that both children were comfortable and relaxed living with their aunt and uncle and that she believed that termination of Mother's parental rights was in the best interest of the children in that the children's grades had improved since being placed with their aunt and uncle and the children had stability for the first time in their lives; and (3) the children's therapist testified that she believed it would be harmful to the children to continue the parent-child relationship and that the children had been doing better since having more stability in their lives and they would continue to improve with stability. Thus, the Court concluded that the recommendations by the caseworker and the therapist coupled with the evidence of Mother's extensive drug use, her failure to complete court-ordered services, and testimony that the children were thriving in their current home was sufficient to support a finding that termination of parental rights was in the children's best interest. *Id.* (citation omitted).