

# Children's Law Center of Indiana



## Termination of the Parent-Child Relationship

11/15/12

In ***In Re A.P.***, 981 N.E.2d 75 (Ind. Ct. App. 2012), the Court affirmed the trial court's order which terminated the parental rights of Mother and Father to their two children. The children were ages four and three at the time of the termination order. Mother and Father were not married at the time either child was born, but Father's paternity was established for both children. Mother's and Father's relationship was sporadic, and Father did not live with Mother during most of the CHINS proceedings. The older child had previously been found to be a CHINS when he tested positive for methamphetamine as an infant due to Mother's use of methamphetamine during pregnancy. The case was closed on February 26, 2009, after Mother complied with services. In 2010, Mother, who was then living in Sullivan County, but on probation in Knox County, again tested positive for methamphetamine. Sullivan County Department of Child Services (SDCS) was informed of Mother's positive test and investigated on February 1, 2010. Mother admitted to using methamphetamine, and SDCS removed the children from Mother's care, filed a CHINS petition, and placed the children in the care of their maternal grandmother and step-grandfather (Grandparents). At the time, SDCS could not locate Father. The trial court adjudicated the children to be CHINS as to both Mother and Father. On March 3, 2010, the court ordered Mother to (1) become and remain drug free; (2) complete intensive outpatient program ("IOP") classes with Reverend Carl Beadle; (3) comply with random drug screens; (4) sign all necessary releases; and (5) participate in individual and/or family therapy. The court ordered Father to contact SDCS. The court also ordered both parents to (1) cooperate with all SDCS requests; (2) notify SDCS prior to address, employment, or household changes; and (3) "participate in visitation schedule set by [SDCS], starting out with supervised and moving to unsupervised as he/she participates in services." The order further stated that the children were to remain in their current home or placement "with supervision by [SDCS]" and that SDCS was awarded wardship of the children, "with responsibility for supervision, care and placement." On the same date, but in a separate order, the trial court ordered Mother to pay \$25.00 per week in child support.

Mother participated in thirty-eight therapy sessions from April 2010 until April 2011, as required by the SDCS permanency plan for reunification. Her therapist concluded that, although Mother gained limited insight into her drug problem, her "behaviors suggested that she would use." Mother's therapist caught her snorting crushed prescription medicine, and noted that Mother failed drug screens from the beginning to the end date of the services provided. During the course of the CHINS case, Mother completed fifty-three drug screens, only four of which were

clean. She failed to participate in seventeen screens, where were considered to be positive. Mother tested positive six times for methamphetamine and one time for THC. She test positive for prescription-type substances numerous times, including hydrocodone, oxycodone, and oxymorphone but consistently failed to list her prescription medication on her consent forms. Mother also exhibited a wide variety of drug levels. Mother was found in contempt of the trial court's order in August 2010 and February 2011 after testing positive for methamphetamine. Mother: (1) completed Reverend Beadle's twelve-step program during the summer of 2011; however, she had previously completed the same program and continued to use methamphetamine; (2) went to Luke House, a sober living environment, but by the time of the termination hearing had been asked to leave when she informed a Luke House employee that she would fail a drug screen; (3) was incarcerated three times during the CHINS case for habitual driving violations; (4) was convicted as a habitual violator of traffic laws for continuing to drive with a suspended license, which led to forfeiture of her driving privileges for life; and (5) was subsequently convicted of operating a motor vehicle while privileges are forfeited for life, a class C felony. Mother's lack of a driver's license resulted in numerous problems related to services provided through SDCS; however, she did not ask SDCS for help with transportation.

Father participated in home-based counseling on approximately two occasions. He failed to stay in contact with SDCS, service providers, and the guardian ad litem. Before the termination hearings, Father failed to attend many of the CHINS-related hearings. He voluntarily appeared in court on one occasion, and he appeared on other occasions while in custody of police officers. A contempt action was initiated against Father after he failed to visit with the children in the manner ordered by the trial court. After Father indicated that he was not interested in SDCS services or assistance and failed to participate in offered services, SDCS focused its full attention on Mother.

On May 4, 2011, the trial court conducted a permanency hearing and SDCS filed a verified petition for termination of Mother's and Father's parental rights. On June 5, 2011, SDCS changed the permanency plan from reunification to termination of parental rights and adoption, a change that the trial court approved on July 6, 2011. After hearing evidence on the termination petition, the trial court terminated both parents' rights on January 18, 2012. Mother and Father appealed, contending that the trial court's findings were insufficient to support its conclusion that continuation of their relationships with the children posed a threat to the well-being of the children. Mother and Father also contended that the trial court erred in determining that termination of the parent-child relationship was in the children's best interests.

**The Court found that the trial court did not abuse its discretion in concluding that Mother posed a threat to the children's well-being.** *Id.* at 82. Citing Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 152 (Ind. 2005), the Court observed that in determining whether the continuation of the parent-child relationship poses a threat to the children, a trial court should: (1) consider a parent's habitual pattern of conduct to determine whether there is a substantial likelihood of future neglect or deprivation; and (2) judge a parent's fitness to care for her child as of the time of the termination proceedings, taking into consideration evidence of changed conditions. A.P. at 81. The Court noted the following evidence in support of the trial

court's findings: (1) Mother submitted to fifty-three drug screens between February 1, 2010, and March 28, 2011, of which six were positive for methamphetamine, one was positive for THC, and forty-nine were positive for prescription controlled substances; (2) the court inferred from the fluctuations in levels of prescription drugs that Mother was abusing the drugs; (3) Mother's counselor was not convinced that Mother "was successful with his services"; (4) Mother had made no changes in other aspects of her life, including the chaos in her home life that temporarily convinced her on more than one occasion that she should voluntarily terminate her parental rights; (5) Mother verbalized her problems, but did not act upon correcting them and continued to blame those around her for her difficulties; (6) Mother's failure to take responsibility for her problems extended to the permanent suspension of her driver's license, and her inability to admit that her disregard for the law resulted in "serious felony charges and further incarceration." *Id.* at 82. The Court observed that, even with the permanent presence of Grandparents in Mother's home, Mother could not avoid drugs that impaired her ability to parent and put her children at risk. *Id.*

**The Court could not conclude that the trial court had erred in determining that termination of Mother's parental rights was in the children's best interests.** *Id.* at 83. Mother argued that she had a loving bond with the children and pointed to evidence of her attendance at programs while incarcerated. The Court noted the following findings by the trial court: (1) the Guardian ad Litem reported that it was in the children's best interests for Mother's parental rights to be terminated; (2) termination was in the children's best interest due to Mother's continued drug use over a period of four years, beginning with the prior CHINS proceeding, Mother's failure to complete drug treatment, her lack of progress with home-based counseling, and her failure to pay ordered child support to Grandparents. *Id.* The Court also noted the testimony of the SCDS family case manager that Mother's past behavior has proven to be the best predictor of her future behavior; thus, he concluded that termination of Mother's parental rights was in the children's best interests. *Id.* The Court said that Mother's strong bond with the children did not eradicate the effects that her continued behavior had and will have upon them. *Id.*

**The Court said that the trial court's findings supported its conclusion that there was a reasonable probability that continuation of the parent-child relationship between Father and the children posed a threat to the children's well-being.** *Id.* at 84. Father contended that the trial court's findings were insufficient to support its conclusion that continuation of his parental relationship posed a threat to the children's well-being, and specifically argued that the findings did not have a nexus to the children's well-being and their relationship with Father. The Court noted the following trial court's findings in support of its conclusion that continuing the parent-child relationship posed a threat to the children's well-being: (1) Father had been held in contempt for failure to maintain contact with SDSCS and for failure to visit the children; (2) Father had shown a pattern of failure to attend court proceedings in the CHINS and paternity cases and was one and one-half hours late to one of the termination hearings; (3) Father did nothing during the CHINS case; (4) the Guardian ad Litem attempted to reach Father by telephone and mail, but was unsuccessful. *Id.* at 83-84. The Court said that there was no

evidentiary basis to allow the trial court to conclude that Father's neglect would not continue and that the continued neglect did not pose a threat to the children's well-being. Id.

**The Court could not say that the trial court erred in giving credence to the Guardian ad Litem's and family case manager's professional opinions that termination of Father's parental rights was in the children's best interests.** Id. at 84-85. Father argued that he and the children developed a loving bond when he allegedly engaged in unauthorized visits with the children and pointed to maternal grandmother's and others' testimony on his positive relationship with the children. The Court, quoting Lang v. Starke Cnty. Office of Family & Children, 861 N.E.2d 366, 373 (Ind. Ct. App. 2007), noted that a determination of the best interests of the children should be based on the totality of the circumstances. A.P. at 84. The Court also observed that, in making this determination, the trial court must subordinate the interests of the parent to those of the children. In Re A.K., 924 N.E.2d 212, 224 (Ind. Ct. App. 2010). A.P. at 84. The Court said that both the Guardian ad Litem and the family case manager had concluded that termination of the Father's rights was in the children's best interests. Id. The Court noted that, with regard to the positive testimony of Mother and the maternal grandmother at the termination hearing, the trial court is not required to believe or assess the same weight to evidence as the person citing the evidence. Id. at 85, citing Thompson v. State, 804 N.E.2d 1146, 1149 (Ind. 2004).