

# Children's Law Center of Indiana



## Termination of the Parent-Child Relationship

9/23/14

In **In Re A.S.**, 17 N.E.3d 994 (Ind. Ct. App. 2014), *trans. denied*, the Court affirmed the trial court's order terminating Mother's and Father's parental rights. *Id.* at 997. The Court concluded that DCS presented sufficient evidence to support the termination of parents' parental rights. *Id.* The parents had two children; the older child was born in May of 2009, and the younger child was born in July of 2010. Mother also had a daughter who was the children's half sister (Sister). In late February of 2011, the parents and the children, including Sister, were forced to move in with Mother's aunt (Great-aunt) as the result of a house fire. On March 12, 2011, three-year-old Sister took Great-aunt's medication and swallowed it. Mother noticed that Sister's behavior became abnormal and suspected that Sister had gotten into the medication, but Mother did not seek medical treatment. Eventually, Father took Sister to the emergency room, but she went into cardiac arrest and died. DCS substantiated death due to neglect and medical neglect against Mother. On March 14, 2011, DCS was informed that Mother, Father, and their children were staying in a motel and that the parents were planning to flee the state. The family case manager visited the family and determined that the parents were not attempting to flee the state, but Mother and Father admitted they frequently used marijuana, and Father admitted that he sometimes took Mother's prescription hydrocode to treat tooth pain. Both parents tested positive for marijuana. Due to concerns over the circumstances of Sister's death, Mother's and Father's drug use, and their uncertain future housing, DCS removed the children from the parents and placed them in foster care. The older child was one year old and the younger child was eight months old at the time of the removal. DCS filed CHINS petitions on March 15, 2011, and parents admitted to the allegations of the petition. The trial court adjudicated the children to be CHINS on June 15, 2011.

On September 29, 2011, the trial court issued its dispositional order. The court ordered the parents to, among other requirements, participate in supervised visitation with the children; maintain appropriate housing and an adequate income; complete substance abuse evaluations, psychological evaluations, and parenting assessments and follow any resulting recommendations; submit to random drug screens; and participate in individual counseling and follow any resulting recommendations. The parents each completed two substance abuse

evaluations in November 2011 and March 2012. The evaluator for the November 2011 substance abuse evaluation concluded that substance abuse was not a concern for either parent. On May 1, 2012, Father tested positive for hydrocodone, which he said that he took to treat sore teeth because he could not afford the dental work he needed. Mother had a prescription for hydrocodone, but occasionally she tested positive for levels higher than her prescribed amount. Both parents completed psychological evaluations on November 16, 2011 and parenting assessments on March 20, 2012. The service providers recommended that both parents complete individual therapy. The results of their parenting assessments were positive, and on November 18, 2011, the parents completed the Homebuilder's program, which is designed to improve parenting. The parents also consistently visited the children throughout the CHINS proceedings.

As a result of the parents' substantial compliance with their court-ordered services, DCS placed the children on a trial home visit with the parents on September 21, 2012. The visit ended early on November 7, 2012, because Mother tested positive for amphetamines and cocaine. DCS next placed the children on a trial home visit with only Father on December 3, 2012. The second trial visit ended after three days because Father tested positive for cocaine. Mother also tested positive for cocaine the same day.

On January 7, 2013, DCS filed petitions to terminate the parents' parental rights to the children. DCS also referred the parents to continue their services. Father began group therapy at the Crestview Center (Crestview) but attended only one or two meetings and met once individually with the therapist. Father then requested a referral for treatment at Aspire, a community mental health center, completed a substance abuse evaluation at Aspire, and attended group therapy there twice per week for a month. Father did not attend the other eight weeks of the group therapy program, and Aspire discharged him for non-attendance. Father never contacted the case manager about continuing treatment elsewhere. Although DCS referred Mother to Crestview, she never sought treatment there. Mother completed a substance abuse evaluation and mental health assessment at Aspire in March of 2013, but was discharged from the program because she did not follow up on the evaluation. Mother then requested and received another referral for Aspire in May of 2013, completed a second evaluation and assessment, and participated in group and individual therapy. She attended a total of only four meetings and did not show up for two scheduled individual sessions.

Father met with a therapist from June or July 2012 until the termination hearing in August of 2013. Father consistently attended meetings with the therapist except for a one month period when Father was too depressed to meet and the month prior to the termination hearing when Father was incarcerated for failing to attend a child support hearing for another child. Mother met with the same therapist whom Father was seeing for six to eight sessions, but then asked for a different therapist. After DCS assigned her a different therapist, Mother stopped attending therapy. Mother later testified that: (1) she stopped therapy because she had given up hope of getting her children back; (2) she was afraid that counseling was not enough and that she needed

in-patient treatment or she might harm herself or someone else; (3) she worried that, if she sought in-patient treatment, DCS would use this fact as a reason to terminate her parental rights. Starting in August 2012, Mother and Father participated in home case management with a family consultant, but their case was closed due to their failure to answer the door when the family consultant scheduled a home visit. The family consultant also supervised the parents' visitation with the children. Although the parents consistently attended visits, they were late, sometimes by as much as thirty minutes or an hour. The family consultant instituted a fifteen-minute time limit on the amount of time she would wait for the parents before canceling the visit, but the parents did not arrive in a more timely manner. The consultant observed that the children seemed "very anxious" if the parents were late.

Throughout the CHINS and termination proceedings, the parents' employment was inconsistent. Mother was unemployed from January 2013 until the termination hearing in August 2013. She enrolled in school, but stopped attending because she was under too much stress. Father was self-employed working on cars, landscaping, and roofing for the year and half leading up to the termination hearing. He was incarcerated at the time of the hearing for thirty days for failing to attend a child support hearing on another child, for whom he owed about \$1200 in support. Father planned to work at a metal factory after his incarceration. The parents also had multiple residences throughout the case. At the time of the termination hearing, Father planned to move into his father's house upon his release. Mother was living in her mother's two-bedroom house, but planned on looking for different housing within a month.

During the CHINS and termination proceedings, the children were placed in four different foster homes and with two different relatives. The family consultant observed that the older child was having a lot of tantrums in the six months prior to the termination hearing and that the younger child had some confusion concerning who her birth mother was. At the time of the termination hearing, the children were in a preadoptive placement with their aunt (Aunt) and her husband, who planned to adopt them if the parents' rights were terminated.

The trial court held an evidentiary hearing on the termination petitions on August 6, 2013. At the hearing, the DCS family case manager testified that she believed termination was in the children's best interests because: (1) the children had been removed from the parents' home for over two years; (2) the parents had not completed their services; and (3) the children needed permanency in their lives. The court appointed special advocate testified that she originally believed the children should be reunited with the parents, but had changed her mind because the parents had lived in a least three different homes; she could never reach them; and they were still unemployed and struggling with substance abuse. The parents' therapist testified that continuing "in limbo... [was not] fair to the children" and that he "would like to see some stability." The family consultant testified that the children "need a permanent home and they need it now." The children's therapist testified that she believed a permanent home would help the older child to regulate his behavior. On October 4, 2013, the trial court issued its order terminating the parents'

parental rights. Mother and Father appealed, arguing that the evidence did not support all of the trial court's findings of fact and that the findings did not support the trial court's conclusions.

**The Court opined that the evidence did not support three of the trial court's findings of fact.** Id. at 1002-03. Mother challenged the following findings: (1) it took the parents nearly a year before they initiated the services they were court-ordered to participate in; (2) at the time of [the termination] hearing, neither parent had appropriate housing; (3) at the last meeting, Mother indicated a desire to hurt herself, and that she was going to self-report to a mental health facility. The Court agreed with Mother that the record did not contain evidence to support the above findings. Id. at 1003. Having held that these three findings were clearly erroneous, the Court observed that it must determine whether there were sufficient remaining findings to support the trial court's conclusions. Id. at 1003-04.

**In light of the parents' failures to complete treatment for their substance abuse, the Court agreed with the trial court's conclusion that there was a reasonable probability that the conditions that led to the children's removal would not be remedied.** Id. at 1005. The Court observed that DCS must prove "each and every element" of the termination statute by clear and convincing evidence, quoting In Re G.Y., 904 N.E. 2d 1257, 1261 (Ind. 2009). A.S. at 1004. Quoting In Re D.W., 969 N.E.2d 89, 94 (Ind. Ct. App. 2012), the Court said that, as a standard of proof, clear and convincing evidence requires the existence of a fact to "be highly probable." A.S. at 1004. Mother claimed that the conditions that led to the children's removal were: (1) Sister's death from ingesting prescription medication; (2) the parents' lack of suitable housing; and (3) the parents' drug use. Mother claimed that there were no findings indicating that access to prescription medication was still an issue, and noted: (1) the trial court's finding stating that the parents lacked adequate housing was error; and (2) there was no evidence that the parents had engaged in habitual, ongoing drug use. Father claimed that: (1) he will have proper housing when he is released from incarceration; (2) he has his own handyman business; (3) he did not have a positive drug screen for the eight months prior to termination hearing; and (4) although he did not complete services, he participated in a substantial number of services. Many of the service providers testified that the parents had good parenting skills. The Court opined that, although it was apparent from the record that the parents loved their children, had parenting skills, and had made some progress in services, the Court could not find that the trial court's conclusion was clearly erroneous. Id. at 1005. The Court observed that the trial court must evaluate a parent's fitness at the time of the termination hearing. Id. The Court noted that, at the time of the termination hearing, the parents had failed to complete any services after the children were removed from their home as a result of drug use during the home visits. Id. The Court noted the following evidence on the parents' failures to complete substance abuse treatment: (1) Mother's substance abuse worsened when DCS returned her children for the trial home visit; (2) after her second evaluation at Aspire, Mother attended only four meetings of group and individual therapy in the months before the termination hearing; (3) although Father did not abuse drugs in the eight months preceding the termination hearing, he failed to complete his substance abuse when the children were placed with him for a trial home visit. (4) Father failed

to attend the last eight weeks of his program at Aspire, and was discharged for non-attendance. Id.

**The Court concluded that the trial court did not err in its determination that termination of parental rights was in the children's best interests.** Id. at 1006. The Court, citing In Re J.C., 994 N.E. 2d 278, 290 (Ind. Ct. App. 2013), observed that recommendations of the case manager and court appointed special advocate, in addition to evidence that the conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in the child's best interests. A.S. at 1006. Both parents argued on appeal that the only evidence DCS presented that termination was in the children's best interest was that the children needed stability and permanency. The parents cited Rowlett v. Vanderburgh Cnty. Office of Family and Children, 841 N.E. 2d 615 (Ind. Ct. App. 2006), *trans. denied*, in which the Court held that permanency, in and of itself, is not a valid basis for terminating the parent-child relationship. A.S. at 1005-06. The Court agreed with the parents that a need for permanency, alone, is not a sufficient basis for terminating parental rights, but found that it was not the only basis in this case. Id. at 1006. The Court noted the following evidence in support of the trial court's determination: (1) since the trial home visit, parents discontinued and failed to complete their services; (2) the seriousness of the parents' substance abuse had increased over time; (3) the parents initially tested positive for marijuana and abused prescription drugs, but, during the trial home visit, the parents tested positive for amphetamines and cocaine; (4) multiple service providers, including the case manager, the court appointed special advocate, the parents' therapist, the family consultant, and the children's therapist, testified that termination was in the children's best interest; (5) the case manager noted that the children had been removed from the parents' home for over two years, and the parents still had not completed their services. Id.

**The Court concluded that the trial court did not err in determining that DCS's plan for the children's care and treatment was satisfactory.** Id. at 1007. Mother argued that DCS's plan was unsatisfactory because (1) Aunt did not want anything to do with the children unless parental rights were terminated, and (2) DCS had terminated Aunt's visitation with the children because she violated a condition of her visitation by discussing the case, the parents, and Sister's death with them. Father claimed the plan was unsatisfactory because there was no guarantee that the adoption would take place or that the children would stay together. The Court quoted Lang v. Starke Cnty. Office of Family and Children, 861 N.E. 2d 366, 375 (Ind. Ct. App. 2007), *trans. denied*, which states that: (1) for a plan to be "satisfactory," it "need not be detailed, so long as it offers a general sense of the direction the child will be going after the parent-child relationship is terminated."; (2) a DCS plan is satisfactory if the plan is to attempt to find adoptive parents; (3) there need not be a guarantee that a suitable adoption will take place; (4) a plan is not unsatisfactory if DCS has not identified a specific family to adopt the children. A.S. at 1007. The Court explained that part of the reason for this is that it is within the authority of the adoption court, not the termination court, to determine whether an adoptive placement is appropriate. Id. The Court concluded that it was satisfactory in this case that DCS's plan for the children was adoption. Id.