

# Children's Law Center of Indiana



## Termination of Parental Rights (TPR)

04/30/2009

In ***In Re A.S.***, 905 N.E.2d 47 (Ind. Ct. App. 2009), the Court affirmed the trial court's order terminating Mother's parent-child relationship with two of her four children. (Father's parental rights were also terminated, but that termination is not a part of this appeal.) The children subject to this appeal have an older sibling as well as a younger sibling who apparently was born after initiation of the CHINS case regarding the older three children. On September 6, 2007, the Tippecanoe County DCS (DCS) instituted a CHINS action on behalf of the three older children after DCS received a report that Mother had left the then three-week-old, youngest child and the oldest child in the care of a neighbor whose own children had been removed by DCS, while Mother was at Riley Children's Hospital with the middle child who had pneumonia. Prior to the middle child's hospitalization at Riley, the child was in Home Hospital in Lafayette for two days, but following the child's discharge from there, Mother had failed to fill the prescriptions for medication, and the child returned to Home Hospital and was subsequently admitted to Riley. Further, the middle child was not current on immunizations, missed three medical appointments, and had not seen a physician since October 2006; the youngest child had not seen a physician since his birth three weeks earlier; and Mother did not know the name of the neighbor in whose care she had left the two children. The children were removed from the home, and they were declared CHINS on October 15, 2007. The trial court ordered a participation plan for Mother that included individual counseling, regular visitation, home-based services, random drug screens, parenting classes, psychological evaluation, obtaining employment, and maintaining appropriate housing. On January 3, 2008, a licensed psychologist who performed a psychological evaluation of Mother, determined that her "overall level of intellectual ability falls in the Borderline Mental Retardation range of cognitive functioning," and her scores indicated a learning disorder, generalized anxiety disorder, and depressive disorder. The petition for termination of Mother's parental rights was filed July 29, 2008. The termination hearing was held September 30, 2008, and at that time (1) Mother testified she had not maintained steady employment and admitted to continuous changes in her housing situation; (2) the home-based services counselor testified that in the early stages of her services, Mother was not attending required meetings or visitations; (3) although Mother's effort improved, she still accused the counselor and others of spoiling opportunities for her and did not take responsibility for her own decisions; (4) the DCS case manager testified that Mother was only attending about twenty-five percent of visits with her children early on because she said they were too early in the morning, and the visits and participation in counseling and other services began to improve, and were steady over the last few months, but Mother's motivation and willingness to obtain employment and housing did not improve at all; (5) Mother was living in a home with five other adults, some with criminal records; (6) Mother had not been truthful about her most recent pregnancy and failed to seek prenatal care until ordered to do so; and (7) the case manager testified that circumstances leading to the children's removal would not be remedied and that, although

Mother loved her children, she had no stability in her household and did not remedy any of the problematic situations during the year her children were removed. The trial court terminated Mother's parental rights with regard to her second-oldest and third-oldest child. Mother appealed.

**The Court held that there was clear and convincing evidence to support the trial court's finding that the conditions resulting in the children's removal from the home would not be remedied, that continuation of the parent-child relationship poses a threat to the well-being of the children, that there is an adequate plan for the care of the children, and that termination of Mother's parental rights is in the children's best interests. Mother's mental deficits do not preclude this result.** *Id.* at 51. Rather than challenging whether DCS had met the burden of proof for termination of Mother's parental rights, Mother likened the termination of her parental rights to Indiana's prohibition on the execution of mentally retarded criminal defendants, and contended on appeal that she could not be subject to termination of her parental rights because of her low intellectual capacity. The Court found this association misplaced and inapposite in that Indiana courts have repeatedly stated that termination proceedings are not designed to punish the parent, but rather to protect the best interests of the child. The Court held that, regardless of Mother's mental deficits, she was unwilling to participate in the programs offered to her and was unwilling or unable to maintain suitable employment and housing, even with the help and resources of family member and programs. *Id.* The Court acknowledged that the Indiana Supreme Court has recognized that mental retardation, standing alone, is not a proper ground for terminating parental rights, but pointed out that, here, rather than basing the termination on mental retardation, the trial court relied on Mother's failure to remedy the conditions that resulted in removal of her children and her ongoing threat to their well-being. According to the Court, the trial court found that Mother displayed a continuing lack of stability, a neglect of the children's medical needs, and a lack of progress in participating in services offered, and, although there might be some link between Mother's mental deficits and her failures to participate in offered services, her mental deficits did not excuse those failures or allow her to keep her children regardless of the danger to their health and well-being. The Court observed that no expert testified to link Mother's mental deficits to her failures during the year her children were in foster care, and, in fact, the home-based counselor testified that "the big picture with [Mother is] ... laziness, I think it's a lack of motivation and I think that she really wants to figure out how to live without working." The Court likened this situation to that in R.G. v. Marion County Office of Family and Children, 647 N.E.2d 326 (Ind. Ct. App. 1995), *trans. denied*, where the parental rights of a mother and father with low IQs were terminated because they were unable and unwilling to develop the skills necessary to fulfill their legal obligations as parents, and noted that, like those parents, here, Mother has been unable to provide a stable home for her children, despite assistance from her family and various agencies. *A.S.* at 50-51.