

# Children's Law Center of Indiana



## Termination of Parental Rights (TPR)

10/06/2009

In **In Re B.M.**, 913 N.E.2d 1283 (Ind. Ct. App. 2009), the Court affirmed the trial court's termination of Father's parental rights. Mother and Father were married when the child was born August 4, 2003, but they subsequently divorced and Mother was awarded sole custody of the child. On January 3, 2006, Vanderburgh County DCS (DCS) filed a CHINS petition regarding the child, because of Mother's cocaine addiction. The next day, Father and Mother appeared in court and the trial court determined that the child was a CHINS and removed him from Mother's care. The parents were ordered to, and did begin to participate in services. However, in June 2007, Father was arrested on federal charges of conspiracy to distribute cocaine. In November 2007, the child was returned to Mother's care. Father was subsequently convicted of the charged offense and incarcerated pending the sentencing hearing. DCS again removed the child from Mother's care in April 2008. On August 5, 2008, DCS filed a petition to terminate the parental rights of both parents. Mother failed to appear at the termination hearing that commenced on December 15, 2008. At the hearing, Father was represented by counsel and testified by telephone that he anticipated receiving a sentence of twenty years to life, and that the sentencing hearing was set for March 13, 2009. Father also testified that his sister, who resided in Peoria Illinois, was willing to care for the child. However, Mother did not consent to such an arrangement; Father did not make any request during the CHINS matter to have the child placed with his sister; no one contacted the sister about the suggested arrangement; the sister never appeared in court; and there is no evidence indicating that the sister made any effort to have the child placed with her at any point during the proceedings. The CASA testified that terminating Father's parental rights was in the child's best interests. The case manager testified that (1) she offered Father many services, including drug screens, supervised visits with the child, and anger management classes; (2) Father either cancelled many of the visitations or did not show up; (3) Father did not cooperate with the drug screens that were offered; (4) she was unaware of any possible placement of the child with Father's sister until the day of the termination hearing; and (5) she did not believe that it would be in the child's best interest for him to be "reunified" with Father or Mother. Following the hearing, the trial court terminated the parental rights of Father and Mother. Father appealed, contending only that the order terminating his parental rights must be set aside because the trial court failed to consider placing the child with his sister as an alternative to termination.

**The trial court did not err by failing to consider the child's placement with Father's sister as an alternative to terminating Father's parental rights.** *Id.* at 1284. The Court reviewed the applicable termination statutes and case law. The Court opined that, contrary to Father's contention, IC 31-34-6-2's provision requiring DCS to consider placing a CHINS with an appropriate family member before considering any other placement, does not apply because this is a termination of parental rights rather than a CHINS proceeding. The Court noted that, (1) as

set forth in IC 31-35-2-4(b)(2)(D), DCS is only required to establish that “there is a satisfactory plan for the care and treatment of the child” in termination proceedings; (2) adoption is a “satisfactory plan” for the care and treatment of a child under the termination of parental rights statute; and (3) here, the child had been living with his godparents for about a year and DCS’ plan for the child was adoption. Id. at 1287 (citation omitted). The Court opined that, because DCS established a plan for the child’s adoption, Father’s contention that the trial court erred in failing to consider the child’s placement with Father’s sister, as an alternative to terminating Father’s parental rights also failed on this basis. Id.