

# Children's Law Center of Indiana



## Termination of the Parent-Child Relationship

1/31/11

In ***In Re D.B.***, 942 N.E.2d 867 (Ind. Ct. App. 2011), the Court reversed the juvenile court's judgment terminating Father's parental rights. The Court remanded the case for further proceedings under its previous CHINS orders. The child and her five siblings were taken into custody by the Lake County office of the Indiana Department of Child Services (LCDCS) in May 2007 when Mother was arrested. The child and two of her siblings were placed together with a maternal second cousin. At the time of the children's detention, Father, whose whereabouts were unknown, lived in South Bend with his wife and two children. Mother was released from incarceration and began participating in court-ordered reunification services in June 2007. Once Father was located, he began visiting the child, but did not get involved with any other services as Mother was "on track" with regaining custody of the child. In November 2007, Mother was arrested and incarcerated on felony auto theft and attempted check fraud charges. Mother remained incarcerated until May 2009. Upon learning of Mother's arrest and incarceration, Father began participating in parenting classes, individual and family counseling, home-based services, and substance abuse classes in order to gain custody of the child. After first testing positive for marijuana, Father completed six months of clean random drug screens following his successful completion of the substance abuse classes. The child was placed in Father's care in December 2008. At that time, Father was living and working in Hammond, Indiana.

Two weeks after the child's placement with Father, Father was laid off from his job. Father's utilities were cut off, and Father was unable to reinstate utility service in his apartment due to an outstanding unpaid utility bill that he could not afford to repay. Father continued to maintain contact with the LCDCS caseworkers and cooperate with service providers while attempting to find new employment. Father and the child temporarily moved in with extended family members in Illinois, but Father lied to caseworkers, allowing them to believe that he still lived in his apartment in Indiana. After approximately two weeks, Father informed the child's therapist during a home visit at the Indiana apartment that he planned to take the child to his family's home in Illinois "because it was warm" there. The therapist shared this information with the LCDCS case manager, and the child was removed from Father's care several days later in January 2009. LCDCS attempted to arrange an interstate compact agreement with Illinois pursuant to the Interstate Compact on the Placement of Children, but the agreement was ultimately denied by Illinois due to Father's wife's criminal history and the family's ongoing

financial instability. Father sought employment while participating in court-ordered services and regularly visiting the child. Father obtained several factory jobs, but was repeatedly laid off due to the economy. Father also worked for a temporary agency. Eventually, Father separated from his wife and began living with his own father, his stepmother, and two stepbrothers in a four-bedroom home located in Calumet, Illinois.

LCDCS filed a petition for involuntary termination of Father's parental rights in June 2009, and an evidentiary hearing was held on January 26, 2010. At the time of the hearing, Father continued to live with his father and remained largely unemployed, working for a temporary agency on sporadic job assignments. Father expected to finalize his divorce from his wife "in the near future." Although LCDCS case workers could not recommend reunification due to Father's current economic status, there was consensus among case workers and service providers that Father was capable of parenting the child and had never harmed the child either physically or emotionally. The juvenile court took the matter under advisement and entered its termination judgment with specific findings and conclusions on April 9, 2010. The court also terminated Mother's parental rights. Mother did not appeal, but Father appealed the termination judgment.

**The Court opined that the juvenile court's conclusions that the conditions resulting in the child's removal and continued placement outside Father's care will not be remedied were not supported by sufficient evidence.** *Id.* at 874. The Court, citing *In Re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009), observed that the State's burdening for establishing the allegations in the termination cases "is one of 'clear and convincing evidence.'" *D.B.* at 872. The State "is not entitled to a judgment terminating parental rights" if the State fails to prove any of the statutory elements. *G.Y.* at 1261. *D.B.* at 872. Father challenged and the Court discussed the sufficiency of the evidence supporting the juvenile court's findings pursuant to IC 31-35-2-4(b)(2)(B), which require DCS to prove there is a reasonable probability that: (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child. *Id.* at 871-72. The Court, citing *In Re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*, said that in determining whether there exists a reasonable probability that the conditions resulting in a child's removal or continued placement outside a parent's care will not be remedied, a juvenile court must judge a parent's fitness to care for his child at the time of the termination hearing, taking into consideration evidence of changed condition. *D.B.* at 873. The Court further noted that, pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *A.F.v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. *D.B.* at 873.

In terminating Father's parental rights, the juvenile court specifically found Father had "tested positive for marijuana *throughout the case*" (emphasis in opinion). The Court opined that a thorough review of the record reveals that this finding is not supported by clear and convincing evidence, in that: (1) although Father tested positive for marijuana at the beginning of the

CHINS case, he did not test positive on any subsequent drug screens throughout the remaining two years of the underlying proceedings; (2) Father successfully completed a substance abuse program and thereafter submitted to six consecutive months of drug screens; (3) the LCDCS case manager explained that there were some “initial issues” with marijuana, but Father thereafter “tested clean” for six months and LCDCS “dismissed” that service; (4) Father confirmed that he had not used marijuana since he tested positive. *Id.* at 873. The Court also opined that the juvenile court’s findings that Father “did not participate in individual counseling “ and was “sporadic with his visitation” are also not supported by the evidence, in that: (1) the record reveals Father successfully completed parenting classes and consistently participated in individual counseling for over a year until LCDCS cancelled this service due to Father’s relocation to Illinois; (2) the family case manager admitted Father had missed only six scheduled visits out of forty-one scheduled visits throughout the entire case; (3) Father acknowledged missing several scheduled visits, but explained his missed visits were due to rescheduling requests by the visitation office, transportation problems, and Father’s work commitments. *Id.* at 873-74.

**The Court opined that the juvenile court’s conclusion that continuation of the parent-child relationship poses a threat to the child’s well-being is also without evidentiary support.** *Id.* at 874. The Court noted the following testimony by the LCDCS case manager: (1) Father had a “cooperative” attitude and “hadn’t done anything to...harm [the child], in the sense of...physical, mental abuse, emotional abuse...”; (2) she thought that Father could properly parent the child; (3) she did not believe Father’s relationship with the child posed a threat to the child or her well-being; (4) her recommendation for termination was based solely on Father’s lack of a consistent source of income and housing and that he has not been consistent with services. *Id.* The Court also observed that the therapist’s testimony echoed that of the case manager. *Id.* The therapist described Father as nice, patient, kind, open to learning and being told things, and never negative or aggressive. *Id.*

**The Court said that the law makes abundantly clear that termination of a parent-child relationship is an extreme measure to be used only as a last resort when all other reasonable efforts have failed. Given the circumstances, the Court does not believe this case has reached the “last resort” stage.** *Id.* at 875. The Court readily acknowledged that there is no guarantee Father will achieve lasting financial stability. *Id.* at 874. The Court opined that this factor considered alone, or in combination with the fact Father lied to caseworkers in 2009 about where he was living, however, is not a valid basis for terminating the relationship between a parent and his child. *Id.* at 874-75. The Court stated that, although the child is currently living and thriving in a loving, pre-adoptive relative foster home, a parent’s constitutional right to raise his own child may not be terminated solely because there is a better home available for the child. *Id.* at 875.