

# Children's Law Center of Indiana



## Termination of Parental Rights (TPR)

05/20/2009

In **In Re G.H.**, 906 N.E.2d 248 (Ind. Ct. App. 2009), the Court affirmed the trial court's order terminating the parent-child relationship of Mother with her daughter. On October 10, 2005, Boone County DCS (DCS) was informed that Mother was being arrested and there was no one present to care for her fourteen-month-old daughter. DCS investigated, took the child into custody, and placed her in foster care. On October 12, 2005, DCS filed a CHINS petition regarding the child which alleged in detail the "filthy" condition in which the house and child were found, and that the child was a CHINS in that her physical or mental condition was seriously impaired or endangered as a result of the inability, refusal, or neglect of Mother to provide the child with necessary supervision and Mother's failure to maintain a clean home seriously endangered the child's physical and mental health. On the same day, the trial court held an initial hearing, at which Mother appeared pro se by video from jail, adjudged the child a CHINS, and ordered DCS to continue her foster care placement. A week later, DCS returned the child to Mother's custody. After a dispositional hearing, on December 20, 2005, the trial court issued a dispositional decree, ordering continued placement with Mother, with several conditions including the maintenance of a clean, safe home environment, and random drug screens for Mother and Father. In the following two years, DCS removed child from Mother's custody and then returned the child to her. The child was placed in both non-relative and relative foster care situations during this time. DCS filed its petition to terminate Mother's parental rights on December 11, 2007, and its petition to terminate Father's in January 2008. Following a hearing on both petitions, on September 26, 2008, the trial court issued an order terminating the parental rights of both Mother and Father. Mother appealed the termination of her parental rights.

**The record shows that DCS succeeded in presenting clear and convincing evidence that the child had been removed from Mother's care for fifteen out of the twenty-two months prior to the filing of the termination petition and for six months following the dispositional decree, although pursuant to the statute, proof of only one of these time periods would suffice.** *Id.* at 252. Mother argued that, based on IC 31-35-2-4 (mistakenly stated as IC 31-35-4-2 in the decision) and IC 31-35-2-4.5, the time period element of IC 31-35-2-4 is not satisfied, because the calculation should not include the time the child was in the care of maternal grandmother or Father. The Court noted that (1) the plain language of IC 31-35-2-4 states that DCS was required to show only that the child was "removed" from Mother's care and "under the supervision" of DCS during the required time periods, and there is no mention that time spent with relatives is an exception; and (2) IC 31-35-2-4.5 uses permissive rather than mandatory language when it states that a compelling reason for a motion to dismiss the petition *may* include the fact that the child is being cared for by a related person. *Id.* at 251-52.

**The Court found no clear error in the trial court's determination, based on Mother's argument that DCS failed to show by clear and convincing evidence that there is a reasonable probability that the conditions resulting in the child's removal will not be remedied.** Id. at 252-53. The Court pointed out that, rather than making a specific finding that there is reasonable probability that the conditions resulting in the child's removal will not be remedied, the trial court made the alternative conclusion listed as a requirement by IC 31-35-2-4(B), that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the child's well-being. The Court reviewed the facts the trial court cited in support of this alternate conclusion and found them to be sufficient not only to support the alternate conclusion reached by the trial court, but also to support a conclusion that there is a reasonable probability that the conditions resulting in the child's removal will not be remedied. Id.

**The record supports the trial court's conclusion that termination of Mother's parental rights is in the child's best interests.** Id. at 254. The Court opined that, (1) in determining what is in the best interests of a child, the court is required to look beyond the factors identified by DCS and look to the totality of the evidence; (2) in so doing, the court must subordinate the interests of the parents to those of the children; (3) the court need not wait until a child is irreversibly harmed before terminating the parent-child relationship; and (4) a parent's historical inability to provide adequate housing, stability and supervision coupled with a current inability to provide the same will support a finding that termination is in the child's best interests. Id. at 253-54 (citations omitted). The Court noted that here, (1) Mother may have a sincere desire to be reunited with the child, but she has been unable to make choices to support the child's well-being; (2) throughout DCS' involvement, Mother has demonstrated several troubling patterns of conduct, including her failure to regularly take medication to treat her bi-polar disorder, her inconsistent exercise of visitation with the child, her non-compliance with individual and group counseling, and her "blackout episodes," during which she exhibits violent behavior and has no memory of it; and (3) these patterns contribute to Mother's continuing inability to provide a safe and stable environment for the child. Id. at 254.