

Children's Law Center of Indiana



Termination of Parental Rights (TPR)

06/16/2009

In **In Re J.M.**, 908 N.E.2d 191 (Ind. 2009), the Court affirmed the trial court's denial of DCS' petition to terminate the parental rights of Mother and Father to their child, and vacated the Court of Appeals decision, **In Re Termination Parent-Child Rel. of J.M.**, 895 N.E.2d 1228, 1236 (Ind. Ct. App. 2008) (finding the trial court's denial of the petition for termination of Mother's and Father's parental rights was clearly erroneous). The child was born November 1, 1999. Both parents had an ongoing relationship with him during the first three years of his life, and there are no allegations that during that time they were unfit parents. In 2002, both parents were convicted of attempted dealing in methamphetamine and were sentenced to ten-year suspended sentences. Mother was incarcerated for three days and placed on ten years probation. Father served two years in the Department of Correction and was placed on four years work release and four years probation. In 2002, the child was removed from Mother's care for 30 days but was then reunited with her. In April 2004, Mother and Father were arrested and charged with the same attempt charge as well as conspiracy to deal. Both pled guilty to the conspiracy charge. Mother was sentenced to twenty years with four years suspended to probation; and Father was sentenced to twelve years, with six years suspended to probation. Shortly after Mother's arrest, DCS removed the child from her care. He was placed with his maternal grandmother and aunt from June to December 2004, in a licensed foster care from December 2004 to July 2005, with his paternal aunt and uncle from July 2005 to February 2006, and thereafter in foster care where he has remained. In March 2006, DCS filed a CHINS petition alleging the child's "parents are unable to provide care for him due to their incarceration." Both parents admitted the allegations and were ordered to comply with a parent participation plan. In December 2006, the court established a permanency plan that included termination of parental rights and adoption. On July 25, 2007, DCS filed an involuntary termination petition. After a factfinding hearing, on February 29, 2008, the trial court entered Findings of Fact and Conclusions of Law, denying the petition to terminate the parental rights of Mother and Father. The GAL appealed and the Court of Appeals reversed and remanded with instructions to terminate Mother's and Father's parental rights. Father filed a petition for rehearing, supported with a "Motion to Supplement the Record." The Court of Appeals denied the petition for rehearing, but apparently did not rule on the motion. Father and Mother sought transfer. The Supreme Court found the information contained in Father's motion to supplement to be relevant to the appeal, granted the motion, and incorporated it into the record.

Following an examination of the four reasons the trial court gave for concluding that there is a reasonable probability that the conditions which resulted in the child's removal will be remedied and that continuation of the parent-child relationship does not pose a threat to the child's well-being, the Court held that the trial court's conclusion was not clearly erroneous. Id. at 194. Regarding the trial court's first reason, that Mother's and Father's

“probable dates of release are close in time” and “are to occur soon,” the Court observed that their release dates are relevant and important because their incarceration is the condition that resulted in the child’s removal. The Court noted that: (1) at the January 8, 2008 termination hearing, Mother testified that her “projected earliest release date” was April 2011, but her “earliest possible release date” was April 2009 if she completed her bachelor’s degree, and that she was “right on track” to complete it in May 2008, at which time she would be eligible for the Work Release Program; and (2) at the termination hearing, Father testified that his “projected earliest release date” was January 2010, that he was “looking to get a year time cut here shortly and ... be out at the latest January, 2009,” and that he had started a substance abuse program on the day of the termination hearing and completion of the program would expedite his “out date” to July 2008. The Court found that (1) this evidence supported the trial court’s finding that Mother’s “official release date is in 2011. However, if she should complete her college degree then she will be eligible for work release in May, 2008;” (2) this evidence supported the trial court’s finding that Father’s “earliest release date is July, 2008;” (3) the findings in turn support the trial court’s conclusions that Mother’s and Father’s “probable dates of release are close in time” and “are to occur soon;” and (4) the trial court’s judgment based on these findings and conclusions is therefore not clearly erroneous contrary to the views of the Court of Appeals. *Id.* at 194-95.

As to the trial court’s second reason, the Court observed that (1) the trial court concluded that “[t]he parents have fully cooperated with the services required of them while incarcerated;” (2) the Court of Appeals did not take issue with or otherwise dispute this conclusion; and (3) the Court saw no basis for rejecting it as clearly erroneous. *Id.* at 195. Thirdly, the trial court concluded that Mother and Father “had a relationship with the child prior [to] their imprisonment and attempted to keep the child in the care of relatives prior to their convictions.” Similarly the Court observed that the Court of Appeals did not take issue with or otherwise dispute this conclusion and the Court saw no basis for rejecting this conclusion. *Id.*

Lastly, the Court reviewed the trial court’s conclusion that Mother and Father’s “ability to establish a stable and appropriate life upon release can be observed and determined within a relatively quick period of time. Thus the child’s need of permanency is not severely prejudiced.” *Id.* at 195. The Court noted: (1) its review of the record showed that Mother and Father had taken steps to provide permanency for the child upon their release; (2) in addition to completing all of the available required self-improvement programs ordered by the court’s dispositional decree, Father testified at the termination hearing, that after his release, “I have a job waiting for me ... working excavation, running heavy machines;” (3) Father’s having secured a home where Mother and the child could reside with him; (4) Father’s “Motion to Supplement the Record,” which is supported by exhibits, states in relevant part that prior to his release from incarceration, Father had “obtained housing at Melrose Apartments and he currently reside [sic] at this housing complex in a clean and appropriate two bedroom apartment,” “[o]n November 10, 2008, Father began employment with Benny’s Floor Coverings in Greencastle, Indiana as an installer where he works 40 to 45 hours per week and has a \$10.00 per hour rate of pay,” and “[i]mmediately upon his release from Plainfield Correction Facility he purchased a 1981 Dodge Ram truck for transportation, registered the vehicle with BMV and obtained auto insurance through Progressive Southeastern Insurance Company;” (5) Mother testified at the termination hearing that she was “right on track” to complete her bachelor’s degree in May 2008, which would push her release date up to April 2009; (6) at oral argument in May 2009, the GAL acknowledged that Mother

had been released from incarceration and her physical presence at oral argument was evidence that she had completed her bachelor's degree; (7) Mother testified at the termination hearing that she had completed a 16-month "community transition program ... where we are offered a lot of different programs to help prepare us for re-entry into society;" and (8) Mother's testimony that she had not lined up a job or housing after her release is offset by evidence that Father has a stable job and appropriate housing for her and the child. The Court concluded that the evidence supports the trial court's conclusion as stated above, and that contrary to the view of the Court of Appeals, it saw no basis for rejecting this conclusion of the trial court as clearly erroneous. Id. at 195-96.

The Court also opined that, whether or not Father's testimony was credible and the weight to be given to it is a matter falling within the sound discretion of the trial court. Id. at 196 n.7 (citation omitted.)

The Court noted that, although this is the second case that it has decided in recent weeks in which it has held that the involuntary termination of the parental rights of incarcerated parents was not warranted, the close proximity of the cases is coincidence and not a reflection of any presumption as to the outcome of such cases. Id. at 192.