

Children's Law Center of Indiana



Termination of Parent-Child Relationship

8/13/12

In ***In Re Ma.J.***, 972 N.E.2d 394 (Ind. Ct. App. 2012), the Court reversed the trial court's order terminating Mother's parental rights to her twin daughters. The Court concluded that DCS failed to meet its statutory burden of proving that the conditions that resulted in the children's removal or placement outside the home of Mother will not be remedied.

In May 2007, twin girls were born to Mother and Father, who were not married. Mother and Father continued to live together, and in September 2009, there was a domestic dispute between Mother and Father. Father had previously been convicted of battering Mother in the twins' presence. The police responded to the incident, and DCS filed a CHINS Petition on the children. Mother and Father admitted to some of the allegations in the CHINS Petition; Mother specifically admitted that there was a history of domestic violence occurring in the presence of the children. In November 2009, Mother was charged with theft and conspiracy to commit theft; the following day, the trial court held the dispositional hearing and ordered Mother to (1) participate in counseling and follow all recommendations; (2) follow the visitation schedule for visitation with her children; (3) maintain regular contact with the DCS family case manager; (4) continue with home based case management and follow all recommendations; (5) take all her medications as prescribed; (6) maintain a safe and stable home for the children; and (7) complete a drug and alcohol assessment and follow all recommendations.

In January 2010, Mother began meeting with a therapist, and DCS felt that Mother was making good progress. However, in April 2010, after a hearing, Mother was restricted to supervised visits for unspecified "safety issues." These issues appeared to pertain to Mother's new boyfriend and his presence at visits with the children, as well as the frequency and duration of Mother's visitations with the children. In May 2010, Mother began home based services with a counselor who also supervised her visits. The counselor felt that Mother was doing well, and noted improvement in Mother's ability to divide her time between the children and her organization. In June 2010, Mother was charged with two counts of welfare fraud. In July 2010, Mother began dating another new boyfriend, at which point, her participation in services became inconsistent. In August 2010, Mother appeared late for an appointment with her therapist and she appeared to be under the influence of a narcotic. Mother admitted she had taken a dose of methadone, which was prescribed to her for back pain. Mother was ordered to begin random drug testing, and she never tested positive for any controlled substance that was not prescribed to her. In September 2010, Mother was charged with receiving stolen property, obstruction of justice, and assisting a criminal. Her new boyfriend was the co-defendant. Mother remained in

jail until the end of December, 2010. In November 2010, the trial court approved the plan to allow DCS to proceed with terminating Mother's parental rights to the children. When Mother was released from jail, DCS declined to offer her additional services.

At the end of December 2010, Mother entered the drug court program, where Mother admitted she had been crushing and snorting her prescription drugs. In order to receive the benefit of a dropped charge and a suspended sentence, Mother must successfully complete drug court and testify truthfully against her new boyfriend. If Mother does not successfully complete the drug court program, she will serve a seven year executed sentence. In March 2011, DCS filed a petition to terminate Mother's parental rights. The hearing ended in August 2011. During this time, Mother remained in compliance with the drug court program. Mother never tested positive for illegal substances, prescription or illicit. Mother attended AA and NA meetings. Mother was involved in no new incidents of domestic violence, and had not become involved with any new men since her release. Mother began making restitution for her welfare fraud case. Mother obtained an appropriate home, employment, and regularly visited with the twins. After a hearing, the trial court terminated Mother's parental rights, finding that the conditions that resulted in the removal of the children from Mother would not be remedied. Mother challenged the trial court's finding that the conditions leading to the removal or the reasons for placement outside her home would not be remedied.

The Court determined that DCS failed to meet its statutory burden of proving that the conditions that resulted in the children's removal or the reasons for placement outside of Mother's home will not be remedied; the Court further stated that Mother's progress in this case was hardly inconsistent or last minute. *Id.* at 404. The Court cited *In re A.B.*, 924 N.E.2d 666 (Ind. Ct. App. 2010), and stated that a trial court, when it is determining whether the conditions leading to removal will be remedied, must judge a parent's fitness to care for the child at the time of the termination hearing, and must take into consideration any evidence of changed circumstances. *Ma.J.* at 401. The Court noted that the trial court, in making its decision, solely focused on Mother's behavior leading up to her incarceration. *Id.* The Court opined that although a parent's habitual patterns are relevant, termination of parental rights cannot be based solely on conditions that existed in the past, but no longer exist. *Id.* (citing *P.C. v. Dep't of Pub. Welfare of Allen Cty*, 630 N.E.2d 1368 (Ind. Ct. App. 1994)). In a lengthy footnote, the Court stated that it was concerned with some of the trial court's findings on this point, and deemed them to be unsupported and speculative. *Ma.J.* at 402-3, fn.5.

While Mother's behavior prior to her incarceration was relevant, the trial court ultimately was supposed to determine Mother's fitness at the time of termination hearing. *Id.* at 402-3. The Court noted that Mother made significant progress in the eight months before the termination hearing: Mother was in compliance with the drug court program; progressing in treatment; attending two weekly support meetings; meeting regularly with her NA and AA sponsor; providing thirty random negative drug screens; and avoiding any new relationships with men. *Id.* at 403. There were no new incidents of domestic violence involving Mother. *Id.* Mother obtained an appropriate home, employment, and regularly visited the twins. Evidence indicated Mother and twins had a loving relationship, and Mother took steps to address developmental delays in the twins. *Id.* "There are no longer any immediate concerns about

[Mother's] ability to parent [the children], and her ability to cope with added responsibility can be quickly assessed without substantial risk of harm to the [the children]." Id. at 404.