

Children's Law Center of Indiana



Termination of the Parent-Child relationship

3/13/17

In **Matter of G.M.**, 71 N.E.3d 898 (Ind. Ct. App. 2017), the Court reversed the termination of Father's parental rights to the child, affirmed the termination of Mother's parental rights to the child, and remanded to the juvenile court for proceedings consistent with the Court's opinion. Id. at 909. The child was born on December 10, 2014, and has a heart condition requiring specialized care. On December 12, 2014, DCS removed the child under a juvenile court order because Mother admitted using unprescribed painkillers and heroin during pregnancy. Father refused a drug screen and told DCS that he was unable to care for the child because he was on probation for rape and was not permitted to be around children unsupervised. On December 16, 2014, DCS filed a CHINS petition based on Mother's drug use, the child's drug withdrawal at birth, and Father's inability to care for the child. In an order following the initial hearing on December 16, 2014, the court ordered Mother to have no drugs in her system when visiting the child, and advised Mother that she could be held in contempt and incarcerated if she disregarded the order to have no drugs in her system when she was visiting the child. Father was arrested shortly after the child's birth for an alleged probation violation based on his positive tests for morphine and Percocet. In March 2015, the State filed another petition to revoke Father's probation, alleging that Father tested positive for morphine. Father's probation was revoked in May 2015, and he was ordered to serve the remainder of his suspended sentence for rape and burglary.

The juvenile court held an initial hearing on August 4, 2015, and Father admitted the child was a CHINS. After Father's admission, the court held a factfinding hearing on the allegations involving Mother and ultimately adjudicated the child to be a CHINS. The court held a dispositional hearing on September 4, 2015, and ordered: (1) Mother shall participate in a substance abuse evaluation and ongoing substance abuse treatment; (2) Mother shall attend visitation with the child as long as she maintains clean drug screens; (3) Mother shall submit to random drug screens; (4) Mother shall participate in home based services; (5) Mother shall comply with all of the recommendations in DCS's predispositional report; and (7) Father may participate in services as he is able while incarcerated, and his dispositional hearing will not occur until his release from incarceration. The juvenile court never held a dispositional hearing for Father. Mother did not participate in services or visit the child consistently. She tested positive for illegal substances four times during the CHINS proceedings, and did not attend the child's medical appointments. On December 17, 2015, the juvenile court changed the child's permanency plan from reunification to adoption. On March 7, 2016, DCS filed a petition to terminate Parents' rights to the child. On July 14, 2016, the court held a hearing on the termination petition. Mother was incarcerated at the time of the hearing. On August 12, 2016, the court entered an order terminating Parents' rights to the child. Father and Mother appealed.

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Finding that the juvenile court never issued a dispositional order for Father, the Court reversed the juvenile court's judgment which terminated Father's parental rights. *Id.* at 904. Father argued DCS did not prove at the termination hearing that the child had been removed from his care under a dispositional decree for at least six months as required by IC 31-35-2-4(b)(2)(A)(i). The Court noted the following juvenile court orders: (1) in the September 4, 2015 dispositional decree, the court stated, "Father may participate in services as he is able while incarcerated. Father's dispositional decree will not occur until his release from incarceration"; and (2) in the December 3, 2015 permanency order, the court stated, "Father is incarcerated and is not under disposition." *Id.* at 903. The Court said that waiver would normally apply since this issue was raised for the first time in Father's appeal. *Id.* at 903-04. The Court opined that waiver did not apply in this case. *Id.* Quoting Parent-Child Relationship of L.B. and S.B. v. Morgan Cty. Dept. of Public Welfare, 616 N.E.2d 406, 407 (Ind. Ct. App. 1993), *trans. denied*, the Court explained that concerning the requirement a child must be removed under a dispositional decree before a court can terminate a parent's rights, the "constitutionally protected rights of parents to establish a home and raise their children mandates that the failure of a juvenile court to require compliance with any condition precedent to the termination of this right constitutes fundamental error which this court must address *sua sponte*." *G.M.* at 904. The Court noted that when DCS filed the termination petition on March 17, 2016, the child had not been removed as to Father under a dispositional decree for at least six months, so the juvenile court erred when it terminated Father's parental rights. *Id.*

The Court disagreed with the majority of Mother's arguments that nine of the juvenile court's findings were not supported by the evidence. *Id.* at 905-08. Mother first challenged two findings, which discussed her failure to visit the child regularly and failure to engage in court ordered services. Mother argued that she was given only a few months to comply with services, worked long hours and lacked transportation. The Court noted the following evidence supported the findings: (1) Mother did not dispute that she had not completed the required services; (2) Mother attended eight visits with the child and cancelled seven visits with him; (3) the DCS case manager testified Mother never completed her initial substance abuse assessment and did not meet with a substance abuse counselor. *Id.* at 905. Mother also took issue with the court's findings which stated that she had four positive drug screens, which were for oxycodone, methadone, and opiates without a prescription. The Court noted DCS presented multiple exhibits containing the results of Mother's drug screens which supported the juvenile court's conclusion. *Id.* at 906. Mother argued the court should not have considered her positive drug screens because they were prior to the CHINS adjudication, but the Court found the juvenile court issued an order after the initial hearing on December 12, 2014, which ordered Mother to have no drugs in her system when she visited the child and that she could be held in contempt and incarcerated if she disregarded the order. *Id.* The Court found that Mother knew she was not to take drugs prior to the dispositional order which stated she should not take drugs. *Id.* Mother also took issue with the juvenile court's findings which discussed her failure to initiate conversations about the child's condition and required care, her lack of interaction with the guardian ad litem, and the guardian ad litem's testimony that Mother had other priorities, such as her job, that seemed to take priority over her child. Regarding eight of the nine findings disputed by Mother, the Court opined that there was evidence to support the findings and

Mother's arguments were invitations to reweigh the evidence and judge the credibility of witnesses, which the Court cannot do. G.M. at 907, citing In Re D.D., 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*.

Mother also disputed the juvenile court's finding that "[the child] has progressed well in his foster family, and he views his foster parents as his true parents." Mother contended the court's finding that the child, a non-speaking toddler, viewed his foster parents as his true parents was speculation and certainly not supported by the evidence. The Court agreed the juvenile court's finding was unsupported by the evidence, but held that this finding by itself did not warrant reversal. Id.

The Court opined the juvenile court did not error when it concluded there was no reasonable probability that Mother would remedy the conditions that led to the child's removal from her care. Id. at 908. Mother argued the juvenile court's conclusion was not supported by the findings because she had steady employment, reliable transportation, and a place for herself and her child to live. Mother also testified at the termination hearing that she was aware of the child's special needs, felt her training as a certified nursing assistant would help her learn the specific requirements of his medical care quickly, would be released from incarceration in November 2016, no longer had a problem with drugs, and was willing to complete any requested services. The Court opined the evidence suggested otherwise, noting: (1) Mother did not complete services, and the time for completion of those services had long passed; (2) Mother did not regularly visit with the child and did not seek to understand his condition and how to treat it; and (3) Mother had multiple positive drug screens, the last of which resulted in her arrest and subsequent incarceration for violation of probation. Id.

The Court held the juvenile court did not err when it concluded termination was in the child's best interests and terminated Mother's parental rights because there was sufficient evidence to support the conclusion. Id. at 909. Citing In Re A.L.H., 774 N.E.2d 896, 900 (Ind. Ct. App. 2002), the Court noted a parent's historical inability to provide a suitable environment along with the parent's current inability to do so supports finding that termination of parental rights is in the child's best interests. G.M. at 908. The Court noted the following evidence in support of the juvenile court's best interests finding: (1) the DCS case manager testified that termination was in the child's best interests because he was established in a home where he had been provided appropriate care, he had no bond with Parents, and Parents had not cared for or bonded with him; and (2) the guardian ad litem testified that termination was in the child's best interests because Mother had not made strides to address her substance abuse, had not attended the child's medical appointments or visited him, and had not learned about his medical condition. Id. at 909.