

# Children's Law Center of Indiana



## Termination of the Parent-Child Relationship

2/27/14

In **Termination of Parent-Child Rel. [J.G.] v. DCS**, 4 N.E.3d 814 (Ind. Ct. App. 2014), the Court concluded that Mother forfeited her right to appeal because she failed to file a timely Notice of Appeal. *Id.* at 815. The Court dismissed her appeal. *Id.* The Court also found that sufficient evidence supported the trial court's decision to terminate Mother's parental rights. *Id.* at 820. Mother has a history of drug abuse, mental illness, domestic violence, and periods of incarceration, and does not have custody of any of her seven children. Mother's extensive history with DCS dates back to 2001. On November 15, 2010, Mother gave birth to the children, who are twins. Mother was incarcerated at the time of the children's births because she had violated her probation on a conviction for possession of methamphetamine. Mother tested positive for methamphetamine while she was pregnant with the children. Four days after the children's births, DCS filed a CHINS petition. The children were found to be CHINS after a factfinding hearing and were formally removed from Mother's care. DCS made referrals to Mother for counseling, evaluations, and parent aide services. Mother struggled to complete job applications and rejected her parent aide's suggestions on shelters or facilities where Mother could obtain housing. Mother's on-again, off-again relationship with Father, who had been convicted of domestic battery against Mother on two separate occasions, spanned several years. Mother and Father were still residing together in November 2012, one month before the evidentiary hearings on termination of parental rights began on December 10, 2012. Although Mother had been diagnosed with schizophrenia, paranoid type, schizoaffective disorder, bipolar type, and substance dependence, Mother missed doctor's appointments scheduled to address her continuing mental health issues. Over an eight month period, from February 7 to October 8, 2011, Mother missed twenty-eight drug screens and tested positive fourteen times for illicit substances, which included positive screens for marijuana, cocaine, amphetamine, and methamphetamine. Mother participated in a mental health diversion program, a sober living program, and addictions treatment in 2012, but, according to her addictions counselor, Mother's prognosis was still "poor and guarded" in December 2012. Mother tried to interact with the children during visits, but she also cancelled twelve visits, did not make any progress in her parenting skills, and caseworkers concluded that Mother and the children were not bonded. Mother's visits with the children ended in October 2011 because she was arrested for criminal confinement and was placed in an in-patient unit of a psychiatric facility for five months.

A termination hearing was held on May 24, 2012. Mother failed to appear at the hearing but was represented by counsel. The trial court issued an order terminating Mother's parental rights, but

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set aside its first termination order because Mother believed that the May 24<sup>th</sup> termination hearing had been continued. Thereafter, the trial court held evidentiary hearings on the termination petition on December 10, 2012 and January 2, 2013. The family case manager testified that termination was in the children's best interests because Mother failed to complete services, missed drug screens, had a history of domestic violence, and had not substantially progressed in her ability to parent despite three years of services. The Court Appointed Special Advocate acknowledged Mother's recent progress, but had concerns about Mother's ability to remain drug free, and recommended termination of Mother's parental rights. On March 25, 2013, the trial court issued an order terminating Mother's parental rights.

On April 4, 2013, Mother filed a Notice of Intent to Appeal. In the documents, Mother requested the appointment of separate, outside counsel for the appeal. The trial court appointed appellate counsel on April 25, 2013, and Mother's Notice of Appeal was filed on May 3, 2013, well past the thirty-day time limit for filing appeals.

**The Court concluded that, because Mother's Notice of Appeal was not timely filed, Mother had forfeited her right to appeal the trial court's termination order.** *Id.* at 819. The Court looked to Ind. Appellate Rule 9(A)(1), which states that a party initiates an appeal by filing a Notice of Appeal with the trial court clerk within thirty days after the entry of a final judgment. *Id.* at 817. The Court observed that Appellate Rule 9 requires the following information to be included in the Notice of Appeal: a designation of the appealed judgment or order; a designation of the court to which the appeal is taken; direction for the trial court clerk to assemble the Clerk's Record; and a designation of the portions of the Transcript that should be prepared. *Id.* Quoting *Bohlander v. Bohlander*, 875 N.E. 2d 299, 301 (Ind. Ct. App. 2007), *trans. denied*, the Court noted, "[t]he timely filing of a Notice of Appeal is a jurisdictional prerequisite, and failure to conform to the applicable time limits results in forfeiture of an appeal." *J.G.* at 817-18. Mother argued that the Court should ignore the thirty-day time limit in Appellate Rule 9(A) because appellate counsel was not appointed until after the thirty-day time limit had expired. The Court reviewed *In Re D. L.*, 952 N.E. 2d 209 (Ind. Ct. App. 2011), *trans. denied*, in which the parents filed Notices of Intent to Appeal, and appellate counsel was appointed the day the Notices were filed, but appellate counsel filed the Notices of Appeal three days too late for one of the termination orders and one day too late for the other termination order. *J.G.* at 818-19. The Court noted the Court of Appeals conclusion in *D.L.* that the parents had forfeited their right to appeal and the appeal was dismissed. *D.L.* at 212-13. *J.G.* at 818-19. The Court noted that, in this case, Mother's Notice of Intent to Appeal also lacked the information required to fulfill the Appellate Rule 9(F) Notice of Appeal requirements, but appellate counsel was appointed more than thirty days after the final judgment was issued. *Id.* at 819. The Court observed that, under the Indiana Post Conviction Rules, a criminal defendant could petition the court for permission to pursue a belated appeal, where the failure to file a timely Notice of Appeal was not due to the fault of the defendant. *Id.* The Court opined that Mother was not eligible to file a belated appeal under Ind. Post-Conviction Rule 2. *Id.* Given the constitutional rights implicated in these proceedings, the Court urged the Indiana Supreme Court to consider allowing belated appeals in cases where the parent's parental rights have been terminated. *Id.* at 820 n.1.

**The Court held that sufficient evidence supported the trial court's decision to terminate Mother's parental rights.** *Id.* at 820. In light of Mother's constitutional right to establish a

home and raise her children, the Court briefly addressed the sufficiency of the evidence of the termination of Mother's parental rights. Id. Mother argued that the trial court clearly erred when it concluded that there was a reasonable probability that the conditions which resulted in the children's removal were not remedied. Mother claimed that, shortly before the termination hearings, she made some progress addressing her issues with substance abuse and mental health. Finding that Mother could not establish error by the trial court, the Court noted that: (1) Mother had a long-standing history of substance abuse; (2) although Mother claimed to be sober, her prognosis was still poor; (3) Mother maintained her relationship with Father, who abuses alcohol, despite the history of domestic violence between them; (4) Mother had failed to complete DCS provided services and cancelled multiple visits with the children; (5) Mother's visits with the children ceased in October 2011 when Mother was arrested for criminal confinement; (6) Mother had received services from DCS for many years and still had not progressed in her ability to parent. Id. The Court characterized Mother's assertion that she is now a "completely different person" as a request to reweigh the evidence and the credibility of the witnesses, which the Court will not do. Id.