

Children's Law Center of Indiana



Termination of Parental Rights (TPR)

05/31/2007

In **In Re Involuntary Termination of Parent-Child Relationship of Kay L.**, 867 N.E.2d 236 (Ind. Ct. App. 2007), the Court affirmed the trial court's termination of Mother's parental rights to her three children who were born September 12, 1992, October 7, 1999, and April 17, 2002. In March 2004 Johnson County Department of Child Services (DCS) removed the children from Mother's care and filed a CHINS petition alleging the children were CHINS because of "neglect which included abandonment and life and health endangering environment, lack of supervision and poor hygiene." Mother was given mental health, counseling, intensive outpatient, aftercare, and relapse prevention services. At some point, mother pleaded guilty to neglect of a dependent, and on July 7, 2005, she was released from prison on probation. Thereafter, Mother completed intensive outpatient treatment, got a job, remained gainfully employed for a period of time, and found a place to live. In January 2006, DCS returned the children to Mother's care. In April 2006, DCS again removed the children from Mother's home because: (1) during a number of supervised visits, a DCS representative smelled alcohol on her breath; (2) Mother tested positive for marijuana and cocaine; (3) Mother was not attending Alcoholics Anonymous meetings and was not taking her prescribed antidepressants; (4) Mother admitted to a caseworker that she had been using marijuana and drinking a six-pack of beer every other day; (5) DCS believed that the children were not safe around Mother's boyfriend who was suspected of engaging in acts of domestic violence; and (6) contrary to one of the dispositional goals of the CHINS proceeding, to allow only authorized adults to care for the children, Mother let her boyfriend and a neighbor, both unauthorized adults, care for the children and left the younger two children in the older child's care and asked the children to keep it a secret and lie if they were questioned on the issue. After the second removal, a DCS caseworker (1) became concerned that during supervised visitations, Mother was apathetic, did not appear to care about the children's behavior, and left the direction of the children to the DCS professionals who were present; (2) observed that Mother and her children did not appear to have a strong bond; and (3) testified that the children appeared to be too much for Mother to handle. On April 27, 2006, Mother's probation was revoked because she tested positive for marijuana and failed to report to the probation office. On April 28, 2006, DCS filed a petition to terminate Mother's parental rights with respect to the three children. Mother was incarcerated at the time of the termination hearing, August 14, 2006, and was scheduled for release at the end of May 2007. Mother (1) was still smoking marijuana in July 2006; (2) was unemployed before she was incarcerated; (3) was unable to support herself or her children; (4) has no specific plan for employment after her release from prison; and (5) has failed to meet a number of the dispositional goals the CHINS trial court put in place for her, including resolving all pending criminal charges, refraining from the use of drugs and alcohol, getting an Alcoholics Anonymous and Narcotics Anonymous sponsor and regularly attending meetings, following

recommendations of a drug and alcohol counselor, maintaining a clean and safe residence, and providing approved adult supervision for the children at all times. Following a hearing, the trial court terminated Mother's parental rights. Mother appealed contending that (1) the TPR petition failed to reference any of the factors for potential dismissal listed in I.C. 31-35-2-4.5(d), and (2) there was insufficient evidence that the conditions which resulted in the children's removal would not be remedied, that a continuation of the parent-child relationship posed a threat to the children's respective well-being, or that termination of Mother's parental rights was in the children's best interests.

The petition to terminate Mother's parental rights was valid. Even if DCS erroneously omitted a reference to the I.C. 31-35-2-4.5 grounds for dismissal in the petition, the error was harmless, inasmuch as the petition could not have been dismissed pursuant to I.C. 31-35-2-4.5 because of the remaining, independent ground for termination – that the children had been removed from Mother's care for at least six months under the CHINS dispositional decree. *Id.* at 241. The Court quoted its earlier analysis of the applicability of I.C. 31-35-2-4.5 in *Everhart v. Scott County Office of Family and Children*, 779 N.E.2d 1225, 1229 (Ind. Ct. App. 2002):

Section 4.5 applies when a petition to terminate has been filed because the trial court has determined that "reasonable efforts for family preservation or reunification with respect to a child in need of services are not required," *or* when a child in need of services has been placed in the home of a related individual, a licensed foster family home, child caring institution, or group home, *and* when the child has been so placed for not less than fifteen of the most recent twenty-two months.

The Court noted that, here, the petition was based upon three grounds, one of which was that "The child[ren have] been removed from her parents for at least six (6) months under a dispositional decree." The Court further noted that I.C. 31-35-2-4.5(d)(1) specifies that a compelling reason for dismissal of the petition "*may* include the fact that the child is being cared for by a" relative, and thus, the statute permits, but does not require, DCS to conclude that the placement of the children with a relative is a compelling reason to dismiss the petition. Here, the DCS concluded that the children's placement with Mother's half-sister did not constitute a compelling reason to forego terminating Mother's parental rights. *Id.*

DCS established by clear and convincing evidence that there was a reasonable probability that the conditions which resulted in the children's removal would not be remedied and that the continuation of the parent-child relationship was a threat to their well-being. Further the trial court properly determined that termination of Mother's parental rights was in the best interests of the children. *Id.* at 242. In arriving at these conclusions, the Court cited the following evidence: (1) the children were originally removed because of Mother's abandonment and lack of supervision, poor hygiene, and a life- and health-endangering environment; (2) following their removal, Mother failed to take part in the CHINS proceeding and did not pursue reunification, failing to keep in contact with DCS for a full year after the CHINS proceeding was instituted; (3) at one point, Mother made the necessary changes to be reunited with her children and was reunited with them; (4) but, after three months, Mother (a) tested positive for marijuana and cocaine and admitted to drinking a six-pack of beer every other day, (b) admitted that she left her children under the supervision of unauthorized adults, including her physically violent boyfriend; (c) admitted that she at times left the children alone with the oldest child in charge, and instructed them to lie and

keep it a secret if anyone asked about it; (5) thus, DCS again removed the children; (6) Mother's drug use led to the revocation of her probation; (7) at the time of the termination hearing, Mother was incarcerated; (8) Mother had no plan for employment following her release from prison; (9) Mother failed to comply with a number of dispositional goals put in place during the CHINS proceeding; and (10) although Mother may have had a sincere desire to be reunited with her children, she was unable to make choices that would keep the children. Id. at 242.