

# Children's Law Center of Indiana



## Termination of Parental Rights

4/18/18

In **Termination of Parent-Child Rel. of A.S.**, 100 N.E.3d 723 (Ind. Ct. App. 2018), Father appealed the trial court's denial of his motion for continuance of hearing date and the subsequent termination of his parental rights. On 12/9/14, A.S. was born drug exposed and two weeks later, was removed from the home as a CHINS after both parents had several dirty screens. At that time, Father was serving two years of home detention for prior drug possession cases. In February 2015, Father admitted that A.S. was CHINS and then complied with DCS by completing a substance abuse evaluation and starting intensive outpatient treatment (IOP) prior to disposition. The dispositional hearing was held in March 2015, and Father was ordered to complete services with DCS, including IOP, supervised visitation, and individual therapy. While DCS was putting those services into place, Father was arrested on more drug charges and incarcerated from April 2015 onward. Father was sentenced in July 2016 to thirteen years in prison, four years for the new charge plus the nine years of prison from his earlier suspended sentences. However, the State requested Father be referred to Purposeful Incarceration, a nine-to-eleven month program for addicted offenders whose addiction is directly related to their criminal offenses. The Court referred Father as recommended, and stated it would "modify Defendant's sentence if he successfully complete[d] Purposeful Incarceration." *Id.* at 726. Father enrolled in the program, and also began supervised parenting time with A.S. every sixty days. He was reportedly appropriate and caring during these visits, and appeared bonded with A.S. Further, he completed workbook sections about appropriate parenting while incarcerated.

Less than one week after Father's sentencing, DCS filed for termination of his parental rights and the hearing was set for March 2017. The hearing was continued four times, eventually being set for September 5, 2017. Father made a motion for a continuance on August 24, stating that he was due to graduate from Purposeful Incarceration on September 29 and would like to delay the hearing until after his graduation and sentence modification. The trial court denied the motion and proceeded to hearing on September 5, terminating his parental rights. Father appealed, stating that the trial court erred in denying his motion to continue and that there was insufficient evidence at trial to terminate his parental rights, pointing the Court of Appeals to the decision in Rowlett v. Vanderburgh County Office of Family and Children, 841 N.E.2d 615 (Ind. Ct. App. 2006), *trans. denied*.

**The Court held that the trial court should have granted Father's continuance, and as such, did not need to address Father's arguments on the sufficiency of the evidence.** *Id.* at 727. In reversing on the first argument, the Court notes that "[g]enerally, the decision to grant or deny a motion to continue is within the sound discretion of the trial court, and we will reverse only for an abuse of discretion." *Id.*, *citing In Re J.E.*, 45 N.E.3d 1243, 1246 (Ind. Ct. App. 2015), *trans. denied*. When a motion to continue has been denied, an abuse of discretion will be found if the

moving party has demonstrated good cause for granting the motion; however, reversal is only warranted if the moving party can show that he was prejudiced by the denial. A.S. at 727.

Here, as in Rowlett, the Court opined that an incarcerated parent's impending change in circumstances is good cause for a continuance, and Father was prejudiced by the denial of his continuance. Id. at 728. Throughout the termination trial, DCS introduced evidence that Father would be in prison until 2022, which was a fact that was about to change drastically. Id. Had the trial been postponed until after the modification of Father's sentence, both he and DCS would have been able to introduce testimony more accurately portraying Father's release date, and his subsequent ability to comply with DCS services and attempt to reunified with A.S. Id. Father's inability to introduce such testimony prejudiced his case, and the matter was reversed and remanded. Id. at 729.