

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

5/7/13

In **A.D.S. v. Indiana Dept. of Child Services**, 987 N.E.2d 1150 (Ind. Ct. App. 2013), the Court affirmed the trial court's order terminating Mother's parental rights to her children, who were ages four years and two years at the time the order was entered. The two children were born on November 10, 2007, and August 27, 2009. On July 8, 2009, Father contacted the police after Mother, who was pregnant with the younger child, repeatedly called Father at work and threatened to harm herself if he did not come home. Marion County office of DCS (MCDCS) was subsequently called to the home and filed a CHINS petition the following day, alleging that the older child was a CHINS because the parents had "failed to provide the child with a safe, stable, and appropriate living environment free from substance abuse." Mother tested positive for cocaine, and admitted to a history of substance abuse, although she denied that she was currently using cocaine. Father informed the family case manager that Mother was cutting herself, he suspected that she was using cocaine again, and he was concerned for the older child's safety when he left her alone with Mother. On August 20, 2009, Mother admitted that the older child was a CHINS, was required to submit to random urine screens and complete a psychological evaluation under a parental participation decree, and was granted temporary in-home trial visitation with the older child. MCDCS filed a CHINS petition on the younger child on November 9, 2009, alleging that Mother was not obtaining services to address her mental health and substance abuse issues in the older child's case. Both the younger child and the older child, then ages two months and two years respectively, were removed from Mother's custody and were never returned to her care. On January 21, 2010, Mother admitted to the allegations in the CHINS petition regarding the younger child; the court determined that the younger child was a CHINS and formally removed her from Mother's care. Under the participation decree, the trial court ordered that Mother participate in home-based counseling, random drug screens, a mental health evaluation, and an intensive outpatient treatment program (IOP).

Mother tested positive for cocaine in January and February 2010, and later testified that she used cocaine for forty days. On February 3, 2010, the trial court suspended visitation between Mother and the children. On March 8, 2010, the trial court authorized Mother to have supervised parenting time when she had completed IOP and a drug screen. In March 2010, Mother completed inpatient treatment at Harbor Lights and then self-referred to Emberwoods for IOP. Mother missed six out of eight classes in a six-week period at Emberwoods and provided inconsistent urine screens; therefore, the court allowed MCDCS to make another referral to a

different agency for assessment. Mother was then referred to Families First, but Mother missed multiple sessions there and was discharged for not participating successfully. MCDCS petitioned to terminate Mother's parental rights, but the trial court dismissed the petition when the children's placement was disrupted and there was no stable, sound placement for the children. MCDCS then made a second referral for home-based services for Mother. Mother engaged in criminal activity throughout the pendency of the case, including: (1) arrest and conviction for prostitution in August 2010; (2) arrest and pleading guilty to criminal recklessness and domestic battery for an altercation involving Father; and (3) arrest and conviction for invasion of privacy due to violation of a no contact order prohibiting contact with Father. As a result of violation of her probation terms on the criminal recklessness and domestic battery charges, Mother was placed on home detention. In December 2011, Mother violated home detention by testing positive for cocaine and was arrested. As a result, home-based counseling was again terminated. Mother testified that she last used cocaine in December 2011 and January 2012. Since March 2012, Mother tested negative for drugs seventeen times, but she missed several drug screens, including a screen the week prior to the termination hearing, which was held on June 18-19, 2012. Mother also failed to complete her domestic violence classes ordered by the court pursuant to her plea agreement for criminal recklessness and battery. At the time of the termination hearing, Mother still resided with Father, who had also failed to complete the domestic violence classes. The children were placed in multiple foster homes throughout the pendency of the case, but have resided with their current caregivers since October 2011. Both the family case manager and the guardian ad litem have remarked that the children are improving in this home. The family case manager testified that this placement is pre-adoptive and the children are "thriving" and have bonded with their foster mother. On January 25, 2012, MCDCS filed a second petition for involuntary termination of the parent-child relationship. After conducting an evidentiary hearing, the trial court terminated the parent-child relationship between the children and Mother on June 27, 2012.

The Court said that clear and convincing evidence supported the trial court's findings, and these findings supported the trial court's conclusion that there was a reasonable probability that the reasons for the children's placement outside the home would not be remedied. *Id.* at 1158. The Court noted the following findings in support of the trial court's conclusion that Mother had "failed to demonstrate the capacity to remain sober on a *consistent and permanent* basis"(emphasis added by Court): (1) Mother "has a long history of cocaine abuse, starting at age eighteen or twenty"; (2) Mother has undergone inpatient treatments twice, in 2006 and 2010, but has relapsed both times; (3) Mother's past cocaine usage and instability resulted in her rights being terminated to two other children and her voluntary relinquishment of her rights to a third child; (4) Mother testified to last using cocaine in January 2012; (5) Mother's "sobriety cannot be monitored with inconsistent urine screens"; (6) Mother "may have had another recent display of sobriety for five months" but without "consecutive monitoring this is not a given." *Id.* at 1157. The Court also noted the following findings which supported the trial court's conclusion that since Mother had not successfully addressed her issues with domestic violence, she could not offer a safe environment for the children: (1) Mother was convicted of criminal recklessness and domestic battery on March 7, 2011; (2) Mother violated the no contact

order with Father in March of 2011; (3) Mother failed to complete her court-ordered domestic violence classes and still resided with Father, who also failed to complete his domestic violence classes. Id. The Court characterized Mother's argument that the trial court erred in its conclusion because at the time of the hearing, she was employed, tested negative on recent drug screens, and was not engaging in domestic violence, as a request to reweigh the evidence. Id. at 1158. The Court will not reweigh the evidence on appeal. Id.

The Court concluded that the totality of the evidence supported the trial court's determination that termination of Mother's parental rights was in the children's best interest. Id. at 1159. The Court noted the following evidence in support of the trial court's determination: (1) the family case manager and the guardian ad litem both supported termination of Mother's parental rights and adoption by the children's current caregivers; (2) Mother's issues with substance abuse and domestic violence have not been remedied and posed a risk to the children's safety if they were returned to her care; (3) the children have suffered from a lack of permanency and have improved while residing with their current pre-adoptive caregivers since October 2011; (4) the children have bonded and attached with their caregivers. Id.