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Termination of Parental Rights (TPR)

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In **Neal v. DeKalb Cty. Div. of Fam. & Children**, 796 N.E. 2d 280 (Ind. 2003), decided September 25, 2003, the Indiana Supreme Court granted transfer, agreed with the holding of the Court of Appeals in Neal v. Termination of Parent Child Rel., 768 N.E. 2d 485 (Ind. Ct. App. 2002), and reversed and remanded the trial court's order terminating the mother's parental rights. The two children, then ages ten years and nine years, were adjudicated CHINS and placed in foster care. Thirteen months later, the mother signed a voluntary relinquishment of parental rights at the DFC office. The Case Manager told the mother that she was not required to sign the voluntary relinquishment form and that she should discuss the matter with someone, preferably an attorney. The Case Manager also advised the mother that voluntary relinquishment was irrevocable. Later that day, after having signed the voluntary relinquishment documents, the mother decided that she did not want to relinquish her rights.

The DFC learned of the mother's changed decision and, within a week, petitioned the court for the involuntary termination of the mother's parental rights. Within two weeks the mother appeared at court for a Voluntariness Hearing. The mother acknowledged that she had signed forms to give up her children and requested court appointed counsel. After a later hearing, at which the mother was represented by counsel, the mother testified that although she had signed the voluntary relinquishment forms, she had felt pressure to do so and had changed her mind and did not want to voluntarily terminate her parental rights. The trial court determined that the mother's attempt to retract or revoke her consent to termination of her parental rights was not valid and ordered the mother's parental rights terminated.

On review, the Court of Appeals reversed the trial court's order because the mother had not consented to the voluntary termination of her parental rights in open court. The Appellate Court acknowledged that at least two other panels of the Court of Appeals had reached contrary conclusions on facts similar to those in the Neal case. The Supreme Court accepted the DFC's invitation to resolve the conflict in the Court of Appeals opinions.

Indiana Legislature intended that I.C. 31-35-1-6 prevails over I.C. 31-35-1-12.
The Court noted that two different Indiana statutes, namely I.C. 31-35-1-6 and I.C. 31-35-1-12, address voluntary termination procedures. I.C. 31-35-1-6(a) provides that parents must give their consent in open court, unless the court makes findings on the

record that: (1) parents gave their consent in writing before a person authorized by law to take acknowledgements; (2) the parents were notified of their constitutional and other legal rights and of the consequences of their actions under I.C. 31-35-1-12; and (3) the parents failed to appear. The Court noted that the mother had not given her consent to terminate in open court and therefore, under I.C. 31-35-1-6 only, the trial court was without authority to terminate the mother's parental rights. Id. at 282.

DFC cited the Court to I.C. 31-35-1-12 for the principal that when a parent appears in open court and indicates that she does not consent to termination, the court need only conduct a hearing to determine whether the initial consent was entered knowingly and voluntarily. See In Re J.W.W.R., 712 N.E. 2d 1081, 1085 (Ind. Ct. App. 1999), which "specifically limits a parent's ability to revoke or set aside her consent 'unless it was obtained by fraud or duress or unless the parent is incompetent.'" Unlike the Court of Appeals, the Supreme Court concluded that the two statutes, I.C. 31-35-1-6 and I.C. 31-35-1-12, could not be harmonized, but rather are in irreconcilable conflict. Neal at 283. The Court proceeded to interpret the legislative intent concerning the two conflicted statutes and concluded that the legislature intended that I.C. 3-35-1-6 should prevail over I.C. 31-35-1-12. Id. at 285. The reasons for the Court's conclusion were that: (1) parents' interest in the care, custody and control of their children is "perhaps the oldest of the fundamental liberty interests" recognized by the United States Supreme Court, Troxel v. Granville, 530 U.S. 57, 65; 120 S. Ct. 2054, 147 L. Ed. 49 (2000); (2) the State's interests in finality and predictability in voluntary termination of parental rights are powerful, but there is not a clear legislative directive that the State's interests outweigh the interests of the parents. Id. at 285.

A parent's written consent to voluntary termination of parental rights is invalid unless the parent appears in open court to acknowledge consent to the termination or unless all three of the exceptions set out in I.C. 31-35-1-6(a) are satisfied. The Court was not persuaded by the DFC's insistence that a parent is forever bound by an out of court written consent and that the process of coming to open court served only the purpose of challenging a consent executed under coercion or duress and not a simple change of heart. The Court agreed with the holding of the Court of Appeals that the parent's written consent to termination was invalid unless the parent acknowledged consent in open court or unless all three exceptions set out in I.C. 31-35-1-6(a) are satisfied. Id.

Dissent by Justice Sullivan cites the CHINS Deskbook 2001 as an authority on juvenile court practice. In his dissenting opinion, Justice Frank Sullivan stated that stare decisis and legislative acquiescence have long since established that a parent cannot set aside his or her consent unless it was obtained by fraud or duress or unless the parent is incompetent. Id. at 286. The dissenting opinion cited the following as "authorities on Indiana juvenile court practice who have also adopted this interpretation of statute and precedent": The CHINS Deskbook 2001 by Frances G. Hill and Derelle Watson-Duvall; Juvenile Justice Benchbook; Family Law—Children in Need of Services by J. Eric Smithburn and Ann-Carol Nash.

