

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

8/31/17

In **Termination of W.M.L.**, 82 N.E.3d 361 (Ind. Ct. App. 2017), the Court affirmed the trial court's judgment which denied DCS's petition to terminate the relationship between Parents and their two children. Parents' older child, a son (Son), was born in October 2008, and their younger child, a daughter (Daughter), was born in May 2012. Both children were removed from Parents' shortly after Daughter's birth because Mother had used marijuana during her pregnancy and the family was homeless. The children were adjudicated to be CHINS, and Parents were court ordered to participate in services. The children were returned to Parents' home in July 2013, but were removed and placed in foster care in September 2013 after the police arrested Father for battering Mother. Father was convicted of domestic battery and placed on probation until September 2014. He was also restrained from having any contact with Mother. Parents were ordered to obtain diagnostic assessments and drug and alcohol assessments, enroll on and successfully complete home-based services, refrain from the use of alcohol and drugs, and attend all visits with the children.

In March 2016, DCS filed a petition to terminate the parent-child relationship. The trial court held five days of hearings from August to November 2016. Evidence at the hearings included that Mother and Father, who had been together for sixteen years, had recently married, lived in a three bedroom house, and regularly visited the children. Testimony about Father revealed that he had: (1) completed a six month batterers intervention program; (2) successfully completed the probation imposed following his battery conviction; (3) completed a five month substance abuse group program two weeks before the termination hearing; (4) worked for the same roofing company for several years. Testimony about Mother revealed that she: (1) was attending substance abuse counseling twice per week; (2) had completed applications for Social Security disability, food stamps, and Medicaid; (3) had a full time job with a lawn care service; (4) took prescribed methadone for pain due to her physical ailments, including multiple sclerosis, hip dysplasia, rheumatoid arthritis, and osteoarthritis, but had not used illegal substances for the past year. Testimony from the therapist, who treated Mother and supervised Parents' visitation with the children, included: (1) the children were "ecstatic" to see Parents, and Son had asked multiple times when he could return to their home; (2) Parents engaged in imaginary play with the children and made a "good team as parents"; (3) she recommended allowing the children to visit Parents in their home; (4) Mother's life was as stable as it had ever been; (5) termination of the parent-child relationships would be detrimental to the children. The children's foster mother testified that Parents had kept in regular communication with the children, and Son had a bond with Father. The DCS case manager testified that Father had: (1) maintained contact with her; (2) always been employed; (3) never had a positive drug screen; (4) completed a diagnostic assessment; (5) completed counseling; and (6) completed a home-based program. The DCS case

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manager recommended terminating Parents' rights due to her concerns about Mother's current methadone use and past drug abuse and her concerns about whether Father had benefited from the services he had completed. The GAL had never met Parents or the children, but had met the children's foster mother. The GAL recommended terminating Parents' parental rights because she believed Father had not benefitted from the domestic violence program.

The trial court denied the petition for termination of the parent-child relationships, determining that DCS had failed to meet its burden of proof. The court found that Parents had demonstrated substantial progress with their services, that Mother had recently begun to address her emotional challenges and made progress in therapy, and that Father's desire to remain with Mother was not sufficient to terminate his parental rights. The trial court also ordered DCS to consider another permanency plan that did not permanently sever the children's relationship with Parents. The GAL appealed.

The Court held the trial court did not err in denying the termination petition because the evidence supported the court's conclusion that DCS had not met its burden of proving there was a reasonable probability that the conditions that resulted in the children's removal would not be remedied. *Id.* at 368. Quoting Bester v. Lake Cty. Office of Family and Children, 839 N.E.2d 143, 147 (Ind. 2005), the Court noted: (1) the parent-child relationship is "one of the most valued relationships in our culture"; (2) "parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities"; (3) when reviewing the termination of parental rights, the court considers only the evidence and reasonable inferences that are most favorable to the judgment; (4) the Court does not reweigh evidence or judge witness credibility; (5) the burden of proof in a termination case is one of "clear and convincing evidence." W.M.L. at 365-66. Citing A.B. v. Lake Cty. Dep't. of Child Services, 888 N.E.2d 231, 239 (Ind. Ct. App. 2008), *trans. denied*, the Court explained that if the State fails to prove any one of the four elements of IC 31-35-2-4, the termination statute, then it is not entitled to a judgment terminating parental rights. W.M.L. at 366-67.

The GAL contended that DCS met its burden to prove there was a reasonable probability that the conditions that resulted in the children's placement outside the home would not be remedied. Citing In re E.M., 4 N.E.3d 636, 643 (Ind. 2014), the Court explained that, in determining whether the conditions that led to removal or placement outside the home will not be remedied, it engages in a two-step analysis. W.M.L. at 367. The Court first identifies the conditions that led to the children's removal or placement outside the home and then determines whether there is a reasonable probability that those conditions will not be remedied. E.M. at 643. W.M.L. at 367. The second step requires trial courts to judge a parent's fitness at the time of the termination hearing, taking into consideration evidence of changed conditions and balancing any recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. E.M. at 643. W.M.L. at 367.

The Court reviewed the evidence most favorable to the trial court's judgment. *Id.* at 367-68. The Court concluded the evidence supported the trial court's conclusion that DCS did not meet its burden of proof on the reasonable probability element of the termination requirements. *Id.* at

368. The Court found that the GAL's arguments were nothing more than a request to reweigh the evidence, which the Court cannot do. Id.