

# Children's Law Center of Indiana



## Termination of the Parent-Child Relationship

9/7/2018

In **In Re M.P.**, 115 N.E.3d 498 (Ind. Ct. App. 2019), the Court affirmed the trial court's order terminating Mother's parental rights, and held that DCS was entitled to reopen the evidence, and that sufficient evidence supported the finding that DCS provided Mother with the required notice.

M.P. ("Child") was removed from Mother's care in October 2015 due to drug use and neglect in the home, and the Child's permanency plan was changed to adoption in November 2016 due to Mother's failure to comply with services. In July 2017, after Mother's continued drug use and noncompliance, a petition to terminate parental rights was filed. A factfinding hearing was initially set for September 25, 2017, but at a pretrial conference that Mother attended, the factfinding hearing was reset for October 30, 2017. Mother failed to attend the factfinding hearing, but her attorney was present, and the hearing was held in her absence, where, among other things, the CASA testified that adoption by the foster parents would be ideal for the child. On November 2, 2017, the trial court ordered termination of Mother's rights. Mother appealed the termination, stating that her due process rights had been violated because she was not given the required ten day notice of the factfinding hearing. DCS filed a motion to remand, agreeing that the trial court record was not clear that the ten day notice had been properly given. The Court granted DCS' motion, and DCS then asked the trial court to reopen the evidence to allow them to establish the ten days' notice had been given. Mother objected, but the trial court allowed DCS to reopen the evidence solely regarding notice, holding a hearing on May 3, 2018. On May 16, 2018, the trial court entered an order terminating Mother's rights, finding that DCS had provided evidence of notice to Mother, and Mother's testimony to the contrary was unreliable. Mother argued that DCS did not provide sufficient evidence that they gave her ten days' notice of the factfinding hearing on their termination of parental rights petition, and that the trial court abused its discretion in allowing DCS to reopen the evidence over her objection.

**The trial court did not err in granting DCS's motion to reopen the evidence; the Court had granted remand for further proceedings on the issue of whether Mother was given appropriate notice, and reopening the evidence accomplished that end. Id. at 503.** IC 31-35-2-6.5 provides that "[a]t least ten (10) days before a hearing on a petition or motion under this chapter ... the person or entity who filed the petition to terminate the parent-child relationship ... shall send notice of the review to ... [t]he child's parent." Id. at 502. Compliance with statutes is mandatory in order to accomplish the termination of the parent-child relationship. Id. at 502-3. The Court noted that previously established proper remedy to notice issue is to remand the matter for hearing as to whether the proper notice was provided. Id. at 503, citing In re H.K., 971

N.E.2d 100, 103 (Ind. Ct. App. 2012). Consequently, the trial court properly interpreted the Court's order remanding the matter for further proceedings as an order which provided DCS with an opportunity to demonstrate that it had complied with the appropriate notice statutes, which necessitated reopening the evidence. Id.

**Mother's argument that DCS failed to show that she had appropriate notice of hearing failed, as the Court would not reweigh the evidence nor reassess the credibility of the witnesses as Mother requested. Id. at 503.** Mother's next argument was that even if reopening the evidence was appropriate, DCS failed to prove she had notice of the hearing. Id. The DCS case manager testified and provided proof of mailing to Mother, but Mother argued that DCS knew that address was no longer her address. Id. The Court observed that "DCS presented evidence that notice of the termination hearing was sent to Mother at her last known address more than ten days prior to the termination hearing. This is sufficient for purposes of I.C. § 31-35-2-6.5.", and declines to second guess the credibility of that witness testimony. Id.