

# *Children's Law Center Of Indiana*



## **Termination of the Parent-Child Relationship**

12/8/11

In **In Re C.M.**, 960 N.E.2d 169 (Ind. Ct. App. 2011), the Court reversed the trial court's order which terminated the parent-child relationship between Mother and her three children, born in 2005, 2006, and 2007. The Court summarily affirmed the termination of Father's parental rights. Father is not an active party to the appeal. DCS became involved with the children on February 24, 2010, when Father, who had discontinued his medication for bi-polar disorder, was charged with battering the children. Mother was incarcerated in the Dearborn County jail on a theft charge and probation violation. In the fall of 2010, the children, who had been adjudicated Children in Need of Services, were placed back in Mother's home for a "trial home visit." Mother, then living apart from Father who was incarcerated in Florida for battery upon his father, received home-based family services and psychological counseling. Mother was fairly cooperative and was consistent with visitation, but became involved with Boyfriend, whose criminal history caused concern for DCS. Mother and Boyfriend signed a safety plan, but the DCS case manager believed that Mother did not follow the restriction that Boyfriend was not allowed to reside in the home with the children. On December 21, 2010, Mother tested positive for oxycodone. Mother, pregnant with twins, reported that she had been experiencing back pain and had taken a pill from an expired prescription on her physician's advice. The physician denied advising Mother to take the prescription medicine. On January 22, 2011, Boyfriend was arrested at Mother's apartment and charged with Dealing Marijuana, Mother was charged with Maintaining a Common Nuisance, and DCS removed the children and placed them in foster care. On January 25, 2011, DCS requested that the permanency plan be changed from reunification to termination of parental rights and adoption.

On February 4, 2011, DCS filed a petition to terminate Mother's and Father's parental rights. At the evidentiary hearing on April 11, 2011, DCS presented evidence on Mother's: (1) convictions for conversion and maintaining a common nuisance; (2) failed drug screen in December 2010; (3) response to parenting services; and (4) apparent acquiescence in Boyfriend's activities. The family case manager, the Guardian ad Litem, and the children's former foster mother each recommended termination of parental rights. Mother testified that: (1) she was residing alone with her newborn twins in a three-bedroom trailer in Ripley County; (2) DCS employees had visited the residence and declined to initiate CHINS proceedings; (3) her source of income was unemployment benefits. Mother also presented documentary evidence that she had been voluntarily enrolled, since February 7, 2011, in an Intensive Outpatient Program at East Indiana

Treatment Center, Inc. Her drug screens had been negative throughout the outpatient treatment. On April 25, 2011, the trial court entered its findings of fact, conclusions of law, and judgment terminating Mother's parental rights. Mother appealed.

**The Court opined that the trial court's findings, which focus on Mother's historical conduct and lacked findings as to Mother's current circumstances, or evidence of changed conditions were insufficient to support the conclusion that termination is warranted.** *Id.* at 174-75. Mother challenged the trial court's determinations relating to IC 31-35-2-4(b)(2)(B) (conditions will not be remedied or relationship poses a threat to children's well-being) and (C) (best interests of the children). The Court, citing *In Re A.B.*, 887 N.E.2d 158, 167 (Ind. Ct. App. 2008), said that, in determining what is in the best interests of the child, the juvenile court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *C.M.* at 174. The Court found that the trial court's findings of fact had evidentiary support in the record, but the trial court made no factual determinations with respect to evidence of changed conditions. *Id.* The Court opined that the limited findings fall short of the conclusion of law that "DCS has established by clear and convincing evidence that the reasons for continued placement outside the home will not be remedied and the continuation of the parent-child relationship poses a threat to the well-being of the child[ren]." *Id.* The Court noted that Mother testified that she had accomplished each of the things required to remedy the prior conditions and accomplish reunification goals. *Id.* at 175. The Court observed that Mother's testimony was not directly contradicted, and the trial court made no determination as to whether Mother's testimony was credible or lacking in credibility. *Id.*

**The Court opined that Mother was not required to produce evidence in order to withstand the termination petition.** *Id.* The Court said that the trial court's conclusions of law included language suggesting that Mother had a burden of proof she does not have. *Id.* The Court observed that IC 31-35-2-4 requires the DCS to establish, by clear and convincing evidence, each of the requisite elements to support the termination of parental rights. *Id.* The Court said that a *prima facie* showing necessarily includes some evidence of current conditions. *Id.* The Court said that, here, the DCS did not present a *prima facie* case of a reasonable probability either that the conditions leading to removal will not be remedied or that Mother poses a threat to the children. *Id.*