

Children's Law Center of Indiana



Termination of Parental Rights (TPR)

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In ***In Re I.A.***, 903 N.E.2d 146 (Ind. Ct. App. 2009), the Court affirmed the trial court's order terminating Mother's parent-child relationship with her youngest child, even though, at the same time, the trial court had also denied the termination petition with regard to four other of her children. Mother has nine children, five of which were listed in the termination petition in this case. Mother began using cocaine in 1988 or 1989 when she was nineteen years old, and continued doing so until this termination petition was filed in 2007, except for a break from 1999 to 2001. A child born earlier, in 1999, tested positive for cocaine at birth and, consequently, following Mother's involvement with the Illinois equivalent of DCS for the next six months, Mother did not use cocaine again until she moved to Indiana in 2001. Mother's youngest child, who is the subject of this appeal, was born August 22, 2006, tested positive for cocaine at birth, and has never been in Mother's care. The youngest child was born with numerous problems, including extra digits on both hands, a heart murmur, right ventricular enlargement, pulmonary stenosis, organic encephalopathy, a disfigured scalp, one of his ears was fully attached to his scalp, and his neck leaned to one side. One month after the youngest child's birth, Allen County DCS filed a petition alleging that eight of Mother's nine children were CHINS in that the youngest tested positive for cocaine at birth, Mother tested positive for cocaine, Mother was unable to provide appropriate care and supervision for her children due to her drug addiction, and needed professional help that she will not receive without court intervention. The children were found to be CHINS, the youngest was placed in licensed foster care, and the rest of the children were placed in relative care and then in licensed foster care apart from the youngest. A parent participation plan was ordered and Mother was allowed to visit the children as a group once a week for two hours at SCAN. In January 2007, at a periodic review hearing, the trial court found her in compliance with the dispositional decree, but in June 2007, the trial court found her to no longer be in compliance because of Mother's relapse into cocaine use, her ceasing participation in services, and her missing visits with her children. On September 13, 2007, DCS filed the termination petition in this case. After that filing, Mother made efforts to engage in services. Following a two-day termination hearing, the trial court issued its orders terminating Mother's parental rights to the youngest child, but denying the termination petition as to the other four children. Mother appealed the termination of her parent-child relationship with the youngest child. More facts are included in the following discussion of the Court's decision.

The Court found sufficient evidence to support the trial court's determination that there is a reasonable probability that the reasons for the youngest child's placement outside the home will not be remedied in that DCS had established a reasonable probability that Mother will not change regarding the youngest child. *Id.* at 155. The Court stated that although it commended Mother for being drug-free at the termination hearing, kicking a cocaine habit for eight months is one thing, but "overcoming a pattern of indifference to a child who has

many medical needs is quite another.” *Id.* The Court observed that the reasons the youngest child was removed from Mother’s care could be summarized as “Mother’s indifference to him.” The Court opined that (1) to determine whether there is a reasonable probability that the reasons for placement outside the home of the parent will not be remedied, the trial court must judge a parent’s fitness to care for her child at the time of the termination hearing, taking into consideration evidence of changed conditions; (2) the trial court must also evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child; (3) Pursuant to this rule, courts have properly considered evidence of a parent’s criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment; (4) the trial court may also properly consider the services offered to the parent by a county DCS and the parent’s response to those services as evidence of whether conditions will be remedied; and (5) a county DCS is not required to provide evidence ruling out all possibilities of change, but needs to establish only that there is a reasonable probability the parent’s behavior will not change. *Id.* at 154 (citations omitted). The Court noted: (1) the trial court’s findings, including that Mother had not availed herself of the training needed to provide for the youngest child’s medical needs; (2) Mother’s testimony which revealed that she had made no real effort to learn about the youngest child’s medical conditions or his current medical needs; (3) although Mother gave birth to the child, she was not even sure of his diagnoses at birth; (4) Mother outright refused when doctors asked her to give a blood sample to help diagnosis of the youngest child; (5) the child was eventually diagnosed with Noonan’s Disorder; (6) Mother admitted that she was unaware of the child’s current medical needs, including the names of his doctors and his medicines, as well as his therapies; (7) Mother’s response of “fine,” when she was specifically asked how the child was on the day she was testifying, denoted “an utter lack of comprehension of what challenges [the child] faces;” (8) Mother immediately shifted the blame for her ignorance to the child’s foster parents, saying that they used to provide her with this information but quit when she relapsed in 2007; (9) Mother was nonresponsive when she was asked if she could not simply have called the case manager to inquire about her son; (10) although, at the end of the termination hearing, Mother came back on the stand and expressed a desire to learn about the child’s needs, the truth is Mother had been indifferent to the child’s needs all along; and (11) Mother abused drugs during the entire pregnancy because she was depressed about being pregnant, did not care enough about the child’s well-being to learn about his diagnoses after his birth, was not certain how many fingers the child has, did not cooperate with doctors in arriving at a diagnosis, and was not even curious enough about the child’s current medical needs to pick up a phone and call the family case manager to ask about him. *Id.* at 154-55.

The Court concluded that, based on the totality of the evidence, there was sufficient evidence to support the trial court’s determination that termination of Mother’s parental rights was in the youngest child’s best interests. *Id.* at 156. The Mother argued that the trial court speculated as to Mother’s inability to care for her youngest child, thereby breaking up the sibling group. The Court noted that (1) at the time of the termination hearing, the youngest child was about four months shy of his second birthday and had never been in his mother’s care or with his siblings on a day-to-day basis; (2) the child had been in the care of the same licensed foster parents with whom he had formed a strong bond and who were responsible for taking him to his doctor and therapy appointments; (3) the family case manager and GAL testified that termination was in the child’s best interests; (4) the GAL testified that the child was thriving with his foster parents who had stabilized his medical conditions; (5) “perhaps most telling of all was

Mother's own attorney's final words to the trial court," that he did not believe that the parental rights of his client should be terminated with regard to any of the children, but "I'd be understanding if the Court were to terminate with regard to [the child];" and (6) in the termination trial, the child was treated separately from his four siblings by the attorneys and by the witnesses, for the good reasons that the youngest child has numerous medical problems and has never been in Mother's care because she has shown indifference to him since before he was born. Id. at 156.

The Court highlighted that this case is very unusual in that, in the same proceeding, the trial court terminated Mother's parental rights to the youngest child but not to four of her other children, but because of the youngest child's special needs and because he was treated separately by both parties throughout the proceedings, the judgment terminating Mother's parental rights to the youngest child is not clearly erroneous. Id.