

# *Children's Law Center of Indiana*



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

3/3/10

In In Re K.L., 922 N.E.2d 102 (Ind. Ct. App. 2010), the Court reversed and remanded the trial court's denial of Father's motion to set aside the trial court's termination of parental rights judgment. Mother and Father were married but not living together at the time of the child's birth on March 11, 2008. Prior to the child's birth, Fountain County Department of Child Services removed Mother's two older children from her care due to neglect. Mother abused alcohol and marijuana during her pregnancy with the child. Mother also cut herself and was hospitalized for cutting when she was seven months pregnant with the child. Fountain County DCS removed the child from Mother's care prior to Mother's and the child's release from the hospital after the child's birth, and a CHINS petition was filed. The Fountain County court determined that appropriate venue rested with Tippecanoe County. A CHINS action was filed by Tippecanoe County Department of Child Services (TCDCS), and the child was determined to be a CHINS. At the time of the child's birth, Father was working as a contractor for U.S. Airlines. Father's work required non-traditional and inconsistent working hours and frequent relocations. Father had no history with drugs, no criminal history, and no prior allegations of child abuse or neglect. Father returned to Indiana because of the CHINS proceedings and began participating in weekly supervised visits with the child. The supervised visits went well, and Father was noted to be appropriate with the child. On June 25, 2008, TCDCS placed the child in the care of Father's sister (Aunt) and her husband (Uncle). Prior to placement, the TCDCS family case manager (FCM), completed a home study and comprehensive background checks of Aunt and Uncle. FCM noted that criminal history checks and a search of the Indiana Sex Offender registry revealed no prior charges or allegations against Aunt or Uncle. FCM further represented that she had searched DCS records and that there were no prior charges or complaints against Aunt or Uncle. Father continued his supervised, weekly visitations with the child after her placement with Aunt and Uncle. In the fall of 2008, FCM told Father that he would not have to participate in services if he agreed to voluntarily terminate his parental rights, thus paving the way for Aunt and Uncle to adopt the child. Mother eventually agreed to voluntarily terminate her parental rights, accepting the child's permanency plan of adoption by Aunt and Uncle. Father, believing that the child's adoption by Aunt and Uncle was in the child's best interests, likewise agreed to voluntarily terminate his parental rights. Father stopped participating in the weekly, supervised visitations with the child offered by TCDCS, but began having more frequent contact with the child almost every evening at the home of Aunt and Uncle.

Father and Mother requested TCDCS to file voluntary petitions to terminate their parental rights. The petitions were filed and the court immediately moved to a hearing thereon. Mother was represented by counsel at the hearing, but Father elected to proceed without counsel. Father was advised in writing and twice more during the hearing of his right to counsel. The court offered to delay the proceedings to find counsel within the courthouse whom Father could consult, but Father declined the court's offer and repeatedly indicated that he did not desire counsel. During the hearing, all parties identified the child's permanency plan as adoption by Aunt and Uncle and indicated their support of the plan. Father and Mother executed their voluntary consents to termination of parental rights based on this plan. Father explained that, while he desired to remain a part of the child's life, he believed adoption by Aunt and Uncle was in the child's best interest because they could offer her more stability. During the hearing the court: (1) told Father and Mother that the decision to voluntarily terminate was irreversible; (2) asked Father questions about his mental state, education, and possible intoxication or disabilities before deciding that Father was capable of rendering valid consent; (3) verified that Father had read the termination documents, had sufficient time to contemplate his decision, and that Father had the opportunity to consult with people he trusted before executing his consent; (4) and verified that Father had time to consult with an attorney if he had wished. The court also asked Father whether he was comfortable that the child could readily be adopted into a good, safe home if the expected adoptive home placement with Aunt and Uncle should for whatever reason go wrong, to which Father responded, "yes." At the end of the hearing the court ordered that Father's and Mother's parental rights be terminated. At the request of TCDCS, the court also authorized Aunt and Uncle to immediately move forward with filing and finalizing the adoption rather than waiting another sixty days for a review hearing. The court's termination of parental rights order was entered on February 16, 2009. On March 27, 2009, TCDCS, without notice, removed the child from the home of Aunt and Uncle and withdrew its consent to adoption. TCDCS showed Aunt a substantiated DCS report made in April 1998, when Uncle's then sixteen-year-old daughter stated that Uncle had sexually abused her when she was eight to ten years old. When the report was made, DCS did not interview Aunt or Uncle or any of the other children who resided with Uncle. The alleged abuse was "substantiated" solely on the daughter's statement, and neither Uncle nor Aunt knew of the report. No CHINS action or criminal charge was ever filed. On April 13, 2009, Father, by counsel, sought to set aside the judgment terminating his parental rights. At the hearing on Father's motion, counsel for DCS stipulated that TCDCS had "institutional knowledge" of the prior substantiated abuse allegation against Uncle and admitted the FCM had made a mistake when she completed the initial home study and indicated there were no DCS records concerning Uncle. Father argued that, based on TCDCS representations that there were no DCS records against Uncle and that DCS supported adoption of the child by Aunt and Uncle, Father had no reason to suspect that the permanency plan for the child would not go through absent a drastic event such as the deaths of Aunt and Uncle. Father maintained that he never contemplated adoption by someone else, and if he had known that was a real possibility, he would not have voluntarily terminated his rights and would have continued with services. On July 23, 2009, the trial court refused to set aside the judgment terminating Father's parental rights. Father appealed.

**The Court concluded that Father's consent to voluntarily terminate his parental rights was vitiated by the misrepresentations made by TCDCS through the FCM; therefore the petition to set aside the judgment terminating his parental rights should have been granted.** Id. at 109. The Court cited Youngblood v. Jefferson County Div. of Family & Children, 838 N.E.2d 1164, 1169 (Ind. Ct. App. 2005), trans. denied, which states that a parent's ability to withdraw consent to termination of parental rights is "extremely limited." K.L. at 106. The Court said that "[a] parent who executes a voluntary relinquishment of parental rights is bound by the consequences of such action, unless the relinquishment was procedure by fraud, undue influence, duress, or other consent vitiating factors." In Re M.R., 728 N.E.2d 204, 209 (Ind. Ct. App. 2000), trans. denied. K.L. at 106. The Court was persuaded by Father's argument that public policy regarding parents' rights to establish a home and raise their children weighed in favor of setting aside the judgment terminating his parental rights. K.L. at 107. In support of its opinion, the Court noted the following *inter alia*: (1) nothing in the record suggests that TCDCS was concerned about Father's involvement in the child's life; (2) Father had shown himself to be appropriate with the child, was employed, and had no problems with alcohol or drug abuse; (3) Father believed that his employment as a contractor did not provide a stable environment to raise a child; (4) Father and the child's CASA believed that the child was flourishing in the home of Aunt and Uncle; (5) Father's decision to terminate parental rights was premised entirely upon TCDCS's representation that Aunt and Uncle were suitable adoptive parents, and that TCDCS approved of their adoption of the child, which in turn was based on the mistake/misrepresentation of the FCM in her home study report; (6) Father had continued to spend time with the child and his decision to voluntarily terminate parental rights was not based upon a desire to exit the child's life; (7) Father's decision was also influenced by the fact that he would remain a part of the child's life; (8) the genuine understanding of all parties was that Aunt and Uncle would adopt the child. Id. The Court stated that the mistake in the FCM's home study report that there were no DCS records against Aunt or Uncle that would prevent the child's placement in their home or subsequent adoption was a misrepresentation under which all parties labored. Id. at 108. The Court said that Father was appropriately advised of his constitutional and legal rights and the trial court carefully questioned Father about his consent to voluntarily terminate his parental rights. Id. The Court observed, "all advisements and questions were clouded by the misrepresentation contained in the home study report and the TCDCS's subsequent actions that served as the basis for [the child's] placement with [Aunt and Uncle] and the TCDCS approval of the permanency plan calling for [the child's] adoption by [Aunt and Uncle]." Id. The Court opined that it seems safe to say that, had the FCM adequately searched the DCS records, the child would never have been placed with Aunt and Uncle and the possibility of adoption by Aunt and Uncle would not have been the deciding factor in Father's decision to terminate his parental rights. Id. at 109.