

Children's Law Center of Indiana



Termination of Parental Rights (TPR)

12/11/2008

In ***In Re M.S.***, 898 N.E.2d 307 (Ind. Ct. App. 2008), the Court reversed and remanded the trial court's order terminating Mother's parent-child relationship with her oldest child, because there was insufficient evidence that termination was in the child's best interests. The child was born in July 2000. Father's parental rights were terminated in August 2007, without appeal. At some point it was determined that the child has severe behavioral difficulties, including Pervasive Personality Disorder, which is "autistic-like but it is not as severe. And autism is lack of social skills, behavioral difficulty." People who suffer from this disorder require a very structured environment and a substantial commitment to childcare and supervision by a caregiver. The disorder is controlled with behavior management and medication. In August 2002, Mother informed the Pulaski County DCS that she was unable to control the two-year-old child's behavior or protect her other child (born after 2000), and asked for help. DCS placed the child in foster care from August until December 2002, when he was returned to his Mother. This CHINS action was terminated in November 2003. In November 2004, Mother informed Cass County DCS that she was unable to supervise the child and her two other children (both younger than the child), and explained that she could not keep the rest of the household safe if the child lived there. Five days later, the child was placed in foster care, where he remained until December 22, 2006, when he was returned to Mother's home. (In December 2004, Mother had admitted the child was a CHINS.) In May 2007, when Mother again informed DCS that she could not control the child's behavior, DCS placed him in the Indiana Developmental Training Center (Center), where he still resided at the time of the termination hearing. DCS offered, and Mother participated in a number of services designed to help her acquire the skills to parent the child, but Mother and the child continued to need help. On June 19, 2007, DCS filed a petition to terminate the parental relationship between the child and Mother. Following a hearing on August 8, 2007, on January 30, 2008 the trial court entered an order terminating Mother's parental rights to the child. Mother appealed.

The Court concluded that termination of Mother's parental rights at this time is, at best premature, in that everyone agrees that, for now, the child should continue to reside in a facility so that he can receive full-time medical and behavioral care, and no one can predict when, or even whether, the child will become stabilized, or what will be best for him when and if he does become stabilized. *Id.* at 308, 314. The Court opined that, to say that Mother's parental rights must be terminated merely because her child has special needs and she needs help to manage his behavior would send a sobering message to all of the parents in Indiana with children who need ongoing medical or psychological assistance - in effect saying that if you have a child that is difficult and you do seek help for that child, your reward is the child is removed, never to return. *Id.* at 314. The Court emphasized (1) that the problem here is not Mother's parenting skills or her love for her children, and she has not been reluctant to comply with DCS'

suggested service, but instead, the problem is the child's special needs; and (2) rather than taking the radical action of severing the parent-child bond prematurely, DCS and the courts should be focused on helping the child to become stabilized and reevaluating his best interests, when and if stabilization occurs. Id. In arriving at its conclusion, the Court closely reviewed the record, viewed the evidence most favorably to the judgment, and noted: (1) everyone who testified agreed that Mother loves her children and did everything that was asked of her, Id. at 311-12; (2) DCS witnesses testified that the reason for DCS' intervention was the child's, rather than the mother's, behavior, and the heart of the family's struggle was not Mother's parenting skills, but the child's special needs; (3) the Center's social worker testified that the child required a lot of structure and, a lot of times, he required one-on-one staff attention, especially when he was getting agitated, Id. at 312; (4) DCS argues that the child would be best served in the long run by perhaps adoption as an only child in a very specialized set of circumstances, but DCS' own witnesses testified that the child will need to remain a resident of the Center until he is stabilized, Id. at 312-13; (5) the status of the child's relationship with Mother affects neither his ability to remain in the Center nor the fact that he continues to need specialized behavioral and medical assistance, and DCS will be paying for the child's stay at the Center regardless of whether the parental relationship is terminated; (6) at the time of the termination hearing, the child was not stabilized, he was taking numerous prescription medications, and his psychiatrist and personnel at the Center were still experimenting with dosage levels, and trying to determine whether they could wean him off of some of the drugs altogether; (7) DCS argued that termination was appropriate because the child may never be able to live in a home with other children, but DCS' witnesses acknowledged that there is no way for anyone to know what the child and Mother will be able to handle once the child is stabilized, and that DCS' plans for the child are similarly unknown, in large part because no one knows when the child will be released from the Center, Id. at 313; (8) Mother testified that, when the child is stabilized, he gets along with his brothers, and he enjoys and is a help in caring for them; and (9) Mother acknowledges that, for the time being, the child needs to be cared for by the Center, but she hopes that after he is stabilized, he could return home, Id. at 314.