

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

2/18/11

In ***In Re M.W.***, 942 N.E.2d 154 (Ind. Ct. App. 2011), the Court reversed the trial court's grant of DCS's petition to terminate Mother's parental rights. The child was born in April 2006. Father and Mother were not married, but lived together until Father moved out in 2008. DCS became involved with the child and Mother in July 2008 because Mother had been using morphine and the parties entered into an informal adjustment. Mother was on probation for a theft conviction, and in September 2008, Mother was arrested for a probation violation due to drug use. DCS then removed the child from Mother and placed the child in foster care. At the time of the child's removal, Father was traveling outside of the state due to his employment. DCS filed a petition alleging that the child was a CHINS, and Mother agreed that the child was a CHINS. In October 2008, the trial court ordered Mother to: participate in home-based counseling, submit to a psychiatric evaluation and comply with all recommendations, participate in routine visitation with the child, establish paternity, submit to random drug screens, submit to a drug and alcohol evaluation and comply with all recommendations, secure suitable housing and employment, resolve all criminal proceedings, and reimburse DCS for expenses. During part of the CHINS proceeding, Mother lived with her boyfriend, but there were domestic violence issues in the household. The DCS case manager observed bruises on Mother's arms and noted that both of Mother's eyes were blackened and swollen. Mother moved into Sheltering Wings, a shelter for women and children, but stayed at the shelter for only two and one-half months. Mother was asked to leave the shelter because she failed to regularly attend required meetings. A probation violation allegation was filed as a result of Mother leaving Sheltering Wings. In February 2009, the DCS case manager advised Mother that a petition to terminate her parental rights "could be filed [after] fifteen months if she failed to follow through with the services recommended." In March or April 2009, DCS internally decided to move toward termination of both parents' rights. In late April 2009, DCS filed a permanency plan listing reunification of the child with parents, and in early May 2009 the trial court approved this permanency plan.

On May 18, 2009, DCS filed a petition to terminate Mother's and Father's parental rights. DCS also filed a contempt petition against Mother and Father in May 2009. Regarding Mother, the DCS case manager testified that, among other things, Mother had failed a random drug screen, had no employment or suitable housing, failed to complete a mental health evaluation, and had inconsistent visitations with the child. The trial court found Mother in contempt and ordered her to strictly comply with court orders. Mother was incarcerated from April 2009 until August 2009 for another

probation violation. In June 2009, Mother pled guilty to consumption of an alcoholic beverage by a minor as a class C misdemeanor and was sentenced to forty-two days in jail. In July 2009, Mother pled guilty to possession of a controlled substance as a class D felony and was sentenced to 545 days with 365 days suspended, 180 days in jail, and 365 days of probation. Mother moved in with the child's maternal grandfather when she was released from jail, but maternal grandfather's residence was deemed inappropriate for the child due to maternal grandfather's criminal history and abuse of Mother. At an August 6, 2009, hearing, DCS requested permission to discontinue services, and the trial court granted that request. In September 2009, the trial court held a hearing on DCS's petition to terminate parental rights. Mother and Father appeared at the hearing. At the end of the first day of hearing, the trial court informed DCS that it had "a really serious problem with [DCS] telling these [parents] on a day certain in April that their plan is to reunify them and then without any justifiable reason filing a termination" petition. The trial court noted that, as of that time, DCS had not met its burden of showing by clear and convincing evidence that the parents' rights should be terminated. On October 1, 2009, the parties filed an amendment to the dispositional/parental participation plan (Amended Plan) in which DCS agreed to continue the present termination case with the parents being given one last chance to strictly comply with the orders. The Amended Plan provided that, if the parents fail to strictly comply, DCS will amend its termination petition to include noncompliance and proceed with the involuntary termination.

On October 18, 2009, Mother suffered a severe stroke and was hospitalized and placed in a rehabilitation facility for two and a half months. Mother then spent two months in a nursing home. She was partially paralyzed on her right side and uses a walker, but was expected to make a full recovery within six to twelve months. After leaving the nursing home, Mother moved into the home of the child's maternal grandfather, who was abusive to her. In late April 2010, Mother began residing at Sheltering Wings. On April 29, 2010, the trial court held another hearing on the termination petition. Mother did not appear for the first day of the hearing, but appeared on the second day of the hearing. The DCS case manager testified that Mother had not completed home-based counseling and that Mother had completed a substance and alcohol abuse evaluation but failed to complete the recommendations. Mother refused DCS's request to reenroll in a drug and alcohol evaluation stating that she would prefer to do services in home once the child was returned to her. In March 2010, Mother completed a mental health evaluation, which indicated that she was not ready to parent the child and did not understand child development, age appropriate discipline techniques, and parent-child roles. The evaluator recommends that Mother take a parenting class. At the time of the termination hearing, Mother's probation was terminated as a result of her medical condition, and she had resolved all of her criminal matters. Mother received social security disability payments. Mother had missed some visits with the child, as recently as three visits in March 2010 and one visit on April 14, 2010. Mother was eligible to live at Sheltering Wings for two years, and the child was eligible to live there with her. After the termination hearing, the trial court entered findings of fact and conclusions thereon terminating Mother's and Father's parental rights. Mother and Father both appealed. Father's appeal is addressed in a separate opinion.

The Court concluded that DCS failed to carry its burden of establishing, by clear and convincing evidence, a reasonable probability that conditions resulting in the child's removal from Mother will not be remedied. *Id.* at 161. The Court agreed with Mother's argument that the trial court's findings and conclusions are clearly erroneous regarding whether there was a reasonable probability that the conditions resulting in the child's removal will not be remedied. *Id.* at 160-61. The Court found that the circumstances here are analogous to those in *In Re J.M.*, 908 N.E.2d 191 (Ind. 2009). *M.W.* at 160. The Court noted that: (1) in *J.M.*, parents were incarcerated on Methamphetamine-related charges in 2004 and their child was found to be a CHINS; (2) the trial court denied the termination petition after a hearing was held in early 2008; (3) the Guardian ad Litem appealed the trial court's denial of the termination petition; (4) the Indiana Supreme Court affirmed the trial court's denial of the termination petition; (5) in particular, the Supreme Court noted that the father anticipated a release from prison in mid-2008 and that the mother anticipated a release from prison in mid-2009; (6) the Supreme Court noted that parents' "ability to establish a stable and appropriate life upon release can be observed and documented within a relatively quick period of time." *J.M.* at 196. *M.W.* at 160. The Court acknowledged that *J.M.* concerned incarcerated parents who were being released from prison soon after the termination hearing and that Mother is not incarcerated. *M.W.* at 160. The Court observed that DCS purportedly gave Mother a second chance with the Amended Plan and due to circumstances beyond her control, i.e. suffering a severe stroke, Mother has been unable to take advantage of that second chance. *Id.* The Court said that Mother had made some progress at stabilizing her life by moving into the shelter and receiving social security disability payments. *Id.* The Court opined that, as in *J.M.*, Mother's ability to establish a stable and appropriate life and properly parent the child can be observed and determined within a relatively short period of time. *M.W.* at 160-61. The Court, describing involuntary termination of parental rights as the most extreme sanction a court can impose on a parent, quoted *In Re I.A.*, 934 N.E.2d 1127, 1136 (Ind. 2010), which states that "termination is intended as a last resort, available only when all other reasonable efforts have failed." *M.W.* at 161. The Court is not convinced that all other reasonable efforts have been employed to reunite Mother and the child. *Id.* The Court opined that the process by which termination occurs should be fair and equitable. *Id.* The Court said that DCS agreed to give Mother a second chance and should follow through with its agreement. *Id.*