

# Children's Law Center of Indiana



## Termination of Parental Rights (TPR)

12/02/2008

In ***In re S.B.***, 896 N.E.2d 1243 (Ind. Ct. App. 2008), the Court affirmed the trial court's termination of the parent-child relationship of Father with the children. The children, twins, were born May 9, 1997, while Mother and Father were married. Mother's parental rights were terminated October 30, 2007, and are not a subject of this appeal. In October 2002, Dubois County Department of Child Services (DCDCS) became involved with the family when Mother allegedly hit and bruised the face of one of the children. Before a planned informal adjustment could be entered into, the family moved out of the county. In July 2003, DCDCS received and substantiated another referral against the parents for lack of supervision. Over the next several years, DCDCS received and substantiated eight reports of abuse by Mother and four by Father. During this time, Father was constantly in and out of prison. Following a January 6, 2006 hearing on a CHINS petition filed December 7, 2005, the children were found to be CHINS but were allowed to remain in Mother's physical custody. The parents were subsequently directed to participate in a variety of services. On March 20, 2006, Mother was arrested on an outstanding body attachment and the children were removed from the home and placed in protective custody where they remained pursuant to a subsequent court order. Father's participation in court-ordered services and visitation was inconsistent and unsuccessful, and on June 21, 2007, DCDCS filed a petition seeking to involuntarily terminate Father's parental rights. At the conclusion of the last day of the three-day, termination fact-finding hearing, the trial court neither granted DCDCS' termination petition, nor dismissed it. Instead, the trial court informed Father that it was going to "take a chance and put [Father] on an informal adjustment" for six months. On February 7, 2008, during a CHINS review hearing, DCDCS presented evidence that Father had failed to comply with the updated parental participation order in that he (1) had admitted to using alcohol and had tested positive for alcohol on at least two separate occasions, (2) had been observed by DCDCS workers with empty beer cans in his home, (3) had continued to express his anger towards DCDCS, (4) had continued to refuse the advice of his therapist to develop coping skills for dealing with times of crisis and stress, (5) had failed to maintain an operating telephone number, and (6) had missed three visitations with the children because of bad weather or pain due to an ankle injury; and evidence was presented that the children had experienced significant regression in their behavior since resuming visitation with Father. On February 26, 2008, the trial court issued its judgment terminating Father's parental rights which included specific findings of facts and conclusions of law based on the evidence presented both during the original termination hearing and the evidence presented at the February 7 CHINS review hearing. One of the specific findings stated that on November 5, 2007 "[t]he court also concluded that [DCDCS] had met its burden of proof as to [F]ather and that the Court was inclined to terminate [F]ather's rights. However, the court granted [F]ather one final chance to prove he can make necessary changes to care for his children." Father appealed the termination of his parental rights to the children.

**The trial court's decision to postpone its pronouncement of judgment and give Father one final chance despite its conclusion that DCDCS had already satisfied its burden of proof was in direct violation of IC 31-35-2-8 which clearly provides that a trial court shall either find the allegations in the petition to be true and terminate the parent-child relationship, or find the allegations not to be true and dismiss the petition.** Id. at 1248. The Court, sua sponte, raised this issue which it found to be dispositive. Id. at 1247. The Court examined IC 31-35-2-8, found it to be clear and ambiguous on its face, and, therefore, found that the words of the statute must be given their plain, ordinary meaning. Id. The Court held that, because the trial court failed to comply with IC 31-35-2-8, its judgment terminating Father's parental rights was erroneous, but that the trial court's error was harmless. Id. at 1248. The Court observed that, (1) although it did not approve of the trial court's postponement of its ruling, remanding this cause for a new termination hearing would be against the best interest of the children who "have lingered in the system six months longer than needed while Father dabbled with services, continued to use alcohol, and failed to maintain regular contact with the children;" (2) the current system has already been criticized for putting children in limbo too long, thereby fostering instability and unhinged relationships; and (3) it is undeniable that it is within the child's best interest and overall well being to limit the potential for years of litigation and uncertainty. Id. at 1248-49. In view of these considerations and the trial court's clear determination that DCDCS satisfied its burden of proof on November 5, 2008, and again on February 26, 2008, the Court affirmed the trial court's termination of Father's parental rights to the children. Id. at 1249.