

Children's Law Center of Indiana



CHINS

03/12/2009

In **In Re T.D.S.**, 902 N.E.2d 332 (Ind. Ct. App. 2009), the Court, on interlocutory appeal, affirmed the trial court's supplemental order finding DCS' placement recommendation to be contrary to the child's best interest, and ordering that the child remain in his current foster care placement until the end of the school year. On or about April 30, 2008, the child was removed from Mother's care and custody amidst allegations of physical abuse perpetrated by Mother on the child. The child's three younger siblings were also removed and placed in foster care due to allegations of neglect relating to Mother's substance abuse problem. The child and his half-brother were placed with the half-brother's paternal grandparents (Grandparents). On June 23, 2008, the trial court adjudicated the child to be a CHINS and ordered that the child remain in foster care with Grandparents, as recommended by DCS, and that Mother participate in a variety of services in order to achieve reunification with her children. Mother participated in and successfully completed all court-ordered services. Consequently, during a December 8, 2008 case conference, it was decided that all the children should be returned to Mother's care on a gradual basis. It was determined that the two younger children would be reunified first so that the two older children, the child and his half-brother placed with Grandparents, could finish the current school semester and receive counseling services to facilitate "transitioning" back into Mother's home. The two younger siblings were returned to Mother on December 20, 2008. On January 14, 2009, the trial court held a periodic review hearing during which DCS requested the court modify its order by removing the child from his current foster placement and immediately returning him to Mother's care and custody. The trial court apparently treated DCS' request as a petition for modification of its Order on Initial Disposition. At the conclusion of this hearing, the trial court decided it would be contrary to the child's best interests to follow DCS' recommendation to immediately return him to Mother's care, and issued an order denying DCS' request for modification and, in accordance with IC 31-34-19-6.1(c), re-set the matter for hearing on January 21, 2009. The child's half-brother was returned to Mother's care on the following day. Also, in accordance with IC 31-34-19-6.1(c), on January 20, 2009, DCS filed with the trial court a supplemental report containing DCS' final recommendation that the trial court release the child from his current foster care and immediately return him to Mother's care. During the modification hearing on the next day, DCS reasserted its recommendation to reunify the child with Mother, the CASA's report to the court indicated that CASA believed it would be in the child's best interests to remain in his current placement with Grandparents until the end of the 2008-2009 academic year, and the child testified that he wished to continue living with Grandparents until the end of the school year. The trial court issued a Supplemental Order in which it incorporated its prior findings contained in the January 14, 2009 order denying modification, found DCS' placement recommendation to be contrary to the child's best interests, and ordered the child to remain in his current foster care placement until the end of the school year. DCS timely filed a Notice of Expedited Appeal, pursuant to Indiana App. Rule 14.1,

challenging the trial court's placement order and CASA filed a Motion to Dismiss DCS' Petition for Expedited Appeal.

The Court held that the trial court's placement order constitutes a new dispositional decree and, as such, is eligible for expedited review under Indiana Appellate Rule 14.1. Id. at 336. Therefore, the Court found CASA's Motion to Dismiss unavailing. Id.

There is sufficient evidence to support the trial court's findings and ultimate decision to deviate from DCS' placement recommendation and order the child to remain in foster care with Grandparents until the end of the academic school year. Id. at 336-37. The Court noted that (1) documents submitted on appeal indicate the DCS case manager who testified informed the trial court that, although Mother had completed the specific court-ordered services, with regard to discipline of the children, she believed Mother would require additional counseling; (2) when the case manager was specifically asked whether she felt Mother had "rectified whatever root cause there was in [Mother] disciplining [the child] with an extension cord," the case manager replied, "I think that it's an ongoing process. I think that we've initially prepared [Mother] to understand [and] to find healthy ways to deal with her child as far as different behavior, yes I do. But I feel that's something that's going to be ongoing;" (3) the case manager also testified that due to "[the child's] behaviors ... there's gonna [sic] always be a problem with transitioning him into schools," and further acknowledged that uprooting the child and moving him to another school "would be a significant change for him;" and (4) the CASA's report recommended that "[the child] should remain in the home of [Grandparents] until the end of the school year," and stated that after "attending [the child's] IEP and speaking with his teachers and with [the child,] this CASA believes that it would be in [the child's] best interest[s,] and be in the best interest[s] of his education," to remain in Grandparents' home until school is out in June. Id. at 337. The Court (1) denied CASA's Motion to Dismiss; (2) affirmed the trial court's Supplemental Order; (3) denied DCS' request for relief under Indiana Appellate Rule 14.1, and directed DCS to comply with the trial court's January 21, 2009 Supplemental Order, including payment for services, until such time as the trial court's order is modified or vacated; (4) directed "the Clerk of this Court" to serve copies of this order on all parties of record; and (5) ordered the LaPorte Circuit and Superior Courts Clerk to file a copy of this order under the lower cause number, and, pursuant to Indiana Trial Rule 77(D), to place the contents of this order in the Record of Judgments and Orders. Id.