

Children's Law Center of Indiana



CHINS

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In **In Re T.S.**, 906 N.E.2d 801 (Ind. 2009), the Court affirmed the juvenile court's placement determination, and made several other findings regarding Indiana Appellate Rule 14.1 which became effective January 1, 2009. This is the first appeal under the new rule. The child, here, was removed from Mother's care because of allegations of physical abuse, found to be a CHINS, and placed with his half-brother in the foster home of the half-brother's paternal grandparents. After several months, DCS requested that the child be reunited with Mother, but the juvenile court decided it would be contrary to the child's best interests to follow DCS' recommendation and immediately return him to Mother's care. The juvenile court found that the child should remain with the foster parents until the end of the school year. DCS appealed the decision pursuant to Appellate Rule 14.1, challenging the court's placement order and contending that its recommendations had been neither unreasonable, based on the facts and circumstances of the case, nor contrary to the welfare or best interests of the child. The juvenile court and the CASA responded in support of the decision, and the CASA also filed a motion to dismiss the appeal on grounds that the juvenile court's decision was not within the category of rulings appealable under Appellate Rule 14.1. The Court of Appeals held that the juvenile court's ruling was subject to Appellate Rule 14.1 but found that the juvenile court "did not abuse its discretion in rejecting DCS's placement recommendation." **In Re T.D.S.**, 902 N.E.2d 332, 333 (Ind. Ct. App. 2009). DCS sought transfer, asserting that the Court of Appeals used the incorrect standard of appellate review. The Supreme Court granted transfer.

Indiana Appellate Rule 14.1 expedited appeals are available to the process of modifying dispositional decrees regarding child placement where a juvenile court does not follow DCS' recommendation. *Id.* 802. The Court opined: (1) Rule 14.1 provides that orders entered under IC 31-34-19-6.1(f) are eligible for expedited appeal; (2) in this case, DCS requested that the juvenile court modify its earlier dispositional decree by removing the child from his current foster placement and immediately returning him to Mother's care and custody; (3) IC 31-34-23-1(2)(C) gives DCS the authority to request such a modification, IC 31-34-23-3(B) requires the juvenile court to hold a hearing on such request, and IC 31-34-23-4 provides that IC 31-34-19 "appl[ies] to the preparation and use of a modification report" and that DCS shall prepare a report in such a hearing; and (4) What may have originally begun as a periodic review became a modification hearing on the juvenile court's initial order of disposition. The Court concluded: (1) the juvenile court's reaching a result contrary to DCS' recommendations, making written findings, and concluding that it "is in [the child's] best interest to remain in current relative/foster placement until the end of the 2008-2009 school year," and that "[t]o immediately remove him from this home at this time would be disruptive, counterproductive to the progress he has been making and not in his best interests," was consistent with IC 31-34-19-6.1(d) and (e); (2) IC 31-34-19-6(f) makes a juvenile court's findings and decree under IC 31-34-19-6.1(d) and (e)

appealable pursuant to any procedure for expedited appeal provided by the Indiana Rules of Appellate Procedure; (3) thus, the juvenile court's placement order constitutes a new dispositional decree, and DCS is appealing the juvenile court's placement order entered under IC 31-34-19-6.1; and (4) Rule 14.1's clear language permits an expedited appeal in cases of disagreement between the juvenile court and DCS under this section. Id. 803.

The juvenile court must accept DCS' placement recommendations unless it finds by a preponderance of the evidence that the recommendation is "unreasonable" or "contrary to the welfare and best interests of the child." IC 31-34-19-6.1(d). Id. 802.

A finding by the juvenile court that DCS' recommendation is contrary to the child's welfare and best interests is reviewed on appeal for clear error. Id. 802. The Court agreed with DCS that (1) IC 31-34-19-6.1(d) creates in the juvenile court presumption of correctness for DCS' final recommendations, relieving DCS of the burden of initially coming forward with evidence to support its findings and requiring that any resulting decision contrary to DCS' recommendation must be supported by a preponderance of the evidence; and (2) because of the statutory presumption favoring DCS' final recommendations, juvenile courts thus lack unfettered discretion to make a contrary decision. However, contrary to DCS' argument that, on review, deference must be given DCS, and the onus is on the trial court to show why DCS' recommendations are unreasonable or contrary to the child's welfare and best interests, the Court concluded that, once the juvenile court has appropriately considered DCS' recommendations in light of the relevant evidence and reached a contrary conclusion, the appellate function is governed by Indiana Trial Rule 52(A), which states that "the court on appeal shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." The Court noted that it is more apt to describe appellate review of determinations under this statute as applying "clearly erroneous" rather than "abuse of discretion" as the operative standard. Id. 803-4.

In this case, the juvenile court's placement determination was not clearly erroneous. Id. 802. The Court declined to find that the juvenile court's determination was clearly erroneous. In doing so, the Court noted: (1) the essential thrust of DCS' appellate contention is that "the trial court has not shown" that DCS' recommendations were unreasonable or contrary to the welfare and best interest of the child; (2) the juvenile court expressly concluded that DCS' recommendations are "contrary to the welfare and best interests of the child and are unreasonable based on the facts and circumstances" and then supported this conclusion with specific factual findings; (3) the juvenile court discussed the evidence of the child's relationship with Mother, his school performance, his relationship with his foster parent, his personal wishes, the history of physical abuse to the child from Mother, Mother's prior substance abuse, Mother's recent intensive substance abuse treatment, and the advantages of waiting until the end of the current school year to begin reunification with Mother; (4) DCS has not established or asserted that any of the juvenile court's specific factual findings are unsupported by any facts or inferences; and (5) DCS has not shown that the findings fail to support the juvenile court's determination contrary to DCS' recommendations. Id. 804-5.