

Children's Law Center of Indiana



Termination of Parental Rights (TPR)

09/29/2008

In **Moore v. Jasper County Dept.**, 894 N.E.2d 218 (Ind. Ct. App. 2008), the Court reversed the trial court's termination of Mother's parental rights to her two youngest children, the twins. The twins were born June 17, 2004, into Mother's single-parent household which already included five of her children who were born in 1986, 1988, 1990, 1992 and 1993. Paternity of the twins was never established and the parental rights of their unknown father were terminated January 23, 2008. On January 1, 2006, the Jasper County Department of Child Services (JCDCS) was contacted by law enforcement officers who had been called to Mother's residence due to an altercation between Mother and two of her older children, all three of whom tested positive for alcohol. Mother was arrested for battery, and one of these two older children was arrested and placed in a detention center because of an outstanding warrant. The other children were left in the home under the supervision of their grandmother. On January 17, 2006, the twins (C.B.M. and C.R.M.) and their 15-year-old sister, M.M., who had served as the twins' primary caregiver, were removed from the home and placed in therapeutic foster care where they have remained. (Mother had had previous contacts with JCDCS.) After, it was discovered that the twins were behind on their immunizations and were significantly developmentally delayed and C.B.M. was diagnosed with Congenital Sucrose-Isomaltase Deficiency (CCSID), a condition in which the body does not produce the enzyme needed to break down natural sugars, the twins were formally removed from Mother pursuant to a dispositional decree, on March 6, 2006. On July 18, 2007, JCDCS filed separate petitions to involuntarily terminate Mother's parental rights to the twins. At the time of the termination fact-finding hearing, December 19, 2007, Mother was married, had enrolled at Ivy Tech Community College to pursue a LPN degree after having already completed several prerequisite classes, had regained custody of two of her minor children, had obtained her driver's license, had recently re-initiated individual counseling, and had obtained suitable housing. At the termination hearing, the JCDCS caseworker acknowledged that Mother had completed several court-ordered services, but the caseworker remained concerned with Mother's problem with "consistency," specifically referencing Mother's inconsistency in maintaining employment, participating in individual counseling, and maintaining contact with JCDCS throughout the CHINS proceeding. The foster care case manager with The Villages, also testified that she had concerns as to whether Mother would properly supervise and medicate the twins should they be returned to her care. The twins' GAL was strongly opposed to the termination of Mother's parental rights and testified that he believed termination would be detrimental to the twins, to the detail of Mother's then current positive circumstances, and that in Mother he saw a very calm person who was very concerned about her children who were in foster care, who was making valiant efforts to change her lifestyle through parenting classes and attending Ivy Tech to become a LPN, and who was living in a home which was clean and very appropriate. The GAL also testified positively with regard to Mother's husband. Mother's sister, an LPN, and maternal grandmother both testified that they were willing to help Mother

care for the twins should Mother regain custody. On January 23, 2008, the trial court issued separate orders terminating Mother's parental rights to the twins.

The Court found the trial court's termination orders to be deficient in that they failed to satisfy the requirements of IC 31-35-2-4(b) and -8, but the Court determined that remand would not cure the error in this case. *Id.* at 224. The Court stated that because the trial court neglected to make any findings specifically pertaining to the statutory requirements delineated in IC 31-35-2-4(b)(2)(B) and (C); to make any conclusions based on its findings; and to provide an explanation as to how its findings support its judgments, it was unable to determine whether the trial court violated Mother's parental rights in terminating her parental relationship with the twins. *Id.* Based on a review of the evidence in the record, the Court concluded that, although the termination orders did not satisfy the requirements of IC 31-35-2-4 and -8 because the findings were a mere recitation of the evidence presented and the trial court failed to provide a nexus between its purported findings and its judgments, simply remanding this cause with instructions for the trial court to enter specific factual findings that are fully supported by the evidence and to provide an explanation as to how its factual findings support its termination orders would not cure the error in this case. *Id.*

The JCDCS failed to carry its burden of establishing, by clear and convincing evidence, that there was a reasonable probability the conditions leading to the twins' removal from Mother's care would not be remedied and that continuation of the parent-child relationship posed a threat to the twins' well-being. *Id.* at 229. The Court gave three reasons for its holding: (1) the majority of the trial court's findings indicate its decision to terminate Mother's parental rights was improperly based on her parental inadequacies as they existed at the time of the twins' removal, as opposed to Mother's abilities and circumstances as they existed at the time of the termination hearing, as is required by the termination statutes; (2) by all accounts, including the trial court's own termination order, Mother had made significant strides in accomplishing the majority of the dispositional goals put in place by the JCDCS; and (3) the GAL strongly objected to the termination of Mother's parental rights. *Id.* at 228. In this regard, the Court noted: (1) the trial court's termination order acknowledges, and the evidence indicates, that by the time of the termination hearing, Mother was married, was enrolled in school to become a licensed practical nurse, had obtained her driver's license, had regained custody of two of her older children, had re-enrolled in counseling, and was living in a four-bedroom home that was reported to be "clean and very appropriate;" (2) Mother's husband was gainfully employed as a welder making about \$50,000 annually and was willing to continue to financially support Mother and her children while Mother attended school; (3) the twins would be eligible for health coverage through the husband's employer were Mother to regain custody, and; (4) the GAL testified that this was a "unique case," that he believed Mother was a "changed person," that Mother's marriage had provided her with "an opportunity of stability ... that [Mother had] never been afforded previously[,]" and that termination of Mother's parental rights would be "detrimental" to the twins' well-being. *Id.* The Court also opined that the trial court's statement that it "would have been willing to delay this termination proceeding to see whether or not the changes which [Mother] has made in her life are permanent, and whether she can properly care for [the twins]" if not for the federal government's mandate requiring a speedy and permanent resolution for children, suggests the trial court's decision to terminate Mother's parental rights to the twins may have been improperly based, at least in part, on a suspicion that Mother's change in circumstances may not be permanent. *Id.*