

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

6/29/12

In **T.B. v. Indiana Dept. of Child Services**, 971 N.E.2d 104 (Ind. Ct. App. 2012), the Court affirmed the trial court's judgment which had terminated Mother's parental rights and declined Mother's request that the Court adopt a policy that prohibits the involuntary termination of parental rights for all mentally retarded parents. In June 2010, the Tippecanoe County Office of the Indiana Department of Child Services (TCDCS) received a report that Mother had left her two children, then ages five and two years, in the care of a mentally handicapped thirteen-year-old babysitter for several hours. During the assessment, the TCDCS case manager observed that the home was in a state of disarray, the children appeared dirty and had not eaten since early that morning, and the two-year-old child had a broken foot that was wrapped in dirty bandages. The five-year-old child informed the case manager that Mother had left him home alone on several prior occasions. It was also discovered that Mother had failed to follow the emergency room doctor's discharge orders directing her to obtain follow-up medical care for the two-year-old's foot. The children were taken into emergency protective custody by TCDCS, and CHINS petitions were filed on the following day. Mother admitted to the allegations of the CHINS petitions, and the children were so adjudicated. In July 2010, the trial court issued a dispositional order directing Mother, inter alia, to: (1) submit to both a mental health evaluation and a medication assessment; (2) engage in intensive home-based case management services; (3) participate in individual therapy; (4) complete parenting education classes; (5) visit regularly with the children; (6) obtain safe and stable housing; and (7) maintain a stable, legal source of income sufficient to support the family.

Mother's participation in reunification services throughout the CHINS case was sporadic and ultimately unsuccessful. Mother's biopsychological assessment with Dr. Abbett in August 2010 confirmed that Mother has "Borderline Intellect[ual]" functioning and suffers with "Cyclothymia" with "cycling several times a day." Dr. Abbett therefore recommended that Mother continue to take her prescribed antidepressant medication, Lexapro, and wrote additional prescriptions for Vyvanse and Lamictal.

In September 2010, Mother submitted to a psychological evaluation with Dr. Vandewater-Percy. Dr. Vandewater-Percy's evaluation indicated that Mother: (1) has poor reasoning skills, poor memory and/or attention skills, and her overall cognitive functioning is in the "low" to "well

below average” range of functioning; (2) is chronically depressed with a highly ambivalent style of relating to others that probably originates from her reported history of rejection and abuse; and (3) although very reliant on others for support, guidance, and affirmation, is “exceedingly mistrustful” and “suspicious” of others; thus, her “relationships are likely to be unstable with fluctuating degrees of emotional investment.” *Id.* at 106. Despite her ongoing struggles with depression and other significant mental health issues, Mother: (1) refused to take her medications as prescribed; (2) cancelled and/or failed to show for more than half of her individual therapy sessions and home-based counseling appointments; (3) continued to remain non-compliant and actually began to regress in services after the children were returned to her care for a trial home visit in December 2010. Following an emergency modification hearing in April 2011, the children were again removed from Mother’s care due in large part to the numerous safety concerns in the home as well as Mother’s continuing inability to adequately provide for the children’s basic needs. After the children’s second removal, TCDCS continued to offer reunification services to Mother, including intensive home-based case management services, individual therapy, and supervised visitation with the children. Mother nevertheless was unable to sustain any progress in her overall ability to properly care for herself and for her children. Specifically, Mother continued to miss approximately seventy-five percent of her scheduled individual therapy sessions and fifty percent of her home-based counseling appointments, failed to maintain stable housing and employment, refused to take her prescription medication, and was repeatedly dishonest with service providers. As for scheduled visits with the children, Mother remained incapable of maintaining appropriate discipline during her visits, discussed inappropriate adult issues in front of the children, and oftentimes ended visits early.

TCDCS filed petitions seeking the involuntary termination of Mother’s parental rights to both children in June 2011. An evidentiary hearing was held in August 2011. TCDCS presented substantial evidence concerning Mother’s failure to successfully complete a majority of the trial court’s dispositional goals, which included participating in individual counseling; taking medications as prescribed; achieving stable and independent housing and employment; learning and incorporating age-appropriate discipline techniques; and demonstrating she is capable of establishing a safe, sanitary, and stable home environment for herself and the children. TCDCS introduced evidence that Mother failed to maintain steady employment, was forced to move out of her apartment the week before the termination hearing, and was living with and financially dependent upon her most recent boyfriend. TCDCS also presented evidence that Mother had recently been arrested, twice, for driving without a valid driver’s license, had received a thirty-day suspended sentence, and was facing an additional charge of Driving While Suspended at the time of the termination hearing. TCDCS also presented substantial evidence regarding the children, including that: (1) the older child’s emotional well-being and school performance had “improved enormously” following his removal from Mother’s care; (2) the older child’s nightmares, which he had experienced “every single night” while in Mother’s care, stopped once he was placed in foster care; (3) the therapist for the children testified that neither child was bonded with Mother; (4) both the TCDCS case manager and the Court Appointed Special Advocate recommended termination of Mother’s parental rights as in the children’s best interests; (5) the children’s therapist testified that both children needed to be protected from the

harm and chronic neglect that they suffered while in Mother's care. The trial court entered its judgment terminating Mother's parental rights on September 28, 2011. Mother appealed. Her sole argument on appeal was that "mentally retarded parents should be immune from losing their parental rights."

The Court declined Mother's invitation to judicially legislate an exception whereby mentally handicapped parents are immune from involuntary termination proceedings. Id. at 110. Mother did not challenge the evidence supporting any of the trial court's specific findings, but instead compared involuntary termination proceedings to criminal proceedings. Mother then asked the Court to "assum[e] arguendo" that the result of a termination proceeding is actually a "penalty" to the parent and posited that such a penalty violates the prohibition against cruel and unusual punishment found in Article 1, Section 15 of the United States Constitution because the ultimate result is to make the child "legally dead" to the parent. Id. at 109-110. The Court, citing Robinson v. Monroe Cnty., 663 N.E.2d 196 (Ind. Ct. App. 1996), stated that it is not a proper function of the Court to ignore the clear language of a statute and, in effect, rewrite the statute in order to render it consistent with a particular view of sound public policy. T.B. at 110. The Court further noted that, contrary to Mother's argument, the Indiana Supreme Court has made clear that the "purpose of terminating parental rights is not to punish parents, but to protect the children." T.B. at 110, quoting Egly v. Blackford Cnty. Dep't of Public Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992). The Court further quoted Egly, 592 N.E.2d at 1234, in which the Indiana Supreme Court further explained that "[a]lthough parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their responsibilities as parents." T.B. at 110. The Court observed that it is well-settled that "mental retardation, standing alone, is not a proper ground for termination of parental rights," quoting Egly, 592 N.E.2d at 1234. T.B. at 110. The Court opined that it therefore stands to reason that the converse should also be true. Id.