

# Children's Law Center of Indiana



## Termination of Parental Rights (TPR)

04/02/2008

In **Termination of the Parent-Child Relationship of S.F.**, 883 N.E.2d 830 (Ind. Ct. App. 2008), the Court reversed the trial court's termination of the parental rights of Father and remanded for the conduct of another trial. In 2005 the two children were found to be CHINS based on one having scabies and lice and concerns regarding their living conditions. The Allen County Department of Child Services (DCS) filed a petition to terminate Father's parental rights because of Father's alleged failure to maintain suitable living conditions. Following a trial, the trial court issued an order stating that additional investigation was necessary and requesting that the Health Department investigate the parents' home and file a report with the trial court. The Health Department apparently conducted the inspection and submitted the requested report. On April 9, 2007, the trial court terminated Father's parental rights in an order which referred to and quoted from the Health Department's report.

**The trial court's consideration of a report that was generated through its independent investigation to which Father was not given an opportunity to respond violated Father's due process rights and constituted fundamental error.** *Id.* at 837. The Court pointed out that due process turns on the balancing of three factors: (1) the private interests affected by the proceeding; (2) the risk of error created by the State's chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure. See Lawson v. Marion County Office of Family & Children, 835 N.E.2d 577, 579 (Ind. Ct. App. 2005). The Court held that the risk of error created by the State's chosen procedure "does not weigh heavily in support of the trial court looking outside of the record to aid in its decision-making." *S.F.* at 836. The Court noted that (1) a parent must be permitted to view the evidence used to support the termination of his parental rights and must be given an opportunity to respond to that evidence; (2) although the Health Department's inspection and report gave the trial court access to a third party's opinion regarding the condition of Father's home after the trial, such actions are not permitted; and (3) to hold otherwise would shift the burden of proof from the State to the parent and would call into question the impartiality of the trial court. *Id.* The Court stated its disagreement with DCS' suggestion that the report was innocuous and the trial court's consideration of it was harmless error. The Court pointed out that (1) the trial court independently requested the inspection and extensively quoted from the report in its termination order; (2) the trial court's statement in its order for the inspection "that additional investigation is required," implied that as the record stood, there was not sufficient evidence to support the termination or at least the trial court was wavering regarding its decision; and (3) although there was overwhelming evidence that the house was unsuitable for children when the children were found to be CHINS and there were concerns about the suitability of the housing at the time of the trial, there was also evidence that Father had improved the conditions in the home. *Id.* at 836-37.