

# Children's Law Center of Indiana



## Termination of the Parent-Child Relationship

2/14/12

In **In Re C.M.**, 963 N.E.2d 528 (Ind. Ct. App. 2012), the Court reaffirmed its original opinion, **In Re C.M.**, 960 N.E.2d 169 (Ind. Ct. App. 2011) on rehearing. The county department of child services (DCS) petitioned to terminate Mother's parent-child relationship with three of her children. After an evidentiary hearing, the trial court terminated the parent-child relationships, and Mother appealed. The Court of Appeals reversed the trial court's termination order. DCS petitioned for rehearing in order to challenge an alleged undue burden imposed by the Court.

**On rehearing, the Court held that DCS is required to make a prima facie showing regarding current conditions supporting termination of parental rights.** *Id.* at 528. DCS asserted that the Court had imposed an undue burden upon it by recognizing that DCS has to make a prima facie showing regarding current conditions before the parent is obliged to come forward with any evidence. According to DCS: (1) the parent bears the burden of going forward with evidence of changed conditions; and (2) there should be a "hierarchy" of evidence for consideration by the court, with evidence of historical conduct to be paramount over evidence of current or changed conditions. The Court looked to the Legislature for statutory guidance, and noted that pursuant to IC 31-35-2-4(b)(2)(B), if the child has not been adjudicated a CHINS on two separate occasions, DCS must show either "a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents *will not be remedied*" or "a reasonable probability that the continuation of the parent-child relationship *poses a threat to the well-being of the child.*" *Id.* at 529. DCS must also establish that termination *is* in the best interests of the child. *Id.* (Emphasis in opinion.) The Court observed that our Legislature has employed present-tense language. *Id.* The Court opined that it is not sufficient to show that a parent had shortcomings in the past. *Id.* The Court said that it is incumbent upon DCS to put forth evidence of lack of remedial measures or evidence of that which poses a threat to the child. *Id.* The Court opined that there may well be no evidence of "changed" conditions, but there must be evidence of "current" conditions. *Id.* The Court further stated that it may not assign a hierarchy to evidence where the Legislature has not done so. *Id.*

**The Court reiterated that a determination that the parent-child relationship shall be terminated is essentially a conclusion of law which must be supported by factual findings that must rest upon clear and convincing evidence.** *Id.* at 530.