

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

5/24/13

In **In Re J.C.**, 994 N.E.2d 278 (Ind. Ct. App. 2013), the Court affirmed the trial court's order terminating Mother's parental rights to her three children, who were six, three, and one years of age. DCS detained the two oldest children on March 18, 2010, after Mother was arrested for theft and operating a vehicle while intoxicated. The children were with Mother while she was committing the criminal acts. On March 22, 2010, the trial court determined that the two oldest children were CHINS, but did not remove them from the family home, as Father was able to care for them. On July 26, 2010, the court ordered Mother to maintain contact with DCS and the Guardian ad Litem (GAL); to keep all appointments with service providers; to allow announced and unannounced visits by DCS or the GAL; to maintain suitable housing and sources of support and income sufficient for the safe upbringing of the children; to participate in home-based therapy, counseling, and case management; to participate in and successfully complete a parenting assessment; and to abstain from the use of drugs and alcohol. The two children were left in Mother's care as Father was incarcerated. On September 13, 2010, the two children were placed in foster care because Mother had been arrested for neglect of a dependent and public intoxication after she fell asleep at a restaurant due to intoxication and then attempted to walk herself and the children across a busy highway. On February 23, 2011, Mother gave birth to the youngest child while serving her sentence at a work release facility. DCS immediately filed a CHINS petition for the youngest child, the youngest child was adjudicated a CHINS, and Mother was ordered to complete the services consistent with the CHINS adjudication on the two oldest children.

Mother had successfully completed all required services by May 2011, and the three children were placed in Mother's home for a trial placement in July 2011. On October 7, 2011, the children were removed from Mother's care for a final time after Mother battered her fiancé in the children's presence because he would not give Mother more than the prescribed amount of her prescription medicine. The assault caused physical injury to her fiancé and damage to the inside of the family home. Mother was arrested and incarcerated for this event with an earliest possible release date in January 2013. The children were initially placed in foster care, and then were transferred to the care of paternal grandmother (Grandmother), where they have remained. On February 29, 2012, DCS petitioned to involuntarily terminate Mother's parental rights. After hearing evidence, the trial court terminated Mother's parental rights, and Mother appealed.

The Court opined that DCS presented sufficient evidence that the conditions which resulted in the children’s removal were not likely to be remedied. *Id.* at 289. Citing *In Re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*, the Court said that the trial court must evaluate the parent’s habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *J.C.* at 287. The Court noted that, pursuant to this rule, courts have properly considered evidence of a parent’s prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment, citing *A.F. v. Marion Cnty. Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied. J.C.* at 287. Mother argued that DCS did not present sufficient evidence to support the trial court’s findings that there was a reasonable probability that the conditions that resulted in the children’s removal would not be remedied, because DCS provided inadequate services to her during the CHINS proceedings. The Court said that it was unable to address the adequacy of the services offered to her during the CHINS proceeding because that issue is unavailable during a termination appeal. *Id.*, quoting *In Re H.L.*, 915 N.E.2d 145, 148 n.3 (Ind. Ct. App. 2009) (“failure to provide services does not serve as a basis on which to directly attack a termination order as contrary to law”). In response to Mother’s arguments that four of the trial court’s findings on whether there was a reasonable probability that the reasons for placement outside the home would not be remedied were inaccurate, the Court characterized her arguments as invitations to reweigh the evidence and judge the credibility of witnesses, which the Court cannot do. *Id.* at 288-89. The Court noted one of the disputed findings, which stated that, “[Mother’s] series of criminal acts, arrests and incarceration, participation in reunification services, and subsequent relapses, demonstrates that the conditions that resulted in the children’s removal or the reasons for placement outside the home will not be remedied. They also demonstrate that continuation of the parent-child relationship poses a threat to the child’s well-being.” *Id.* at 289. The Court said that, while this finding has conclusory language, it summarizes the other more specific findings which are all supported by the evidence. *Id.*

The Court opined that the findings supported the court’s conclusion that termination was in the best interests of the children. *Id.* at 291. Mother claimed that DCS had not presented sufficient evidence that termination of her rights was in the children’s best interests. Mother argued that she never harmed her children, and the “DCS providers repeatedly commented on Mother’s tender care for her children, her neat and organized home, and her willingness to comply with the requests of the court and the Department of Child Services.” *Id.* at 290. The Court, citing *In Re J.S.*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009), said that recommendations of the case manager and court appointed advocate, in addition to evidence that the conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in the child’s best interests. *J.C.* at 290. The Court noted the trial court’s findings regarding Mother’s drug use and criminal activity that resulted in the children’s removal more than once, Mother’s incarceration at the time of the termination hearing with a release date in early 2013, and that Mother faced revocation of her probation for an earlier criminal charge. *Id.* The Court opined that Mother’s arguments were invitations for the Court to reweigh the evidence, which the Court cannot do. *Id.*

The Court opined that there was a suitable plan in place for the care and treatment of the children. *Id.* at 291. Mother argued that DCS' plan for care and treatment of the children, namely adoption by Grandmother, was not satisfactory. Mother complained that Grandmother had taken the children to prison to visit Father on numerous occasions, but Grandmother did not allow similar visitation to Mother while Mother was incarcerated. Mother was concerned that, if Grandmother were permitted to adopt, Grandmother might alienate the children from Mother while allowing a relationship with Father, even though both parents' rights had been involuntarily terminated for drug use and criminal activity. The Court responded that its standard of review and the controlling law compelled the Court to hold that the evidence supported the trial court's finding of an adequate plan for the children's future care as a necessary element for termination of Mother's rights. *Id.* at 290. The Court noted that such finding is not tantamount to affirmation that adoption of these children by Grandmother would be in their best interests. *Id.*