

CHAPTER FIFTEEN

POST-TERMINATION

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CHAPTER FIFTEEN

POST-TERMINATION

I. IMPACT ON PARENT POST-TERMINATION

A. ALL RIGHTS AND DUTIES ARE TERMINATED

If the juvenile or probation court terminates the parent-child relationship, all rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, parenting time, or support, pertaining to the relationship, are permanently terminated. Ind. Code § 31-35-6-4(a)(1).

B. NO CONSENT TO ADOPTION

If the juvenile court or probate court terminates the parent-child relationship, the parent's consent to the child's adoption is not required. Ind. Code § 31-35-6-4(a)(2).

In re Adoption of J.M., 10 N.E.3d 16 (Ind. Ct. App. 2013) (because the trial court found that the biological parents were not fit, it did not err in concluding that their consent for J.M. to be adopted was unnecessary).

C. PREVIOUSLY ACCRUED SUPPORT OBLIGATIONS NOT AFFECTED

Any support obligations that accrued before the termination is not affected. However, the support payments shall be made under the juvenile or probate court's order. Ind. Code § 31-35-6-4(b).

II. REFERRAL TO PROBATE COURT FOR ADOPTION OR DISPOSITION ALTERNATIVES

Pursuant to Ind. Code § 31-35-6-1(a), if the juvenile or probation court terminates the parent-child relationship, the court may: (1) Refer the matter to the court having probate jurisdiction for adoption proceedings; or (2) Order any dispositional alternative specified by Ind. Code § 31-34-20-1 or Ind. Code § 31-37-19-1.

Juvenile court does not have exclusive original jurisdiction in adoption proceedings. Petition of Gray, 425 N.E.2d 728, 729 (Ind. Ct. App. 1981).

A. REVIEW EVERY SIX MONTHS UNTIL PETITION FOR ADOPTION FILED

If the juvenile court refers the matter to the court having probation jurisdiction under Ind. Code § 31-35-6-1(a)(1), the juvenile court shall review the child's case every six (6) months until a petition for adoption is filed. Ind. Code § 31-35-6-1(b).

B. GAL/CASA PROCEDURE AFTER ADOPTION REFERRAL

Pursuant to Ind. Code § 31-35-6-2, if the juvenile court or probate court terminates the parent-child relationship and refers the matter to the court having probate jurisdiction for adoption proceedings, the guardian ad litem or court appointed special advocate shall do the following:

- (1) Provide the county department with information regarding the best interests of the child.
- (2) Review the adoption plan as prepared by the county department as to the best interests of the child.
- (3) Report to the court with juvenile jurisdiction and, if requested, to the court having probate

jurisdiction, regarding the plan and the plan's appropriateness in relationship to the best interests of the child.

III. POST-ADOPTION CONTACT

A. BY PARENT

1. Contact may be permitted if Consent to Adoption or Voluntary TPR

Pursuant to Ind. Code § 31-19-16-1, at the time an adoption decree is entered, the court entering the adoption decree may grant post-adoption contact privileges under Ind. Code § 31-19-16-2 to a birth parent who has: (1) Consented to the adoption; or (2) Voluntarily terminated the parent-child relationship.

Conditioning the voluntary TPR on continuing post-adoption visitation irreconcilably conflicts with Indiana adoption law and is not permitted. T.B. v. Indiana Dep't of Child Servs. (In re M.B.), 921 N.E.2d 494, 499 (Ind. 2009).

2. Conditions for post-adoption contact

Pursuant to Ind. Code § 31-19-16-2, a court may grant post-adoption contact privileges if:

- (1) The court determines that the best interests of the child would be served by granting post-adoption contact privileges;
- (2) The child is at least two (2) years of age and the court finds that there is a significant emotional attachment between the child and the birth parent;
- (3) Each adoptive parent consents to the granting of post-adoption privileges;
- (4) The adoptive parents and the birth parents: (A) Execute a post-adoption contact agreement; and (B) File the agreement with the court;
- (5) The licensed child placing agency sponsoring the adoption and the child's court appointed special advocate or guardian ad litem under Ind. Code § 31-32-3 recommends to the court the post-adoption contact agreement, or if there is no licensed child placing agency sponsoring the adoption, the local office or other agency that prepared an adoption report under Ind. Code § 31-19-8-5 is informed of the contents of the post-adoption contact agreement and comments on the agreement in the agency's report to the court;
- (6) Consent to post-adoption contact is obtained from the child if the child is at least twelve (12) years of age; and
- (7) The post-adoption contact agreement is approved by the court.

Statute establishing circumstances for post-adoption visitation for birth parent provides exclusive means of obtaining visitation Sexton v. Rowe (In re A.R.), 723 N.E.2d 476, 478 (Ind. Ct. App. 2000).

3. Post-Adoption Contact Agreement

Pursuant to Ind. Code § 31-19-16-3, a post-adoption contact agreement filed under Ind. Code § 31-19-16-2(4) must contain the following provisions: (1) An acknowledgement by the birth parents that the adoption is irrevocable, even if the adoptive parents do not abide by the post-adoption contact agreement. (2) An acknowledgement by the adoptive parents that the agreement grants the birth parents the right to seek to enforce the post-adoption privileges set forth in the agreement.

4. Petition to Modify or Enforcement of Agreement

Pursuant to Ind. Code § 31-19-16-4, a birth parent or an adoptive parent may file a petition with the court entering the adoption decree for the following purposes: (1) To modify the post-adoption contact agreement. (2) To compel a birth parent or an adoptive parent to comply with the post-adoption contact agreement.

5. Monetary Damages

The court may not award monetary damages as a result of the filing of a petition under Ind. Code § 31-19-16-4. Ind. Code § 31-19-16-5.

6. Voiding or Modifying Post-Adoption Agreement

The court may void or modify a post-adoption agreement approved under Ind. Code § 31-19-16 at any time before or after the adoption if the court determines after a hearing that the best interest of the child requires the voiding or modifying of the agreement. Ind. Code § 31-19-16-6(a).

7. GAL/CASA May Be Appointed

a. Appointment for Certain Hearings

Pursuant to Ind. Code § 31-19-16-6(b), before the court: (1) Voids or modifies an agreement; or (2) Hears a motion to compel compliance with an agreement approved under Ind. Code § 31-19-16; the court may appoint a guardian ad litem or court appointed special advocate under Ind. Code § 31-32-3 to represent and protect the best interests of the child.

b. Provisions of Ind. Code 31-32-3 Apply

The provisions of Ind. Code § 31-32-3 concerning the: (1) representation; (2) duties; (3) liabilities; and (4) appointment; of a guardian ad litem or court appointed special advocate apply to proceedings under Ind. Code § 31-19-16. Ind. Code § 31-19-16-7.

8. Adoption Decree Not Voided For Failure to Comply With Contact Agreement

A court may not revoke an adoption decree because a birth parent or an adoptive parent fails to comply with a post-adoption contact agreement approved by a court under Ind. Code § 31-19-16. Ind. Code § 31-19-16-8.

9. Post-Adoption Contact without Court Approval

Pursuant to Ind. Code § 31-19-16-9, post-adoption contact privileges are permissible without court approval in an adoption of a child who is less than two (2) years of age upon the agreement of the adoptive parents and a birth parent. However, post-adoption contact privileges under this section may not include visitation. A post-adoption agreement under this section: (1) is not enforceable; and (2) does not affect the finality of the adoption.

B. BY SIBLING(S)

1. Order for Post-Adoption Sibling Contact

Pursuant to Ind. Code § 31-19-16.5-1, at the time an adoption decree is entered, the court entering the decree may order the adoptive parents to provide specific post-adoption contact for an adopted child who is at least two (2) years of age with a pre-adoptive sibling if: (1) The court determines that the post-adoption contact would serve the best interests of the adopted child; and (2) Each adoptive parent consents to the court's order for post-adoption contact privileges.

Hinrichs v. Office of Family & Children (In re T.J.F.), 798 N.E.2d 867, 873 (Ind. Ct. App. 2003) (Trial court lacked authority to grant sibling visitation between adopted child and biological sister absent a specific statement in the adoption decree authorizing sibling visitation.).

2. Considerations of Court

Pursuant to Ind. Code § 31-19-16.5-2, in making its determination under Ind. Code § 31-19-16.5-1, the court shall consider any relevant evidence, including the following: (1) A recommendation made by a licensed child-placing agency sponsoring the adoption. (2) A recommendation made by the adopted child's court appointed special advocate or guardian ad litem. (3) A recommendation by the county office of family and children or other agency that prepared a report of its investigation and its recommendation as to the advisability of the adoption under Ind. Code § 31-19-8-5. (4) Wishes expressed by the adopted child or adoptive parents.

3. Effect of Noncompliance with Sibling Contact Order

If post-adoption contact is ordered under Ind. Code § 31-19-16.5, the adoption is irrevocable even if the adoptive parents do not abide by the post-adoption contact order. Ind. Code § 31-19-16.5-3.

4. Vacating or Modifying Sibling Contact Order

a. Persons Entitled to File Petition to Vacate or Modify Sibling Contact Order

Pursuant to Ind. Code § 31-19-16.5-4, the following persons may file a petition requesting that the court vacate or modify a post-adoption contact order with a pre-adoptive sibling or to compel an adoptive parent to comply with the post-adoption contact order: (1) A pre-adoptive sibling by: (A) next friend; or (B) guardian ad litem or court appointed special advocate. (2) The adopted child by: (A) next friend; or (B) guardian ad litem or court appointed special advocate as described in Ind. Code § 31-19-16.5-5. (3) An adoptive parent.

b. Court May Vacate Sibling Contact Order at Any Time

The court may vacate or modify a post-adoption contact order entered under Ind. Code § 31-19-16.5 at any time after the adoption if the court determines after a hearing, that it is in the best interests of the adopted child. Ind. Code § 31-19-16.5-5.

c. Guardian Ad Litem/CASA May Be Appointed

Before hearing the petition to: (1) vacate or modify; or (2) compel compliance with; the post-adoption contact order, the court may appoint a guardian ad litem or court appointed special advocate to represent and protect the best interests of the adopted child. However, the court may only appoint a guardian ad litem or court appointed special advocate for the adopted child under Ind. Code § 31-19-16.5 if the interests of an adoptive parent differ from the child's interests to the extent that the court determines that the appointment is necessary to protect the best interests of the child. Ind. Code § 31-19-16.5-5.

d. GAL/CASA Provisions Apply

The provisions regarding the representation, duties, and appointment of a guardian ad litem or court appointed special advocate by a juvenile court described under Ind. Code § 31-32-3 apply to a post-adoption contact proceedings under Ind. Code § 31-19-16.5. Ind. Code § 31-19-16.5-6.

5. No Monetary Damages or Revocation of Adoption for Violations

The court may not: (1) award monetary damages; or (2) revoke an adoption decree; if the court finds that a post-adoption contact order entered under Ind. Code § 31-19-16.5 has been violated. Ind. Code § 31-19-16.5-7.

IV. APPEAL

See also the Appellate Practice Manual available from the Indiana Public Defender Council.

Appeals may be taken as provided by law. Ind. Code § 31-32-15-1.

PRACTICE POINTER: CHINS/TPR Checklist (courtesy of Marion County Public Defender Agency, Appellate Division):

____ I have double-checked the due date for my brief. Neither late briefs nor extensions of time are available in CHINS and TPR appeals.

____ I know if an attorney for the GAL has entered an appearance.

____ If an attorney for the GAL has entered an appearance, that attorney is included in my certificates of service.

____ I have certified that I have completed service of the Appellant's Appendix to all parties of record.

A. FINAL APPEALABLE ORDER

The Order terminating parental rights is a final, appealable Order.

Cf. CHINS cases (in CHINS case, the disposition order is the final appealable order)

G.B. v. Dearborn County Div. of Family & Children (In re G.B.), 754 N.E.2d 1027 (Ind. Ct. App. 2001) (Court continued disposition hearing for further proceedings. Disposition order from second hearing was the final, appealable order.).

In re J.L.V., 667 N.E.2d 186, 188 (Ind. Ct. App. 1996) (CHINS determination is not final, appealable order. Entry of a dispositional order following the dispositional hearing would constitute a final, appealable order.).

Vega v. Allen County Dep't of Family & Children Servs. (In re J.V.), 875 N.E.2d 395, 399 (Ind. Ct. App. 2007) ("Only after a dispositional hearing has been held is there a final, appealable order because the disposition finally determines the rights of the party.").

1. Specific Findings Required in Order

Ind. Code § 31-35-2-8 was amended in 2012 to require the court to issue findings in support of a TPR order. The court shall enter findings of fact that support the entry of the conclusions required by Ind. Code § 31-35-2-8(a) Ind. Code § 31-35-2-8(a) and -8(b). Ind. Code § 31-35-2-8(c)-8(b). Ind. Code § 31-35-2-8(c).

Even before the 2012 amendment, the court of appeals applied TR 52(A) to require findings of fact in termination cases.

Moore v. Jasper County Dep't of Child Servs., 849 N.E.2d 218, 224 (Ind. Ct. App. 2008) (in ordering termination of mother's parental rights, trial court did not make the required TR. 52(A) findings of fact, but merely recited evidence from the termination hearing and, thus, did not provide a suitable nexus for its conclusions of law. State did not show by clear and convincing evidence that termination was proper pursuant to Ind. Code § 31-35-2-4(b)(2). Parks v. Delaware County Dep't of Child Servs., 862 N.E.2d 1275, 1278 and 1281 (Ind. Ct. App. 2007) Although a trial court is not statutorily required to make particular findings in termination cases, "once the trial court walks down the path of

making findings, it is bound under Trial Rule 52(A) to make findings that support the judgment. While the rights of parents to raise their children as they see fit pursuant to the Fourteenth Amendment to the United States and Ind. Const. art. I, § 12 Ind. Const. art. I, § 12 is not absolute, the trial court was required to find the facts specially and it abdicated that obligation when most of its findings concerning the two children amounted to stating that "the witness testified.").

Cf. CHINS

J.Q. v. Indiana Dep't of Child Servs., 836 N.E.2d 961, 967 (Ind. Ct. App. 2005) (Trial court failed to adequately state reasons for CHINS disposition, which resulted in a remand to follow the requirements of Ind. Code § 31-34-13-3. Record that existed was vague and was not adequate for appellate review.).

B. MOTION TO CORRECT ERROR

1. Not a prerequisite for appeal unless newly discovered evidence

Pursuant to Ind. Trial R. 59(A)(1), a motion to correct error is not a prerequisite for appeal except when a party seeks to address:

- (1) Newly discovered material evidence, including alleged jury misconduct, capable of production within thirty (30) days of final judgment, which, with reasonable diligence, could not have been discovered and produced at trial[.]

All other issues and grounds for appeal appropriately preserved during trial may be initially addressed in the appellate brief.

2. Motion not allowed when DCS challenges order requiring provision of services

No motion to correct error is allowed concerning orders or decrees issued pursuant to Indiana Code § 31-34-4-7(e), Ind. Code § 31-34-19-6.1(e), Ind. Code § 31-37-5-8(f) or Ind. Code § 31-37-18-9(b). Appeals of such orders and decrees shall proceed as prescribed by Indiana Appellate Rule 14.1. Ind. T.R. 59(K).

3. Who may file motion to correct error

The motion to correct error, if any, may be made by the trial court, or by any party. Ind. T.R. 59(B).

4. Timing of Motion to Correct Error

The motion to correct error, if any, shall be filed not later than thirty (30) days after the entry of a final judgment is noted in the Chronological Case Summary. Ind. T.R. 59(C).

C. TIMING OF APPEAL - NOTICE OF APPEAL

1. Filing the Notice of Appeal

A party initiates an appeal by filing a Notice of Appeal with the Clerk [of the Court of Appeals] as defined by Ind. App. R. 2(D) within thirty (30) days after the entry of a Final Judgment is noted in the Chronological Case Summary. However, if any party files a timely motion to correct error, a Notice of Appeal must be filed within thirty (30) days after the court's ruling on such motion, or thirty (30) days after the motion is deemed denied under Trial Rule 53.3, whichever occurs first. Ind. App. R. 9(A).

F.L. v. Ind. Dep't of Child Servs. (In re D.L.), 952 N.E.2d 209, 212-13 (Ind. Ct. App. 2011) (Notice of Intent timely filed, but not the Notice of Appeal. Notice of Intent had the purpose of getting pauper counsel appointed. The Notice of Appeal's purpose was to alert the trial court and the parties of the initiation of an appeal and to trigger action by the trial court clerk and court reporter, setting in motion the filing deadlines imposed by the Appellate Rules.).

2. Timely Filing of Notice of Appeal No Longer a Jurisdictional Prerequisite

While Appellate Rule 9(A)(5) states that "the right to appeal shall be forfeited" unless the Notice is timely filed, neither that rule nor any other appellate rule states that such a failure deprives an appellate court of jurisdiction over an appeal. O.R. v. K.G., 16 N.E.3d 965 (Ind. 2014). Thus, a belated Notice of Appeal is a legal error by which an appeal is forfeited, but it does not deprive appellate courts of authority to, in their discretion, entertain such an appeal. Id. The fact that Appellate Rule 1 allows an appellate court to, on its own motion, to "permit deviation from these Rules" is a recognition that a court may assume jurisdiction over a forfeited appeal. Id.

3. No Ethical Duty to File Notice of Appeal For Absent Client

For example, In re I.B., 933 N.E.2d 1264, 1271 (Ind. 2010) (Indigent mother's trial attorney had no basis to file appeal of TPR order, and, thus, appellate counsel could not be appointed, where mother had failed to appear for TPR hearing and had no contact with attorney or the State for months prior to TPR and following the TPR. Rules of Professional Conduct, guidance from other jurisdictions, and the principal policy of TPR adjudications dictate that counsel could not effectively and ethically represent that mother wanted to file an appeal.).

4. Expedited Appeals – DCS Initiated “Rocket Docket” Appeal Concerning Payment of Placement and/or Services

a. Only applies to orders for services to be paid for by DCS

The expedited appeal rule only governs appellate review per Indiana Code § 31-34-4-7(f) [CHINS predisposition services], Ind. Code § 31-34-19-6.1(f) [CHINS disposition services], Ind. Code § 31-37-5-8(g) [JD predisposition services], and Ind. Code § 31-37-18-9(d) [JD disposition services]. All other appeals concerning children alleged to be a delinquent are not covered by this rule. Ind. App. R. 14.1(A).

b. DCS must file notice of expedited appeal within five days of order

DCS shall conventionally file a Notice of Expedited Appeal with the Clerk within five (5) business days after the court's order of placement and/or services is noted in the Chronological Case Summary. Ind. App. R. 14.1(B)(1).

c. Additional notices

On the same day DCS conventionally files the Notice of Expedited Appeal, it shall serve the Notice on the trial court judge, the clerk of the trial court, the court reporter (if a transcript, or any portion of a transcript is requested), the county commissioners, the guardian ad litem, CASA, any juvenile who is the subject of the order if 14 years of age or older, counsel for the juvenile, the parents of the juvenile, the Attorney General, in the case of a juvenile delinquency matter the Chief Probation Officer and Prosecutor, and any other party of record. Ind. App. R. 14.1(B)(2).

d. Trial court is a party

The trial court shall be considered a party to the Appeal if it files a timely appearance. Ind. App. R. 14.1(B)(6).

e. Parties must file an appearance to remain a party

Any party who has received the Notice of Expedited Appeal shall have five (5) business days from service of the Notice of Expedited Appeal to file an Appearance and request any additional other items to be included in the record. Failure to file an Appearance shall remove that party from the Appeal. Ind. App. R. 14.1(B)(5).

f. Transcript and clerk's record takes priority over all other appeals

The completion of the Transcript and Record on Appeal shall take priority over all other appeal transcripts and records. Ind. App. R. 14.1(C)(1).

g. Any party may file a memoranda

Any party on Appeal may file a memorandum. Ind. App. R. 14.1(D)(1).

h. Does not follow normal brief rules

The memorandum may be in narrative form and need not contain the sections under separate headings listed in Appellate Rule 46(a). Ind. App. R. 14.1(D)(1).

i. Ten-page or 4,200 word limit

Memoranda shall not exceed ten (10) pages unless limited to 4,200 words and shall adhere to the requirements of Appellate Rules 43(A)-(H) and (J). Memoranda exceeding ten (10) pages in length shall contain the word count certification required by Appellate Rule 44(F). Ind. App. R. 14.1(D)(2).

j. DCS has five days to file memorandum

DCS shall have five (5) business days from the notation in the Chronological Case Summary of the filing of the Notice of Completion of Transcript (or the Notice of Completion of Clerk's Record if a transcript is requested) to file a memorandum stating why the trial court's decision should be reversed. DCS's memorandum shall be accompanied by an Appendix that shall contain copies of all relevant pleadings, motions, orders, entries, and other papers filed, tendered for filing, or entered by the trial court, including but not limited to the pre-dispositional report and all attachments thereto. Ind. App. R. 14.1(D)(3).

k. Responding parties have five days to file response memorandum

Any responding party shall file five (5) business days after DCS has filed its memorandum to file a responsive memorandum stating why the decision should be sustained or reversed, and to file any accompanying supplemental Appendix. Ind. App. R. 14.1(D)(4).

l. No reply memorandum

No reply memorandum shall be allowed. Ind. App. R. 14.1(D)(5).

m. No extensions of time

Extensions of time are not allowed. Ind. App. R. 14.1(E).

n. No rehearing

A party may not seek rehearing of an appellate decision issued under this rule. Ind. App. R. 14.1(F).

o. Petition to transfer

A Petition to Transfer must be filed no later than five (5) business days after the adverse decision of the Court of Appeals. Ind. App. R. 14.1(H).

p. Payment for placement and/or services when DCS prevails

If DCS prevails on appeal, payment shall be made in accordance with Indiana Code § 31-34-4-7(g) [CHINS predisposition services], Ind. Code § 31-34-19-6.1(g) [CHINS disposition services], Ind. Code § 31-37-5-8(h) [JD predisposition services], or Ind. Code § 31-37-18-9(e) [JD disposition services], as the case may be. Ind. App. R. 14.1(G).

Pursuant to Ind. Code § 31-37-5-8(h) and Ind. Code § 31-37-18-9(e), if the department prevails on appeal, the department shall pay the following costs and expenses incurred by or on behalf of the child before the date of the final decision:

(1) DCS pays for services

Any programs or services implemented during the appeal, other than the cost of an out-of-home placement ordered by the juvenile court.

(2) DCS pays for out of home placement only if emergency findings were made

Any out-of-home placement ordered by the juvenile court and implemented after the court order, if the juvenile court has made written findings that the placement is an emergency required to protect the health and welfare of the child.

D. CONFIDENTIALITY OF APPEAL

1. All CHINS & TPR Records are Confidential

Pursuant to Ind. Code § 31-39-1-2, all juvenile court records subject to this chapter are confidential and are available only in accordance with Ind. Code § 31-39-2. The court shall take appropriate actions to protect juvenile court records governed by this chapter from unauthorized disclosure.

2. All records must be excluded from public access

Pursuant to Administrative Rule 9(G)(1), the following must be excluded from Public Access: (a) Entire cases where all Court Records are declared confidential by statute or other court rule[.]

3. Because all records confidential, no notice of exclusion necessary

Pursuant to Appellate Rule 23(F)(3)(a)(ii), in cases where all Court Records are excluded from Public Access in accordance with Administrative Rule 9(G)(1), no notice of exclusion from Public Access is required.

4. Green paper requirements do not apply

Pursuant to Administrative Rule 9(G)(5)(b)(iii), the green paper requirements set forth in 9(G)(5)(b) do not apply to cases in which all Court Records are excluded from Public Access pursuant to 9(G)(1).

PRACTICE POINTER: When filing in a CHINS/TPR case on appeal, be sure to choose “confidential document under Admin. Rule 9” as the e-filing security code. App. R. 23 (F)(4)(c).

For more information on confidentiality requirements on appeal, review Appellate Rule 23(F), Administrative Rule 9(G).

E. STANDARD OF REVIEW

When reviewing findings of fact and conclusions of law, trial court will only be reversed if clearly erroneous; Court of Appeals uses two-tier standard of review: (1) were findings supported by evidence and (2) was judgment supported by findings. Hallberg v. Hendricks County Office of Family & Children, 662 N.E.2d 639, 643 (Ind. Ct. App. 1996); and Bester v. Lake Cnty. Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005).

A judgment is clearly erroneous if it relies on an incorrect legal standard. E.B. v. Ind. Dep’t of Child Servs. (In re Des.B.), 2 N.E.3d 828, 836 (Ind. Ct. App. 2014). See also Johnson v. Lake County Office of Family & Children (In re R.J.), 829 N.E.2d 1032, 1035 (Ind. Ct. App. 2005). “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996).

Any issues not covered by the trial court's findings are reviewed under the general judgment standard, "under which a judgment will be affirmed if it can be sustained on any legal theory supported by the evidence. J.B. v. Ind. Dep't of Child Servs. (In re S.D.), 2 N.E.3d 1283, 1287 (Ind. 2014). If the evidence and inferences support the trial court's decision, the appellate court must affirm. L.S. v. Noble County Dep't of Family & Children, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

It is precisely because the judge or magistrate presiding at a termination hearing has a superior vantage point for assessing witness credibility and weighing evidence that we give great deference to a trial court's decision to terminate a parent's rights. E.M. v. Ind. Dep't of Child Servs. (In re E.M.), 4 N.E.3d 636, 642-43 (Ind. 2014). The appellate courts must be careful not to substitute our judgment for the trial court when reviewing the sufficiency of the evidence. Weighing the evidence is the trial court's prerogative. Id. The appellate court only considers the evidence that supports the judgment and the reasonable inferences to be drawn from the evidence. Peterson v. Marion County Office of Family & Children (In re D.D.), 804 N.E.2d 258, 265 (Ind. Ct. App. 2004). The review is confined to two steps: (1) whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly and convincingly support the judgment. K.T.K. v. Indiana Dep't of Child Servs., 989 N.E.2d 1225, 1229-30 (Ind. 2013).

Clear error is that which leaves us with a definite and firm conviction that a mistake has been made. J.M. v. Marion Cnty. Office of Family & Children, 802 N.E.2d 40, 44 (Ind. Ct. App. 2004).

"The improper admission of evidence is harmless error when the judgment is supported by substantial independent evidence to satisfy the reviewing court that there is no substantial likelihood that the questioned evidence contributed to the judgment." In re Termination of Parent-Child Relationship of E.T., 808 N.E.2d 639, 646 (Ind. 2004). The appellate court will find an abuse of discretion only where the trial court's decision is against the logic and effect of the facts and circumstances before the court—not all error is reversible. Id.

F. RIGHT TO COUNSEL

A parent's statutory right to counsel continues through all stages of the TPR proceeding, included all states of the TPR case, including appeal. In re I.B., 933 N.E.2d 1264, 1267 (Ind. 2010).

B.G. v. Ind. Dep't of Child Servs. (In re J.G.), 4 N.E.3d 814, 817-18 (Ind. Ct. App. 2014) (Mother requested pauper counsel, which was not appointed until the 30th day of the appellate deadline. Notice of Intent to File was filed within the deadline. The Notice of Appeal was filed late and the appeal was dismissed. The Notice of Intent to Appeal did not have the information required to fulfill the Appellate Rule 9(F) Notice of Appeal requirements. The mother was not eligible to file a belated appeal under PCR 2, as would a criminal defendant, and she forfeited her right to appeal.).

G. JUDICIAL NOTICE OF OTHER PROCEEDINGS

Ind. Evidence Rule 201 was modified effective Jan. 1, 2010, to allow a court to take judicial notice of "records of a court of this state."

In re D.K., 968 N.E.2d 792 (Ind. App. 2012) (I.R.E. 201(b) allows trial courts to take judicial notice of records of other court proceedings, but if a court does so, there must be some effort made to include such "other" records in the record of the current proceeding. If a party on appeal wishes to rely on parts of the "other" record or records in making an argument before the court of appeals, it should include those parts in an appendix submitted to the court under AP. 50).

H. APPELLATE COURT IS RESTRICTED TO ONLY CONSIDER THE TRIAL COURT'S RECORDS

Inaction by father of illegitimate child to have child declared a dependent child and made a ward of court, report of probation officer as to an investigation of home of mother of child was not proper evidence for appeal because it was not part of the trial court's record. Groves v. State, 138 N.E.2d 295, 298 (Ind. Ct. App. 1956).

I. MUST RAISE ISSUES AT TRIAL-LEVEL FIRST

A parent may waive a due-process claim in a CHINS or termination proceeding by raising that claim for the first time on appeal. McBride v. Monroe Cnty. Office of Family & Children, 798 N.E.2d 185, 194-95 (Ind. Ct. App. 2003).

J. COLLATERAL ESTOPPEL

The appellate court may not address the adequacy of services offered during the CHINS proceedings because that issue is unavailable during an appeal following termination of parental rights. A.Z. v. Marion County Dep't of Child Servs. (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." Id.

Adams v. Marion County Office of Family & Children, 659 N.E.2d 202, 206 (Ind. Ct. App. 1995) (Parents were collaterally estopped in TPR appeal from appealing determination that father molested child in CHINS disposition, which was a final appealable order within the CHINS cause.).

K. REFERRAL FOR ADOPTION POSSIBLE WHILE APPEAL PENDING

An appeal of a court's decision regarding the termination of the parent-child relationship does not prevent the court in the court's discretion from referring the matter for adoption proceedings while the appeal is pending. Ind. Code § 31-35-6-3.

C.A.B. v. J.D.M. (In re Adoption of C.B.M.), 992 N.E.2d 687 (Ind. 2013) The Indiana Supreme Court strongly cautioned trial courts against referring children for adoption while a termination appeal is still pending "in view of the potentially devastating consequences of having an adoption invalidated by a TPR."

Kilbert v. Marion County Office of Family & Children (In re A.K.), 755 N.E.2d 1090, 1098 (Ind. Ct. App. 2001) (Mother requested a stay of adoption proceedings pending appeal, which the court denied; the court did not abuse its discretion in denying the request for the stay where the evidence did not show that the trial court's decision to terminate parental rights was likely to be overturned on appeal).

PRACTICE POINTER: Either party may request a temporary stay of judgment to set aside the court's order while the appeal is pending. The stay should be requested through the trial court first. If not granted by the trial court, then request the stay through the appellate court. When appropriate and in the child's best interest, DCS may continue providing services, including visitation, to the family during the appellate process.

V. TRIAL RULE 60(B)

(B) Mistake -- Excusable neglect -- Newly discovered evidence -- Fraud, etc. -- On motion and upon such terms as are just the court may relieve a party or his legal representative from a judgment, including a judgment by default, for the following reasons:

- (1) mistake, surprise, or excusable neglect;
- (2) any ground for a motion to correct error, including without limitation newly discovered

evidence, which by due diligence could not have been discovered in time to move for a motion to correct errors under Rule 59;

- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) entry of default or judgment by default was entered against such party who was served only by publication and who was without actual knowledge of the action and judgment, order or proceedings;
- (5) except in the case of a divorce decree, the record fails to show that such party was represented by a guardian or other representative, and if the motion asserts and such party proves that
 - (a) at the time of the action he was an infant or incompetent person, and
 - (b) he was not in fact represented by a guardian or other representative, and
 - (c) the person against whom the judgment, order or proceeding is being avoided procured the judgment with notice of such infancy or incompetency, and, as against a successor of such person, that such successor acquired his rights therein with notice that the judgment was procured against an infant or incompetent, and
 - (d) no appeal or other remedies allowed under this subdivision have been taken or made by or on behalf of the infant or incompetent person, and
 - (e) the motion was made within ninety (90) days after the disability was removed or a guardian was appointed over his estate, and
 - (f) the motion alleges a valid defense or claim;
- (6) the judgment is void;
- (7) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (8) any reason justifying relief from the operation of the judgment, other than those reasons set forth in subparagraphs (1), (2), (3), and (4).

K.E. and W.E. v. Marion County Office of Family & Children, 812 N.E.2d 177, 180 (Ind. Ct. App. 2004) (Mother's T.R. 60(B)(8) motion that was filed two years after the TPR was not reasonable under the circumstances. The court relied heavily on the fact that the children had been adopted and "presumably established a sense of stability in their new family.").

VI. NO HABEAS CORPUS

The U.S. Supreme Court has held that a writ of habeas corpus was not available for collateral attacks on state termination decisions; the Court reasoned that the parents could not avail themselves of federal habeas relief where the action did not seek to litigate any liberty interests of the children but rather sought to re-litigate the parents' own interests in their parental rights. Lehman v. Lycoming County Children's Servs. Agency, 458 U.S. 502, 511 (1982).