

# Children's Law Center of Indiana



## CHINS

6/13/12

In **B.N. v. Marion County Dept. of Child Serv.**, 969 N.E.2d 1021 (Ind. Ct. App. 2012), the Court concluded that the evidence was insufficient to support the juvenile court's determination that the children are CHINS, and reversed the CHINS determination. On May 26, 2011, police stopped Mother in the parking lot of a gas station, and found oxycodone, Xanax, and marijuana in her car. Mother's seven-year-old son was in the back seat of the car. Police also discovered that Mother's driver's license was suspended. Mother was taken into custody by police and charged with possession of marijuana and possession of oxycodone, a controlled substance. The Department of Child Services (DCS) took custody of Mother's seven-year-old son and three-year-old daughter. On May 31, DCS filed a CHINS petition alleging that Mother had failed to provide the children with a "safe and appropriate living environment free from drugs" and that the children were CHINS under IC 31-34-1-1, which provides that a child is a CHINS if "[t]he child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision." Because Mother wished to have the children returned to her care, Mother voluntarily submitted to four drug screens in June and July. At each drug screen, Mother provided DCS staff with current prescriptions for oxycodone and Xanax. Mother tested negative at each drug screen, the children were returned to her care in mid-July, and Mother voluntarily submitted to a fifth drug screen, which was also negative. At the fact-finding hearing on October 17, DCS introduced evidence on: (1) Mother's May 26 arrest; (2) Mother's previous involvement with DCS four year earlier when DCS substantiated claims of domestic violence by the children's father against Mother; (3) Mother's voluntary negative drug screens; (4) Mother's voluntary participation in home-based services, although at the time of the hearing she was no longer doing so. The DCS family case manager testified that: (1) DCS had made a referral for a substance-abuse assessment for Mother and mental-health assessments for the children, but those assessments had not been completed; (2) Mother had recently been ordered to undergo random drug screenings, but Mother, who did not have a valid driver's license, had not reported to these screenings; (3) Mother and the children were living in a house that Mother was renting, and Mother was employed; (4) to her knowledge, Mother no longer saw the children's father.

Mother's evidence included: (1) a prescription for oxycodone, which was valid at the time of her arrest; (2) Mother's testimony that she had been taking Xanax and oxycodone with valid prescriptions since 2007; (3) she had a protective order against the children's father and no

longer saw him. Mother did not produce a prescription for the Xanax. The juvenile court entered findings of fact and conclusions of law and adjudicated the children CHINS.

**The Court concluded that the trial court's CHINS determination was clearly erroneous because there was simply no evidence that the children's physical or mental condition was seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of Mother to supply the children with necessary food, clothing, shelter, medical care, education or supervision.** Id. at 1026. The Court opined that DCS did not meet the burden required by IC 31-34-1-1. Id. at 1025. The Court noted that the following evidence presented at the fact-finding did not meet the burden: (1) although Mother was charged with possession of marijuana and admitted using marijuana in the past, she tested negative at each drug screening; (2) Mother presented the court with a prescription for oxycodone, which was valid at the time she was arrested; (3) Mother was not charged with any crime relating to her possession of Xanax. Id. at 1026. The Court opined that the other facts relied upon by the juvenile court also failed to establish that the children were impaired or endangered, in that with respect to Mother's participation in services, Mother volunteered to participate in services after her arrests; these were not mandatory services required by DCS. Id. The Court noted that Mother's participation in services, to the extent it would be relevant, would go to whether the coercive intervention of the court was needed. Id. at 1026 n.3. The Court said that it need not reach the second prong of IC 31-34-1-1, however, because it concluded that DCS failed to prove the first prong of the section. Id. The Court further noted that Mother's previous DCS involvement stemmed from a domestic violence incident four years ago, and Mother confirmed the family case manager's testimony that Mother no longer saw the perpetrator and had a protective order against him. Id. at 1026. The Court observed that, finally, there was no evidence that Mother's suspended driver's license had any effect on the condition of the children. Id.