

Children's Law Center of Indiana



CHINS (DCS Liability)

10/17/12

In **D.L. v. Huck**, 978 N.E.2d 429 (Ind. Ct. App. 2012), the Court affirmed in part, reversed in part, and remanded the Family's complaint against the Department of Child Services (DCS) for further proceedings. Father, Paternal Aunt and Uncle (Aunt and Uncle), Grandfather, and the child (Family) had brought suit against DCS, asserting multiple claims, including negligence, fraud, intentional infliction of emotional distress, and violation of due process rights. The child, born on March 11, 2008, to married parents, was removed from Mother's care two days after birth. A CHINS petition was filed, and the child was determined to be a CHINS. Father, who had been working out of state as an airline contractor, returned to Indiana because of the CHINS proceeding and began participating in weekly visits with the child. Believing that he could not care for the child due to the demands of his job, Father turned to Aunt and Uncle who sought custody of the child. Before placing the child with Aunt and Uncle, DCS completed a home study and comprehensive background check of Aunt and Uncle. DCS noted that the Indiana Sex Offender Registry revealed no prior charges or allegations and that there were no prior DCS charges or complaints against Aunt and Uncle. DCS placed the child with Aunt and Uncle on June 25, 2008, and Father continued his weekly supervised visits. In November of 2008, Father had a conversation with DCS, and was told that if he consented to the child's adoption by Aunt and Uncle and voluntarily terminated his parental rights, he would not have to participate in services and could visit the child at will. Based on that conversation, and believing that Aunt and Uncle could provide a better home for the child, Father stopped participating in services and instead began visiting the child almost daily in the home of Aunt and Uncle.

By February 2009, DCS's plan for the child had changed to adoption and Mother and Father had voluntarily terminated their rights, explaining that they thought adoption by Aunt and Uncle was in the child's best interest and that Aunt and Uncle had taken good care of the child.

Immediately prior to the termination hearing, counsel for DCS confirmed with Father that Aunt and Uncle would be able to adopt the child. At the end of the hearing, the court ordered the termination of Father's and Mother's parental rights and authorized the immediate filing of a petition to adopt the child by Aunt and Uncle. The following month, DCS appeared at the home of Aunt and Uncle and removed the child from their custody without a court order. The removal

was based on a twenty-year-old child abuse report against Uncle that DCS had recently found, in which Uncle's then sixteen-year-old daughter accused him of sexually abusing her when she was eight to ten years old. The report was "substantiated" based solely on the daughter's statement when it was made in 1998. When the report was made, DCS did not perform a comprehensive investigation, did not interview Uncle, Aunt or any of the children residing with Uncle and did not provide a copy of the report to Aunt or Uncle. The allegation was never the subject of a CHINS action or any criminal charges. Aunt and Uncle were unaware that there had been a substantiated allegation against Uncle until DCS appeared and removed the child from their home.

After the child's removal, DCS denied Aunt and Uncle any opportunity to address the allegation to challenge the child's removal. DCS withdrew its consent to the adoption petition, and prohibited the Family from having any contact with the child. Father sought custody, but was denied based on the termination of his parental rights. Grandfather also sought and was denied custody. The child was placed in the home of a couple who had no previous relationship with the child but who were personal friends of the regional director of the Indiana Department of Child Services. Father endeavored to have the order terminating his parental rights set aside, and DCS opposed his efforts. The trial court denied Father's motion, but the Court of Appeals reversed the trial court. In Re K.L., 922 N.E.2d 102 (Ind. Ct. App. 2010). After the appeal, Father was allowed to resume contact with the child, who was returned to Father's custody in August of 2010.

The Family brought suit against DCS, which filed a motion to dismiss. The trial court granted dismissal of seven of the eight counts, holding the claims were barred by quasi-judicial immunity because they were based on allegations that DCS acted wrongly in the course of duties within the CHINS proceeding for the child. The trial court also concluded that Aunt, Uncle and Grandfather lacked standing to bring the claims against DCS because they did not have a custodial relationship with the child prior to the CHINS proceeding. The court allowed one claim to go forward, in which Uncle claimed negligence on the part of DCS regarding the substantiated report. The Family appealed the dismissal of their other seven claims.

The Court concluded that DCS was not entitled to quasi-judicial immunity for any of the actions underlying Family's complaint because there was no court oversight of DCS's actions and decisions, and DCS was not implementing a court order. Id. at 435. The Court, citing H.B. v. State of Indiana – Elkhart Div. of Family & Children, 713 N.E.2d 300, 302 (Ind. Ct. App. 1999), *trans. denied*, noted that it is well-settled that judges are entitled to absolute judicial immunity from suits for money damages for all actions taken in the judge's judicial capacity, unless those actions are taken in the complete absence of any jurisdiction. D.L. at 433. The Court further observed that: (1) the underlying purpose of the immunity is to preserve

judicial independence in the decision-making process; (2) the same underlying policy justifies granting immunity to non-judicial officers who perform quasi-judicial functions; (3) this quasi-judicial immunity is given to people “performing tasks so integral or intertwined with the judicial process that these persons are considered an arm of the judicial officer who is immune.” H.B., 713 N.E.2d at 302. D.L. at 433. The Court, citing Forrester v. White, 484 U.S. 219, 224 (1988), noted that, to determine which acts are covered by quasi-judicial immunity, the U.S. Supreme Court has adopted a functional approach, where the court looks to the nature of the function performed rather than the identity of the actor who performed it. D.L. at 433. The Court noted that even judges are not immune for acts that stem from functions that are not adjudicative. D.L. at 433, citing Forrester, 484 U.S. at 219. Quoting Antoine v. Byers & Anderson, Inc., 508 U.S. 429, 435-36 (1993), the Court said that the “touchstone” when applying the functional approach is “performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights.” D.L. at 433.

The Court said that the question in the instant case is which, if any, of the actions underlying the Family’s complaint were so integral or intertwined with the judicial processes that, in performing them, DCS would be considered an arm of the court and thus immune. Id. The Court observed that, in the instant case, DCS’s actions were not nearly as closely tied to a judicial proceeding as the situation in H.B. v. State of Indiana, 713 N.E.2d 300. D.L. at 434. In H.B., the Court held that DFC (previous name for DCS) was entitled to immunity because it was acting in accordance with a court order to monitor the progress of children who had been adjudicated CHINS and the DFC’s failure to report to law enforcement occurred in the course of court-ordered duties after the children were adjudicated CHINS. D.L. at 434. The Court looked to Millspaugh v. Cnty. Dept. of Pub. Welfare of Wabash Cnty., 937 F.2d 1172 (7th Cir. 1991), cert. denied, 502 U.S. 1004 (1991), in which mothers brought suit against the department of public welfare after one of its social workers initiated and was involved in a CHINS proceeding involving the mothers’ children. D.L. at 434-35. In Millspaugh, 937 F.2d at 1176-77, the worker was not given absolute immunity for the application for the initial CHINS order, which was deemed analogous to seizing evidence under a warrant and would have injured the mothers “even had the state court resolved all questions in their favor.” D.L. at 435. The Court said that, in the instant case, after parental rights were terminated and adoption by Aunt and Uncle was pending, while DCS might be expected to sign off on the final adoption, DCS was not acting directly at the instruction of a court, failed to seek a court order for the child’s removal, and no court reviewed the removal of the child or any of DCS’s subsequent actions or decisions. Id. The Court opined that, because, in the instant case, DCS was not actively engaged with the court and the child was seized without a court order, the facts more closely fit the types of actions for which the Millspaugh court determined that immunity was not appropriate. Id. The Court said that the actions complained of

by the Family were not sufficiently intertwined with the judicial process to qualify for quasi-judicial immunity. Id.

The Court held that IC 31-25-2-2.5 entitled DCS to statutory immunity for all of the dismissed claims with the exception of the claim for fraud, which the Court allowed to move forward. Id. at 436. The Court noted that IC 31-25-2-2.5 provides, regarding DCS, that “[t]he following are not personally liable, except to the state, for an official act done or omitted in connection with performance of duties under this title: (1) The director of the department. (2) Other officers and employees of the department.” Id. at 435. The Court said that there is no published case law interpreting this statute, but, in interpreting a statute, the Court’s goal is to give effect to the intent of the legislature, and the Court is guided by the principle that the best evidence of the legislature’s intent is the language of the statute itself. Id., citing Robinson v. Gazvoda, 783 N.E.2d 1245, 1250 (Ind. Ct. App. 2003), *trans. denied*. The Court opined that the statute grants an immunity that is broader than that of quasi-judicial immunity, in that it specifically encompasses both actions and omissions, and does not apply only to actions taken in conjunction with a court. D.L. at 435. The Court said that, most of Family’s claims are for harms that occurred as the result of actions or omissions that could reasonably be seen to be within the duties of DCS employees, but the fraud claim is based on alleged acts that would not be within DCS’s duties, and therefore, would not be protected by immunity. Id. at 435-36. The Court further said that, although the statute applies only to DCS employees and not to the organization itself, the only way to reach the organization is through the doctrine of respondeat superior; thus, once DCS employees are given immunity, DCS as a whole effectively has immunity for those actions and omissions. Id. at 436.

The Court determined that Aunt and Uncle had a liberty interest in their relationship with the child, such that they had standing to bring suit, and that Grandfather did not have standing to bring suit. Id. at 438. The Court, citing Smith v. City of Hammond, 848 N.E.2d. 333, 339 (Ind. Ct. App. 2006), *trans. denied*, defined standing as the question of whether a party has an actual demonstrable injury for purposes of a lawsuit. D.L. at 436. The Court said that a determination that Aunt, Uncle, or Grandfather had standing would necessarily be based on a determination that they had a protectable liberty interest in their family unit with the child. Id. The Court looked to Smith v. Org. of Foster Families for Equal. & Reform, 431 U.S. 816, 844 (1977), in which the United States Supreme Court recognized that strong bonds can form in the absence of blood relationships and noted that in the right circumstances, a foster family may “hold the same place in the emotional life of the foster child, and fulfill the same socializing functions, as a natural family.” D.L. at 436. The Court opined that it seemed “at odds with reality” to conclude that Aunt and Uncle did not have any liberty interest with the child. Id. at 437. The Court noted the following: (1) Aunt and Uncle had a pre-existing biological

relationship with the child that is not typical of foster families; and (2) there was no tension between the liberty interests of Aunt and Uncle and those of the natural parents in that the natural parents had terminated their rights with the expectation that Aunt and Uncle would adopt the child. Id. In considering the issue of Grandfather's standing, the Court said that much of the law surrounding grandparents' rights with regard to their grandchildren is related to the grandparent visitation statute, which is in derogation of the common law. Id. at 438. The Court opined that, if at common law grandparents have no right to seek visitation with a grandchild, it follows that they do not have a liberty interest in maintaining a relationship with that child, at least absent a custodial relationship. Id. The Court found that the trial court correctly determined that Grandfather did not have standing to bring suit. Id.