

Children's Law Center of Indiana



CHINS

04/28/2009

In ***In Re A.C.***, 905 N.E.2d 456 (Ind. Ct. App. 2009), the Court, affirmed in part and reversed in part the trial court's judgment that the child is a CHINS, and remanded with instructions to vacate portions of the participation decree. The child was born November 7, 2006. A judgment of paternity and support issued August 2, 2007, establishing Father's paternity, granting custody to Mother, and granting Father visitation. Father shared a home with Stepmother, but, at the time relevant here, he was living with paternal Grandmother because a pending charge of child molestation prevented him from having unsupervised contact with his children. On April 30, 2008, when a Marion County DCS (DCS) case manager visited Stepmother's residence for a routine visit concerning a child belonging to Father and Stepmother, Father was there participating in a supervised visit with his children. During the visit, the case manager met the child and learned that she was eighteen months old, she had been dropped off to Father by Mother over thirty days earlier, and Father had taken her to live with Stepmother. On May 9, 2008, a public health nurse visited Stepmother's home regarding one of the other children and became concerned about the child's developmental delays, such as her lack of speech and poor balance when walking; her poor hygiene; her lack of immunizations; and Mother's unknown whereabouts. The nurse shared these concerns with the case manager who, on May 10, 2008, stopped by Stepmother's residence and asked Stepmother about a doctor's appointment for the child. Stepmother responded that the child had an appointment, but she could not recall the day or time, and that there had been no contact with Mother. The case manager noted the child's poor overall appearance, as evidenced by a foul odor, soiled cloths, and oily hair. On May 16, 2009, the case manager met with the public health nurse and others at Stepmother's residence and discovered that the child still had not been given her immunizations, that Stepmother had been informed by the health department that she would be unable to get immunizations for the child without a birth certificate and she could not get a birth certificate without Mother's presence, and that Stepmother did not know Mother's whereabouts. The visitors observed a foul odor coming from the child. After consultation with DCS supervisors, the Indianapolis police were called for assistance in taking the child into the custody of the DCS. After the child's removal, it was discovered that she had blisters caused by a severe diaper rash. On May 19, 2008, Mother contacted DCS about the child, but refused to provide any information regarding her address, her phone number, or where she had been for the past several weeks. DCS' CHINS petition alleged that the child was a CHINS because Mother "has abandoned the child and has not demonstrated the ability or willingness to parent the child at this time;" Father "has extensive history with DCS and a pending criminal case involving child molest of an older child;" and Stepmother had "failed to appropriately care for the child, obtain timely medical care, and was unable to adequately address the child's needs due to her lack of legal custody." At the July 25, 2008 CHINS factfinding hearing, Mother testified that (1) four days before Easter, she took the child to Grandmother's house for a supervised visit with Father; (2) on Easter, when Mother went to pick up the child at 4 p.m., the child was not there and Grandmother would not tell

Mother where the child was or how to contact Father; (3) Mother went to Father's residence, but no one was there; (4) Mother went to Father's residence on four different occasions, but was unsuccessful in locating him or the child; and (5) Mother called Grandmother on four separate occasions, but she would not reveal Father's or the child's location. At the September 12, 2008 dispositional hearing, the trial court ordered that the child be removed from Mother and Father and be placed with DCS; that Mother participate in services, including drug and alcohol assessment, random drug testing, substance abuse treatment, and establish paternity; and that the plan for permanency be reunification with the parents. Mother appealed.

There was sufficient evidence to support the CHINS adjudication in that, contrary to Mother's contentions, the evidence shows that the child's physical or mental condition was seriously impaired as the result of Mother's inability, refusal, or neglect to provide the necessary clothing, food, shelter, medical care, or supervision; Mother is responsible for the condition in which the child was found by DCS; and the coercive intervention of the court was necessary to force Mother to provide the child with necessary care and treatment. *Id.* at 458, 462-63. Mother argued that the conditions in which the child was found were not the result of any voluntary conduct on her part because Father had taken the child, Mother was unable to find her, and Stepmother was responsible for the child's condition. The Court noted that (1) the public health nurse who visited Stepmother's residence testified that the child was developmentally delayed, that the child walked with a "wide gate [sic]" that was "more like ... a twelve month old," that she was concerned regarding Stepmother's inability to obtain medical care for the child because she did not have guardianship of the child, and the child "[a]bsolutely" needed to see a physician;" (2) when the child was placed in foster care, she was underweight, behind on her vaccinations, was dirty, had difficulties walking, and had an abnormal hip which was diagnosed as "hypersubluxation of her left leg;" (3) Mother testified that she had moved several times during the pendency of the CHINS proceeding, that if the child was returned to her care, her housing would consist of a two-bedroom trailer that would be shared by three adults and two children, and the last time she had been employed had been in 2007 for about five months; (4) Mother's lack of cooperation with DCS since the filing of the CHINS petition highlighted Mother's inability or refusal to properly care for the child; (5) the DCS case manager testified that she had left five telephone messages for Mother stating that she needed to talk to Mother, but her calls were never returned; (6) Mother failed to attend three scheduled visits with the child; (7) at the time the child was removed by DCS, Mother had sole legal custody; and (8) Mother made only feeble attempts to locate the child, as demonstrated by the lack of evidence that Mother contacted law enforcement or DCS for assistance in locating the child, even though she claims she did not know where the child was for nearly two months. *Id.* at 462.

As to Mother's contention that there was insufficient evidence to prove that the coercive intervention of the court was necessary, the Court observed: (1) when the child was placed in foster care, she was underweight, behind on her vaccinations, dirty, had difficulties walking, and had an abnormal hip; (2) at the time of the factfinding hearing, when Mother was asked about her knowledge regarding the child's speech and walking difficulties, Mother responded that "I don't think it was a big concern of me [be]cause she was to me developing correctly;" (3) Mother testified that the child "[did not] have a doctor right now," that she was not aware that the child had a heart murmur because "it was not caught when she was born," that the child had been late getting her shots, and that another did not think that she had been negligent in caring for the child; and (4) the circumstances show that Mother has consistently failed to provide the child

with necessary care and treatment, in that it was not until the child was placed in foster care that she became current on her immunizations, in foster care the child is receiving physical and speech therapy for her developmental delays, and the child's heart murmur was not discovered until the child was placed in foster care. To the Mother's apparent argument that, because she did not abandon the child as alleged in the CHINS petition, the coercive intervention of the court is unnecessary, the Court opined that DCS does not need to show abandonment before a juvenile court may conclude that the coercive intervention of the court is necessary or before a child may be adjudicated a CHINS, and observed that, in any event, the record indicates (1) the child had been living with Stepmother for over thirty days when DCS learned of her presence in the home; (2) when the child was removed from Stepmother's home, Mother's whereabouts were unknown, and (3) Mother made only feeble attempts to locate the child. *Id.* at 462-63 (citation omitted).

The evidence does not support the requirements of the participation decree that Mother to submit to drug and alcohol assessment, random drug testing, and substance abuse treatment; and the trial court's findings of fact do not support the participation decree order that Mother establish paternity for the child. Consequently, these requirements must be vacated. *Id.* at 464. The Court noted that (1) the trial court's findings of fact found that "[Mother] agreed that she needed the services being proposed by the [DCS] but disagreed that she needed any substance evaluation services," and determined that paternity had been established on August 2, 2007; (2) the judgment of paternity and support was entered into evidence; (3) there is no other reference to any alleged substance abuse in the findings of fact or conclusions of law; and (4) a review of the record disclosed no allegation or even an indication that Mother has a substance abuse problem. The Court opined that (1) the trial court was using mere boilerplate language in its participation decree; (2) such use can make the citizenry cynical about the requirements necessary to achieve the goals of a CHINS adjudication; (3) the requirements the trial court determines for the participation of parents must relate to some behavior or circumstance that was revealed by the evidence; (4) the permanency plan of reunification is not furthered by ordering Mother to participate in services that are unnecessary to address a behavior or circumstance that is relevant to the child's removal from her care; (5) forcing unnecessary requirements upon parents whose children have been adjudicated as CHINS could set them up for failure with the end result being not only failure to achieve the goal of reunification but potentially the termination of parental rights; and (6) these possible ramifications are inconsistent with the general requirement that "the [DCS] shall make reasonable efforts to preserve and reunify families," and unduly interfere with the parent-child relationship. *Id.* at 464-65 (citations omitted).