

Children's Law Center of Indiana



CHINS

09/21/2009

In **In Re A.H.**, 913 N.E.2d 303 (Ind. Ct. App. 2009), the Court affirmed the trial court's determination that the child was a CHINS as well as the dispositional order following that determination. The child was born October 10, 2008. On October 12, 2008, DCS, without a court order, removed the child from the care of Parents based on statements made by the nursing staff at the hospital. On October 14, 2008, at Parents' request, an emergency hearing was held and the child was released back to the care of Parents. On October 15, 2008, DCS filed a CHINS petition alleging the child was a CHINS based on information obtained from nursing staff that Parents stated they did not know how to care for the child because their other children were girls and Father repeatedly asked for help with common functions such as changing the child's diaper, dressing him, and cleaning his face after he spit up. (The petition also included information related to another of Mother's children and a child of Parents both of whom had been removed from Parents' care because both children had bleeding diaper rash, one had a staph infection, Parents refused to take one child to the doctor and had not taken her to the doctor since her birth, Parents began feeding table foods to one of the children when she was only days old, and Parents repeatedly stated that no one can tell them what to do or what to feed their children.) On the same day, following a hearing, the trial court found that the allegations constituted probable cause that the child was a CHINS based upon neglect, placed the child in guardianship pending a fact-finding hearing, and determined that Parents should have daily visitation with the child. On December 19, 2008, DCS filed a revised CHINS petition alleging that the child was a CHINS based on observations of Parents' behavior during their daily visitation with the child, including observations that Parents refused to participate in "tummy time" with the child despite a recommendation to do so to help the child develop his neck and back muscles, Parents failed to attend to the child's clogged tear ducts unless instructed to do so, Parents incorrectly pumped breast milk and failed to recognize the amount of milk needed for the child, Mother fell asleep while holding the child several times, Parents frequently cussed loudly at each other in front of their children, Parents did not believe that medical problems existed "unless they see the problem," and Parents "did not believe and did nothing about [the child] vomiting and about a hernia" until they observed those issues weeks later. At a fact-finding hearing in January 2009, the trial court excluded evidence offered by DCS related to previous CHINS adjudications involving the two other children. After the hearing, the trial court found that the child was a CHINS and ordered that the child be removed from Parents' care and placed in foster care and that Parents were to participate in a treatment program which included supervised visitation with the child, parenting education, and additional parenting and psychological assessments. Parents appealed.

The Court found that given the evidence and testimony presented at the fact-find hearing, it could not said that the trial court's findings of fact, conclusions of law, and judgment

were clearly erroneous. *Id.* at 311. The Court opined that the evidence and findings of fact were sufficient to demonstrate that the child's physical condition was "seriously endangered." *Id.* (citations omitted). The Court reviewed the findings and conclusions specifically challenged on appeal and the evidence supporting them. Regarding the conclusion that "The parents have demonstrated an overall inability or refusal to understand, retain and follow through with appropriate parenting advice given to them by the child's care givers," the Court reviewed the evidence presented to support the specific findings that (1) the parents were instructed on the difference between milk and formula but did not always seem to understand the difference; (2) the parents were instructed about the proper frequency of burping the child but did not follow instructions; (3) the parents were instructed that mother should not sleep while holding the child but did not always follow through on the instructions; (4) the parents were instructed about the proper frequency of changing the child's diaper but did not always follow through on the instructions, and on one occasion father stated that he would change the diaper every one half hour to keep from "getting in trouble;" (5) the parents were instructed about the proper amount of formula to give the child but did not always follow instructions; and (6) the parents showed a misunderstanding about the frequency of feeding the child would require during the night, in that one night they were up pumping breast milk for a visit the next day, but indicated that they would not have been up at night with the child if he were with them. As to the other challenged conclusion that "The parents have demonstrated an overall inability or refusal to understand, retain and follow through with appropriate medical advice given to them by the child's care givers, doctors and nurses," the Court reviewed the evidence presented to support the specific findings that (1) the parents have shown an inability or refusal to properly support the child's head while holding the child; (2) the parents have demonstrated an inability or refusal to or unwillingness to provide the child with tummy time, as requested; (3) the parents were instructed about the normal body temperature of a baby, but they demonstrated an overall lack of understanding about when to call the doctor and when not to, they indicated on occasion that a body temperature of 98.2 degrees was too high, and on another occasion they indicated that they need not call a doctor unless the body temperature was 103 degrees; (4) the parents were instructed about how to properly clean the child's eyes but would not do so as instructed. *Id.* at 307-10.