

Children's Law Center of Indiana



CHINS

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In ***In Re A.H.***, 992 N.E. 2d 960 (Ind. Ct. App. 2013), the Court affirmed the trial court's order granting DCS's petitions to interview Mother's two children, ages eight years old and six years old, as part of a DCS assessment of a report of child neglect. On January 9, 2013, DCS received a report that Mother was using methamphetamines and heroin on a daily basis when her children, ages four, six, and eight years old were present, Mother was selling prescription drugs and heroin, and that there were syringes all around the house. The DCS family case manager visited Mother at her home on January 11, 2012. She explained the nature of the report to Mother, observed her home, and interviewed her. Mother stated that she was not using drugs, methamphetamines or heroin, and that she had prescription drugs that she was using for health conditions. Mother submitted to a drug screen and the results were negative for all drugs except those that she was prescribed. Mother confirmed the identity of the oldest child's father and told the case manager that he had made a false allegation to DCS in the past and that she believed that he had made the current report. The case manager did not observe any indication of illicit drug use or sales in the home and did not observe any indication that Mother was impaired or under the influence of drugs. The case manager observed that Mother's four-year-old child appeared happy and healthy. The case manager asked Mother to sign a safety plan, which provided that Mother agreed to remain sober and drug free while caring for the children, not to use, sell, or manufacture illegal drugs, and take prescription drugs only as directed. Mother signed the safety plan. The case manager informed Mother that, as part of the assessment, she needed to speak with Mother's six-year-old child and eight-year-old child, who were in school at the time. The case manager asked for Mother's permission to speak with the two children, but Mother did not give permission, stating that she wished to speak with her attorney and that the children had "been through a lot of things like this before and... [she] did not wish to do any further damage to the children." At some point, the case manager spoke to the father of Mother's six-year-old child, and he informed the case manager that Mother had a history of drug abuse, that he was not sure if Mother was currently abusing drugs, and that he had not seen Mother for six to nine months. On January 14, 2013, Mother called the case manager and indicated that she did not want the children to be interviewed.

On January 25, 2013, DCS filed petitions to interview Mother's two oldest children. On February 1, 2013, the court held a hearing on the petitions at which Mother verbally moved to dismiss DCS's petitions and the parties presented evidence and arguments. Mother argued that IC 31-33-8-7, the statute which permits DCS to petition for a court order to interview a child as part of an assessment, is unconstitutional pursuant to the Due Process Clause of the Fourteenth

Amendment. Mother testified that she had reason to believe that the father of her eight-year-old child might file a false accusation against her, that he does not pay child support and does not have visitation, and that she is pursuing court action for back child support. On February 6, 2013, the trial court entered an Order Granting Request to Interview Children requiring Mother to produce the eight-year-old child and the six-year-old child for DCS interviews within ten days and permitting Mother to be present for the interviews. The trial court's Order provided in part that: (1) Mother's fundamental right to raise her children is not absolute; (2) where significant compelling interests exist, such as protecting the welfare of the children, the state has the power to intervene; (3) DCS has a compelling interest in this case and has no other means to directly assess the conditions of these children without an interview. Mother filed a motion to stay the interviews pending appeal, which DCS opposed, and the court denied. Mother appealed.

The Court concluded that Mother had failed to establish that the trial court erred in granting DCS's Petitions to interview children or that she was denied due process. *Id.* at 968. Mother made the following appellate arguments: (1) the private interest of a parent in preventing damage to a child which would be caused by an interrogation is extremely significant; (2) due process requires the presence of additional procedural protections prior to compelling child interrogation; (3) the statutory scheme permits compelled interrogation in cases where there is no concern of danger to a child and is in violation of due process; (4) the lack of requirements that the petition be verified and include the factual basis establishing child abuse or neglect creates a risk of error; (5) she was not provided an opportunity to be heard in a meaningful manner and the hearing was not meaningful because the court was statutorily permitted to enter the order even though it was not necessary for the children's protection. DCS contended that the court did not deny Mother's due process rights, in that: (1) DCS made Mother aware of the allegations; (2) DCS only wanted to interview, not interrogate, the children; (3) the provisions of IC 31-33-8 state that DCS shall initiate an appropriate and thorough child protection assessment and the assessment may include an interview; (4) given that the purpose of the interviews is to assess the allegations to ensure the children's safety and make a determination as to what actions DCS should take based upon the outcome of the assessment, the additional steps requested by Mother are unwarranted; (5) due process does not require a petition under IC 31-33-8-7(d) to be verified; (6) IC 31-33-8-7(e) requires the court to conduct a hearing, thus, the statute affords a parent due process though this requirement; (7) Mother has failed to demonstrate any harm. The Court said that the Due Process Clause of the Fourteenth Amendment protects a parent's right to raise her child without undue influence by the state *Id.* at 966, citing *In Re G.W.*, 977 N.E.2d 381, 384-85 (Ind. Ct. App. 2012). The Court went on to say that this "fundamental right is not unlimited... because the state has a compelling interest in protecting the welfare of children." *A.H.* at 966, quoting *In Re G.W.* at 385. The Court said that (1) due process is the opportunity to be heard at a meaningful time and in a meaningful manner; (2) when determining whether a litigant received proper process, the Court balances the factors of the private interests affected by the proceeding, the risk of error created by the State's chosen procedure, and the countervailing governmental interest supporting use of the challenged procedure; (3) due process is flexible and calls for such procedural protections as the particular situation demands (multiple citations omitted). *Id.* at 966. Citing *In Re C.G.*, 954 N. E. 2d 910, 917-18 (Ind. 2011), the Court said that the private interest affected by the proceeding, namely, a parent's interest in the care, custody, and control of her child is substantial, and the countervailing factor of the State's interest in protecting the welfare of the child is also substantial. *Id.*

The Court recognized the fundamental right of a parent to raise her child, without undue interference by the state, but could not say that due process requires DCS to conduct an assessment or a portion of an assessment in order to obtain information which would provide a basis supporting the accuracy or reliability of the report prior to interviewing the child. Id. at 967. The Court could not say that the risk of error created by the legislature's chosen procedure or that IC 31-33-8-7, which allows DCS to interview a child as part of the initial assessment and after obtaining a court order, violates due process. Id. The Court cited In Re G.W. at 386, which noted that the Court of Appeals was aware of no constitutional prohibition against the proposed child interview arrangements. A.H. at 967. The Court found that Mother's argument regarding the lack of a verification requirement for the petition filed pursuant to IC 31-33-8-7 was not compelling. Id. The Court could not say that Mother was not afforded notice of or an opportunity to be heard on the petitions to interview the children at a meaningful time and in a meaningful manner. Id. at 968.