

Children's Law Center of Indiana



CHINS

5/11/2007

In ***In Re C.B.***, 865 N.E.2d 1068 (Ind. Ct. App. 2007), the Court affirmed the juvenile court's judgment determining the child to be a CHINS. On July 6, 2006, the Adams County Department of Child Services (DCS) removed the child, born February 6, 2004, from Mother's care. A detention hearing was held and, on July 14, 2006, DCS filed its Petition alleging the child was in need of services. The DCS had been contacted by the hospital because the child who had been brought to the emergency room was suffering from facial bruises, a broken arm, and numerous other bruises on his body. Mother and her boyfriend told the DCS investigator that the child had fallen off the loveseat and hit a rocking chair. The juvenile court held an initial hearing on July 14, and a fact finding hearing on September 20, 2006. The juvenile court concluded that the child was a CHINS. The DCS filed a dispositional report on November 8, 2006, and recommended that the child remain in foster care. On November 22, 2006, the juvenile court held a hearing on the dispositional report. The Mother objected to portions of the report which referred to her and her second child testing positive for controlled substances during the birth of her second child. The juvenile court overruled the Mother's objections. Mother appealed.

The juvenile court was permitted to admit the dispositional report despite its inclusion of any hearsay, as long as the report contained evidence of probative value. I.C. 31-37-18-2.¹ Moreover, inasmuch as a child's best interests outweigh a parent's right to confidentiality, the juvenile court properly admitted the results of Mother's urine drug screen test along with the dispositional report. *Id.* at 1072-73. Mother contended that the statements in the dispositional report pertaining to the birth of her second child constituted inadmissible hearsay and violated privacy laws contained within the Health Insurance Portability and Accountability Act (HIPAA) of 1996. In accordance with I.C. 31-37-18-2, "any predispositional report may be admitted into evidence to the extent that the report contains evidence of probative value even if the report would otherwise be excluded." The Court noted that, inasmuch as the report indicated that Mother tested positive for drugs at the time of the second child's birth, three months after DCS removed the first child from her care, and DCS prepared the report shortly after the second child's birth, the evidence was relevant in determining whether or not the first child should be reunited with Mother. Further, admission of the drug screen test was consistent with the holdings in *In Re A.H.*, 832 N.E.2d 563, 567-569 (Ind. Ct. App. 2005), *Carter v. Knox County Office of Family and Children*, 761 N.E.2d 431 (Ind. Ct. App. 2001), and *Doe v. Daviess County Div. of Children and*

¹ This citation is to the delinquency statute. I.C. 31-34-29-2 is the correct citation to this provision in the CHINS statute.

Family Serv., 669 N.E.2d 192 (Ind. Ct. App. 1996), in that the child's best interests outweigh a parent's right to confidentiality. The drug screen test indicated that while hospitalized for the birth of her second child, Mother tested positive for several different chemicals, including bezodiazepam, opiate, cocaine, and cannabinoid. Accordingly, the Court concluded that the juvenile court did not abuse its discretion in admitting the dispositional report in full. C.B. at 1071-73.

DCS presented not only sufficient evidence, but overwhelming evidence, that the child's physical well-being was seriously endangered and that he needs care and treatment he is not receiving from Mother. Thus, the child was appropriately adjudicated as a CHINS. Id. at 1073. The Court noted that Dr. William Lewis testified that (1) he examined the child and found multiple physical injuries, including a broken arm, a bruised eye and face, and bruises and swelling on his chest, neck, back of his head, groin, and buttocks; (2) the bruise found on the back of the child's head was "definitely abnormal" and signified that the child "was hit with some kind of object in the back of the head;" (3) it would be unusual for a two-year-old like the child to suffer bruising in the middle of his chest or in his groin area; (4) the child's buttocks indicated "[r]ather vigorous spanking;" (5) "either [the child] fell 100 times in [] a very short period of time from great heights or he was beaten;" and (6) he had concluded that the child was beaten "probably on several occasions." The Court found that, while it was not certain whether Mother inflicted these injuries upon the child, there was no question that the child suffered this harm while under Mother's care and custody and that, given the multiplicity of the child's injuries, the record suggested that Mother was slow to seek medical treatment for the child. Id.