

# Children's Law Center of Indiana



## CHINS

3/30/2007

In ***In Re C.S.***, 863 N.E.2d 413 (Ind. Ct. App. 2007), the Court reversed the juvenile court's judgment determining the child to be a CHINS as to Father. Mother and Father were not married when the child was born. Father was not present at the birth, but he did visit Mother and the child in the hospital several times. Mother did not name Father on the birth certificate and they did not execute a paternity affidavit at the hospital. Mother and the child tested positive for benzodiazepines. Mother told the DCS investigator that: (1) she had used drugs during pregnancy; and (2) Father was the child's father but Mother did not know where he was. Mother did not tell her that Father had been visiting at the hospital. DCS filed a CHINS petition on November 29, 2005 and an initial hearing was held that same day, except it was continued as to Father because he did not appear. Father had not received service regarding that hearing. Father appeared for a continued initial hearing on January 12, 2006, at which time he acknowledged paternity and said he wanted to establish paternity. Because Father was a minor and his mother lived out of state, the juvenile court appointed his aunt with whom he lived to be his temporary guardian and also appointed an attorney to represent him. The juvenile court granted Father supervised visitation with the child and told him how to get a DNA test for the purpose of establishing paternity. At the April 19 2006 fact-finding hearing the juvenile court noted that Father had taken a DNA test and the DCS investigator testified. The investigator testified that she had no contact with Father or anyone on his behalf during the investigation. When DCS rested on the investigator's testimony, Father moved for a directed verdict. The juvenile court denied Father's motion. Father called Mother as a witness and she testified that Father had come to the hospital after the child's birth three or four times, that he expressed a desire to sign a paternity affidavit but she had already signed the papers and did not report that he was the father, and that he had offered to make arrangements to care for the child. The Father testified that he had called and left messages for the DCS investigator on numerous occasions but she never returned his calls; he was employed, working toward his GED, and lived with his aunt in a home with room for the child; and he wanted to take care of the child. Father submitted to random drug tests that were negative, and he voluntarily received services from Father's Resource Center, which teaches basic parenting skills and provides help finding employment. Father's aunt testified that he lived with her in a home with plenty of space for the child; that she was willing to help take care of the child; and she witnessed Father attempting to contact the DCS investigator and had tried to contact her several times without success. The juvenile court found that DCS had met its burden by a preponderance of the evidence and that the child was a CHINS as to Father. Father appealed.

**There was insufficient evidence to support the juvenile court's determination that the child was a CHINS with regard to Father, where the juvenile court's findings focused on Mother's actions with respect to the child and specifically related primarily to her drug use during pregnancy; and DCS' arguments regarding Father related solely to father's situation at the time of the petition's filing without consideration of his situation at the time the case was heard by the juvenile court.** *Id.* at 418. The Court noted that (1) although the child was born with drugs in her system, there was not allegation and no evidence that Father was responsible for that circumstance; (2) Father's un rebutted testimony was that he was available and willing to sign a paternity affidavit at the hospital, but was prevented from doing so by Mother and Mother's testimony supported this assertion; (3) Father indicated his intention to establish paternity and underwent genetic testing toward that goal, which testing showed a 99.999999% probability that he was the biological father; (4) Father testified without contradiction that he had a job, stable housing, had voluntarily taken parenting classes, and undergone drug testing with consistent negative results; (5) Father's witnesses testified that he has the ability and desire to provide food, shelter, and other necessities for the child and that he has strong family support; (6) DCS presented no evidence that would tend to show that Father would require the coercive intervention of the court to appropriately care for the child; and (7) Father voluntarily underwent genetic testing and voluntarily participated in services designed to develop his parenting skills, even though there was no evidence that he needed those services. The Court distinguished *In Re S.M.*, 840 N.E.2d 865 (Ind. Ct. App, 2006) which DCS relied on to support its assertion that Father's failure to establish paternity supported the trial court's determination. The Court noted that (1) *S.M.* was decided in the context of a termination of parental rights case rather than a CHINS case; and (2) the father in *S.M.* failed to take any steps to establish paternity for a period of over eighteen months, whereas, here, despite receiving no counseling from DCS regarding how to establish paternity, Father repeatedly indicated his desire to do so and in the five months between the filing of the petition and the fact-find hearing, took affirmative steps toward doing so. The Court held that Father's "failure" to establish paternity before the fact-finding hearing is not evidence of neglect on his part that would seriously impair or endanger the child. The Court concluded that the only evidence before the juvenile court relating to Father was that he would be an acceptable parent to the child. *C.S.* at 418-19.