

Children's Law Center of Indiana



CHINS

01/10/2007

In ***In Re D.H.***, 859 N.E.2d 737 (Ind. Ct. App. 2007), the Court reversed the trial court's determination that the children who lived with Mother were CHINS. Mother has six children. On August 26, 2005, the Marion County Department of Child Services (DCS) received a report that Mother's oldest child, who was 17 years old at the time and was living in a foster home, alleged that her stepfather had molested her during the time she was in second through fourth grade. The DCS removed the Mother's other five children (Children) from the Mother's home where they all lived with the accused stepfather. The accused stepfather is the biological father of the Mother's five children who were removed. The DCS also filed a petition alleging that the Children were CHINS. According to the petition, on about September 6, 2005, the DCS case manager determined these children were CHINS because their oldest sibling, already a ward, was molested by her stepfather; the oldest daughter alleged that, at the time of the molest, she had told Mother, but Mother took no protective measures except to send her to reside with her father; and due to the untreated sexual perpetration issues of the stepfather and Mother's failure to take appropriate protective measures with regards to her children, "all of the children are endangered in the family home." *Id.* at 738-39. At the factfinding hearing Mother testified that her oldest daughter had told her that her stepfather had been touching her but that the daughter had not given specific details; and, as a result, Mother took the daughter to the doctor, talked to the Children, confronted the stepfather, talked to members of the stepfather's family regarding the accusation, and sent the oldest daughter to live with her father. The oldest daughter lived with her father for about one and one-half years, until her father suddenly returned her to Mother during her sixth grade year. Later the oldest daughter alleged that her father had molested her. After about two years of living with Mother and her stepfather again, the oldest daughter started running away and lived with various friends and relatives until Mother refused to allow her to return to the family home. Then the oldest daughter was declared a CHINS. No evidence was presented that the Children were abused. After the February 23, 2006 factfinding hearing, the trial court entered findings of fact and conclusions of law stating, among other things, that: (1) the siblings of the oldest daughter did not witness any inappropriate contact between the stepfather and the oldest daughter; (2) the hospital found no evidence of physical or sexual abuse, but the trial court found that lack of evidence to be inconclusive; (3) the trial court declined to conclude that the stepfather was guilty of any criminal offense stemming from the allegations in the CHINS proceedings, or to specifically find that the allegations made by the oldest daughter were true or not true; (4) the trial court found the allegations made by the oldest daughter to be credible; and (5) "Due to the allegations raised by [the oldest daughter] and the response by [Mother and the stepfather], the Court finds the [five youngest children] to be in need of services, as to [Mother and the accused stepfather]." Mother appealed.

The trial court abused its discretion by excluding evidence based on the Rape Shield Statute, I.C. 31-37-4-4, inasmuch as the Rape Shield Statute does not apply in civil cases, and a CHINS proceeding is a civil action. However, the error was harmless and did not affect Mother's substantive rights because the excluded testimony was cumulative of other admitted evidence. *Id.* at 741. At the factfinding hearing, based on the Rape Shield Law, the State objected to questions Mother's attorney asked the oldest daughter about a prior miscarriage, her accusations against her father, and her sexual history. The trial court sustained the objections, but later allowed testimony regarding abuse by the oldest daughter's father. Other evidence was admitted (1) that the oldest daughter was, at the time of the hearing, pregnant with her boyfriend's baby; (2) that she had earlier been pregnant; and (3) that she had accused her father of molesting her. *Id.* at 740-41.

The trial court's judgment that the Children were CHINS was clearly erroneous. To permit the Children to be declared CHINS based upon speculation that the children would be endangered if the allegations of molestation were true would contravene the CHINS statutes. *Id.* at 744. In the CHINS petition, the DCS alleged that the Children's physical or mental condition was seriously endangered in violation of the CHINS statute because the Children's sibling, the oldest daughter, was molested by her stepfather, and because Mother took no protective measures other than to send her to reside with her father. The Court noted that the DCS had the burden of proving by a preponderance of the evidence that the Children were CHINS, and that, relying on Maybaum v. Putnam County Office of Family & Children, 723 N.E.2d 951 (Ind. Ct. App. 2000), Mother alleged on appeal that the allegations of the CHINS petition were not proven because the trial court specifically declined to find that the oldest daughter had been molested by her stepfather. The Court distinguished Maybaum in that, here unlike Maybaum, Mother had notice of the allegations of the petition, which were that the stepfather had molested the oldest daughter and that Mother had failed to take measures to protect the Children. However, the Court noted that, in this case, although the trial court found the oldest daughter's allegations to be credible, it specifically declined to find that her allegations were true or not true and concluded that the oldest daughter's sexual abuse allegations, if true, would endanger the well being of the Children. D.H. 743-44.