



## CHINS

11/07/2005

In **In Re J.Q.**, 836 N.E.2d 961 (Ind. Ct. App. 2005), the Court reversed the CHINS determination with instructions that the trial court more specifically follow the requirements of the child hearsay statute, I.C. 31-34-13-3 and the dispositional finding statute, I.C. 31-34-19-10. The nine year old child had been removed from the care of his mother and placed with relatives due to a bruised eye on December 1, 2004 by the Indiana Department of Child Services (formerly known as the Marion County Office of Family and Children). At the CHINS fact-finding hearing the trial court admitted into evidence a written statement by psychologist Dr. Marla Smith that the child would suffer emotional harm if he testified at the CHINS proceeding. The trial court then permitted the Child Protection Service investigator to testify as to the child's statements to her regarding his eye injury. The DCS used the inconsistencies in the investigator's testimony and the mother's testimony concerning the circumstances of the child's injury as pivotal pieces of the DCS claim that the child was a CHINS. The child was found to be a Child in Need of Services and the court established a permanency plan at the disposition hearing approximately one month later which ordered that the child remain in a relative's home until the mother completed the requirements of a Parental Participation Order. The mother appealed the CHINS determination, arguing that the trial court failed to follow the requirements of I.C. 31-34-13-3 when it admitted child hearsay statements during the CHINS fact-finding without holding a prior hearing on the matter. The mother also argued that there was insufficient evidence to support the trial court's CHINS finding.

**The trial court's improper admission of child hearsay statements pursuant to I.C. 31-34-13-3 without notice to the mother or opportunity to be heard violated the mother's due process rights. Id. at 965.** Although the trial court cited the "protected persons statute" as its basis for admitting the CPS investigator's statements, the Court noted that the protected persons statute does not apply in CHINS cases. Id. at 964 n.3. The Court concluded that the trial court was attempting to follow the procedure for admitting child hearsay in CHINS proceedings laid out in I.C. 31-34-13-3. Id. The Court noted that I.C. 31-34-13-3 states, in pertinent part, that a statement by a child that would otherwise be inadmissible is admissible in a CHINS proceeding only "after notice to the parties of a hearing." (Emphasis added). Id. at 965. Applying the principles of statutory construction, the Court concluded that a logical and fair reading of I.C. 31-34-13-3 requires some separation of the child hearsay determination and the CHINS determination to give effect to the statute's notice and hearing requirements. Id. The Court found that the record showed that the mother was not given adequate notice or

adequate opportunity to be heard regarding the admission of the child's statements. The Court also could not find any evidence that the trial court made a finding that the time, content and circumstances of the child's statements provided any indication of reliability as required by I.C. 31-34-13-3(1). The Court opined that this finding was imperative in a case where the child's out-of-court statements, if admitted, would weigh heavily in the court's determination of whether the child is a CHINS. *Id.* The Court concluded that the child's hearsay statements were inadmissible. *Id.* at 966.

**Failure to provide advance notice to the mother of the psychologist's recommendation that the child not testify prevented the mother from presenting her own evidence that the child was competent to testify. *Id.* at 966.** The Court cited I.C. 31-32-2-3 which states that a parent is entitled to cross-examine witnesses, obtain witnesses or evidence by compulsory process, and introduce evidence on her own behalf. The Court did not find that the mother was given this opportunity due to lack of advance notice.

**Absent the inadmissible child hearsay statements, the evidence was insufficient to support a CHINS determination. *Id.* at 967.** The Court opined that their review of the trial court's findings of fact was made difficult by the court's vague language. The Court noted that in its disposition hearing report, the trial court merely stated:

The Court finds that reasonable efforts have been offered and available to prevent or eliminate the need for removal from the home...the court also finds that the services offered and available have either not been effective or been completed that would allow the return home of the child without Court intervention. The Court finds that it is contrary to the health and welfare of the child to be returned home and that reasonable efforts have been made to finalize a permanency plan for the child.

The Court concluded that the limited findings of the trial court made it difficult for the Court to determine whether or not a mistake was made in the CHINS adjudication. The Court's review of the record in its entirety yielded evidence that could support either outcome. The Court opined that it was in no position to reweigh the evidence or to read the trial court's mind in its regard to its findings of fact. The Court was concerned that procedural irregularities, like an absence of clear findings of fact, in a CHINS proceeding may be of such import that they deprive the parent of procedural due process with respect to a subsequent termination of parental rights. *Id.* at 967, citing *A.P. v. Porter County Office of Family and Children*, 734 N.E.2d 1107, 1112-13 (Ind. Ct. App. 2000), *trans. denied*. The Court noted the requirement of I.C. 31-34-19-10(5) that the trial court give its reasons for its disposition in a CHINS proceeding.