

# Children's Law Center of Indiana



## CHINS

7/6/11

In ***In Re Ju.L.***, 952 N.E.2d 771 (Ind. Ct. App. 2011), the Court affirmed the trial court's finding that Mother's two sons are Children in Need of Services (CHINS). The two boys, born on March 19, 2004, and February 2, 2006, were born during their parents' marriage. During the incidents in question, Mother and Father were in the midst of a contested dissolution proceeding commenced by Mother in May 2008. Between May of 2008 and July of 2009, the Marion County Division of the Department of Child Services (DCS) received multiple allegations that Father was abusing the boys. Between July 2009 and July 2010, DCS received at least twenty-five reports. The allegations included that Father had: pinched the boys' penises with his fingers, glass, nail clippers, and hedge clippers; pulled out the boys' hair; poked the boys with needles, safety pins, chop sticks, and a syringe; threatened to pull out stitches from the boys' circumcisions; put a juice box straw in the older boy's penis; hit the boys with a hammer; tried to give the boys black pills; and bruised the older boy's buttocks with a melon baller. Five different DCS family case managers investigated the multiple allegations, including interviewing Mother, Father, and the boys. Three investigations were conducted before DCS filed its CHINS petition on February 12, 2010. Two investigations were conducted after the filing of the CHINS petition. None of the investigations substantiated the allegations against Father, but two of the investigations substantiated emotional abuse by Mother. On April 29, 2010, Dr. Gonso, a psychologist, completed a court ordered custody evaluation pursuant to the pending dissolution of marriage. Dr. Gonso formed the opinion that Mother's profile was indicative of someone with intense chronic anger and that Mother was exhibiting alienating behaviors that could eventually cause the boys to refuse contact with Father. Dr. Gonso recommended that Father have sole legal custody, that Mother not be permitted to take the boys to any medical appointment without Father's attendance or agreement, and that Mother and Father share physical custody on a "2/5 schedule."

Following the abuse reports made during April of 2010, DCS moved for emergency detention of the boys on May 6, 2010, requesting that the boys be placed with Father. On May 12, 2010, the trial court granted the request and ordered Mother's visits with the boys to be supervised. The trial court conducted a factfinding hearing on the CHINS petition on June 4, June 29, and July 14, 2010, and found that the boys were CHINS because they had been subjected to emotional abuse by Mother. Among its findings of fact and conclusions of law, entered on August 11, 2010, the trial court stated that:

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Mother ha[d] never wavered in her belief that [the boys] were being physically or sexually abused by Father. This despite the fact that [the older boy] recanted, admitted to lying, and expressed a desire to be truthful. Additionally, Mother [was] unwilling to consider the possibility that Father [was] not abusing the boys.

The trial court also found that Mother created an environment at home that encouraged the boys to tell others that Father was abusing them. Mother appealed the CHINS adjudication.

**The Court concluded that DCS provided Mother with adequate notice that the abuse statute was also a ground for the CHINS petition because Mother's acts toward the children were also at issue.** *Id.* at 780. Mother argued that the trial court erred when it determined that the boys were CHINS pursuant to a statute not cited in the CHINS petition. DCS cited IC 31-34-1 generally in its CHINS petition, and included language mirroring the neglect statute (IC 31-34-1-1). In contrast, the trial court eventually decided that the boys were CHINS according to the abuse statute (IC 31-34-1-2), which states that a child is a CHINS if:

1. the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian; and
2. the child needs care, treatment or rehabilitation that:
  - A. the child is not receiving; and
  - B. is unlikely to be provided or accepted without the coercive intervention of the court.

The Court observed that the question of notice in a CHINS petition is governed by IC 31-34-9-3, which states that a CHINS petition must contain both "[a] citation to the provision of juvenile law that gives the juvenile court jurisdiction in the proceeding" and "[a] concise statement of the facts upon which the allegations are based, including the date and location at which the alleged facts occurred." *Id.* at 778. The Court cited Maybaum v. Putnam Cnty. Office of Family & Children, 723 N.E.2d 951, 954 (Ind. Ct. App. 2000), where the Court interpreted the provisions of IC 31-34-9-3 as necessary to provide a parent, custodian, or guardian with proper notice in a CHINS proceeding so that the parent or guardian may refute the assertions. *Ju.L.* at 778. The Court also discussed In Re V.C., 867 N.E.2d 167, 178-79 (Ind. Ct. App. 2007), where the Court held that issues not raised by the pleadings may be tried by the express or implied consent of the parties. *Ju.L.* at 778. The Court said in In Re V.C., 867 N.E.2d at 178 that *neither pleadings, pre-trial orders, nor theories proposed by the parties should frustrate the trier of fact from finding the facts that a preponderance of the evidence permits* (emphasis added in *Ju.L.* opinion). *Ju.L.* at 779. The V.C. Court further stated that a party is entitled to some form of notice that an issue that was not pleaded is before the court. V.C. at 178. *Ju.L.* at 779. Notice can be overt, as where the unpleaded issue is expressly raised prior to or during the trial, or implied, *as where the evidence presented at trial is such that a reasonably competent attorney would have recognized that the unpleaded issue was being litigated* (emphasis added in *Ju.L.* opinion). V.C. at 178.

Ju.L. at 779. Stating that the controlling factor in V.C. was the issue of notice, not whether the parties objected to the trial court's adjudication of the alternate grounds, the Court said that its interpretation prevents parties from pleading ignorance where adequate notice is given. Ju.L. at 780.

**The Court opined that the trial court did not err in concluding that the boys were CHINS.**

Id. at 783. Mother argued that the trial court erred in concluding that the boys were CHINS because there were no facts in the CHINS petition to support the conclusion that they had been subjected to “numerous exams and interviews.” Mother’s first sub-argument is that the CHINS petition did not provide Mother with adequate notice because it did not specify the dates or locations of the instances at issue. The Court noted that DCS stated in its CHINS petition that further information is provided in the attached Preliminary Inquiry and Affidavit written by the family case manager, and that in the Preliminary Inquiry and Affidavit, DCS does identify specific exams and interviews, along with relevant dates. Id. at 781. The Court noted that, among other allegations, it lists that the children were interviewed and examined for bruises, marks, or welts on January 12 and February 1, 2010, and completed a sexual abuse exam on January 31, 2010. Id. The Court concluded that this information satisfies the “concise statement of the facts upon which the allegations are based,” as required by IC 31-34-9-3, and that Mother received proper notice that the interviews and examinations of the boys would be at issue during the CHINS action. Id. The Court did not find merit in Mother’s second sub-argument that the trial court erred because it relied on facts not contained in DCS’s petition to determine that the boys were CHINS. Id. The Court opined that the purpose of a CHINS petition is not to provide the exclusive factual foundation for the trial court’s subsequent conclusions of law. Id. Mother’s third argument is that the trial court’s findings of fact do not support its conclusion of law that the children are CHINS because the trial court’s findings of fact do not justify the conclusion that Mother has caused the boys to be exposed to numerous exams and interviews. The Court observed that the trial court merely referred to the petition’s allegations of numerous interviews and exams to support its proposition that Mother had notice that IC 31-34-1-2 could be grounds for the CHINS proceeding. Id. at 782. The Court said that the trial court’s conclusion of law clarifies that the basis for its CHINS finding is that Mother has never wavered in her belief that the boys are being abused by Father, even though the boys have admitted to lying and there has never been any physical evidence of abuse—not solely the evidence of numerous interviews and examinations. Id. The Court determined that the trial court’s conclusions of law were not clearly erroneous because there is evidence to support the conclusion that Mother made repeated allegations of abuse even though the boys admitted they had lied and there was not substantiated physical evidence. Id. at 783.