

Children's Law Center of Indiana



CHINS

10/14/10

In **In Re M.R.**, 934 N.E.2d 1253 (Ind. Ct. App. 2010), the Court vacated the juvenile court's parental participation decree with regard to Alleged Father in a Child in Need of Services (CHINS) proceeding. The Court remanded the case for further proceedings consistent with this opinion. On September 4, 2009, the Marion County Department of Child Services (DCS) filed a CHINS petition alleging that Mother's four children were CHINS. The petition provided that Alleged Father of one of the children was incarcerated. The juvenile court held a fact-finding hearing on the CHINS petition on January 5, 2010. Alleged Father did not appear at the hearing and his counsel's motion for continuance was denied. Mother admitted amended CHINS allegations and all four children were adjudicated CHINS with respect to Mother and their alleged fathers. Following the dispositional hearing on February 2, 2010, the juvenile court entered a "Participation Decree" with regard to Alleged Father which provided, among other things, that Alleged Father reimburse DCS for "the out of home placement/and or services to the children in the amount of \$25.00 per week beginning the first Friday once released from incarceration." Alleged Father appealed, contending that the juvenile court erred when it entered a parental participation decree against him.

The Court opined that Alleged Father's mere status as a party did not confer authority to the juvenile court to order his parental participation prior to a determination that he is, in fact, a parent. *Id.* at 1255. The Court noted the Indiana Supreme Court opinion, **In Re N.E.**, 919 N.E.2d 102, 105 (Ind. 2010), which emphasized that a CHINS adjudication focuses on the condition of the child and the status of the child alone. **M.R.** at 1254. Citing IC 31-34-20-3, the Court said that, through a parental participation decree issued as part of a CHINS disposition, the juvenile court may order a parent, guardian, or custodian to: (1) obtain assistance in fulfilling the obligations as a parent, guardian, or custodian, (2) provide specified care, treatment, or supervision for the child, (3) work with a person providing care, treatment, or rehabilitation for the child, and (4) participate in a program operated by or through the Department of Correction. *Id.* at 1255. The Court further said that a parental participation decree establishes certain parental duties and directs parental action, choice, and control in the rearing of the child. *Id.* The Court found it "curious that the juvenile court would enter a parental participation decree against an individual who has not yet been determined to meet the definition of a parent as provided by our juvenile law." *Id.* Citing IC 31-9-2-88, which defines "parent" for the purposes of the juvenile law as a biological or adoptive parent, the Court observed that the exclusive

means to establish a man's paternity are through an action filed pursuant to the paternity statute or the execution of a paternity affidavit. *Id.* The Court understood why Alleged Father was summoned as a necessary party to the CHINS proceeding, noting IC 31-34-10-2(b), which states that a summons for an initial hearing on a CHINS petition shall be issued for: (1) the child, (2) the child's parent, guardian, custodian, guardian ad litem, or court appointed special advocate, and (3) any other person necessary for the proceedings. (Emphasis in original). *Id.* at 1255 n.3. The Court said that "[t]he juvenile court in this case put the cart before the horse." *Id.* at 1255.

The Court opined that because the proper procedures were not followed, including the filing of a proper verified parental petition, the juvenile court did not have authority to order Alleged Father's parental participation as part of its CHINS disposition. *Id.* at 1256. The Court discussed the following procedural requirements that must be met before parental participation can be ordered as part of a CHINS disposition: (1) a verified petition, signed by the attorney for DCS or the guardian ad litem or court appointed special advocate must be filed (IC 31-34-16-1 and -2); (2) the form and substance of the petition as set out at IC 31-34-16-3 must be followed; (3) after the verified petition is filed, IC 31-34-16-4 provides that the court may hold a hearing and shall advise the parent that failure to participate as required by an order issued under IC 31-34-20-3 can lead to termination of the parent-child relationship. *Id.* at 1255-56. The Court also cited Mikel v. Elkhart County Dept. of Pub. Welfare, 622 N.E.2d 225, 228 (Ind. Ct. App. 1993), in which the Court held that the procedural requirements of the statute regarding parental participation must be followed before a juvenile court "may mandate parental involvement subject to contempt of court." M.R. at 1256.