

Children's Law Center of Indiana



CHINS

1/6/10

In ***In Re N.E.***, 919 N.E.2d 102 (Ind. 2010), the Court affirmed the trial court's adjudication that the child was a Child in Need of Services, but vacated the trial court's dispositional order and remanded the case for further proceedings. The Court had accepted transfer from the Court of Appeals, whose opinion at 903 N.E.2d 80 (Ind. Ct. App. 2009) had reversed the trial court's determination that child was a CHINS. The Court of Appeals concluded that the State had not alleged, and the trial court had not determined, the child to be a CHINS with respect to Father. The child, born on January 24, 2004, was the daughter of a Mother (Mother) of three other children, each of the four having a separate father. In December, 2007, the Department of Child Services (State) filed a CHINS petition alleging that all four of Mother's children were CHINS because Mother was unable to protect her children from domestic violence between herself and the alleged father of her youngest child and there had been several incidents of domestic violence against Mother in the children's presence. The State removed the child's three siblings from Mother's home, located the child at the home of her paternal grandmother (Grandmother), and placed the child into foster care with her siblings. The trial court held a hearing at which the State conceded that the child spent a great deal of time at Grandmother's home where Father also lived. The court ordered DNA testing, established Father's paternity, and placed the child in the custody of Father and Grandmother. About a week later, the State filed a Motion to remove the child from Father and Grandmother, alleging that Father had a prior conviction for domestic battery, paternal grandfather, who lived in the house, was addicted to cocaine, and paternal grandfather had an outstanding warrant for his arrest due to a probation violation. The court returned the child to foster care with her siblings. Mother admitted that her children were CHINS, but Father requested a factfinding hearing. Conflicting evidence was presented as to where the child spent most of her time, with Mother testifying that the child had lived with her most of the time, and Father and Grandmother testifying that the child had lived with them for most of her life. The Guardian ad Litem stated that the child was appropriately cared for while in Grandmother's and Father's home. The trial court adjudicated the child to be a CHINS, continued her in foster care, and held a dispositional hearing, finding the child and her siblings to be wards of the State. The trial court made no specific findings as to Father or its reasons for not placing the child with Father. Father appealed. Father argued that the trial court held the factfinding hearing outside the time permitted by statute, but the Court summarily affirmed the Court of Appeals decision regarding the timeliness of the hearing. *Id.* at 105, n.2.

The trial court properly adjudicated the child a Child in Need of Services. *Id.* at 106. The Court observed that a CHINS proceeding is a civil action, and the State must prove by a

preponderance of the evidence that a child is a CHINS as defined by the juvenile code. IC 31-34-12-3. *Id.* at 105. The Court stated that a CHINS adjudication focuses on the condition of the child, and the acts or omissions of one parent can cause a condition that creates the need for court intervention. *Id.* The Court stated that a CHINS adjudication can also come about through no wrongdoing on the part of either parent, such as where a child substantially endangers his own health or the health of another, citing IC 31-34-1-6, or the parents lack the financial ability to meet the child's extraordinary medical needs, citing Lake County Div. of Family & Children Servs. v. Charlton, 631 N.E.2d 526 (Ind. Ct. App. 1994). *N.E.* at 105. The Court opined that, "[s]tanding alone, a CHINS adjudication does not establish culpability on the part of a particular parent." *Id.* Citing State Ex Rel. Gosnell v. Cass Circuit Court, 577 N.E.2d 957, 958 (Ind. 1991), the Court said that a CHINS intervention in no way challenges the general competency of a parent to continue a relationship with the child. *N.E.* at 105. The Court held that a CHINS determination establishes the status of a child alone. *Id.* at 106. Because a CHINS determination regards the status of the child, a separate analysis as to each parent is not required in the CHINS determination stage, and the conduct of one parent can be enough for a child to be adjudicated CHINS. *Id.* The Court said that "to adjudicate culpability on the part of each individual parent in a CHINS proceeding would be at variance with the purpose of the CHINS inquiry: determining whether a child's circumstances necessitate services that are unlikely to be provided without the coercive intervention of the court." *Id.* Citing Baker v. Marion County Office of Family & Children, 810 N.E.2d 1035, 1039 (Ind. 2004), the Court opined that "[t]he resolution of a juvenile proceeding focuses on the best interests of the child, rather than guilt or innocence as in a criminal proceeding." *N.E.* at 106.

Because the trial court's dispositional decree did not address its reasons for not placing the child with Father the Court opined that the decree may well have interfered with Father's rights and violated the "least restrictive (most family like)" placement mandate of IC 31-34-19-6(1)(A); thus, remand was warranted. *Id.* at 108. The Court quoted IC 31-34-19-10, which sets out the dispositional findings required after CHINS status has been determined. The Court noted that in its dispositional order the trial court incorporated the State's pre-dispositional report, which addressed Mother's failure to protect her children and her lack of cooperation in the prosecution of domestic violence cases to ensure the children's safety. *Id.* at 107. The dispositional order found that it was contrary to the health and welfare of the children to be returned home, but the trial court's reasons for its disposition did not seem to take into account the time the child spent in Father's (and Grandmother's) care or anything else regarding the suitability of placing the child with Father. *Id.* at 108. The Court found these omissions of consequence because: (1) when the juvenile court makes decisions during a CHINS hearing as to whether the child will become a ward of the State or orders services, this has the potential to interfere with the rights of parents in the upbringing of their children; (2) procedural irregularities, like an absence of clear findings of fact, in a CHINS proceeding may be of such importance that they deprive a parent of procedural due process with respect to a potential subsequent termination of parental rights, quoting In Re J.Q., 836 N.E.2d 961, 967 (Ind. Ct. App. 2005); (3) IC 31-34-19-6 requires the juvenile court to enter a dispositional decree that is "the least restrictive (most family like)" and IC 31-34-19-7 requires the court to consider placing a child with a blood relative before considering other out-of-home placements. *N.E.* at 108.