

Children's Law Center of Indiana



CHINS

5/14/2007

In ***In Re N.H.***, 866 N.E.2d 314 (Ind. Ct. App. 2007), the Court reversed and remanded the juvenile court's judgment determining that the stepfather of a CHINS was no longer a party to the CHINS proceeding, and thus Stepfather was not entitled to discovery in the CHINS proceeding, where Stepfather's guardianship of the child had not been terminated. Stepfather was appointed guardian of the child, his step-daughter, in 2000. The child's mother is deceased. In 2002, the child became the subject of a CHINS petition. In June 2006, Stepfather made several non-party requests for production of information regarding the child's placement and progress, and requested documents from the child's guardian ad litem (GAL). The GAL filed a Motion for Protection from Discovery, alleging in part that Stepfather had no legal interest in the child in that he was not her legal guardian under the CHINS, and he was not her father or her alleged father. At a July 11, 2006 hearing regarding the GAL's motion, the juvenile court stated that he was granting the protective order and "I've found at this point, this point in time, [Stepfather] is not a party of this case. He may have been in the past he may well be in the future but he's not at this point." Stepfather appealed.

The juvenile court erred in finding that Stepfather was not a party to the CHINS proceeding, where his guardianship of the CHINS had not been terminated. *Id.* at 318. The Court observed that (1) Stepfather noted that according to I.C. 31-34-9-7 a child's guardian is a party "to all proceedings described in the juvenile law and [has] all rights of parties under the Indiana Rules of Trial Procedure;" (2) all parties agreed that Stepfather had been properly appointed guardian of the child prior to the CHINS proceedings; (3) Stepfather contended that his guardianship of the child continued until it was properly terminated which had not occurred; (4) Stepfather noted that if the filing of a CHINS petition automatically terminated a guardianship, a large part of the CHNS statute would be meaningless; (5) OFC and the GAL agreed that the juvenile court erred in dismissing Stepfather as a party to the CHINS proceedings; and (6) the GAL noted that the usual procedure was to consolidate the guardianship case with the CHINS case, and then seeking termination of the guardianship is the functional equivalent of seeking the termination of parental rights. *Id.* at 317.

The GAL requested that the discovery issue be remanded. The Court noted: "The July 11, 2006, hearing was held on the merits of the Motion for Protection from Discovery, and the GAL had an opportunity at that time to support her motion. We therefore remand for the trial court to rule on the GAL's Motion for Protection from Discovery on its merits based upon the hearing already held." *Id.*