

Children's Law Center of Indiana



CHINS

5/17/11

In ***In Re R.P.***, 949 N.E.2d 395 (Ind. Ct. App. 2011), the Court affirmed the trial court's finding that two children were Children in Need of Services (CHINS). The children, ages six and four, are the daughters of Mother and Father, who were involved in a divorce and custody dispute throughout all of the incidents in this case. On March 30, 2009, DCS received a report that Mother was in the hospital as a result of being beaten by Father. When DCS investigated the report, it determined that Mother had attempted suicide and that the report was false. As a result, Father was given temporary custody of the children until shortly after Mother was released from the hospital. At that time, Mother and Father resumed a shared custody arrangement. Mother subsequently made reports to DCS and the police department on three separate occasions (May 26, 2009, October 20, 2009, and February 24, 2010) regarding allegations that Father had touched one or both of the children's private areas inappropriately. DCS and the police conducted three investigations, including interviewing the children on three separate occasions. The children's three interviews did not reveal evidence of sexual abuse. The DCS family case manager recommended to Mother that both children receive counseling at the close of its first investigation, which began in May 2009. During the third DCS investigation, on March 3, 2010, Mother admitted to the family case manager that the children had seen a therapist only two or three times since Mother first reported abuse in May of 2009. Mother also refused to allow DCS to interview the children in February 2010, and provided the family case manager with a video of the children admitting that Father had inappropriately touched them. After watching the video, the family case manager, her supervisor, and the police detective believed that Mother was coaching the children through their answers in the video. DCS concluded on three separate occasions that Mother's allegations of sexual abuse were unsubstantiated. In addition to the DCS and police investigations, Mother took one or both of the children for medical examinations concerning possible sexual abuse on three separate occasions. Medical examiners were unable to find any evidence of sexual molestation in either child, but the older child was diagnosed with a yeast infection by her pediatrician on one occasion.

Based on Mother's multiple reports of sexual abuse and the multiple times the children were subjected to sexual abuse examinations, DCS began to believe that Mother was endangering the children. On March 10, 2010, DCS obtained an *ex parte* detention order and removed the children from Mother's care, citing that an emergency existed due to allegations that the children's physical or mental condition was seriously impaired or endangered if not immediately

removed from Mother's home and taken into protective custody. On March 11, 2010, DCS filed petitions alleging that the children were CHINS pursuant to IC 31-34-1-1 and -2 because Mother had made false accusations against Father regarding domestic and sexual abuse. On March 12, 2010, the trial court held a preliminary inquiry hearing, determined there was probable cause to believe that the children were CHINS, and ordered that the children continue to be placed with Father. The court held a factfinding hearing on July 9 and 12, 2010, took the matter under advisement and found the children to be CHINS on August 19, 2010. On September 14, 2010, the trial court entered a Dispositional Order continuing the children's placement with Father and their wardship with DCS. Mother appealed.

The Court concluded the trial court had jurisdiction to decide this case even though the trial court failed to conduct a factfinding hearing within the 60 day time limit. *Id.* at 404. The Court quoted IC 31-34-11-1, which mandates that:

- (a) Except as provided in subsection (b), unless the allegations of a petition have been admitted, the juvenile court shall complete a factfinding hearing not more than sixty (60) days after a petition alleging that a child is a child in need of services is filed in accordance with IC 31-34-9.
- (b) The juvenile court may extend the time to complete a factfinding hearing, as described in subsection (a), for an additional sixty (60) days if all parties in the action consent to the additional time.

Mother argued that the trial court should have dismissed the CHINS proceedings because the CHINS petitions were filed on March 11, 2010, and the trial court conducted the factfinding hearing 119 days later, on July 9, 2010. Mother noted that she did not agree to an extension of the time limit, and contended that, as a result, the trial court did not have subject matter over the case and should have dismissed the case *sua sponte*. The Court opined that its decision in Parmeter v. Cass Cnty. Dept. of Child Servs., 878 N.E.2d 444 (Ind. Ct. App. 2007), is directly on point for this issue. R.P. at 399. In Parmeter, the Court discussed whether the term "shall" in IC 31-34-11-1 "connotes a mandatory as opposed to a discretionary import" and concluded that "shall" may be construed as directory instead of mandatory "to prevent the defeat of the legislative intent." Parmeter at 448. R.P. at 399. The Parmeter Court further opined that the term "shall" is directory when the statute fails to specify adverse consequences, the provision does not go to the essence of the statutory purpose, and a mandatory construction would thwart the legislative purpose. Parmeter at 448. R.P. at 399. The Court said that the intent of the Parmeter opinion was to indicate that there are important legislative concerns underlying IC 31-34-11-1 that should not be overlooked due to excusable procedural delays. R.P. at 400. The Court agreed with Mother that the legitimacy of a reason for a delay is an important factor in determining whether a trial court appropriately conducted a factfinding hearing outside of the 60-day time limit, but declined to find the trial court's actions inappropriate when Mother has not produced any evidence showing there was an illegitimate reason for the delay. *Id.*

The Court concluded that DCS presented sufficient evidence to prove by a preponderance of the evidence that the children are Children in Need of Services. *Id.* at 404. The Court observed that parents have a fundamental right to raise their children without undue influence from the State, but that right is limited by the State's compelling interest in protecting the welfare of the children. *G.B. v. Dearborn Cnty. Div. of Family and Children*, 754 N.E.2d 1027, 1032 (Ind. Ct. App. 2001). *R.P.* at 401. The Court also noted that the CHINS statutes do not require that a trial court wait until a tragedy occurs to intervene; instead a child is a CHINS when he or she is endangered by parental action or inaction. *In Re A.H.*, 913 N.E.2d 303, 306 (Ind. Ct. App. 2009). *R.P.* at 401. The Court found that the facts of *In Re V.C.*, 867 N.E.2d 167 (Ind. Ct. App. 2007), are very similar to the facts of this case. *R.P.* at 401. The Court said that in *V.C.*, the trial court's determination that the child was a CHINS was affirmed on the following evidence: (1) the mother made numerous reports to child protective services that the father had sexually abused the child; (2) the mother regularly examined the child's genitalia after the child's visits with the father; and (3) the mother spent several years coaching the child to fabricate molestation allegations against the father. *V.C.* at 171, 173, and 181. *R.P.* at 401. The Court opined that, as in *V.C.*, a parent or guardian can endanger a child's mental condition by making multiple false sexual abuse allegations. *R.P.* at 401. The Court said, "[t]hat principle is especially relevant in the instant case where Mother made multiple sexual molestation allegations that were not supported by the evidence, subjected [the children] to multiple sexual abuse examinations, and failed to enroll [the children] in ongoing therapy as recommended by DCS officials." *R.P.* at 401-02. The Court also did not agree with Mother's proposition that injury is a requirement to adjudicate the children as CHINS; a child may be a CHINS if his or her mental condition is *endangered* (emphasis in opinion). *Id.* at 402.

The Court opined that the trial court's findings were sufficient to afford Mother procedural due process. *Id.* at 404. Mother contended that the trial court denied her due process by failing to issue adequate findings and conclusions in its Dispositional Order. IC 31-34-19-10 states:

The juvenile court shall accompany the court's dispositional decree with written findings and conclusions upon the record concerning the following:

- (1) The needs of the child for care, treatment, rehabilitation, or placement.
- (2) The need for participation by the parent, guardian, or custodian in the plan of care for the child.
- (3) Efforts made, if the child is a child in need of services, to:
 - (A) prevent the child's removal from; or
 - (B) reunite the child with;
the child's parent, guardian, or custodian in accordance with federal law.
- (4) Family services that were offered and provided to:
 - (A) a child in need of services; or

(B) the child's parent, guardian, or custodian; in accordance with federal law.

In the Dispositional Order the trial court stated that: (1) the children will continue to receive visitation with Mother, therapy, and schooling; (2) participation by Mother in the plan of care for the children is necessary for reunification; (3) remaining in the home of Mother would be contrary to the welfare of the children because the children need protection; and (4) that reasonable efforts to prevent or eliminate removal of the children were not required due to the emergency nature of the situation, as follows: immediate removal of the children was necessary in order to protect the children. Mother made accusations about [Father] which the children denied. Mother failed her stress test when asked specific questions about making up sexual abuse allegations. R.P. at 403.

The Court quoted In Re N.E., 919 N.E.2d 102, 108 (Ind. 2010), which held that "procedural irregularities in a CHINS proceeding, such as an absence of clear findings of fact, may be of such import that the irregularities deprive a parent of procedural due process with respect to a potential subsequent termination of parental rights." R.P. at 402. The Court also discussed In Re T.S., 881 N.E.2d 1110, 1113 (Ind. Ct. App. 2008) (boilerplate language generally is not sufficient to permit appellate review); A.P. v. Porter Cnty. Office of Family and Children, 734 N.E.2d 1107, 1115-16 (Ind. Ct. App. 2000) (trial court's findings insufficient because court had not given reason for its disposition or for the child's placement in foster care); and In Re A.I., 825 N.E.2d 798, 814 (Ind. Ct. App. 2005) (trial court's order, while sparse, substantially complied with statutory requirements.) R.P. at 402-03. The Court distinguished the instant case from the A.P. case, where the Court found six procedural errors in addition to the trial court's omissions in its findings of facts and opined that the multiple procedural violations increased the risk of deprivation of due process. A.P. at 1117-1118. R.P. at 402-03. The Court noted that, in the A.I. opinion, the Court had reiterated that one procedural deficiency alone may not result in a due process violation. A.I. at 816. R.P. at 403.

The Court concluded that the trial court's findings in the instant case did not violate Mother's right to procedural due process. Id. The Court concluded that, as in A.I., the trial court's Dispositional Order was sparse, but it is apparent that the trial court did consider the elements required by IC 31-34-19-10. R.P. at 403. The Court concluded that the trial court's mention of Mother's failed voice stress test in the Dispositional Order, which contradicted the trial court's prior order excluding the test results, was harmless error. Id. at 404. The Court opined that the finding that "Mother made accusations against [Father] [that] the children denied" was sufficient to justify the emergency nature of the situation. Id. The Court also said that the risk to Mother's parental rights toward the children, who have been placed with Father, is lower. Id. The Court cited the A.P. opinion, which held there is a greater risk of a constitutional violation when a child is placed outside of the home as a result of a CHINS hearing because such a placement logically indicates an increase in the possibility that there will be a subsequent termination of parental rights. A.P. at 1116. R.P. at 404.