

Children's Law Center of Indiana



CHINS

4/30/13

In **In Re R.S.**, 987 N.E.2d 155 (Ind. Ct. App. 2013), the Court reversed the trial court's determination that the infant is a CHINS, finding that there was insufficient evidence to support the determination. The infant was born on April 26, 2012, approximately one month after the trial court had entered an order terminating Parents' rights to three older siblings, ages four, three, and two years. The termination order on the older siblings was based on evidence that: (1) all three siblings had special needs and required occupational, physical, speech, and developmental therapies; (2) Parents did not have adequate housing or financial resources to care for the siblings; (3) Parents did not complete court-ordered educational and therapeutic treatment programs to address their low cognitive functioning and personality disorders; (4) Parents had elevated scores on the Child Abuse Potential Inventories. DCS removed the infant from Parents the day after her birth based solely on the family's history and evidence given during the termination trial on the siblings. On May 24, 2012, DCS filed a CHINS petition on the infant, but the allegations in the petition related to Parents' history with the three older siblings and there were no specific factual allegations that the infant needed care that she was not receiving. Evidence presented at the infant's CHINS factfinding hearing included: (1) all DCS caseworkers and supervisors testified that the infant was removed from Parents based solely on the family's history before her birth; (2) the infant was healthy and tested negative for drugs at birth; (3) Mother receives approximately \$700 per month in social security disability benefits and Father is earning minimum wage income; (4) Parents are sharing the \$315 per month bill for rent, gas, and water at their residence and have enough money left over to purchase adequate food, clothing, and necessities for the infant; (5) Parents appropriately fed, interacted with, and nurtured the infant during visits; (6) a DCS investigator has found Parents' residence to be clean and appropriate; (7) before the infant was born, Father was accused of molesting a child who lived in Parents' home and DCS substantiated the allegations but Father was appealing the substantiation; (8) Father has a 2011 misdemeanor conviction for public indecency and Mother has a 2012 theft conviction; (9) Mother suffers from a personality disorder, post-traumatic stress, and a learning disability and had a medical appointment scheduled at the time of the hearing so that she could resume taking her medication. The trial court found the infant to be a CHINS, concluding that her physical and/or mental condition is seriously impaired or at risk as a result of Parents' inability to provide necessary shelter and supervision.

The Court opined that the evidence did not support the trial court's conclusion that the child is a CHINS. *Id.* at 159. The Court observed that the evidence revealed that Parents' parental relationships with the three older siblings were terminated in part because Parents

lacked financial resources and adequate housing to properly care for the siblings' special needs, but the infant is healthy and tested negative for drugs. Id. The Court also noted that Parents have income from social security disability and Father's job, their residence is clean and appropriate, and they appropriately fed and nurtured the infant during visits. Id. Citing In Re N.E., 919 N.E.2d 102, 105 (Ind. 2010), the Court said that a CHINS adjudication focuses on the condition of a child, and whether that child needs services, and in no way challenges the general competency of a parent to continue a relationship with a child. R.S. at 159. The Court also said that a CHINS adjudication may not be based solely on conditions that no longer exist, and the trial court should also consider the parents' situation at the time the case is heard by the court (multiple citations omitted). Id. The Court observed that it is apparent that Parents have made positive changes in their lives. Id.