

Children's Law Center of Indiana



CHINS

10/21/2008

In ***In Re T.B.***, 895 N.E.2d 321 (Ind. Ct. App. 2008), the Court affirmed in part and reversed in part the juvenile court's orders granting the release of certain records at the request of news media. The child was born August 12, 2004. In November 2004, Marion County Department of Child Services (MCDCS) filed a CHINS petition regarding her. She was found to be a CHINS and was placed in foster care until Mother successfully completed services and was reunited with the child on January 19, 2006, at which time the CHINS case was closed. In May 2006, the child was again found to be a CHINS under a new cause number, and she was again placed in foster care until she was returned to Mother in November 2007. The child died November 27, 2007, allegedly as a result of multiple blunt force injuries. Mother and her boyfriend were charged with neglecting and murdering the child. The CHINS case was closed November 27, 2007, because of the child's death. On that same date, reporters from the Indianapolis Star and Fox Channel 59 requested access to the juvenile court's records in that CHINS case. Following a hearing at which additional records were requested, the juvenile court granted access to redacted copies of its records in the CHINS case closed November 27, and set a hearing on the supplemental requests. On December 6, 2007, the juvenile court granted access to redacted copies of records which were held by Indiana Department of Child Services (IDCS) and MCDCS, and pertained to the child. On January 3, 2008, the juvenile court denied access to its records from the CHINS case involving the child's brother, which case was pending at the time of the child's death; and granted access to redacted copies of records from the child's first CHINS case and from two juvenile delinquency hearings involving Mother. On January 11, 2008, the juvenile court granted access to the transcript of the August 2007 review hearing in the child's CHINS case which was pending at the time of her death. Mother appealed all of the orders granting access except the one which issued December 6.

The Court found that it did have subject matter jurisdiction over Mother's appeal. *Id.* at 331.

Although Mother's appeal was moot because the records at issue had already been released, the Court addressed its merits because it involves questions of great public interest that are likely to recur in the context that will continue to evade review. *Id.* at 332.

The juvenile court did not err in releasing redacted copies of its records from the CHINS proceeding that was pending at the time of the child's death pursuant to IC 31-39-2-10. *Id.* at 342-43. The Court reviewed Administrative Rule 9, IC 31-39-1-2, IC 31-39-

2-10, and IC 31-39-2-15. Contrary to Mother's contention, the Court concluded that (1) IC 31-39-2-10 applies to both closed and pending cases and to both CHINS and juvenile delinquency cases; and (2) IC 31-39-2-15 does not govern whether a juvenile court may release records pursuant to IC 31-39-2-10. *Id.* at 342. The Court agreed (1) with the juvenile court's assessment that the death of any child is a matter "of the keenest public interest ... and especially when the child is ostensibly under the auspices of the state;" and (2) with the juvenile court that the Star has a "legitimate interest" in informing the public of the facts surrounding the death of the child "while in the care of her mother, just hours before a scheduled court hearing." *Id.*

Further, the Court observed with surprise that, in view of the fact that Mother, an adult, had been charged with neglecting and murdering the child prior to the first hearing on the request for access of records, neither the juvenile court's orders nor the parties' briefs cited to IC 31-39-1-1, which provides that the confidentiality provisions of IC 31-39-1 "[apply to all records of the juvenile court *except the following*: (1) *Records involving an adult charged with a crime or criminal contempt of court...*" *Id.* at 340. The Court noted that, despite the fact that the records had already been released, it would be "prudent to provide guidance to juvenile courts in future cases as to what constitutes "[r]ecords involving an adult charged with a crime" for purposes of IC 31-39-1-1(a)(1). *Id.* The Court stated that it believed that the legislative intent behind this ambiguous and broad statement was to ensure that the confidentiality provisions of IC 31-39-1-2 did not impede the State's investigation and prosecution of the "adult charged with a crime[.]" *Id.* at 340-41. The Court held that IC 31-39-1-1(a)(1) applies only to those juvenile court records that relate specifically to both the adult and the charged crime; and noted that to conclude otherwise would be to subvert the confidentiality provisions of IC 31-39-1-2 and to convert IC 31-39-1-1(a)(1) into a fishing license for prosecutors and the public alike. *Id.* at 341.

The Court also noted that Mother's due process claims were not ripe for adjudication. *Id.* The Court (1) noted that it was referring to Mother's contention that the juvenile court's release of these records violated what she characterized as her "inherent due process right to a trial free of prejudicial pretrial publicity;" and (2) found that the contention was purely speculative and dismissive of the ample procedural safeguards at her disposal, such as voir dire and change of venue, to ensure that she would receive a trial by an impartial jury in her prosecution for the child's death. *Id.* The Court opined, however, that juvenile courts would be well advised to consider that the release of records in a CHINS proceeding could result in significant expenditures of scarce judicial and economic resources to protect a parent's constitutional right to a fair trial in a subsequent criminal proceeding. *Id.* at 341 n.28.

The juvenile court erred in releasing a transcript of the August 2007 review hearing pursuant to IC 31-32-6-2. *Id.* at 346. The Court noted that (1) IC 31-32-6-2 provides that "[t]he juvenile court shall determine whether the public should be excluded from a proceeding other than" juvenile delinquency proceedings involving murder or felony allegations, which are presumptively open to the public pursuant to IC 31-32-6-3; (2) for purposes of IC 31-32-6-2, a "proceeding" is an actual hearing or trial, not a transcript of the hearing or trial; and (3) IC 31-32-6-2 clearly does not say that a juvenile court may release a transcript of a proceeding from which the public was excluded - such as the August 2007 review hearing. *Id.* at 345-46.

The juvenile court did not err in releasing its records from the CHINS proceeding that was closed in January 2006 pursuant to IC 31-39-2-10. *Id.* at 348. Contrary to Mother's contentions, the Court observed: (1) in light of the child's death during the pending CHINS proceeding, which was of "legitimate interest" for the purposes of IC 31-39-2-10, Mother's prior involvement in the child welfare system is undoubtedly of equal interest and import; (2) IC 31-39-2-10 is not limited to pending cases; and (3) IC 31-39-2-10 also contemplates the release of court records regarding an adult respondent in a CHINS case, given that practically all CHINS cases involve an adult respondent. *Id.*

The juvenile court erred in releasing its records from Mother's juvenile delinquency proceedings pursuant to IC 31-39-2-8. *Id.* at 349. Noting that it did not agree with Mother's contention that IC 31-39-2-8 contemplates only the release of a record in a pending juvenile delinquency case, it concluded (1) that the plain language of the statute indicates that the record must relate to the act or acts that serve as the basis for the delinquency allegation; and (2) that, although Mother's alleged neglect and murder of the child were the crimes that prompted the request for access to her delinquency records, those acts were not the bases for the delinquency allegations, and thus the juvenile court erred in releasing its records regarding Mother's delinquency proceedings pursuant to IC 31-39-2-8. *Id.*

The juvenile court did not err in releasing redacted records of IDCS and MCDCS regarding the child pursuant to IC 31-33-18-1.5. *Id.* at 353. The Court concluded that, here, Mother disregarded the plain language of IC 31-33-18-1.5 which provides that a properly redacted DCS record "regarding a child whose death or near fatality may have been the result of abuse, abandonment, or neglect" that is otherwise not confidential under state or federal law "may be disclosed to *any person* who requests the record." *Id.* at 352-53. The Court noted that Mother wisely did not contend that the child's death was anything other than the result of abuse, abandonment, or neglect, and did not claim that the records are otherwise confidential under state or federal law. *Id.* at 353.