

Children's Law Center of Indiana



CHINS

4/27/12

In ***In Re V.C.***, 967 N.E.2d 50 (Ind. Ct. App. 2012), the Court affirmed the juvenile court's determination that the child is a Child in Need of Services. The child had previously been determined to be a CHINS because Mother's mental state had deteriorated to the point where she could no longer care for the child. The prior CHINS proceeding was successfully terminated after Mother's mental state improved to the point where DCS representatives believed Mother could adequately care for the child. At the conclusion of the prior CHINS proceedings, Mother was instructed to continue services on her own, and Maternal Aunt was approved to care for the child for short periods of time if Mother's mental state deteriorated to the point that Mother required a short break from the child. In August 2011, Mother contacted the Lafayette Police Department and reported that she required assistance because her mental state had deteriorated to the point where she could no longer provide suitable care for the child. The police contacted DCS, and a DCS staff person spoke with Mother. Mother reiterated that she was unable to provide suitable care for the child, and informed the DCS staff person that Father was incarcerated, and that Mother had family members who may be willing to care for the child. Mother refused to provide the family members' names to the DCS staff person.

DCS filed a Request for Taking Custody and a Request for Filing of CHINS with the juvenile court on August 30, 2011. The juvenile court entered an order finding that Father would be incarcerated in the Department of Correction (DOC) until approximately September 22, 2016, and ordered that Father should appear at all hearings telephonically. On August 31, 2011, DCS filed a CHINS petition, and the juvenile court conducted a detention hearing, at the conclusion of which it found that probable cause existed to believe that the child was a CHINS. The court granted DCS temporary wardship over the child. On September 9, 2011, the juvenile court conducted an initial hearing at which Mother admitted the CHINS allegations. Father denied the CHINS allegations, asserted that he was aware of his rights, and stated that he did not need an attorney. The juvenile court scheduled a fact-finding hearing on October 13, 2011. On September 30, 2011, Father requested that the juvenile court issue a subpoena to Maternal Aunt and filed an affidavit asserting that he believed that Maternal Aunt would testify to a willingness to accept custody of the child. Father did not include Maternal Aunt's address or any other contact information for Maternal Aunt in the affidavit. The juvenile court did not issue the subpoena because Father had failed to provide the court with Maternal Aunt's address. On October 13, 2011, the juvenile court conducted a fact-finding hearing at which Father appeared

telephonically. Father requested a continuance to secure Maternal Aunt's testimony regarding her potential willingness to accept custody of the child. DCS stipulated that Maternal Aunt would indicate a willingness to be considered as a relative placement of the child. The juvenile court denied Father's request for a continuance, went forward with the fact-finding hearing, and heard evidence presented by DCS and Father. At the conclusion of the fact-finding hearing, the juvenile court determined that the child was a CHINS. The juvenile court ordered that the child remain in foster care at the dispositional hearing. On December 14, 2011, Father filed a Motion to Correct Error, which was denied by the juvenile court. Father then appealed, alleging due process violations in failing to issue a subpoena to Maternal Aunt and in denying Father's request for a continuance.

The Court opined that they juvenile court did not erroneously deny Father's request to issue a subpoena to Maternal Aunt. *Id.* at 53-54. Father conceded that he did not provide the juvenile court with Maternal Aunt's address, but argued that the court erred by failing to conduct its own investigation into Maternal Aunt's contact information after Father provided her name and possible avenues for obtaining the information to the court. The Court agreed with the juvenile court that it is not the court's responsibility to "go out and find" the person named in the subpoena. *Id.* at 53. The Court opined that, even if the juvenile court had issued the subpoena, the court would likely have been unable to serve the subpoena to Maternal Aunt due to Father's failure to provide her address. *Id.*

The Court found that the juvenile court acted within its discretion in denying Father's request for a continuance. *Id.* at 54-55. The Court noted that Ind. Trial Rule 53.5 provides that a hearing may be continued at the discretion of the court upon a showing of good cause by affidavit or other evidence. *Id.* Citing Hallberg v. Hendricks Cnty. Office of Family and Children, 662 N.E.2d 639, 646 (Ind. Ct. App. 1996), the Court observed that the granting or denial of a continuance is clearly within the trial court's discretion and denial of the motion for continuance is an abuse of discretion only if the movant demonstrates good cause for granting the motion. *V.C.* at 54. The Court concluded that Father failed to demonstrate good cause for granting his motion for continuance. *Id.* The Court agreed with DCS's claim that Maternal Aunt's testimony was not essential, noting the testimony of the DCS case manager who worked on the child's prior CHINS case that Maternal Aunt had been designated only to provide short-term temporary care of the child if Mother's mental condition necessitated a short break from the child. *Id.* The Court also noted that DCS agreed to stipulate that Maternal Aunt would be willing to be considered as a relative placement, and DCS indicated a willingness to investigate whether Maternal Aunt would be a suitable placement for the child. *Id.*

The Court could not conclude that a CHINS determination was unnecessary. *Id.* at 55. Father contended that the juvenile court erroneously determined that the child is a CHINS because a suitable relative placement was available. The Court said that Father's entire argument was based on the false premise that Maternal Aunt had previously been approved to take custody of the child if Mother's mental state deteriorated. *Id.* The Court noted the evidence

that: (1) there was not approved suitable relative placement available to take custody of the child at the time when Mother informed DCS that she was unable to provide suitable care for the child; and (2) Father was incarcerated in the DOC until at least 2016. Id.