

Children's Law Center of Indiana



CHINS

5/22/2012

In ***In Re V.H.***, 967 N.E.2d 1066 (Ind. Ct. App. 2012), the Court reversed the judgment of the trial court adjudicating the child to be a CHINS, and remanded the matter with instructions to vacate the participation order. The Court held that the child was not a CHINS because Mother was addressing the child's needs without the need for the coercive intervention of the court, and that the participation order issued by the juvenile court (1) was vacated as a matter of course since the CHINS determination was overturned, and (2) was not appropriate because the requirements in it were unrelated to the CHINS adjudication.

Mother gave birth to the child in May 1995. The child's father was deceased, and Mother worked full time from 2008 onwards in a clerical position for the Family and Social Services Administration. The child had behavioral problems for approximately twelve years, with her behavior becoming physically violent as she reached puberty. Mother had worked with the child's school and the child was identified as being eligible for special education services, and had an Individualized Educational Plan. In March 2011, when the child was fifteen years old, Mother took the child to Gallahue Mental Health Services for an initial assessment. The child was diagnosed with Oppositional Defiant Disorder. The child's treatment plan was individual and group therapy; the child went to three group sessions before DCS became involved. In April 2011, Mother contacted the police when the child, who was physically larger than Mother, became physically aggressive towards Mother. The report to DCS alleged "that there was a physical altercation involving both [Mother] and [the child] and that [the child] was a victim of physical abuse." The DCS Family Case Manager (FCM) discussed the incident with Mother, who stated that she and the child had an argument, during which the child began pushing Mother. Mother stated that she pushed the child back, but did nothing else. Mother also indicated to the FCM that the child was not cooperative about attending group counseling, and the FCM provided Mother with some information on resources, and left the investigation open. The investigation was still open when DCS received a second report involving Mother and the child in May 2011. This second report alleged that there had been another physical altercation between Mother and the child, and that the child had been arrested and placed at Lutherwood Emergency Shelter. When Mother was contacted to pick up the child, Mother indicated to the DCS FCM that she was not planning on picking up the child because she wanted the child to continue to be involved in counseling before returning home. The child returned home at the end of May 2011, but DCS substantiated neglect against Mother because she did not pick the child up from Lutherwood, even though the DCS investigation indicated that the child was the aggressor of the physical altercation. In May 2011, DCS filed a petition alleging that the child was a CHINS. At the CHINS factfinding hearing in August 2011 and at the CHINS dispositional

hearing In October 2011, Mother denied the allegation. Mother argued that the child was not a CHINS because she was providing for the child's needs without the coercive intervention of the court, and that she was not unwilling to provide the necessary food, clothing, shelter, medical care, education, or supervision of the child. Mother also argued that if the juvenile court determined that the child was a CHINS, that it should make that finding under IC 31-34-1-6 (CHINS 6), which applies when a child is a danger to themselves or others, but does not need a finding of parental abuse or neglect.

At the August 2011 factfinding hearing, a DCS FCM testified that: (1) the family required home-based counseling; (2) the child needed either counseling or mental health treatment ; (3) DCS had home-based counseling in place; (4) DCS had ordered counseling at Gallahue, but the FCM did not know if the Gallahue counseling had started yet; (5) the last information the FCM had on the Gallahue appointments was a phone call the FCM had received from Gallahue indicating that they had the family on record and would set up appointments.; and (6) the FCM had noted that although the home was appropriate, there were no beds for the child and her sister, and Mother was relieved that DCS could help her obtain beds. At the same hearing, Mother testified that: (1) she had taken the child to Gallahue before DCS became involved; (2) the child had stopped attending group therapy; (3) Mother had tried to get the child signed up again at Gallahue; (4) Mother was unsuccessful in getting the child back into Gallahue because the child was a CHINS, so Medicaid indicated that DCS must pay for Gallahue; (5) because DCS was the one paying for Gallahue, the DCS FCM would have to be the one to schedule the appointments; (6) Mother made several inquiries to two FCMs and a supervisor as to how to get the Gallahue referral and the appointments set up, but never received phone calls back.

The juvenile court determined the child to be a CHINS because her physical or mental condition was seriously impaired or endangered as a result of Mother's inability to provide necessary care and supervision to the child, and Mother's inability to adequately address the child's issues. The juvenile court noted that despite Mother's efforts, Mother had been unable to provide for the child's needs, and the child's condition was worsening rather than improving. The juvenile court determined that services were necessary in order to ensure that the child got the care she needed, and as of the date of the trial, she was not receiving this care. The juvenile court also found that that the child was unlikely to be provided with or accept the needed services without the coercive intervention of the court. The juvenile court determined that the child had not completed treatment at Gallahue or received her psychological evaluation for unknown reasons, and that Mother by herself and without assistance was unable to ensure that the child received the required treatment.

At the October 6, 2011 dispositional hearing, a different magistrate than the one who was at the August 2011 CHINS factfinding hearing was presiding, and Mother requested a continuance because the August 2011 CHINS factfinding transcript had not been prepared. Mother asserted that the transcript was necessary, because the transcript indicated that DCS told Mother that it would take three to six months to get a psychological evaluation, and that consequently, Mother obtained a psychological evaluation for the child on her own. The final report regarding the psychological evaluation was due on October 17, 2011. The juvenile court and the new presiding magistrate did not see the necessity of the transcript, noting that DCS was just recommending standard services. These included, among other things: (1) allowing the family

case manager to visit the home and inspect it; (2) remaining employed and maintain a suitable residence; (3) designating a disciplinarian for the child; (4) ensuring that the child obtained a psychological evaluation; and (5) reimbursing DCS \$25 per week. Mother appealed, arguing that (1) the evidence was insufficient to support the juvenile court's finding that the child was a CHINS, more specifically that DCS failed to prove that she neglected the child or that coercive intervention of the court is necessary because she has been providing for the child's needs including treatment for her behavior problems; and (2) the participation order required Mother to accept services and satisfy requirements unrelated to the CHINS adjudication.

The Court felt that under the present facts and circumstances, it was clear that Mother was addressing the child's behavioral issues, and the Court could not agree that the child needed care, treatment, or rehabilitation that the child was not receiving and was unlikely to be provided with without the coercive intervention of the court. *Id.* at 1073. The Court noted that a child is a CHINS when the child's condition demonstrates that the child needs care, treatment, or rehabilitation that the child is not receiving, and is unlikely to be provided or accepted, while in the care of his or her parents, without the coercive intervention of the court. *Id.* at 1072. In coming to its conclusion, the Court considered the following facts: (1) the child had an I.E.P., and Mother was involved in developing that I.E.P.; (2) the child had a Behavioral Intervention Plan at school, and Mother was involved in developing that plan; (3) Mother took the child to Gallahue for an initial assessment after the child's behavioral problems escalated; (4) Mother took the child to three group sessions before DCS became involved because of the child's escalating bad behavior; (5) Mother had the child taken to Lutherwood after another physical confrontation where the child was the aggressor and the police were called and demanded counseling services; (6) after DCS became involved, Mother contacted her own primary care physician and scheduled the child for a psychological evaluation after Mother learned that DCS could not schedule one for three to six months. *Id.* at 1072-1073.

The Court vacated the participation order as a matter of course, since it had reversed the CHINS order; however, the Court opined that noted that even if the CHINS order had been affirmed, it would have vacated the participation order because of procedural errors and because the requirements ordered were unrelated to the CHINS adjudication. *Id.* at 1073. In reaching its decision, the Court noted the following facts: (1) a different magistrate presided over the dispositional hearing than was at the factfinding hearing; (3) the new magistrate did not have the transcript from the factfinding hearing, which led Mother to move for a continuance; and (3) that the juvenile court at the dispositional hearing failed to see the relevance of the transcript because DCS was only recommending "standard services." *Id.* The Court felt that the transcript from the factfinding hearing was relevant at the dispositional hearing, especially because the dispositional hearing was presided over by a different magistrate than the one who presided over the CHINS adjudication hearing. *Id.* Thus, the refusal to grant Mother's continuance based on the lack of a transcript and a new magistrate was procedurally inappropriate. *Id.* The Court further noted that the label of "standard services" was problematic because the evidence that was produced at the factfinding hearing should have influenced the services and requirements that were ordered in the participation order. *Id.* The Court reasoned that prior case law indicated that "[t]he use of boilerplate language can make the citizenry cynical about the requirements necessary to achieve the goals of a CHINS adjudication. Although the juvenile court has broad discretion in determining what programs and services in which a

parent is required to participate, the requirements must relate to some behavior or circumstance that was revealed by the evidence.” V.H. at 1073-74, citing A.C. v. Marion County Department of Child Services, 905 N.E.2d 456, 464-65. Mother was ordered to complete requirements and accept services that were not supported by the record. V.H. at 1074. The Court noted some of examples of these services and requirements as: (1) permitting the DCS family case manager to made unannounced visits to ensure the child’s safety, even though the child’s safety was not an issue; (2) maintaining a stable job and residence when her house was already determined to be suitable, and Mother had always been employed full-time; (3) putting in place a plan to protect the child from abuse or neglect from any person when there was no evidence of abuse or neglect; (4) reimbursing DCS \$25 a week for services, even though Mother had to schedule the child’s psychological evaluation on her own because DCS failed to do so in a timely manner. Id.