

Children's Law Center of Indiana



CHINS

12/9/13 (publication ordered 2/19/14)

In **J.C. v. Indiana Dept. of Child Services**, 3 N.E. 3d 980 (Ind. Ct. App. 2013), the Court affirmed the trial court's CHINS adjudication of Mother's fifteen-year-old son (Older Son), finding that the evidence was sufficient to support it. The Court vacated the trial court's CHINS adjudication of Mother's twelve-year-old son (Younger Son), finding that the evidence was insufficient to support it. In December 2011, Older Son was arrested and charged with possession of drug paraphernalia. In March 2012, Mother signed an agreement which provided that Older Son would receive six months of informal probation, in return for which he would not be expelled subject to abiding by the agreement. The conditions of the agreement included attending substance abuse assessments and counseling and meeting monthly with his probation officer. Older Son attended his July meeting with the probation officer, but did not attend his June meeting or his August meeting with the probation officer. In the fall of 2012, Older Son and Younger Son were both truant for several days. As a result, Older Son's probation officer and a police officer conducted a welfare check at the home. Mother was not at home, but Older Son and Younger Son were at home. Older Son said that he was ill, did not have clean clothes to wear, and had been bullied at school. The probation officer again telephoned Mother, who did not respond to the call. When Older Son told the probation officer and the school guidance counselor that he had considered suicide and had engaged in cutting himself, the probation officer telephoned Mother and instructed her to take Older Son to a nearby hospital for a mental health evaluation. Mother complied.

DCS filed CHINS petitions for Older Son and Younger Son in October 2012. The allegations in Older Son's CHINS petition included that: (1) he had missed approximately half of the scheduled school days between August 13, 2012 and September 11, 2012, without excuse; (2) he was on probation for a substance abuse delinquency finding and self-reported continued use of illegal drugs; (3) he had engaged in self-harming behaviors, including cutting himself, expressed suicidal thoughts, and was not appropriately using his mental health medications to address his diagnosis of Major Depressive Disorder; (4) he frequently left home without permission and remained away from home without reporting his whereabouts or when he would return; (5) he was expecting the birth of his child, and was overwhelmed at the prospect of his pending parental responsibilities. Older Son's CHINS petition also alleged that Mother: (1) did not engage with treatment providers, the child's probation officer, or the child's school to address the child's numerous issues; (2) had failed to communicate with DCS, the probation officer, or the school counselors; and (3) had failed to fulfill parental obligations. The only allegation in

The Derelle Watson-Duvall Children's Law Center of Indiana - A Program of Kids' Voice of Indiana
9150 Harrison Park Court, Suite C • Indianapolis, IN 46216 • Ph: (317) 558-2870 • Fax (317) 558-2945
Web Site: <http://www.kidsvoicein.org> • Email: info@kidsvoicein.org

Younger Son's CHINS petition that pertained specifically to Younger Son was that he had missed approximately seven scheduled days of school between August 13, 2012 and September 11, 2012 without an excuse. All of the other allegations in Younger Son's CHINS petition pertained to Older Son's issues and Mother's response to those issues. Older Son's informal probation was extended for three months. Older Son admitted to the probation officer that he had experimented with illegal drugs during his probation. After numerous negative drug screens, Older Son tested positive for marijuana and amphetamines in November and December 2012. He was referred to the prosecutor for formal probation. Following a CHINS factfinding hearing in February 2013 and a dispositional hearing in April 2013, the trial court issued its dispositional orders finding Older Son and Younger Son to be CHINS. Mother appealed the CHINS adjudications for both boys.

Finding that the evidence supported the trial court's CHINS adjudication as to Older Son, the Court affirmed Older Son's CHINS adjudication. *Id.* at 984. The Court noted that the State bears the burden of proving by a preponderance of the evidence that a child meets the statutory definitions of a CHINS. *Id.* at 982. The Court looked to IC 31-34-1-1, which states the State must prove that:

- (1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and
- (2) the child needs care, treatment, or rehabilitation that:
 - (A) the child is not receiving; and
 - (B) is unlikely to be provided or accepted without the coercive intervention of the court.

The Court, citing *In Re N.E.*, 919 N.E. 2d 102, 105 (Ind. 2010), observed that a CHINS designation focuses on the condition of the child rather than on an act or omission by the parent. *J.C.* at 982. The Court cited the following evidence in support of Older Son's CHINS adjudication: (1) he was placed on informal probation due to a charge of possession of drug paraphernalia; (2) Mother failed to bring him to two appointments with his probation officer and did not return the probation officer's telephone calls; (3) he tested positive for marijuana and amphetamines and admitted to experimenting with LSD, peyote, and marijuana during probation; (4) his informal probation was unsuccessful, and he was referred to the prosecutor's office for formal probation; (5) the school counselor and the DCS case manager had difficulty in getting Mother to return their telephone calls; (6) he told his counselor and probation officer that he had been suicidal and had engaged in cutting. *Id.* at 983-84. Although Mother argued that the court's coercive intervention was not necessary to ensure that Older Son's problems were addressed, the Court observed that the testimony by the probation officer, counselors, and family case manager "illustrated Mother's pattern of poor communication and failure to respond to messages concerning [the son's] treatments, school attendance, and legal circumstances." *Id.* at 984.

The Court concluded that the trial court clearly erred in adjudicating Younger Son as a CHINS, and vacated Younger Son’s CHINS adjudication. Id. at 985. In reversing the trial court’s CHINS adjudication of Younger Son due to insufficient evidence, the Court noted that the only allegation in Younger Son’s CHINS petition which pertained to him was his seven day truancy. Id. at 984. The Court found that the record was devoid of evidence indicating that Younger Son’s school absences for a relatively brief period of time seriously endangered him, that truancy was a continuous problem, or that Older Son’s problems had a dangerous or negative impact on Younger Son. Id. at 984-85. The Court reiterated that each CHINS determination is very specific to that particular child. Id. at 985.