

# Children's Law Center of Indiana



## CHINS

5/9/2007

In **Slater v. Dept. of Child Services**, 865 N.E.2d 1043 (Ind. Ct. App. 2007), the Court affirmed the juvenile court's judgment determining that Father's son was a CHINS. Father and Mother have two children: a daughter born in 1994 and a son born in 2003. On February 2, 2006, the Marion County Office of Family and Children (OFC) received a report that Father had molested the daughter. The OFC investigator spoke to the daughter who said that "Father had 'French kiss[ed]' her and had 'rubbed her breast and buttock areas over and under her clothing[;]' that Father never wears clothes around the house unless they have company; that Father had asked [the daughter] to lick and touch his penis on several occasions; that she 'believe[d] that she had touched his penis once when he took her hands and put it [sic] down his pants, while they were lying in bed[;]' and that she had seen Father 'mess with his penis until white stuff come [sic] from it.'" The daughter also said that she had seen Father touching two of her female cousins inappropriately, and that she had not reported the abuse to her Mother. The Mother told the investigator that she was unaware of any abuse, and that she was unsure whom to believe regarding the allegations. On February 6, 2006, the OFC filed a petition alleging the children to be CHINS. On June 9, 2006, the juvenile court held a factfinding hearing, at the conclusion of which it adjudicated each of the children to be CHINS. On September 8, 2006, the juvenile court held a dispositional hearing, at which Father's attorney objected to two specific provisions of the predispositional report which regarded reimbursement for substance abuse assessment and reimbursement to OFC. At the conclusion of the dispositional hearing, the juvenile court (1) entered a dispositional order adopting OFC's predispositional report in full and incorporating the same as the findings of the court; (2) ordered the children to be wards of OFC and for the daughter to be in foster care and the son to be in relative care; and (3) incorporated into the dispositional order a parental participation plan. Father appealed.

**The requirement of I.C. 31-34-1-4(b)(2) that OFC show that a sex offense perpetrated by Father resulted in either a conviction or the entry of a judgment after a CHINS factfinding hearing, was met by OFC's showing that the sex offense against the daughter resulted in an adjudication that the son is a CHINS, entered after a factfinding hearing as provided under I.C. 31-34-11-2. Id. at 1047.**

**Under I.C. 31-34-1-3(b)(2), the juvenile court must necessarily determine the sex offense victim to be a CHINS before it may adjudicate the sibling to be a CHINS, but the statute does not require that it be done in separate proceedings. Id. at 1048.** The Court noted that resolution of the issue of whether I.C. 31-34-1-3(b)(2) requires a child sex offense victim to be adjudicated to be a CHINS before the victim's sibling can be adjudicated to be a CHINS

based on that sex offense is a matter of first impression, requiring the Court to construe that statute. The Court discussed the rules of statutory construction. The Court noted that, (1) contrary to Father's contention, the statute "contains no terms dictating the timing of the CHINS determinations of the sex offense victim and the victim's sibling;" (2) the statute merely requires the entry of a judgment determining the sibling to be a CHINS after a factfinding hearing; (3) Father's construction of the statute would leave the sibling of a sex offense victim unprotected while the trial court determined the CHINS status of that victim; and (4) such "runs afoul of the purposes of the CHINS statutes, which include 'ensur[ing] that children within the juvenile justice system are treated as persons in need of care, protection, treatment, and rehabilitation[.]' [I.C.] 31-10-2-1(5)." *Id.* at 1047-48.

Further, the Court disagreed with Father's contention that the trial court should not have adjudicated the son to be a CHINS because the OFC did not show that the caseworker placed the son into a period of informal adjustment, later deciding that further intervention was necessary, or, alternatively, the caseworker determined a program of informal adjustment was not appropriate. The Court reviewed the filings of the OFC and found that the requirements of I.C. 31-34-1-3(b)(4) had been met, and, accordingly the juvenile court did not err when it determined the son to be a CHINS. *Id.* at 1048.