



CHINS

6/6/2006

In **Townsley v. Marion County Dept. Of Child**, 848 N.E.2d 684 (Ind. Ct. App. 2006), the Court reversed the juvenile court's judgment determining the child to be a child in need of services (CHINS) and remanded to the juvenile court with instructions to re-evaluate the CHINS petition consistent with the requirements of I.C. 31-34-13-3. The Court further directed that the child's placement remain in therapeutic foster care pending the juvenile court's CHINS determination. *Id.* at 689. The child was eight years old at the time of the events which led to the filing of the CHINS petition by the agency now called the Indiana Department of Child Services (DCS). Father testified that the child had lived with him for the past eight years. The twenty-year old woman (ex-girlfriend) who lived Father during two years of that time testified at the June 30, 2005 fact-finding hearing that she served as step-mother to the child. The ex-girl friend testified to what the child told her in a telephone call he made to her on January 26, 2005, after she had moved out of Father's house. Among other things she testified that (1) in that telephone conversation, the child said, "Every time I go to sleep my daddy be playing with me;" (2) "when [the child] was four years old and went to stay with his biological mother, [the child] told her about Father's "messaging" with him but that his mother had not believed him, and that [the child] had begged not to be sent back to Father's house out of fear that Father would 'beat' him;" and (3) the ex-girlfriend called and took the child to the child's ADHD therapist at Midtown Community Mental Health Center. According to the child's Midtown therapist, (1) she interviewed the child about being molested; (2) she first spoke to the ex-girlfriend about the child's claims; (3) she asked the child leading questions about his claims; (4) the child told her Father had touched and penetrated his "behind" and had touched the child underneath his clothes; (5) the child's answers appeared somewhat contrived and she could not tell if the answers were reliable; and (6) the child expressed fear at the prospect of returning home because of Father's sexual abuse. The DCS investigator took the child to a forensic child interviewer with the Child Advocacy Center who testified that (1) she interviewed the child using open-ended rather than leading questions; (2) she believed the child's statements were reliable; (3) the child told her that Father touched the "outside of his butt with his wee-wee" on more than one occasion, beginning in December 2004, with the last incident occurring on January 26, 2005; (4) the child did not indicate that the touching included penetration; (5) the forensic interviewer understood that, according to the child, both he and his father were wearing "drawers and robes" at the time, and that the touching happened on the outside of the child's clothes while the child was asleep; and (6) the child told her he wished to live with the Father's ex-girlfriend. Additional facts are discussed below in conjunction with the Court's analysis on appeal.

Following the hearing, the juvenile court found that the DCS had met its burden of proof with respect to both Father and Mother that the child was in need of services. Father appealed.

The Court concluded, as it had in J.Q., 836 N.E.2d 961, 964-65 (Ind. Ct. App. 2005), that the juvenile court here erred in failing to consider, in a separate hearing, the admissibility of the child’s out-of-court statements, and that this was a violation of the requirements of I.C. 31-34-13-3. Townsley at 689. The Court quoted a portion of I.C. 31-34-13-3 which included the correct standard for determining reliability under the statute as “that the time, content, and circumstances of the statements indicate their reliability.” Id. at 687-88. The Court relied on its findings in J.Q. for the interpretation of I.C. 31-34-13-3 and noted that in J.Q. it (1) considered that an important purpose of the Indiana Juvenile Code was to provide a judicial procedure that “ensures fair hearing” and “recognizes and enforces the legal rights of children and their parents;” (2) concluded that “a logical and fair reading of I.C. 31-34-13-3 requires some separation of the child hearsay determination and the CHINS determination in order to give effect to the statute’s notice and hearing requirements;” and (3) held that it was error for the trial court to merge its decisions regarding the admissibility of the child’s statements and the CHINS determination into one fact-finding hearing. J.Q. at 965. Regarding this case, the Court specifically recited the following facts in its decisional analysis: (1) the Marion County DCS petitioned the juvenile court to introduce the child’s out-of-court statements pursuant to I.C. 31-34-13-3; (2) no separate hearing was held; (3) at the June 30, 2005 fact-finding hearing, following Father’s preliminary objection to the admission of the child hearsay statements, the court stated Father’s objection was premature and ruled that it would “entertain that objection if and when such evidence is presented;” (4) the child’s statements alleging Father’s sexual abuse were subsequently admitted during the hearing; (5) regarding the testimony of Father’s ex-girlfriend as to the child’s allegations, the court found that the “time, content and circumstance of the two statements in question do have the sufficient additional [statutory] reliability...;” (6) regarding the testimony of the child’s therapist at the Midtown Community Mental Health Center, the court again stated, “I’m going to overrule the objection as to ... child hearsay pursuant to the [statute];” (7) with respect to the testimony of the forensic child interviewer, the court similarly stated, “[F]ind the young [child’s] statements to be at the time, content, circumstances reliable as to [the statute];” and (8) all these rulings, which were taken under advisement when Father made his objections, were made after the testimony had been heard. In making its finding, the Court noted (1) not only were the admissibility and CHINS determinations made in the same actual proceeding, there was no meaningful separation of these two distinct matters during that proceeding; (2) the testimony was introduced before the court had made a determination as to its reliability, and once the testimony was heard, the court appeared to lose focus on the question of its admissibility; and (3) with respect to the testimony of both the child’s therapist and the forensic child interviewer, the attorneys had to stop the court from continuing forward with the CHINS proceeding in order to remind it to rule on the admissibility of the testimony. Townsley at 688-89.

The Court questioned the juvenile court’s broad determination of the reliability of the child’s statements in light of the arguable inconsistency in the statements and the fact that the child’s claims to the child’s therapist at Midtown Community Mental Health Center were seemingly contrived answers to her leading questions. Townsley at 689. The Court questioned whether the child’s statements were adequately reliable under I.C. 31-34-13-3 to justify their admissibility based on its review of the record. The Court noted: (1) I.C. 31-34-13-3 requires that, in order for child hearsay statements be deemed admissible, the court must find that the time, content, and circumstances of the statements provide sufficient indications of reliability; (2) as found in J.Q., such a finding of reliability is imperative in cases where, if the child hearsay statements are admitted, they will weigh heavily in the court’s determination of whether a child qualifies as a CHINS; (3) such findings of reliability were similarly imperative here in light of the fact that the sole basis for the CHINS petition with respect to Father was the child’s claim that Father had sexually molested him; (4) the court’s finding that the child’s statements were reliable made only broad references to their time, content, and circumstances; (5) the child’s therapist, who admitted she had asked the child leading questions and she could not determine the reliability of his claims, testified that the child had told her that Father had touched him underneath his clothes, and the sexual contact included penetration; and (6) the forensic child interviewer testified that the child had told her Father had touched him over his clothes while the child was asleep and while both he and Father were wearing “drawers and robes,” and that the child had made no reference to penetration.