

Children's Law Center of Indiana



CHINS

4/7/17

In ***In Re Ce. B.***, 74 N.E.3d 247 (Ind. Ct. App. 2017), the Court affirmed the juvenile court's CHINS adjudication of two children, who were five years old and one year old when the CHINS petitions were filed on July 5, 2016. *Id.* at 250. The petitions alleged that: (1) the children lived with Mother and her boyfriend (Custodian), and the children's father was in prison; (2) Mother and Custodian engaged in domestic violence in front of the five-year-old child; (3) Custodian was recently arrested for a domestic violence related incident involving Mother and had pending criminal charges against him; (4) Custodian used cocaine and marijuana; and (5) Mother used marijuana. Attorneys were appointed for Mother and Custodian at the initial hearing on July 5, 2016. On July 27, 2016, Mother and Custodian appeared in court with their attorneys. Both attorneys said their clients were willing to stipulate to the CHINS petition and affidavit. The affidavits contained additional allegations: (1) Mother was homeless, but stayed with Custodian, who often beat her up and threw her out of his house; (2) on one occasion when Mother's father came to Custodian's house to get Mother and the children, Custodian ran out of the house with a sword; (3) the five-year-old child told a case manager that Mother and custodian smoked "white and brown blunts" around him. The judge clarified that by stipulating, there would not be a trial, and he would refresh his memory by reading the CHINS petition and affidavits, and decide the case only on that information. Mother and Custodian agreed that they understood. The Court found, based on the evidence, that the children were CHINS, ordered Mother and Custodian not to use illegal drugs or alcohol and to undergo random drug screens, and set a dispositional hearing for August 24, 2016. Mother and Custodian appeared before a judge pro tem on August 24, and their attorneys informed the court that Mother and Custodian would like to withdraw their stipulations. The judge pro tem put the matter on the judge's calendar for September 7. Mother appeared at court on September 7 with her attorney. Custodian did not appear, but his attorney appeared. The attorneys informed the court that Mother and Custodian wished to withdraw their stipulations due to issues regarding the services that DCS was requesting. DCS's attorney objected, noting that Mother and Custodian were represented by attorneys when the stipulations were entered. The judge took the matter under advisement, and denied Mother's and Custodian's requests to withdraw their stipulations at a review hearing on September 21, 2016. The judge set a dispositional hearing for October 5, 2016. At the dispositional hearing, Custodian declared that he "wanted a trial." The judge pro tem denied Custodian's request to withdraw his stipulation. The judge pro tem then clarified that Custodian "had a right to a trial *before* [he] stipulated to the facts in the petition" and advised him that he could appeal that order if he wanted. *Id.* at 249. Custodian appealed.

Finding the juvenile court did not err in denying Custodian's request to withdraw his stipulation to the CHINS petitions and affidavits of preliminary inquiry, the Court

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affirmed the trial court’s CHINS adjudication. Id. at 250. Custodian contended the juvenile court erred in finding that the children were CHINS without first holding a factfinding hearing. The Court found that the juvenile court *did* hold a factfinding on July 27, at which Custodian, represented by counsel, chose to stipulate that the facts contained in the CHINS petitions and reports of preliminary inquiry were true (emphasis in opinion). Id. The Court said it appeared that Custodian’s argument was actually that the juvenile court erred in denying his request to withdraw his stipulation. Id. Quoting Harlan v. Harlan, 544 N.E.2d 553, 556 (Ind. Ct. App. 1989), the Court noted, “As a general rule, stipulations may not be withdrawn without the consent of both parties, or for cause. Typically, the grounds for setting aside a stipulation include fraud, mistake, undue influence, or grounds of a similar nature. It is not a ground for relief that the stipulation was disadvantageous to the party seeking relief.” Ce.B. at 250. The Court observed that Custodian did not set forth any grounds for cause either at the trial court or on appeal. Id.