

Children's Law Center of Indiana



CHINS

05/29/2009

In **In Re M.D.**, 906 N.E.2d 931 (Ind. Ct. App. 2009), the Court remanded with instructions the trial court's granting of Parents' motion to dismiss the CHINS petition. Mother and Father have three children, the youngest of whom was born June 17, 2008. On August 21, 2008, Father took the youngest child to daycare in the morning, and Mother picked the child up at about 4:15 p.m. Mother first noticed that the youngest child was fussier than usual at around 6:45 p.m., but attributed it to the heat of that very hot day. The child continued to be fussy throughout the weekend. On August 25, 2008, Mother took the child to the doctor's office, where it was discovered that the child had a broken leg, which was caused by non-accidental trauma. The child was admitted to the hospital and a referral was made to DCS. DCS took custody of the youngest child on August 26, 2008, and CHINS petitions were filed regarding all three of the children. Prior to the October 22 and 23 CHINS fact-finding hearing, both parties filed motions requesting the trial court, pursuant to Indiana Trial Rule 52(A), to make specific findings of fact and conclusions thereon to support its decision after the fact-finding hearing. At the end of DCS' case, Parents orally moved to dismiss the CHINS petitions pursuant to Indiana Trial Rule 41(B). The trial court granted Parents' motion and issued an order dismissing the CHINS petitions without issuing any findings of fact and conclusions. DCS appealed.

Although Trial Rule 41(B) states that when the trial court renders judgment on the merits against the plaintiff by granting an involuntary dismissal it shall make findings when requested at the time of the motion, but the Rule is silent as to whether a motion filed prior to the commencement of the hearing is sufficient, the best practice and policy is for a trial court to issue findings supporting its decision to dismiss when requested to do so prior to a fact-finding hearing even when no subsequent request is made at the time of a motion under Trial Rule 41(B). Id. at 933. The Court opined: (1) when a motion for findings and conclusions is made prior to the admission of evidence, it requests the same outcome as a motion made at the time a party moves for involuntary dismissal under Trial Rule 41(B); (2) A motion filed prior to the admission of evidence is requesting that a trial court specifically find the facts that it relies upon in its determination of the merits of the case and to state its conclusions based upon such facts; and (3) a Trial Rule 41(B) motion, if granted, concludes a hearing and makes a determination of the case on its merits. The Court concluded that requiring the parties to re-file their motions requesting findings at the time that a motion to involuntarily dismiss is made serves no purpose in that a motion filed prior to a hearing encompasses the same intent as one filed simultaneously with a Trial Rule 41(b) motion to dismiss, which is to request findings and conclusions to support a trial court's decision on the merits following a fact-finding hearing. Here, according to the Court, the trial court's order dismissing the CHINS petitions pursuant to Trial Rule 41(B) was a disposition of the case on the merits following a fact-finding hearing, and the trial court should have issued specific findings and conclusions to support such determination because it was requested to do so by the parties. Id.