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The Children's Law Center of Indiana

CHINS

6/04/01

In Re A.H., 751 N.E. 2d 690 (Ind. Ct. App. 2001)

In **In Re A.H.**, 751 N.E. 2d 690 (Ind. Ct. App. 2001), the Court affirmed the CHINS adjudication of a fifteen-year-old child due to sexual misconduct by the father and the mother's failure to protect the child. The Court further affirmed the dispositional order which required the father to live outside the home and the family to be evaluated at Indianapolis Institute. Lastly the Court opined that procedural irregularities in the O.F.C. case plan did not violate the parents' due process rights. The child had a medical condition called myoclonus which caused rhythmic contractions in her abdominal region and for which was prescribed medications that had side effects of confusion, sleepiness, amnesia, intoxication, and sedation. The parents were instructed by the child's doctor to place a hand on the child's naval after she had gone to sleep at night to determine whether the contractions were occurring. This testing was the father's responsibility while the mother worked third shift. The child told a friend, a Bartholomew County O.F.C. case manager and an Indiana State Police Detective that, when checking her abdomen, her father had put his finger in her vagina five to ten times and rubbed her vagina; that he stuck his hand down her underwear and touched her pubic hair, and that her father inserted his finger into her vagina and felt her breasts when the child sleep walked into the father's bedroom and crawled into his bed. The child was found to be a CHINS and the court's dispositional order required evaluations at Indianapolis Institute and that the father remain away from the home and have supervised visitation with the child.

Evidence was sufficient to support CHINS finding; appellate courts do not re-weigh evidence. The O.F.C. filed a CHINS petition alleging that the child was a CHINS due to abuse, neglect, and because she was a victim of the sex offense of sexual misconduct with a minor. After a four-day fact-finding hearing, the court concluded that the child was a CHINS under all three of the statutory definitions and entered findings of fact and conclusions of law. The Court noted that, in reviewing a case where the court has entered findings of fact and conclusions of law, the Court must determine whether the evidence supports the findings, and the findings support the judgment. *Id.* at 695. The court's decision is reversed only if it is clearly erroneous. *Id.* The Court considers only the evidence and reasonable inferences therefrom that support the judgment in making its determination as to whether the trial court's decision is clearly erroneous. *Id.* The parents argued that numerous findings were unsupported by the evidence. The Court analyzed the evidence supporting each finding, including the testimony of the caseworker, detective, and other witnesses concerning abuse. The Court found that the record indicated that four people, including the detective and caseworker, testified that the child told them the father had come into her bedroom and touched her inappropriately on a number of occasions. The Court opined that this evidence was sufficient for the juvenile court to have found by a preponderance of evidence that the father abused the child by committing sexual misconduct with a minor as defined by I.C. 35-42-4-9. *Id.* at 698. The Court further opined that the finding that the father had sent an inappropriate e-mail picture and message to the child was supported by witness testimony concerning the child's statements about the e-mail and the fact that the e-mail heading came



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from the father's work e-mail address. The Court further found that trial court's determination that the mother failed to protect the child was supported by the evidence because the mother's actions in questioning the father and arranging counseling for the child did nothing to remove the father's opportunity to molest the child in the future. The child was exposed to danger by the mother's failure to protect her. *Id.* at 699.

Dispositional decree conformed with the statute, I.C. 31-34-19-6. The Court was unpersuaded by the family's claim that the requirement for independent evaluations at Indianapolis Institute unnecessarily disrupted the family's freedom and life, and imposed unnecessary restrictions on the child and parents. The family cited their on-going therapy at St. Vincent Stress Center in support of their claim that the Indianapolis Institute evaluation was not needed. The Court cited evidence that the St. Vincent Stress Center staff members were unaware of the child's molestation by the father and that the child was a ward of Bartholomew County O.F.C. as supportive of the court's decision that independent evaluation was necessary. *Id.* at 700. The family further complained that the depositions order was contrary to the statute because it required the father to remain away from the home. The Court stated that it could not "find fault in the court's decision to remove [f]ather from the home". The Court opined that when child abuse has been established the state has compelling interest in protecting the welfare of the child. The rights of a parent are not greater than the rights of a child whose growth and development have already been threatened by abuse. *Id.*, quoting *In Re Joseph*, 416 N.E. 2d 857, 860 (Ind. Ct. App. 1981.)

O.F.C.'s failure to negotiate or produce timely case plan did not result in a violation of parents' due process rights. The parents argued that the failure of the Bartholomew County O.F.C. to negotiate the child's case plan with them and the failure to provide a case plan within sixty days denied the parents their due process rights. The parents cited *In Re A.P.*, 734 N.E. 2d 1107 (Ind. Ct. App. 2000), a termination of the parent-child relationship case, where numerous procedural irregularities, including failure to provide a case plan to parents, warranted reversal of the termination order. The Court distinguished *A.H.* from *A.P.* because parental rights were not being terminated and noted that an erroneous CHINS adjudication has a far less disastrous impact on the parent-child relationship. *A.H.* at 701, quoting *In Re M.M.*, 733 N.E. 2d 6, 10 (Ind. Ct. App. 2000). The Court opined that, assuming for the sake of argument that the O.F.C. did not provide an opportunity to negotiate the case plan nor complete the case plan in a timely manner, these procedural irregularities did not result in a violation of parental due process rights. The Court opined that, given the finding of sexual abuse and the concerns about the parents' honesty with their therapists, the CHINS finding and resulting dispositional order would not have been different if the O.F.C. had negotiated the case plan or provided a more timely plan. *Id.* at 702.