

Children's Law Center of Indiana



CHINS

9/28/11

In **T.N. v. Indiana Dept. of Child Services**, 954 N.E.2d 519 (Ind. Ct. App. 2011), the Court reversed and remanded the child's Child in Need of Services (CHINS) adjudication. On August 16, 2010, the Indiana Department of Child Services (DCS) filed a CHINS petition alleging Mother and Father did not provide the child with a safe living environment and appropriate supervision because: (1) Mother allowed the child's boyfriend to sleep over when the child was thirteen years old, which resulted in the child becoming pregnant and giving birth when she was fourteen years old; and (2) Father has untreated substance abuse and mental health issues, including a diagnosis of paranoid schizophrenia. The court initially permitted the child to remain in Father's home, but removed her and placed her in foster care less than a month later because Father was not cooperating with DCS, the child was not enrolled in school, and the child was hospitalized for head and facial injuries after being attacked by the nieces of Mother's boyfriend. Mother admitted the child was a CHINS at the fact-finding hearing, on November 8, 2010, but Father, represented by counsel, objected to CHINS status being granted on Mother's admission alone. Father's counsel noted that parents shared joint legal and physical custody. DCS counsel accepted Mother's CHINS admission and was ready to proceed to a CHINS trial as to Father, but the trial court said that case law did not require a CHINS trial for Father. The trial court adjudicated the child to be a CHINS based on Mother's admission and opined that Father could dispute any services DCS wanted to offer him at a contested dispositional hearing. The court then conducted a contested dispositional hearing and ordered Mother and Father to take part in a number of services with a goal of reunification with the child. Father appealed the CHINS determination.

The Court held that if either parent challenges a CHINS allegation, due process requires a fact-finding hearing before the court declares the child a CHINS. *Id.* at 526. Father argued that the court violated his right to due process when it found the child a CHINS based on the admission of Mother, without allowing Father to contest that allegation. The Court said that, when determining whether a litigant received proper process, the Court balances three factors: "(1) the private interests affected by the proceeding; (2) the risk of error created by the State's chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure." *In Re J.S.O.*, 938 N.E.2d 271, 274 (Ind. Ct. App. 2010). *T.S.* at 523. The Court opined that Father's interest in being able to raise his child without interference from government is substantial. *T.S.* at 525. The Court said that the only apparent State interest

served by denying Father a fact-finding hearing is speedy adjudication; however, in this case both DCS and Father were prepared to proceed with the fact-finding hearing. Id. The Court determined that the State's interest in denying Father a hearing therefore does not seem substantial. Id. The Court acknowledged that permitting trial courts to proceed with a CHINS disposition over the objection of one parent, based on the admission of the other parent, may not create a *substantial* risk of erroneous CHINS adjudications, but courts could reach different results after a disputed hearing. Id. The Court said that the procedure followed in this case could permit error, especially in situations in which "one parent may have an ax to grind with the other parent." Id. The Court opined that, when the parent's interest is substantial and the State's interest appears minimal, this risk of error should be avoided. Id.

The Court, interpreting In Re N.E., 919 N.E.2d 102 (Ind. 2010), opined that DCS does not have to prove a child is a CHINS as a result of both Mother's actions and Father's actions. T.S. at 524. DCS claimed that each parent does not have the right to contest a child's CHINS status because a CHINS adjudication is centered on determining whether the court needs to intervene to protect the child's well-being. DCS relied on In Re N.E., 919 N.E.2d 106, which held "a CHINS determination establishes the status of a child alone....a separate analysis as to each parent is not required in the CHINS determination stage." T.S. at 524. The Court opined that the N.E. opinion did not eliminate the requirement that DCS prove the child is, in fact, in need of services as alleged in the CHINS petition. T.S. at 524. In the N.E. case, the petition alleged that the child and her three siblings were CHINS due to domestic violence in Mother's home. The Court noted that, in the N.E. trial, the parents gave divergent testimony regarding the number of hours the child spent in each of their homes. T.S. at 524. The Court said that the trial court in N.E. found the child was a CHINS based on the Mother's testimony, but if the court had believed the father's evidence that the child spent 95% of her time with the father or his mother, the court could have found the child was not "seriously endangered" by the situation in the rarely-visited Mother's home. T.S. at 524. The Court thus declined DCS's invitation to hold that one parent's admission is sufficient to prove a child is a CHINS, when the child's other parent contests that allegation. Id.

The Court opined that a contested dispositional hearing is not an adequate substitute for a fact-finding hearing. Id. at 525. The Court observed that at the fact-finding stage, the primary issue is whether the child is in need of services, but at the dispositional hearing, the primary issue is what placement, services, and programs are necessary to properly care for the CHINS. Id. The Court also noted that litigants have more protection from the admission of unreliable and possibly prejudicial evidence in fact-finding hearings than in dispositional hearings (multiple citations omitted). Id. The Court said that, in light of these relaxed rules for the admission of evidence, the Court could not accept DCS's assertion that these two types of proceedings are interchangeable. Id.