

# Children's Law Center of Indiana



## Delinquency

7/19/10

In **A.H. v. State**, 949 N.E.2d 358 (Ind. Ct. App. 2010), the Court reversed the child's delinquency adjudication for an act that would be exploitation of an endangered adult as a class A misdemeanor if committed by an adult. In May 2009 the sixteen-year-old child went to Robert Barnhart, an adult diagnosed with "mental retardation" and an IQ of 54, to borrow \$750 to bail her husband out of jail. Barnhart cannot read or write, has a "hard time with numbers" and is legally blind. Barnhart receives assistance from the developmental disabilities provider, Help at Home, which assists Barnhart with his finances. Barnhart told the child that he was not authorized to loan her money and he could not afford it, but he eventually agreed to give the child the money and assumed it was a loan. The child filled out the top part of the check and Barnhart signed the check. The child took Barnhart's check to Charlie Matthews, who gave her \$750 in exchange for the check. The child paid her husband's bail and then took out a loan to pay Matthews \$750. Matthews returned Barnhart's check to the child. The \$750 was never withdrawn from Barnhart's account. Later the child returned to Barnhart and told him that she needed \$100 to go to Indiana Beach. Again, the child filled out the top part of the check, and Barnhart signed the check. Barnhart considered the check to be a loan. Matthews gave the child \$100 for the check. The child re-paid Barnhart \$25 of the \$100 that she received from the second check. When Help at Home discovered irregularities in Barnhart's checking account, they contacted an investigator employed by Adult Protective Services. On July 2, 2009, the State filed a petition alleging the child committed an act that would be exploitation of an endangered adult as a class D felony if committed by an adult. After a hearing, the juvenile court adjudicated the child delinquent and sentenced her to the Department of Correction until she reaches the age of twenty-one years unless released sooner by the Department.

**The Court held that the evidence is insufficient as a matter of law to sustain the child's delinquency adjudication for an act that would be exploitation of an endangered adult.** Id. at 361. The Court said the offense of exploitation of an endangered adult as a class A misdemeanor, IC 35-46-1-12, provides in pertinent part: "...a person who recklessly, knowingly, or intentionally exerts unauthorized use of the personal services or the property of: (1) an endangered adult...for the person's own profit or advantage or for the profit or advantage of another person commits exploitation of...an endangered adult." Id. at 360. IC 35-46-1-1 defines an "endangered adult" as "an individual who is: (1) at least eighteen years of age; (2) incapable by reason of mental illness, mental retardation, dementia, habitual drunkenness,

excessive use of drugs, or other physical or mental incapacity of managing or directing the management of the individual's property or providing or directing the provision of self-care; and (3) harmed or threatened with harm as a result of: (A) neglect; (B) battery; or (C) exploitation of the individual's personal services or property." Id. The Court said that, to adjudicate the child delinquent for committing exploitation of an endangered adult as a class A misdemeanor if committed by an adult, the State needed to prove that the child recklessly, knowingly, or intentionally exerted unauthorized use of the property of an endangered adult for the child's own profit or advantage or for the profit or advantage of another person. Id. The Court agreed with the child's argument that the evidence is insufficient to sustain the adjudication, noting, inter alia, the following evidence: (1) the check for \$750 was never withdrawn from Barnhart's account; (2) the \$100 check is a relatively small sum of money and the child paid back to Barnhart \$25, which is consistent with the idea that Barnhart loaned the money to the child; (3) Barnhart testified that he does not need permission to buy lunch or toothpaste and necessities; (4) Barnhart testified that the money in his checking account belonged to him and that he agreed to give the child the money, and considered the checks to be loans. Id. The Court opined that, while Barnhart may have diminished capacity and the child prevailed against Barnhart, the Court did not believe the State met its burden of proving beyond a reasonable doubt that the child's use of Barnhart's property was unauthorized. Id. at 361.