

# Children's Law Center of Indiana



11/23/16

In ***In Re C.K.***, 70 N.E.3d 359 (Ind. Ct. App. 2016), the Court affirmed the juvenile court's determination that the child, who was four months old at the time the CHINS petition was filed, was a CHINS pursuant to IC 31-34-1-1 (neglect) and IC 31-34-1-2 (abuse by parental act or omission). *Id.* at 375. The child was born to married parents on April 13, 2015. Mother is an emergency room physician and Father is an electrical engineer. On August 18, 2015, Mother fed the child and Father put him to bed at approximately 8:00 p.m. During the night, the child awoke at about 1:00 a.m., and again between 3:00 a.m. and 4:00 a.m. Mother woke and attended to him on both occasions. Mother breastfed him for about fifteen minutes before he returned to sleep. At about 5:45 a.m., Father awakened, heard the child crying, changed the child's diaper, and brought him to Mother at about 6:00 a.m. Mother stayed in bed with the child, nursing him and sleeping, until 7:00 a.m. Father left for work at 6:30 a.m. Mother dropped the child off at the Goddard School at about 7:45 a.m. The lead teacher in the infant room observed that the child was not showing a lot of expression, was not making noises, and did not move his arms or legs. After the child had slept for about an hour, the teacher noticed "a different breathing sound from him", and he did not respond or open his eyes when she tapped him. The teacher called for the school's director and assistant director, who found the child was non-responsive and showed a "gaspier kind of breath." Paramedics and Parents were called. Mother asked that the child be taken to Riley Hospital. Paramedics arrived at the school, checked the child's vital signs, and observed that he was not responsive to painful stimuli, his limbs were weak, and his skin was cold and pale. Paramedics took the child to I.U. North Hospital, which was the nearest hospital.

The child underwent tests which showed intracranial hemorrhaging, and he was transported to the emergency room at Riley Hospital. At Riley, Dr. Fulkerson, a pediatric neurosurgeon, attended to the child and characterized the child's subdural hematomas as "severe." Tests revealed that the child had subdural hematomas on both sides of his brain, which are collections of blood in the space between the brain and the skull, as well as hemorrhages in the retina of his right eye. Dr. Hicks, a professor and board-certified specialist in child abuse pediatrics, also evaluated the child. Dr. Hicks felt that the child's injuries "were suspicious for non-accidental trauma", but acknowledged that other possibilities included "an accidental event that had not yet been disclosed or an accidental event associated with a lapse of supervision, or an accidental event associated with neglect." Dr. Hicks noted that "it takes a significant amount of force to cause this type of injury", and the force involved was "not the type of...forces that are involved with bouncing a baby on one's knee or...infant swings or carriers." The child spent three days in Riley Hospital intensive care and another four days in a regular Riley Hospital room.

DCS received a report regarding the child's injuries. A DCS assessor and a Carmel Police Detective conducted an investigation, which included an interview of Parents at Riley Hospital. Mother told the assessor and the detective that the child had experienced problems with sleeping within the last two weeks and was getting up three or four times per night. This was a change

from the child's regular pattern of sleeping through the night. Parents took a polygraph examination at the Carmel Police Department on August 26, 2015. Father passed the polygraph, but Mother failed it based on her responses about her involvement with and knowledge of the child's injuries. The detective felt that Mother's statements in regard to sleep were one of the bigger things that showed a motive for the injury, along with his observation that Mother did not show much distress when he interviewed her at Riley Hospital.

On September 2, 2015, DCS requested the court's approval to take custody of the child and filed a CHINS petition. The CHINS petition alleged that: (1) the child was found to be lethargic and unresponsive while at Goddard School; (2) the child had subdural hematomas on both sides of his head as well as hematomas/hemorrhages around his eyes; (3) the injuries were non-accidental; and (4) Mother failed a polygraph examination regarding the child's injuries. The juvenile court held a detention hearing, ordered the child's continued detention and placement in the family home, permitted Mother to return to the home, and ordered that all of Mother's contact with the child be supervised. The juvenile court held an initial hearing on September 17, 2015, at which Parents denied the CHINS allegations. On October 13, 2015, Mother underwent psychological testing. The psychologist's report noted that Mother's responses to questions indicated defensiveness and situational-related depression and anxiety. The psychologist noted that, although Mother did not fall into the risk factors of shaken baby syndrome, depression, stress, and a colicky or fussy child could be risk factors. The psychologist could not definitively exclude Mother as a perpetrator. The juvenile court held a factfinding hearing on three days in November 2015. On December 28, 2015, the court entered an order which contained detailed findings of fact and conclusions of law. The order determined that the child was a CHINS under IC 31-34-1-1 and IC 31-34-1-2. The court also applied IC 31-34-12-4, the rebuttable presumption of CHINS statute. The juvenile court held a dispositional hearing and entered a dispositional order on February 26, 2016. On March 29, 2016, DCS filed a motion to terminate jurisdiction and discharge the parties, which was granted by the court on March 31, 2016. Parents appealed the CHINS adjudication, challenging many of the juvenile court's findings and conclusions. Parents also asserted that the juvenile court erroneously applied IC 31-34-12-4.

**The Court concluded the juvenile court correctly applied IC 31-34-12-4, the rebuttable presumption of CHINS statute.** *Id.* at 374. The Court looked to IC 31-34-12-4, which provides that a rebuttable presumption is raised that a child is a CHINS because of an act or omission of the child's parent, guardian, or custodian if the state introduces competent evidence of probative value that: (1) the child has been injured; (2) at the time the child was injured, the parent, guardian, or custodian: (A) had the care, custody, and control of the child; or (B) had legal responsibility for the care, custody, or control of the child; (3) the injury would not ordinarily be sustained except for the act or omission of a parent, guardian, or custodian; and (4) there is a reasonable probability that the injury was not accidental. *C.K.* at 364. The Court noted the juvenile court had before it sufficient evidence to establish that the child suffered injuries, that while he was in Mother's care he was showing symptoms of a head injury upon his arrival at Goddard, that his injuries were of a type not ordinarily sustained except for an act or omission of a parent, and his injuries were not accidental. *Id.* at 374. The Court found Parents' argument required the Court to reweigh the evidence which the juvenile court had before it. *Id.* The Court could not say the juvenile court erred in applying the rebuttable presumption statute or that Parents presented sufficient evidence to rebut the presumption. *Id.*

**The Court concluded the juvenile court’s determination that the child was a CHINS under IC 31-34-1-1 and IC 31-34-1-2 was supported by the evidence.** Id. at 375. The Court noted the CHINS determination was based on evidence that the child suffered subdural hematomas and retinal hemorrhaging while in Mother’s care and Parents did not dispute that the child suffered these injuries, which are consistent with traumatic injury. Id. at 372. The Court observed that the juvenile court held a three-day factfinding hearing, and was in the best position to evaluate the evidence which was presented. Id. at 372-73. The Court noted the following evidence: (1) after Father left for work, Mother was alone with the child for over an hour prior to dropping him off at Goddard; (2) upon the child’s arrival at Goddard, the teacher observed that the child didn’t show a lot of expression, looked sleepier, wasn’t moving a lot, and was not cooing or making noises; (3) Dr. Hicks testified that symptoms of a head injury included a change in mental status so the infant is not normal in alertness and ability to make eye contact or respond, and the infant may develop sleepiness, lethargy, or coma, may have difficulty feeding, and may have difficulties in the ability to move the arms and legs; (4) Dr. Hicks characterized the child’s injuries as “moderate”, and said that symptoms may be more subtle or challenging to recognize; (5) Dr. Hicks testified that retinal hemorrhages are unusual with accidental head injuries, and the child’s injuries “were suspicious for non-accidental injury”; (6) Dr. Fulkerson explained that the child suffered subdural hematomas of different densities which would “suggest changes in timeframe”, and that multiple densities of the subdural fluid on the M.R.I. and CT scan could cause him to “worry about multiple events” which suggest “there is something repetitive going on and also again trips our concern for the child.” Id. at 373-74. The Court found that the medical testimony on the severity and possible causes of the child’s injuries was reflected in the juvenile court’s findings. Id. at 374. The Court held that Parents’ arguments were a request to reweigh the evidence, which the Court cannot do. Id.