

Children's Law Center of Indiana



CHINS and Third Party Custody

4/12/2016

In **In Re Custody of M.B.**, 51 N.E.3d 230 (Ind. 2016), the Indiana Supreme Court reversed the circuit court's dismissal of Aunt and Uncle's petition seeking custody of the child, finding the circuit court's determinations that (1) Aunt and Uncle lacked standing to file the custody action; and (2) the circuit court lacked subject matter jurisdiction to hear the custody proceeding, were both incorrect. *Id.* at 231. The Court remanded to the circuit court for further proceedings. *Id.* at 236. The child was the subject of a pending CHINS action, and the juvenile court denied Aunt and Uncle's motion to intervene in the CHINS case. Aunt and Uncle then filed a petition for emergency custody of the child in circuit court pursuant to IC 31-17-2-3(2). The circuit court dismissed Aunt and Uncle's petition, reasoning that Aunt and Uncle lacked standing to petition for custody and that the pending CHINS case divested the circuit court of subject matter jurisdiction. Aunt and Uncle appealed the dismissal.

The Court held that Aunt and Uncle had standing to bring an independent custody action with respect to the child. *Id.* at 233. Citing IC 31-17-2-3(2), the Court observed that any person "other than a parent" has standing to initiate a cause of action for custody, so long as the question of custody over the child is not incidental to dissolution of marriage, legal separation, or an action for child support. *Id.* Noting that no such action was pending and that neither Aunt nor Uncle was a parent to the child, the Court determined that Aunt and Uncle had statutory standing to bring an independent action for custody of the child. *Id.*

The Court held that the circuit court had subject matter jurisdiction over Aunt and Uncle's petition for custody, but must stay its jurisdiction pending the conclusion of the CHINS case regarding the child. *Id.* at 236. Observing that IC 33-28-1-2 provides for the circuit court's concurrent jurisdiction over civil matters, the Court cited State ex. Rel. American Fletcher Nat. Bank & Trust Co. v. Daugherty, 283 N.E.2d 526, 528 (Ind. 1972) which held that, where courts have concurrent jurisdiction over the same subject, such jurisdiction may not be exercised simultaneously. *D.W.* at 235. The Court determined that, although the CHINS and custody proceedings differed in form, they related to the same subject matter, namely custody and care of the child. *Id.* Noting a possible exception for a motion pursuant to Ind. Tr. R. 12(b)(8), the Court advised that a circuit court "may allow the parties to file an independent custody action while a CHINS proceeding is pending in juvenile court", but that court is required by law to abstain from

the exercise of that jurisdiction until the CHINS proceeding has concluded, absent an applicable exception to the juvenile court's exclusive jurisdiction. Id. at 236.