

# Children's Law Center of Indiana



## CHINS

9/2/15

In **In Re D.B.**, 43 N.E.3d 599 (Ind. Ct. App. 2015) (Brown, J. dissenting), the Court reversed the trial court's CHINS adjudication. *Id.* at 607. The child was born out of state to Mother and Father in August 2012. Father was present at the child's birth, signed a paternity affidavit, and was involved in the child's life for about four months. When the child was four months old, Mother and the child moved to Indianapolis. Father did not relocate with them, and now lives in Minnesota. Father sent money to Mother when she requested it, but did not provide regular child support payments. Father alleged that Mother prevented him from seeing or having contact with the child on a regular basis, and that she prevented him from calling her to check on the child. In August 2014, Mother, the child, and the child's five-month-old half-brother were living with Mother's boyfriend (Boyfriend). Boyfriend shot and killed Mother and then himself, while the child and her half-brother were in the home. DCS removed the children and filed a CHINS petition. By the date of the filing of the CHINS petition, Father had not seen the child for over one year. DCS placed the child with her Godmother. Father contacted DCS one week later and appeared for the initial hearing. The juvenile court adjudicated the child to be CHINS. At that time, the Interstate Compact on the Placement of Children process for Father was incomplete. Father appealed the CHINS adjudication.

**The Court held that the Interstate Compact on the Placement of Children (ICPC) (IC 31-28-4-1) does not apply to placement with an out-of-state parent.** *Id.* at 604. Father first argued that the ICPC does not apply to the placement of a child with her biological parent. The Court found this was an issue of statutory interpretation, to which the Court applied a de novo standard of review. *Id.* at 603. The Court noted that: (1) an interstate compact is "an agreement between two or more states, entered into for the purpose of dealing with a problem that transcends state lines"; (2) all fifty states are current members of the ICPC; (3) the broad purpose of the ICPC is to facilitate "cooperation between states in the placement and monitoring of dependent children." (Multiple citations omitted). *Id.* In **In re Adoption of Infants H.**, 904 N.E.2d 203, 207-08 (Ind. 2009), the Supreme Court observed that: (1) the ICPC is one of the most important safeguards for children, whom it is contemplated will be sent to live with adoptive parents in another state; and (2) the conditions for placement required by the ICPC "are designed to provide complete and accurate information regarding children and adoptive parents from a potential sending state to a receiving state... in order to ensure children will have the opportunity to be placed in a suitable environment." **D.B.** at 603.

The Court cited Article III of the ICPC, which states that "a sending agency may not send, bring, or cause to be sent or brought into any other party state *a child for placement in foster care or as a preliminary to a possible adoption* unless the sending agency complies with each requirement

The Derelle Watson-Duvall Children's Law Center of Indiana - A Program of Kids' Voice of Indiana  
9150 Harrison Park Court, Suite C • Indianapolis, IN 46216 • Ph: (317) 558-2870 • Fax (317) 558-2945  
Web Site: <http://www.kidsvoicein.org> • Email: [info@kidsvoicein.org](mailto:info@kidsvoicein.org)

under Article III and with the receiving state's laws governing the placement of children.” (Emphasis in opinion). D.B. at 604. The Court applied the ICPC version found at IC 31-28-4 to the instant case, because the newer, substantively different version of the ICPC at IC 31-28-6-1 will not be effective until it has been ratified by thirty-five states. Id. The Court observed that IC 31-28-4 “quite plainly provides that it applies only to placement in foster care or a preadoptive home.” Id. To the extent that the juvenile court's CHINS determination rested on the fact that the ICPC process for Father had not yet been completed, the Court discounted that basis of the CHINS adjudication. Id.

**Finding that DCS offered no evidence that Father was an unfit parent, but merely proved that he had been an absent parent, the Court concluded that there was insufficient evidence to support the juvenile court's conclusion that the child was a CHINS.** Id. at 606-07.

Father's second argument was that there was insufficient evidence to support the juvenile court's determination that the child was a CHINS. Quoting In re S.D., 2 N.E.3d 1283, 1287 (Ind. 2014), the Court observed the Supreme Court's caution that “[n]ot every endangered child is a child in need of services, permitting the State's *parens patriae* intrusion into the ordinarily private sphere of the family.” D.B. at 605. The Court noted that, in the instant case, DCS alleged that the child was a CHINS pursuant to IC 31-34-1-1, which provides: (1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and (2) the child needs care, treatment, or rehabilitation that: (A) the child is not receiving; and (B) is unlikely to be provided or accepted without the coercive intervention of the court. Id. Again quoting In re S.D., 2 N.E.3d at 1287, the Court observed that the Supreme Court has interpreted this provision to require “three basic elements: that the parent's actions or inactions have seriously endangered the child, that the child's needs are unmet, and (perhaps most critically), that those needs are unlikely to be met without State coercion.” D.B. at 605.

The Court said it was undeniable that the child had undergone significant trauma in the past year, and it could be argued that her “mental condition is seriously impaired or seriously endangered” as a result of that trauma. Id. The Court held that DCS had certainly not proven that her mental and emotional condition was the result of Father's “inability, refusal, or neglect... to supply the child with necessary food, clothing, shelter, medical care, education, or supervision[.]” Id. The Court observed that, to the contrary, Father was prepared to supply all of those necessities immediately. Id. The Court found that the following undeniable facts alone did not lead to a conclusion that Father's “actions or inactions have seriously endangered the child”: (1) Father had not been a significant presence in the child's life; (2) Father and the child did not really know one another as a result of his parental absence; (3) removing the child from the caregiver she knew and loved to place her with an unknown caregiver would be an additional trauma. Id. at 606. The Court opined that, as Father is the child's parent, there must be a presumption that he is a fit and capable parent, unless and until DCS proves otherwise by a preponderance of the evidence. Id. The Court found it was DCS's burden to prove by a preponderance of the evidence that the child would be seriously impaired or endangered in Father's care. Id. The Court also acknowledged that there is but a brief timeframe, dictated by statute, between the

filing of a CHINS petition and a CHINS factfinding hearing, and the difficulty of gathering evidence about an out-of-state parent. Id. The Court noted it is up to DCS to gather the facts and the evidence to support its CHINS petition, and, in this case, it failed to do so. Id.

**In her dissenting opinion, Judge Brown did not agree that the ICPC does not apply to placements with out-of-state parents.** Id. at 607. Judge Brown noted Article VIII of the ICPC (which expressly sets forth the limitations of the ICPC’s applicability) and Article X (which provides that the provisions of the ICPC “shall be liberally construed to effectuate the [ICPC’s] purposes”). Id. She also quoted the regulations on the Association of Administrators of the Interstate Compact on the Placement of Children (the “AAICPC”) website, which states, “The ICPC *does apply* when a court or public child welfare agency seeks to place a child with a parent located out-of-state if the court or agency has evidence that the parent may not be fit to care for the child or if the court or agency seeks an evaluation of the parent’s fitness. (Emphasis in opinion.) Id. at 608. Judge Brown concluded that the ICPC applied to placement with Father under the circumstances of the instant case; thus, it was proper for the juvenile court to consider and in part rely upon the fact that the ICPC process had not yet been completed in making its determination. Id. at 609. Judge Brown agreed with the juvenile court that the child’s transition to Father needed to be gradual to insure that Father had established a bond with the child and the child was in a safe environment. Id.