

Children's Law Center of Indiana



CHINS

9/27/17

In ***In Re D.F.***, 83 N.E.3d 789 (Ind. Ct. App. 2017), the Court affirmed the trial court's order adjudicating Mother's four children, D.F., Kn.L., Ka.L., and M.M., to be Children in Need of Services. *Id.* at 797. D.F. was born in April 2000, Kn.L. was born in September 2002, Ka.L. was born in September 2006, and M.M. was born in August 2012. Mother was in a relationship with M.M.'s father, who occasionally spent the night at Mother's home. Mother has been diagnosed with bipolar disorder, schizophrenia, and post-traumatic stress disorder. Mother also drank alcohol on a daily basis and was frequently intoxicated. On the night of October 7, 2016, Mother became intoxicated. At about three o'clock on the morning of October 8, Mother burst into the children's bedroom and told them to wake up. Mother threatened to strike D.F. with a hair dryer if she did not comply. Mother accused D.F. and Kn.L. of sending nude pictures of themselves to others via their cell phones. D.F. denied this, and Mother struck D.F. in the face with her fist and a cell phone several times. When Mother hit D.F. with the cell phone, the child ran away from Mother and screamed for Mother to stop hitting her. Mother continued until M.M.'s father intervened. Mother kicked M.M.'s father out of the house and continued her tirade against D.F. Mother punched D.F. in the chest, knocking the child to her knees and causing the child to have trouble breathing. After she stopped attacking D.F., Mother took Kn.L. to the laundry room and began to hit and punch her. Mother also pulled and dragged Kn.L. by her hair, which ripped out some of the braids in Kn.L.'s hair. Mother told D.F. to leave the house, so D.F. and Kn.L. left Mother's home at approximately four o'clock in the morning, wearing only their sleep clothes. It was very cold that night, and D.F. did not have shoes on, so the children went to a friend's house, where D.F. borrowed some shoes. D.F. and Kn.L. then walked twenty minutes to the home of their aunt. D.F. told Aunt that Mother "had hit us again." Aunt noticed that D.F.'s jaw was swollen, took the children to the hospital, and called the police to report Mother's behavior.

DCS was contacted, and a DCS assessment manager spoke with D.F. and Kn.L. at the hospital. The DCS manager observed that the children were still wearing only pajama pants and tank tops, Kn.L. had a scratch on her left cheek and a "chunk of hair" had been ripped from her head, and D.F.'s jawline was swollen. The DCS manager went to Mother's home with the police to attempt to contact Mother, but no one answered the door. The DCS manager eventually contacted Mother on October 11, 2016, at the courthouse prior to a scheduled hearing. Mother admitted her history of mental illness, but refused to submit to a hair and urine sample to screen for drugs. Mother ripped out a chunk of her hair, threw it at the DCS manager, and said, "That is my drug screen." With the assistance of the police, the two younger children, Ka.L. and M.M., were removed from Mother's care. The children were placed in relative care.

The school social worker became involved with Kn.L. and Ka.L. after they came to school with body odor so overpowering that the teachers had to open the windows. The social worker allowed the children to shower at school and even washed their clothes at school. Ka.L. began to shower regularly at school, and the social worker provided her with toiletries, including deodorant. The social worker approached Mother about the girls' hygiene issues, but Mother was not receptive to the social worker's suggestions.

DCS filed a CHINS petition for the children on October 12, 2016. DCS had previously substantiated reports in 2000, 2006, and 2012 that Mother's newborn children were born exposed to marijuana. The CHINS factfinding hearing was held on March 8, 2017. Mother testified and denied the accusations against her, claiming that all of the other witnesses were lying. The trial court magistrate presided, and the CCS entry by the trial judge stated the children were adjudicated to be Children in Need of Services. The trial court magistrate presided over the dispositional hearing, which was held on April 4, 2017. The court entered a parental participation order for Mother, issued its standard dispositional order, appointed an attorney to represent Mother on appeal, and scheduled a permanency hearing for October 3, 2017. The CCS entry stated that DCS was to provide a detailed written order. On May 5, 2017, the trial court issued written orders, both of which were signed by the magistrate, adjudicating the children to be CHINS, and ordering disposition, including orders for Mother to participate in various services. On April 20, 2017, Mother filed her Notice of Appeal, which described the order being appealed as "Finding that the children are CHINS and Dispositional Order."

The Court found the trial court magistrate lack authority to enter a final dispositional order, but, since neither party raised the issue of the magistrate's lack of authority, the Court considered this issue waived. *Id.* at 793-95. Quoting *In re D.J. v. Indiana Dep't of Child Servs.*, 68 N.E.3d 574, 578 (Ind. 2017), the Court noted, "to the extent our case law leaves any doubt, we make explicit that a CHINS determination, by itself, is not a final judgment." *D.F.* at 793. The Court opined that there was no jurisdictional impediment to Mother's appeal, even though her Notice of Appeal was filed before the trial court entered its statutorily-required findings and conclusions. *Id.* at 794. Quoting *In re D.J.* at 358, the Court explained, "[t]he only two prerequisites under our appellate rules are (i) the trial court must have entered an appealable order, and (2) the trial court must have entered the notice of completion of clerk's record on the CCS." *D.F.* at 794. The Court quoted *In re adoption of I.B.*, 32 N.E.3d 1164, 1173 n.6 (Ind. 2015), which states:

Magistrates may enter final orders in criminal cases, IC §§ 33-23-5-5(14), -9(b), but otherwise "may not enter a final appealable order unless sitting as a judge pro tempore or a special judge." IC § 33-23-5-8(2). Instead, they may only "report findings," while "[t]he court shall enter the final order." IC § 33-23-5-9(a).

D.F. at 794. The Court observed there was no indication that either party objected to the fact that the trial judge did not sign the appealable dispositional orders, so the issue was therefore waived. *Id.* The Court said "in no uncertain terms: trial court magistrates do not have the authority to enter final judgments in civil cases, including juvenile cases." *Id.* at 795. The Court opined that final dispositional orders in CHINS cases must be signed by the trial court judge, not simply by the magistrate. *Id.*

The Court held DCS presented sufficient evidence to support the trial court’s conclusion that the four children were CHINS and affirmed the CHINS adjudication. Id. at 797. The Court noted DCS alleged that the children were CHINS under: (1) IC 31-34-1-1 (the neglect statute); (2) IC 31-34-1-2, (the abuse statute); and (3) IC 31-34-12-4 (the presumption statute). D.F. at 795-96. The Court noted IC 31-34-12-4 provides 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, or control of the child; or (B) had the 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. D.F. at 796.

Mother claimed that DCS presented insufficient evidence to support the trial court’s CHINS findings, but the Court disagreed. Id. at 796. The Court found there was a rebuttable presumption that D.F. was a CHINS because of an act or omission of Mother, and the trial court could reasonably conclude that Mother failed to rebut this presumption. Id. The Court noted the following evidence in support of the trial court’s finding that DCS had met its burden under the presumption statute: (1) D.F. had been injured; (2) D.F. had been struck repeatedly in the face and head by Mother, who used both her hands and a cell phone to strike the girl, which caused swelling to D.F.’s face; (3) at the time of the injury, Mother had care, custody, and control over D.F.; (4) the injury would not have been sustained except for Mother’s act of striking D.F.; and (5) there was more than a reasonable probability that the injury was not accidental, but was the result of Mother’s intentional acts of striking D.F. in the head. Id. The Court opined the trial court, which gave no credit to Mother’s testimony, could reasonably conclude that Mother failed to rebut the presumption that D.F. was a CHINS. Id. The Court held there was sufficient evidence to support the determination that D.F. was a CHINS. Id.

The Court said the same was true for Kn.L. who: (1) was attacked by Mother; (2) had to shield her face with her arms to protect herself from Mother’s blows; (3) was pulled and dragged by her hair; and (4) whose condition was corroborated by the DCS assessment manager who testified that Kn.L. had a scratch on her face and was missing a “chunk of hair.” Id. at 796-97. The Court found that DCS presented evidence that Kn.L. was injured while in Mother’s care, the injury would not have been sustained but for Mother’s acts of physical abuse, and the injury was not accidental. Id. at 797. The Court said the evidence raised the rebuttable presumption that Kn.L. was in need of services because of the act or omission of Mother, and the trial court wholly discredited Mother’s self-serving testimony. Id. The Court found that Mother did not successfully rebut the presumption that Kn.L. was a CHINS. Id.

The Court also concluded DCS presented sufficient evidence that Ka.L. and M.M. were CHINS. Id. In support of this conclusion, the Court noted the following evidence: (1) both children were in the house when Mother viciously attacked their older sisters; (2) Mother was frequently drunk and smoked marijuana and admitted to DCS that she had been diagnosed with several mental

illnesses; (3) School officials noted a marked lack of hygiene with regard to Ka.L., and the child had to shower and wash her clothes at school; (4) Mother resisted any offer of help from DCS. Id. The Court said that, from this evidence, the trial court could reasonably conclude that the two children's mental or physical health was seriously impaired by Mother's inability or refusal to provide them with necessary supervision. Id.

The Court also held the trial court could reasonably conclude that the care, treatment, or rehabilitation needed to address these circumstances was unlikely to be provided without the coercive intervention of the court. Id. The Court observed: (1) Mother admitted to DCS that she had been diagnosed with bipolar disorder, schizophrenia, and post-traumatic stress disorder; (2) instead of receiving treatment, Mother self-medicated with alcohol and marijuana; (3) instead of acknowledging the problems with her parenting of the children, Mother blamed the children, DCS, and her sister, and insisted that all the other witnesses were lying. Id. The Court opined that Mother's behavior supported the trial court's conclusion that the children would not receive care or treatment without the coercive intervention of the trial court. Id.