

Children's Law Center of Indiana



CHINS

2/25/15

In ***In Re E.W.***, 26 N.E.3d 1006 (Ind. Ct. App. 2015), the Court affirmed the juvenile court's order ceasing all visitation and telephone contact between Mother and her child, who was a Child in Need of Services *Id.* at 1010. On August 18, 2009, DCS filed a CHINS petition which alleged that the child, who was ten years old, was having sex with her boyfriend and that Mother frequently "checked" the child's "privates" to see if she was engaging in sexual intercourse. Both Mother and Father admitted that the child was a CHINS. The child initially remained in Mother's care, but was removed and placed in the Columbus Behavioral Facility between June and October 2009. The child was returned to Mother's care upon being released from the facility, but was again removed from Mother's care and placed in a facility and in foster care between January and April 2011 because Mother's home did not meet minimal standards and Mother was not following the child's medication regimen. The child was returned to Mother's care in April 2011, but Mother failed to supervise the child adequately and the child was raped. The child suffered physical injuries from the rape, and was removed from Mother's care in June 2011. Since June 2011, the child has not been returned to Mother's care.

After the June 2011 removal, Mother and the child had supervised visits. The visitation supervisor reported that about half of these visits were detrimental to the child because of the Mother's inappropriate comments and behaviors. The visitation supervisor testified that he had seen no improvement in Mother's parenting skills in the ten months he had supervised the visits. Mother was unwilling to participate in court ordered services that were designed to improve her parenting skills. The child's therapist identified Mother's presence in the child's life as a stressor, and also stated that some of the child's current mental health issues were directly related to her visits with Mother. Mother also undermined the foster parents' discipline and control over the child in multiple ways. Mother told the child that if she were in Mother's care, Mother would give the child whatever the child wanted.

On September 26, 2013, the juvenile court changed the child's permanency plan to "another planned permanent living arrangement" (APPLA). On February 19, 2014, the juvenile court approved DCS's recommendation that all visits between Mother and the child cease. On May 19, 2014, the juvenile court clarified that all visitation between Mother and the child ceased as of February 19 and that the child's permanency plan was APPLA. Mother appealed.

The Court determined it would consider Mother’s appeal as an appeal from a final judgment. *Id.* at 1009. The Court looked to Indiana Appellate Rule 2(H), which explains what orders qualify as final judgments. The Court said that the practical effect of a permanency plan of APPLA was that the child would remain a ward of the State until her majority, would either remain in foster care or live in a facility or group home, and would continue to receive services and treatment. *Id.* The Court found that, by ordering that all contact between Mother and the child cease, the trial court was effectively ending that relationship until the child became a legal adult. *Id.* The Court observed that the child would become eighteen years old in July 2016, over two years from the date on which the juvenile court ordered that contact between the child and Mother cease. *Id.* The Court said that, whether or not this was technically a final judgment, it certainly operated as one. *Id.*

The Court found that the evidence readily supported the juvenile court’s order ceasing visitation and phone contact between Mother and the child. *Id.* at 1010. While there is no statute specific to the CHINS context related to parenting time, the Court found the general family law statute to be instructive. *Id.* at 1009. The Court noted IC 31-17-4-2, which states that the court shall not restrict a parent’s parenting time rights *unless the court finds that the parenting time might endanger the child’s physical health or significantly impair the child’s emotional development* (emphasis in opinion). *Id.* The Court found the record to be replete with evidence supporting the juvenile court’s conclusion that cessation of the visits would be in the child’s best interests. *Id.* at 1010. Among the evidence noted by the Court was: (1) Mother had behaved inappropriately during visits, inserted herself between the child and the foster parent in inappropriate ways, and refused to participate in services designed to make her a better parent; (2) the child’s therapist, family case manager, and court appointed special advocate all testified that further contact with Mother was detrimental to the child’s well-being and that cessation of contact was in the child’s best interest; (3) the visitation supervisor testified that at least half of the visits had been detrimental to the child and that Mother made no improvement in her parenting abilities in ten months. *Id.* The Court noted the juvenile court’s finding: “[t]he Mother has visited the child consistently; however, these visits have proven to be detrimental to the well-being of the child due to Mother’s inappropriate behaviors during the visits.” *Id.* at 1009. The Court observed that, while the juvenile court did not use the precise words of IC 31-17-4-2, *which may not even apply directly to a CHINS case*, the clear import of the finding was synonymous with the statutory language (emphasis added). *Id.* at 1010.