

Children's Law Center of Indiana



CHINS

9/8/16

In **In Re J.B.**, 61 N.E.3d 308 (Ind. Ct. App. 2016), a CHINS case, the Court of Appeals issued its opinion on rehearing. The Court reached the same result as its original opinion, **In Re J.B.**, 55 N.E.3d 903 (Ind. Ct. App. 2016), but for different reasons. **Id.** at 312. The Court reversed that part of the CHINS court's order which discharged the parties and terminated the CHINS case, and remanded for further proceedings consistent with the CHINS statutes, including any appropriate services for Mother. **J.B.**, 61 N.E.3d at 313-14. DCS petitioned for rehearing on the Court's opinion in **In Re J.B.**, 55 N.E.3d 903, in which the Court held that the CHINS Court lost jurisdiction as soon as it discharged the parties, at which point the issue of custody reverted to the paternity court. DCS argued that the CHINS court's paternity custody modification order survived the termination of the CHINS case. Father and Mother shared custody of their children pursuant to an order of a paternity court. After a car accident in which Mother was under the influence of drugs and the children were not properly restrained, DCS filed a petition in the CHINS court alleging that the children were CHINS. Mother and Father admitted that the children were CHINS, and the CHINS court adjudicated the children to be CHINS and scheduled a dispositional hearing. Before the dispositional hearing, DCS filed a motion in the CHINS case to change custody of the children to Father. The CHINS court held a hearing, awarded sole custody of the children to Father and ordered that Mother would have supervised parenting time. The court then closed the CHINS case without entering a dispositional decree that would have ordered services for Mother.

The Court declined to guess what the legislature meant when it said in IC 31-30-1-13(d) that “[a]n order establishing or modifying *paternity* of a child by a juvenile court survives the termination of the [CHINS] proceeding”. (Emphasis in original.) The Court asked the legislature to take a deeper look at IC 31-30-1-12 and IC 31-30-1-13. **Id. at 312. DCS argued that according to IC 31-30-1-13(d), the CHINS court's custody modification order survived the termination of the CHINS proceedings. The Court noted that IC 31-30-1-13(d) had never been addressed by the Court, so the Court was working from a clean slate. **Id.** at 310. The Court observed that: (1) the goal of statutory construction is to discern and further the intent of the legislature; (2) to do so, the Court starts with the plain language of the statute, giving its words their ordinary meaning and considering the structure of the statute as a whole; (3) no word or part should be rendered meaningless if it can be reconciled with the rest; (4) it is just as important to recognize what a statute does not say as it is to recognize what it does say (multiple citations omitted). **Id.** at 311.**

The Court found two ways to read what “[a]n order establishing or modifying the paternity of a child” means. **Id.** at 311-12. The Court said that one way is to read “paternity” to mean

establishing or modifying the identity of the child's father. Id. at 311. The Court found that the problem with giving "[a]n order establishing or modifying paternity of a child" its plan meaning is that it presumes that a juvenile court in a CHINS case can establish paternity, but it appears that the juvenile court in a CHINS case cannot establish paternity. Id. Quoting In Re Paternity of T.H., 22 N.E.2d 804, 807 (Ind. Ct. App. 2014), the Court said that the phrase "modify paternity" is unclear, give that "[t]he Indiana Code has no provision for the filing of an action to disestablish paternity." J.B., 61 N.E.3d at 311. The Court said the other way is to read "paternity" to include custody modifications, as the article governing the establishment of paternity also addresses determining and modifying custody. Id. The Court observed that the legislature used "an order establishing or modifying paternity" in IC 31-30-1-13(d), while it used "an order modifying child custody, child support, and parenting time" in IC 31-30-1-12(e) [the similar statute concerning dissolution cases]. Id. at 311-12. Citing Andrianova v. Ind. Family & Social Servs. Admin., 799 N.E.2d 5, 15 (Ind. Ct. App. 2003), the Court noted that, when the legislature uses particular language in one section of the statute but omits it in another section, the Court presumes that it is intentional. J.B., 61 N.E.3d at 312. The Court said that, if the legislature meant that a CHINS court can modify custody and that the CHINS court's custody modification survives the termination of the CHINS proceeding, there is another problem. Id. The Court noted IC 31-30-1-13(b) provides that if a paternity court modifies child custody when the CHINS case is open, the paternity court's modification only becomes effective when the CHINS court enters an order approving the modification *or* terminates the CHINS proceeding (emphasis in opinion). Id. The Court explained that, under DCS's reading of IC 31-30-1-13(d), if a CHINS court in one county does not approve a custody modification from a paternity court in another county and then modifies custody to a different parent, once the CHINS court terminates the CHINS proceeding, *both* orders would be in effect with different parents receiving custody (emphasis in opinion). Id.

The Court reversed that part of the CHINS court's order which discharged the parties and terminated the CHINS case because the goal of the CHINS statutory scheme was not furthered in this case. Id. at 313. The Court looked to IC 31-10-2-1 and to In Re N.E. 919 N.E.2d 102, 108 (Ind. 2010), and noted that the policy of this state and the purpose of Title 31 is to "strengthen family life by assisting parents to fulfill their parental obligations" and to "provide a continuum of services developed in a cooperative effort by local governments and the state." J.B., 61 N.E.3d at 312. The Court examined orders from the CHINS court and found: (1) at the July 27, 2015 detention hearing, DCS recommended supervised visitation for Mother and a family conference, and the court adopted DCS's recommendation; (2) in its August 3, 2015 order finding the children to be CHINS, the court accepted DCS's recommendation regarding "placement, services, and programs", and set a dispositional hearing on September 3, 2015; (4) before holding a dispositional hearing, the court awarded sole custody of the children to Father and ordered supervised parenting time for Mother; (5) the court then closed the CHINS case without ever entering a dispositional decree, which, according to IC 31-34-19-6, would have required that Mother have a reasonable opportunity for participation. Id. at 313. The Court opined that DCS used the coercive power of the State to insert itself into a family relationship by obtaining a CHINS finding and then had the CHINS court modify sole custody to Father and close the CHINS case thirty days later, without entering a dispositional decree and giving Mother a meaningful opportunity to participate in services as DCS itself had recommended in both the parental participation petition and the predispositional report. Id.