

Children's Law Center of Indiana



CHINS

5/19/16

In **In Re R.H.**, 55 N.E.3d 304 (Ind. Ct. App. 2016), the Court affirmed the trial court's order finding that the Marion County Department of Child Services (DCS) need not make reasonable efforts to reunify the child with Mother. Id. at 311. The child was born on November 2, 2014 and was taken into DCS custody immediately following her birth. The child is Mother's eleventh child. At the time of the child's birth, a Child in Need of Services (CHINS) proceeding was in progress for two of Mother's other children. On April 21, 2015, the child was adjudicated a CHINS following testimony from Mother's therapist that the therapist did not believe continued therapy would be able to equip Mother to care for her child. After the CHINS adjudication, DCS filed a motion pursuant to IC 31-34-21-5.6 for a no reasonable efforts exception because Mother's parental rights to two of her children had previously been involuntarily terminated in separate termination proceedings which took place in 2006 and 2007. On August 17, 2015, the juvenile court granted DCS's motion, stating that reasonable efforts for reunification of Mother and child were not required because of Mother's lack of participation with offered services for her other children, her inability to make progress in therapy, and her problems with instability caused by her homelessness and unemployment. After a permanency hearing on September 15, 2015, the juvenile court changed the child's permanency plan from reunification to adoption. Mother appealed the court's finding that reasonable efforts were not required. Mother claimed that DCS had unlawfully discriminated against her, and argued that she was entitled to reasonable accommodations under the Americans with Disabilities Act (ADA) and the Rehabilitation Act (RA) for her undiagnosed disabilities.

The Court found that the juvenile court's order was an appealable order. Id. at 309. DCS asserted that Mother's appeal was premature and should be dismissed because there was no dispositional order. The Court found no specific dispositional order in the record, and said it was unclear why no dispositional order had been entered within thirty days of the CHINS finding, as required by IC 31-34-19-1. R.H. at 308. Citing In Re J.V., 875 N.E.2d 395, 399 (Ind. Ct. App. 2007), *trans. denied*, the Court observed that the dispositional order is the final appealable order from a CHINS proceeding. R.H. at 307-08. The Court looked to the effect of the orders which the court had entered prior to Mother's notice of appeal, noting that: (1) the court had determined that the child was a CHINS and placed her in foster care; (2) in addition to finding that DCS need not make reunification efforts, the no reasonable efforts order suspended Mother's visitation with the child; and (3) the permanency order changed the plan from reunification to adoption. Id. at 308. The Court found that the court's orders as a whole served the purpose of a dispositional decree, ended the relationship between Mother and the child, and allowed DCS to move forward with termination proceedings. Id. The Court said that, whether or not the court's orders were technically a final judgment, they operated as one and were therefore appealable. Id. at 309.

The Court concluded that Mother was not denied services or reasonable accommodations to participate in services because of her disability, and the juvenile court did not violate her rights by entering an order finding that DCS was not required to make reasonable reunification efforts. Id. at 311. The Court opined that, if Mother had a disability and was otherwise eligible to receive services, then DCS must provide her with reasonable accommodations when providing those services. Id. at 310. Testimony by Mother’s therapist reflected that reasonable accommodations were provided while Mother was receiving services, and Mother did not contest this conclusion. Id. Quoting Stone v. Daviess Cnty. Div. of Children & Family Servs., 656 N.E.2d 824, 830 (Ind. Ct. App. 1995), *trans. denied*, the Court noted that “[T]he ADA was not intended ipso facto to re-write state substantive law.” R.H. at 310. The juvenile court’s determination that DCS did not have to continue providing Mother with reunification services was not based on Mother’s disability but rather was properly based on the text of IC 31-34-21-5.6(b)(4), which states that reasonable efforts to reunify a parent and child are not required if the “parental rights of a parent with respect to a biological or adoptive sibling of a child who is a child in need of services have been involuntarily terminated by a court order.” Id. at 309-311.