

Children's Law Center of Indiana



CHINS

5/26/17

In **Indiana Department of Child Services v. J.D.**, 77 N.E.3d 801 (Ind. Ct. App. 2017), *trans. denied*, the Court reversed the trial court's denial of the CHINS petition for a two-month-old child and remanded with instructions to conduct further proceedings consistent with its opinion. *Id.* at 809. The child was born on April 19, 2016, and Father's paternity was established by affidavit shortly after the child's birth. Mother and Father were no longer together when the child was born, and the child resided with Mother and her boyfriend. On June 24, 2016, DCS received a report that the child had been seen in the hospital emergency room and found to have five fractured ribs, a fractured right tibia, and a possible fracture to the left radius. Mother told the case manager that only she, her boyfriend, and Father had access to the child. Mother explained that the child had fallen asleep in his car seat during a trip to the grocery store, and when Mother removed him from the car seat after he awoke about two hours later, the child cried out in pain. Mother took the child to his primary care physician the next day and asked that the child be x-rayed. The case manager concluded that the child's injuries were not accidental and that it was necessary to remove him from Parents. Upon his release from the hospital, the child was placed in foster care. On June 27, 2016, a CHINS petition was filed, and the trial court held a detention hearing and authorized the child's continued placement outside the home.

A factfinding hearing was held on August 2 and 16, 2016. The case manager testified about the events leading up to the child's removal and placement in foster care. Three physicians testified at the CHINS factfinding hearing, and all opined that the child's injuries were non-accidental. Dr. Midkiff, the radiologist who read the child's bone survey in the emergency room, testified that: (1) he was "very certain" that the child's injuries were the result of non-accidental trauma; (2) the child had four corner fractures, which are small fractures at the ends of the bones near the growth plates that are "very unusual" and consistent with a "whiplash motion" in a child's extremities caused by being shaken; (3) the posterior rib fractures and the corner fractures "have very high specificity for non-accidental trauma" and "almost basically never occur accidentally"; (4) he was "very confident" that the child did not suffer from any medical condition that could have explained the injuries; (5) on a follow-up bone survey conducted on July 14, 2016, he was able to identify additional fractures, including fractures of the eighth and ninth ribs on the right, a fracture of the tenth rib on the left, and a fractured clavicle; (6) the child's fractures were in different stages of healing, which indicated at least two separate incidents of trauma. Dr. Riordin, who treated the child at the emergency room, testified that: (1) Mother was unable to provide an explanation as to how the child was injured; (2) Mother said the child had not been out of her care and had not sustained any trauma; (3) it was not possible for the child's injuries to have been caused by being lifted out of a car seat; (4) none of the child's laboratory tests suggested a metabolic deficiency or bone disorder; (5) she believed the child's injuries were non-accidental.

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Dr. Thompson, a child abuse pediatrician at Riley Hospital, testified that: (1) she was “very certain” that the child’s injuries were not accidental; and (2) the child’s rib fractures were posterior, there were “multiple fractures and they’re all in order”, and “[t]hat specific pattern is highly specific to child abuse because there’s only one way it can occur which is...front to back impression.” With regard to the child’s fractured clavicle, Dr. Thompson testified that direct force against the collar bone itself or indirect force, such as when a toddler trips and extends an arm to stop the fall, was necessary to produce such injury. Dr. Thompson explained that in a very young infant such as the child, indirect force was not a plausible mechanism for such an injury. Dr. Thompson also testified that the child’s pattern of fractures was not consistent with a bone disorder.

Mother, Father, and Mother’s boyfriend also testified at the factfinding hearing. Father testified that his last unsupervised visit with the child had been on June 11, 2016, there did not appear to be anything wrong with the child at that time, and he had not dropped or hit the child. Mother’s boyfriend testified that he had never observed any injuries or odd behavior from the child, and that he was out of town for work on June 23, 2016, when Mother called him about a “crackling noise” coming from the child’s back. Mother testified that: (1) she had no concerns that Father, her boyfriend, or her boyfriend’s children had harmed the child; (2) she took the child to his two month checkup on June 22, 2016, and nothing appeared to be wrong with him then; (3) when she took the child out of his car seat following a trip to the grocery store on June 24, 2016, he began screaming very loudly and remained unusually fussy throughout most of the night; (4) when she took the child to the doctor the next day, the physician initially did not think there was anything wrong with the child, but realized there was a problem when she asked the doctor to feel the child’s back; (5) she requested the x-ray, which led to the child being transferred to the emergency room and the discovery of multiple fractures. Mother denied harming the child, and testified that the child never had an injury or fall while in her care.

At the conclusion of the evidence, DCS argued that it had presented sufficient evidence to trigger the presumption, pursuant to IC 31-34-12-4, that the child was a CHINS. After a recess, the trial court orally denied the CHINS petition from the bench and ordered the child to be returned to Mother’s care. DCS filed a motion to correct error on September 15, 2016, which was deemed denied when the trial court failed to set a hearing or rule on the motion within forty-five days. DCS appealed.

The Court explained that it will reverse a negative judgment only when the trial court’s decision is contrary to law or if the trial court applies the wrong legal standard. *Id.* at 806. (Multiple citations omitted.) DCS argued the trial court committed legal error by: (1) failing to give effect to the presumption set forth in IC 31-34-12-4; and (2) rejecting the physicians’ testimony that the child’s injuries were non-accidental. Citing *In Re Des.B.*, 2 N.E.3d 828, 836 (Ind. Ct. App, 2014), the Court said that it will not set aside the findings or judgment in a CHINS proceeding unless it is clearly erroneous. *DCS v. J.D.* at 806. The Court noted that the clearly erroneous standard is defined based on whether the party is appealing a negative judgment or an adverse judgment, citing *Serenity Springs v. LaPorte Cnty. Convention & Visitors Bureau*, 986 N.E.2d 314, 319 (Ind. Ct. App. 2013). *DCS v. J.D.* at 806. The Court clarified that, “[a] negative

judgment is one entered against a party who bears the burden of proof, while an adverse judgment is one entered against a party defending on a given question.” Serenity Springs at 319. DCS v. J.D. at 806. The Court observed that DCS was appealing from a negative judgment because DCS bore the burden of proving by a preponderance of the evidence that the child was a CHINS. Id.

The Court opined that the trial court’s statement in finding the child was not a CHINS made it clear that the trial court’s decision was driven by a misunderstanding and misapplication of the law. Id. at 808. Noting the trial court’s statement that whether the child’s injuries were non-accidental was a question of law, the Court explained that the manner in which the child was injured, and specifically whether the injuries were non-accidental, was a question of fact. Id. Citing Vaughn v. Daniels Co. (West Virginia), Inc., 841 N.E.2d 1133, 1137 (Ind. 2006), the Court explained that the trial court’s mischaracterization of this issue was of particular concern because it effectively required the court to disregard the physicians’ testimony that the child’s injuries were non-accidental. DCS v. J.D. at 808. The Court observed that: (1) identifying the cause of a patient’s injuries is a matter squarely within the purview of medical science; (2) in many cases, doctors or other medical professionals with the appropriate training and experience will be the only individuals with the expertise required to understand and explain the biomechanical forces necessary to produce certain types of injuries; (3) such testimony is of particular importance in cases, such as this case, where a very young infant has numerous serious injuries for which parents have provided no plausible explanation; (4) the trial court’s view overlooked the fact that doctors routinely testify concerning whether injuries are accidental and Indiana Appellate Courts regularly rely on such testimony. Id. The Court said, “[a]lthough a fact-finder is not required to credit a particular physician’s opinion as to the cause of a child’s injuries, to conclude that all such testimony is improper or inherently lacking probative value would undermine numerous criminal convictions and civil judgments and leave vulnerable children at risk for further abuse by creating a virtually insurmountable evidentiary obstacle for DCS in some CHINS cases.” Id.

The Court found DCS presented competent and probative evidence which was sufficient to trigger the application of IC 31-34-12-4, the Presumption Statute, and shift the burden of producing evidence to rebut the presumption to the child’s parents. Id. at 809. The Court noted the Presumption Statute provides that:

A rebuttable presumption is raised that a child is a child in need of services 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.

The Court explained that in cases where a child has injuries that suggest neglect or abuse, the Presumption Statute shifts the burden to the party who is most likely to have knowledge of the cause of the injuries—the parent, guardian, or custodian—to produce evidence rebutting the presumption that the child is a CHINS. Id. at 807. The Court said the importance of the Presumption Statute is underscored in cases such as this case, where the injured child is too young to speak for himself. Id. The Court found the trial court’s statements suggested it imposed an inappropriately high evidentiary burden on DCS to trigger the Presumption Statute. Id. at 808. The Court noted the statute requires only “competent evidence of probative value” of the circumstances set out therein. Id. at 808-09. The Court looked to Black’s Law Dictionary (10th ed. 2014), and noted the following definitions: (1) “competent evidence” is cross-referenced to the definitions for “admissible evidence” and “relevant evidence”; (2) “admissible evidence” is “[e]vidence that is relevant and is of such a character (e.g., not unfairly prejudicial, based on hearsay, or privileged) that the trial court should receive it”; (3) “[r]elevant evidence” is “[e]vidence tending to prove or disprove a matter in issue”; (4) “[p]robative evidence” is “[e]vidence that tends to prove or disprove a point in issue.” DCS v. J.D. at 809.

The Court opined that DCS “need only produce some relevant and admissible evidence tending to establish the elements of the Presumption Statute in order to shift the burden of production to the parents or custodians.” Id. The Court found that DCS undoubtedly did so in this case. Id. The Court observed that: (1) there was no question that the child was seriously injured and evidence established that from birth until his removal, the child was continuously in his parents’ care; and (2) three physicians concluded based on their training and experience that the child’s injuries were non-accidental and indicative of child abuse. Id.