

Children's Law Center of Indiana



CHINS

7/28/17

In **Matter of Ale.P.**, 80 N.E.3d 279 (Ind. Ct. App. 2017), the Court affirmed the juvenile court's order denying Foster Parents' motion for the return of their three former foster children. *Id.* at 289. On February 6, 2013, the children's biological parents admitted that the children were CHINS, and DCS was awarded wardship of the children, two girls and one boy, on March 28, 2013. The children were placed in a foster home until July 2013, and were placed with their paternal grandparents from July 2013 until July 2015. The children were placed with Foster Parents in July 2015, and DCS removed them from Foster Parents' home on August 5, 2016. After their removal, the children were placed in a "Respite Home" before being placed in a new foster home on August 12, 2016. On August 17, 2016, Foster Parents filed a Motion for Return of the Children, Petition for Guardianship, and for Custody. On August 22, 2016, the trial court granted Foster Parents' motion to intervene, and began hearing evidence on Foster Parents' motion and petition.

The court heard testimony from eleven witnesses on three scheduled days. Among the evidence presented was: (1) Grandparents' testimony that the boy and one of the girls masturbated; (2) a school staff member observed that the girls were incredibly upset upon learning that they were being removed from Foster Parents' home, and every day the girls expressed a desire to return to Foster Parents; (3) a foster care specialist testified that Foster Mother requested home based therapy from her on several occasions, but the services were not provided to her knowledge; (4) the case manager supervisor testified the largest single factor in the decision to remove the children from Foster Parents was that Foster Mother kept questioning the children about being molested by their parents, to which the children agreed "just to get out of the room and not talk about it anymore", that during the second Child Advocacy Center (CAC) interview, one of the girls was very anxious, the other girl looked scared, and Foster Mother was caught in the hallway trying to listen outside the CAC interview room door; (5) the supervisor also testified that she sent emails to the children's teachers about the children's behavior, but the teachers did not state that they witnessed the children masturbating in school; (6) the director of the DCS local office testified she believed that Foster Parents had possibly emotionally harmed the children by questioning them and possibly planting information in their heads about sexual abuse that did not occur. Foster Mother testified about sexual behavior from the children, offered to undergo an exam for reunification, and said she did not instruct the children to say they had been sexually abused. Foster Father testified that he witnessed two of the children appear to masturbate. The children's Court Appointed Special Advocate testified: (1) the children had made enormous progress with grandparents and Foster Parents; (2) the children felt stable and secure in Foster Parents' household; (3) she believed adoption of the children by Foster Parents was a very good idea; (4) the children's therapist and teachers did not notice any sexualized behaviors by the

The Derelle Watson-Duvall Children's Law Center of Indiana - A Program of Kids' Voice of Indiana
9150 Harrison Park Court, Suite C • Indianapolis, IN 46216 • Ph: (317) 558-2870 • Fax (317) 558-2945
Web Site: <http://www.kidsvoicein.org> • Email: info@kidsvoicein.org

children; (5) the children's new foster home was "chaotic" and she didn't think it was clean; and (6) the conditions in Foster Parents' home were better than the conditions of the home where the children were currently placed. The children's DCS case manager testified that no teacher ever told her about sexualized behavior from the children and she recommended that the children not remain with Foster Parents. The case manager supervisor also testified that: (1) she had seen the children since they moved to their new foster home; (2) the new foster parents had not reported any sexualized behavior by the children; (3) the new foster parents reported the girls were becoming more affectionate every day and the boy told the new foster mother he loved her; and (4) the children were in a pre-adoptive home. An Indiana State Police Detective testified that her investigation began following the children's two CAC interviews. The Detective testified: (1) the girls changed the details, including where it happened and what items were used during the abuse; (2) Foster Mother "wanted to believe so badly that these kids had been molested," and "she was obsessed with this whole situation"; (3) the biological parents had been interviewed and were both cleared of being suspects; (4) during a parade, Foster Mother ran out of the crowd, pointed at biological mother, and yelled that she was a child molester; (5) one of the girls revealed that Foster Mother had asked her over and over about being molested to the point where the girl agreed that her parents had molested her.

The court took the matter under advisement and conducted an in camera interview of the children. On October 10, 2016, the court denied Foster Parents' Motion for Return of Children, Petition for Guardianship, and for Custody. In its order the court: (1) was very concerned by the shifting and typically uncorroborated accounts of the children's alleged behavior provided by Foster Mother; (2) found Foster Mother had taken actions that reflected a surprising lack of restraint and obsessive or compulsive behavior, including listening at the door to the CAC interviewing room and loudly accusing the children's parents at the Peru Circus Parade of engaging in child molestation; (3) could not conclude that it was in the children's best interests to be returned to Foster Parents' care, although Foster Parents maintained a nice home, supported the children's education, and exposed the children to new experiences. The court also ruled that Foster Parents' intervention was at an end and terminated Foster Parents' supervised visits and telephone contact with the children. Foster Parents filed a motion to correct error, which the court denied. Foster Parents appealed.

Given that the juvenile court used the best interests test proposed by Foster Parents' counsel, the Court could not say that reversal was warranted on this basis and could not say that Foster Parents were deprived of due process. Id. at 287. Foster Parents contended they could not be heard at a meaningful time and in a meaningful manner because the juvenile court did not refer to a burden of proof or cite a legal standard it would use to determine the outcome of the hearing. Quoting In Re K.D., 962 N.E.2d 1249, 1257 (Ind. 2012) (quoting Matthews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893 (1976)), the Court noted, "due process requires 'the opportunity to be heard at a meaningful time and in a meaningful manner.'" Ale.P. at 286. The Indiana Supreme Court held that the following Matthews factors apply to a due process analysis of a CHINS adjudication: (1) the private interests affected by the proceeding; (2) the risk of error created by the State's chosen procedure; and (3) the countervailing governmental interest supporting the use of the challenged procedure. K.D. at 1257. Ale.P. at

286. The Court looked to IC 31-34-21-4.5, which allows a foster parent, a long term foster parent, or a former foster parent to request intervention as a party to a proceeding described in IC 31-34-21 [periodic case review and permanency hearing], and states that a court may grant a petition to intervene if the court determines that intervention of the petitioner is in the best interests of the child. Id. The Court noted that: (1) Foster Parents' motion to intervene was granted, and they presented evidence and cross-examined DCS's witnesses over the course of a three day hearing; (2) when the court asked Foster Parents' counsel to call the first witness on the motion and petition, Foster Parents' counsel called the children's grandmother, began questioning her, and did not object at the beginning of that hearing or at the other hearings. Id. at 287. In response to Foster Parents' argument that the juvenile court did not refer to a burden of proof or cite a legal standard it would use, the Court found that Foster Parents did not cite to authority requiring a court to do so. Id.

Foster Parents also asserted that they could not present certain evidence because DCS controlled how much they were allowed to know about the placement of the children in their new foster home. In response, the Court noted: (1) the CASA testified in Foster Parents' favor with respect to a comparison of the two homes; and (2) Foster Parents did not assert that the juvenile court precluded them from obtaining discovery. Id.

The Court concluded the juvenile court's judgment denying Foster Parents' Motion for Return of Children, Petition for Guardianship, and for Custody was not clearly erroneous.

Id. at 289. Foster Parents contended that it was in the best interests of the children to continue to live in their foster home. DCS contended that returning the children to Foster Parents was not in the children's best interests. The Court looked to Worrell v. Elkhart Cty. Office of Family & Children, 704 N.E.2d 1027, 1029 (Ind. 1998), in which the Indiana Supreme Court held, "[F]oster relationships are designed to be temporary, providing a 'safe, nurturing environment' until the child can either be returned to the natural parents or adopted by new ones. . . . the foster relationship is contractual; the parents are reimbursed by the State for their care of the children." Ale.P. at 288. The Court also noted that 465 I.A.C. 2-1.5-3, titled "Qualifications of the foster family; general" provides: "Foster parents' ability to meet these competencies shall be reevaluated at each relicensure and at any other time at the discretion of the department or child placing agency." Ale.P. at 288.

The Court found the following evidence supported the juvenile court's finding that it was "very concerned by the shifting and typically uncorroborated accounts of the children's alleged behavior. . . .": (1) while Foster Mother and other relatives reported sexual behavior by the children, other witnesses testified they did not observe such behavior; (2) due to Foster Mother's concern that the children masturbated in school, the case manager supervisor emailed the children's teachers, who did not state that they witnessed such behavior; (3) the CASA testified that she spoke with the children's therapist and teachers, who did not notice anything of concern about sexualized behaviors in the classroom; (4) the caseworker testified that the paternal grandparents did not talk to her about the children's sexualized behavior during the time the children were placed with grandparents, and that no teacher ever came to her about sexualized behavior from the children. Id. at 289. The Court could not say the juvenile court's finding was

clearly erroneous. Id. The juvenile court also found that Foster Mother's actions reflected "(a) surprising lack of restraint; and (b) obsessive and/or compulsive behavior." The Court could not say that this finding was clearly erroneous. Id. In support of this finding, the Court noted the following evidence: (1) the case manager supervisor testified that Foster Mother "hounded" the girls regarding the idea that their biological parents sexually molested them to the point that the girls stated molestation by their parents had occurred "just to get out of the room"; (2) the Indiana state Police Detective testified that Foster Mother was "obsessed with the whole situation"; (3) the court heard testimony about Foster Mother listening at the door during the CAC interview with one of the children and about Foster Mother following the biological parents at the parade and loudly accusing them of molesting the children. Id. The Court noted that: (1) the caseworker recommended that the children not remain with foster Parents; (2) the Director of the DCS local office testified that Foster Parents might have harmed the children emotionally; and (3) the Director was concerned that Foster Mother planted information in the children making them believe they had been sexually abused when they had not. Id.