

Children's Law Center of Indiana



CHINS

6/29/17

In **Matter of K. S.**, 78 N.E.3d 740 (Ind. Ct. App. 2017), the Court reversed the juvenile court's finding that the four-month-old child was a CHINS. *Id.* at 745. In June 2016, DCS received a report that Mother tested positive for marijuana after giving birth to her child. The DCS case manager visited Mother at the hospital, and explained "what [she] was there for and the nature of [her] report." Mother admitted that she had used marijuana two months earlier to increase her appetite during her pregnancy, and became very agitated and irate. Mother refused the case manager's request for another drug screen and admitted that she had been living in a motel before being admitted to the hospital, but said that she planned to live with her cousin or her mother following discharge from the hospital. Mother refused to give the case manager contact information for either her cousin or her mother. After speaking with her supervisor by telephone, the case manager "served [Mother] for court." The case manager explained that, given Mother's behavior, DCS had to restrict Mother's access to the child, which meant that Mother could not visit with the child or remove the child from the hospital. When the case manager served Mother with the court papers, Mother balled up the papers and threw them at the case manager, telling the case manager to leave Mother's room. A few days later, Mother called the case manager and asked for an explanation of what was happening. The case manager returned to the hospital, reviewed the DCS paperwork with Mother, and Mother signed the documents as requested. Mother was calm and explained to the case manager that after she was released from the hospital, Mother would be living at her cousin's house. DCS filed a CHINS petition for the child. The petition alleged that Mother, who admitted using marijuana during her pregnancy, had failed to provide the child with a safe, stable, and appropriate living environment that was free from substance abuse. The petition also alleged that Mother was homeless and lacked a plan for obtaining and maintaining stable housing. DCS placed the child in foster care when he was discharged from the hospital.

The CHINS factfinding hearing was held in September and October 2016. DCS had referred Mother to home-based case management services and supervised visitation. The home-based services case manager testified that: (1) she supervised two visits between Mother and the child in June 2016 at an agency because Mother stated that her cousin did not want visitation at her house; (2) Mother explained that "she kind of felt that she wasn't really wanted...or that the stress of everything and the contact with everyone was a little bit much for her cousin"; (3) during Mother's two visits in June, Mother was loving to the child, and fed him and changed him; (4) Mother cancelled a scheduled visitation with the child in July 2016, and at the time of the CHINS hearing, Mother had had no further contact with the child. The DCS case manager recommended that Mother complete a mental health assessment and also complete a parenting assessment because Mother had not seen the child since June 2016. The child's foster mother

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testified that the child was happy, developing well, and meeting his milestones. DCS did not present evidence that the child tested positive for marijuana. Mother testified: (1) she was working at a clothing store and living with her cousin, whose address she provided; (2) she had her own therapist, who was not a DCS referral, and whose name she provided. Following the hearing, the juvenile court adjudicated the child to be a CHINS. The court concluded that the child's physical or mental condition was seriously impaired or endangered as a result of the inability, refusal, or neglect of the child's parent, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision. The court specifically found that Mother uses marijuana and did not have stable housing for herself and her child. Mother appealed the CHINS adjudication, arguing that there was insufficient evidence to support it.

Based upon the totality of the evidence, the Court opined that there was insufficient evidence to support the CHINS adjudication. *Id.* at 745. Citing *In Re N.E.*, 919 N.E.2d 102, 105-06 (Ind. 2010), the Court noted that a CHINS proceeding is a civil action, DCS must prove by a preponderance of the evidence that the child is a CHINS as defined by the juvenile code, and the purpose of the CHINS adjudication is to provide proper services for the benefit of a child, not to punish the parent. *K.S.* at 744-45. The Court also noted IC 31-34-1-1 provides that a child is a CHINS if, before the child becomes eighteen years of age: (1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education or supervision; and (2) the child needs care, treatment, or rehabilitation that: (A) the child is not receiving; and (B) is unlikely to be provided or accepted without the coercive intervention of the court. *Id.*

The Court observed the juvenile court adjudicated the child to be a CHINS after concluding that Mother used marijuana and did not have stable housing. *Id.* at 745. As to the first finding, the Court said Mother admitted that she had used marijuana two months before the child's birth, but there was "no evidence showing how, specifically, Mother's use of marijuana two months prior to giving birth *seriously* impaired or *seriously* endangered" the child (emphasis in opinion). *Id.* Citing *In the Matter of S.M.*, 45 N.E.3d 1252, 1255-56 (Ind. Ct. App, 2015), the Court noted DCS presented no evidence that the child tested positive for marijuana, or even if he did, how a positive marijuana test would have or did endanger him. *K.S.* at 745. The Court also noted: (1) the child was "feeding well"; (2) during the supervised visits, Mother was engaged and loving; (3) and at the factfinding hearing, the child's foster mother testified he was developing well and meeting his milestones. *Id.* The Court also found that DCS presented absolutely no evidence that Mother did not have stable housing. *Id.* The Court opined that Mother's statement to the case manager that she felt she "wasn't really wanted" at her cousin's house did not support the juvenile court's finding that Mother lacked stable housing. *Id.* The Court explained that, although the juvenile court might have been concerned that, at some point, Mother and the child would be asked to move out of cousin's house, this had not happened at the time of the factfinding hearing. *Id.*