

Children's Law Center of Indiana



CHINS

1/12/17

In ***Matter of S.G. v. IN Dept of Child Services***, 67 N.E.3d 1138 (Ind. Ct. App. 2017), the Court affirmed the trial court's determination that DCS did not need to undertake reasonable efforts to reunify Mother with four of her children who were adjudicated CHINS. *Id.* at 1147. The Court concluded that: (1) IC 31-34-21-5.6(b)(4) (the No Reasonable Efforts Statute) is not unconstitutional as applied to Mother; and (2) the trial court did not abuse its discretion by granting DCS's request to forego reasonable efforts. *Id.* Mother is the parent of ten children. Four of Mother's children, namely A.W., age fourteen, S.G., age six, L.G., age five, and D.G., age three, are the subjects of the instant CHINS case. Between 1999 and 2016, DCS substantiated at least thirteen instances of child abuse or neglect against Mother, which resulted in eleven separate CHINS cases involving her children. A.W. was found to be a CHINS on six separate occasions, S.G. and L.G. were found to be CHINS on three separate occasions, and D.G. was found to be a CHINS twice. The CHINS petitions were filed because of Mother's drug use, physical abuse, and neglect. Mother completed services, and many of her children were reunified with her. On October 22, 2012, Mother's parental rights to two of her children, M.G. and A.G., were terminated, and the children were adopted in May of 2014.

On October 8, 2015, DCS filed petitions alleging that A.W., S.G., L.G., and D.G. (hereinafter the children) were Children in Need of Services. DCS asserted that: (1) Mother failed to provide the children with a safe, stable, and appropriate environment free from substance abuse; (2) Mother had an "extensive history" with DCS; (3) Mother was refusing DCS access to the children; and (4) the whereabouts of A.W., the oldest child, were unknown. The trial court held an initial hearing and detention hearing, ordered the children's removal from Mother, stipulated that Mother could have supervised visitation with the children, and appointed Child Advocates, Inc. to act as the children's guardian ad litem. Immediately following the trial court's ruling, DCS, with the assistance of the Indianapolis Metropolitan Police Department, removed S.G., L.G., and D.G. from Mother's home. DCS located A.W. a few days later, and placed him with his father, and later in a foster home. S.G. was placed with his paternal grandmother, and L.G. and D.G. were placed in a therapeutic foster home. At a pre-trial and continued initial hearing on October 15, 2015, DCS indicated that it would be pursuing a No Reasonable Efforts order and requested that Mother not be given visits with the children. Mother objected, but the trial court determined that she should not have any visits. On December 9, 2015, DCS and the GAL filed a Joint Motion for Hearing on Reasonable Efforts Exception, and requested that the court enter an order pursuant to IC 31-34-21-5.6 finding that reasonable efforts to reunify the children with Mother were not required. On December 23, 2015, Mother filed a motion seeking visitation with the children, and on January 12, 2016, the trial court held a hearing on Mother's request for visitation. On February 11, 2016, the court determined that it was not in the children's best

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interests to have supervised parenting time with Mother, and that Mother was not able to regularly exercise parenting time since she was on bed rest due to her pregnancy with her eleventh child. In February 11, 2016, Mother gave birth to I.K., her eleventh child, and admitted to DCS that she had used cocaine. DCS removed I.K. from Mother's custody and initiated a separate CHINS proceeding for I.K.

The trial court conducted a CHINS factfinding hearing for A.W., S.G., L.G., and D.G. and a hearing on DCS's request for a No Reasonable Efforts order with respect to the four children in March, 2016. On June 20, 2016, the court issued an order adjudicating the children to be CHINS. The court also granted DCS's request that reasonable efforts were not required to reunify Mother with the children. On July 16, 2016, the trial court conducted a dispositional hearing and did not order Mother to participate in any services.

The Court concluded that the No Reasonable Efforts Statute is not unconstitutional as applied to Mother. The Court also found no merit in Mother's claim that the trial court abused its discretion by granting DCS's request to forego reasonable reunification efforts. *Id.* at 1146. Mother contended that the No Reasonable Efforts Statute is unconstitutional as applied to her. The Court looked to G.B. v. Dearborn Cty. Div. of Fam. and Child., 754 N.E.2d 1027, 1031 (Ind. Ct. App. 2001), *trans. denied*, which states: (1) whether a statute is constitutional on its face is a question of law, which is reviewed *de novo*; (2) statutes are "clothed in a presumption of constitutionality"; (3) an individual who is challenging the constitutionality of a statute bears the burden of rebutting this presumption; (4) all reasonable doubts must be resolved in favor of an act's constitutionality; (5) when a statute can be construed to support its constitutionality, the Court must adopt such a construction. S.G. at 1144. Mother claimed that the No Reasonable Efforts Statute violated her substantive due process rights under the Indiana and United States Constitutions because it infringed upon her fundamental right to family integrity. Quoting G.B., 754 N.E.2d at 1031, the Court said that in order to succeed on her claim, Mother "must show that the [Statute] infringes upon a fundamental right or liberties deeply rooted in our nation's history or that the law does not bear a substantial relation to permissible state objectives." S.G. at 1145. The Court explained that because our courts have long recognized that parents' rights to raise their children are within the protection of the Fourteenth Amendment, the No Reasonable Efforts Statute "must serve a compelling state interest and be narrowly tailored to serve that interest." G.B. at 1032. S.G. at 1145. The Court looked to the G.B. opinion and noted the conclusion that the No Reasonable Efforts statute: (1) serves the State's compelling interest of protecting children from parental abuse and neglect; (2) is narrowly tailored to meet the compelling interest it is intended to serve; and (3) "is not more intrusive than necessary to protect the welfare of children" because it "include[s] only those parents who have had at least one chance to reunify with a different child through the aid of governmental resources and have failed to do so." G.B. at 1032. S.G. at 1145. Although Mother insisted that the reasoning of the G.B. opinion did not apply in her case because her history showed that reunification efforts were previously successful for her, the Court found no merit in her argument. S.G. at 1145. The Court noted that, by doing the bare minimum, Mother was able to temporarily reunite with her children, except for M.G. and A.G., but Mother's failure

to take advantage of multiple opportunities to make permanent changes in her life resulted in a perpetual cycle of instability for her children. Id. at 1146.

The Court also found that the No Reasonable Efforts Statute is not unconstitutionally vague. Id. at 1147. Mother also claimed that the No Reasonable Efforts Statute is unconstitutionally vague. The Court looked to Smith v. State, 8 N.E.3d 668, 676 (Ind. 2014), which explained that a criminal statute is unconstitutionally vague if the conduct sought to be prohibited is not clearly defined. S.G. at 1146. Quoting Smith at 8 N.E.3d 676, the Court said that unconstitutional vagueness may be reflected in two distinct statutory flaws: “(1) for failing to provide notice enabling ordinary people to understand the conduct that it prohibits, and (2) for the possibility that it authorizes or encourages arbitrary or discriminatory enforcement.” S.G. at 1146. Mother contended that the No Reasonable Efforts Statute failed the second prong because DCS can arbitrarily choose to seek a No Reasonable Efforts order or to offer services. Quoting Brunton v. Porter Mem’l Hosp. Ambulance Serv., 647 N.E.2d 636, 640 (Ind. Ct. App. 1994), the Court said that the State was correct in pointing out that “case law indicates that the ‘void for vagueness’ doctrine is ‘applicable only to penal statutes, not to non-penal civil statutes.’” S.G. at 1147. The Court also found that the No Reasonable Efforts Statute does not authorize arbitrary enforcement. Id. The Court noted that specific statutory criteria must be satisfied (i.e., prior termination of parental rights to the sibling of a current CHINS) before DCS may, in its discretion, determine that it will not allocate resources for reunification of a parent with her children. Id. The Court found such discretion was not tantamount to arbitrary enforcement. Id.