

Children's Law Center of Indiana



CHINS

2/19/18

In **Matter of E.Y.**, 93 N.E.3d 1141 (Ind. Ct. App. 2018), the Court reversed the trial court's finding that the ten-year-old child was a CHINS. *Id.* at 1143. The child was born on November 13, 2006, and Mother is his sole adoptive parent. On February 3, 2017, Detective Morgan, an officer with the behavioral health unit of the Indianapolis Police Department, and Ms. Johnson, a mobile crisis specialist with Eskenazi Hospital, went to a hotel room where Mother and the child were living. Mother had left Detective Morgan twenty-five voice mails over a two day time period, which led him and Ms. Johnson to make the visit. When Detective Morgan and Ms. Johnson arrived at the hotel room, the child was at school, and Mother was packing their things to move to another hotel. Mother said they were "no longer welcome" at the hotel, and stated that she "was hearing voices through the TV from a former employer[.] [She] couldn't really make out what the voices were saying to her, but that they were following her wherever she was going." Detective Morgan and Ms. Johnson thought that Mother was suffering from a mental illness, and transported her to Eskenazi Hospital for an evaluation. Detective Morgan arranged for the child's maternal grandmother to pick up the child from school that day. The DCS family case manager interviewed Mother at the hospital, spoke to the child at the DCS office, and took the child to Riley Hospital for treatment for his asthma. The child did not have any medication for his asthma.

DCS placed the child in foster care and filed a CHINS petition alleging the child was a CHINS because Mother was hearing voices and did not have stable housing. After an initial hearing, DCS referred Mother to home-based services "to stabilize her home and to ensure that she had employment." The home-based counselor attempted to contact Mother several times, but Mother never attended any sessions with the counselor and the counselor discharged Mother for "non-compliance" with the recommended services. Another home-based therapist, Ms. Davenport, supervised eight visits between Mother and the child beginning in April, 2017. Ms. Davenport observed that there was not a lot of interaction, talking, or affection between Mother and the child, but Mother did take him to eat, get haircuts, and to the library. Ms. Davenport thought Mother needed a psychological evaluation, but did not refer Mother for an evaluation. Ms. Davenport opined that Mother would not submit to an evaluation unless the court ordered one. The trial court found that the child was a CHINS following a factfinding hearing on May 11, 2017. The trial court's findings included: (1) Detective Morgan involuntarily detained Mother as a result of the danger she presented to herself and the child; (2) at the time of Detective Morgan's visit, Mother did not have a satisfactory plan for the child because she was being forced out of the hotel, did not have a job, and was suffering from mental illness and was not being properly medicated; (3) the child was removed from Mother's care as a result of Mother's mental illness and lack of a stable living environment; (4) Mother had mental health needs and would benefit

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from mental health evaluations, but was not cooperative and would not participate in treatment without the coercive intervention of the court. The court held a dispositional hearing on June 22, 2017. Mother appealed.

The Court held there was insufficient evidence to support the trial court's CHINS finding. Id. at 1147. Mother contended the trial court erred in adjudicating the child to be a CHINS because there was no evidence that the child was seriously endangered as a result of Mother's apparent mental illness, the child's needs were unmet, or the child's needs would go unmet in the absence of the coercive intervention of the court. The Court agreed with Mother's claim. Id. at 1145. The Court noted DCS provided no evidence that Mother had ever been diagnosed or treated for a mental illness nor had DCS referred Mother for a psychiatric evaluation. Id. at 1146. The Court assumed that, based on the undisputed evidence that Mother was hearing the voice of a former employer through the television set in early February 2017, Mother was likely suffering from a mental illness. Id. at 1145-6. The Court noted: (1) DCS presented no evidence that Mother continued to have that specific delusion at the time of the factfinding hearing; and (2) there was no evidence that a medical diagnosis had been made or that treatment had been prescribed for Mother. Id.

Quoting In re N.C., 72 N.E.3d 519, 524 (Ind. Ct. App. 2017), the Court noted it is well settled that "the focus of a CHINS adjudication is on the condition of the child alone." E.Y. at 1146. The Court observed that DCS presented no evidence relevant to the impact of Mother's mental illness on the child's condition. Id. The Court held the evidence did not support a reasonable inference that, at the time of the factfinding hearing, Mother's mental health *seriously* endangered the child (emphasis in opinion). Id. The Court noted Ms. Davenport's testimony that Mother was meeting the child's needs and there was no evidence regarding harm to the child from Mother's lack of interaction or lack of affection. Id. The Court also found there was no evidence that Mother was a danger to herself and her child at any time after Detective Morgan's interaction with Mother in early February, 2017. The Court quoted the Indiana Supreme Court decision In re D.J., 68 N.E.3d 574, 580-81 (Ind. 2017), in which the Supreme Court noted, "[w]hen determining CHINS status under IC 31-34-1-1, particularly the 'coercive intervention' element, courts 'should consider the family's condition not just when the case was filed, but also when it is heard.' Doing so avoids punishing parents for past mistakes when they have already corrected them." E.Y. at 1147.

The Court also found there was insufficient evidence to show that Mother lacked stable housing. Id. The Court noted undisputed evidence showed that Mother had money and planned to move to another hotel when detective Morgan and Ms. Johnson visited her on February 8, 2017. The Court also noted the case manager's testimony at the factfinding hearing that she did not know where Mother was living, had not viewed Mother's home, and did not know whether it was appropriate. Id. The Court explained that, without evidence to support a CHINS determination, neither DCS nor our courts could compel mental health treatment for Mother. Id.