

Children's Law Center of Indiana



CHINS

1/17/2018

In **In The Matter of Q.J.**, 92 N.E.3d 1092 (Ind. Ct. App. 2018), the Court held that: (1) statements that the oldest male child made to the doctor regarding bruising and malnourishment were admissible under the hearsay exception for statements made for the purpose of medical diagnosis or treatment; (2) the evidence was sufficient to support a CHINS finding for all six children; and (3) Father's discovery of the oldest male child's statements contained in a psychological evaluation did not warrant relief from judgment on the basis of newly discovered evidence. The Court affirmed the matter.

The oldest male child ran away from home, and when the police discovered him, they believed he may be the victim of abuse and neglect due to his limp, bruises, and malnourished appearance. Medical lab results later confirmed the child's extreme malnourishment, and an examination showed swelling and bruising. The child became "teary-eyed" and scared to tell the police officers about why he ran away, but eventually described abuse and neglect he and his siblings suffered at home, which included deliberate and prolonged withholding of food and beatings. The police executed a search warrant, and when a case worker visited the children late in the day, they all said they had not eaten yet that day. Mother denied starving the children, stated she was giving the children the minimum amount of food she was required to give them as a parent, and that she would give the children extra food if they reported their siblings' bad behavior to her. The second oldest male child was examined by the doctor, who was concerned about the results of the examination, as well as several statements the child made. The second oldest male child told the medical team he was forced to perform certain exercise movements several hundreds of times for several hours. DCS filed CHINS petitions on all the children, and the court ordered the removal of all six children. Mother and Father were charged with neglect of a dependent, and neglect of a dependent resulting in bodily injury. During a clinical interview and assessment of two of the female children, the female children remarked that their parents would force the boys to work hard and do chores until 4:00 a.m., that Father became easily angered and would hit the boys, that they had seen incidents of domestic violence between the parents, that they had been beaten by Father, and that Mother had tried to kill one of the male children. At the CHINS factfinding, the clinical assessments were admitted into evidence without objection from Mother or Father. When the doctor who examined the male children testified, Father objected on hearsay grounds to the doctor answering the question of what the child reported as the cause of his malnourishment. The trial court overruled the objection, and allowed the doctor to testify as to what the oldest male child had said. The doctor also testified that Mother's account of the food provided was very similar to what the child had indicated. The doctor could not confirm that the bruises were caused by Mother or Father, but testified that the malnourishment and bruising would not be present without "without an act or omission by the

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parents.” The case manager testified that the children should not return to the parents, as Mother stated that the oldest male child had ruined their lives, that their methods of control and discipline were appropriate, and that the oldest male child was evil and they all hated him. The caseworker recommended not returning the female children because they parroted many of Mother’s statements, and they also revealed information about food withholding, inappropriate discipline, and domestic violence. Other case workers and therapists expressed safety concerns for the children and their expressed trauma. The trial court adjudicated the children to be CHINS, and Father appealed.

The doctor’s testimony about the oldest male child’s statements fell within the hearsay exception of Ind. Evid. R. 803(4), statements made for the purpose of medical diagnosis or treatment, and as such, the trial court did not abuse its discretion in admitting the doctor’s testimony about the child’s statements. *Id.* at 1100. Father argued that the child’s statements to the doctor were inadmissible hearsay because there was no evidence that the child knew he was talking to a medical professional for the purposes of diagnosis or treatment. *Id.* at 1100. The Court noted at the outset that a hearsay statement is one that is not made by the declarant while testifying and is offered to prove the truth of the matter asserted; hearsay is generally not admissible unless it falls within an outlined exception. *Id.* Indiana Evidence Rule 803(4) provides for admissibility of statements made for the purpose of medical diagnosis or treatment. *Id.* These statements must be made by the person seeking medical diagnosis or treatment, and the statement must describe medical history, part or present symptoms, pain, sensation, or the general start or cause of the past or present symptoms, pain, or sensation, as long as that information is reasonably relevant to diagnosis or treatment. *Id.* A two-step analysis into the reliability of the statement includes determining whether the declarant is motivated to provide truthful information in order to lead to diagnosis and treatment, and whether the content of the statement is such that an expert in the field would reasonably rely upon it in making a diagnosis or giving treatment. *Id.* at 1100. The Court discussed a prior case, Bartrum v. Grant County Off. of Fam. & Children, 772 N.E.2d 522 (Ind. Ct. App. 2002), which held that the record was devoid of any evidence that the children were motivated to make truthful statements to obtain diagnosis or treatment, especially because the testimony of the children’s therapist portrayed the children as young, mentally and emotionally incompetent, and unaware of the doctor’s purpose. Bartrum at 533; Q.J. at 1100. The Bartrum Court held that in the case of very young children, there must be evidence that the declarant understood the professional’s role in order to trigger the motivation to speak truthfully. Q.J. at 1100. The Q.J. Court noted that in contrast to prior case law, the oldest male child was not a young child and made his statements to the doctor at a hospital, which supported the inference that he knew the purpose of his visits and was motivated to speak truthfully. *Id.*

The evidence most favorable to the trial court’s findings supported its conclusions that the children were CHINS, and consequently, Father’s arguments about the sufficiency of the evidence failed. *Id.* at 1101 and 1103. The Court first noted that it was not the Court’s job to reweigh the evidence or judge witness credibility, and that its role was to consider whether the evidence supported the findings and then whether the findings supported the judgment. *Id.* at 1101. The Court noted the following evidence supporting the trial court’s findings and order: (1)

testimony from various witnesses about the children's malnourished state; (2) information from the children about the lack of food they were provided; (3) information about Mother's statements indicating hostility towards the oldest male child; (4) medical information about the extreme malnourishment the children were experiencing; (5) information from Mother about withholding food as punishment; (6) the oldest male's child diagnosis of Post Traumatic Stress Disorder from the lack of food, constant forced exercise, and other humiliating punishments from the parents; (7) the clinical assessment where the female children reported the maltreatment of the oldest male child by the parents; (8) information from the female children indicating they had seen Father hit the male children and incidents of domestic violence between Mother and Father; (9) information from one of the female children that she was scared of her parents; (10) information from the female children that they were not fed and were beaten; and (11) information from the female children showing that they were encouraged to participate in the physical abuse of one of the male siblings.

Since Father's newly discovered evidence would have been used only for impeachment purposes, it did not qualify as the type of evidence upon which relief from judgment based on newly discovered evidence can be granted; as such, Father was not entitled to relief from judgment. *Id.* at 1105. Father asserted that he was denied effective assistance of counsel because his counsel should have filed a motion for relief from judgment under Indiana Trial Rule 60(B)(2). *Id.* at 1104-5. The psychological evaluation of one of the children was not filed with the trial court until almost five months after the trial court issued its order adjudicating the children to be CHINS, and Father found statements in there which allegedly contradicted the doctor's testimony. *Id.* at 1105. The Court first noted that Father had not shown any case law providing that a statute creates a cause of action for ineffective assistance of counsel in a CHINS proceeding. *Id.* The Court noted that any 60(B)(2) claim by Father on this topic would have been ineffective because the Rule provides that the newly discovered evidence must be among other things, not merely cumulative or impeaching. *Id.* Father argued that this newly discovered evidence entitled him to relief from judgment because some of the statements the child made in the evaluation contrasted with the doctor's testimony; the Court characterized this as Father arguing that the psychological evaluation could have been used to impeach the doctor. *Id.* Since the evidence did not qualify as evidence that could provide relief from judgment, any Trial Rule 60(B)(2) motion from Father would have failed. *Id.*