

# Children's Law Center of Indiana



## CHINS

10/10/2018

In **In re B.V.**, 110 N.E.3d 437 (Ind. Ct. App. 2018), the Court held that a child cannot be deemed a CHINS when no evidence is presented at factfinding that the parent's conduct endangered or harmed the child, or that the child has needs that are not being met by the parent.

The child was born in November 2017, and DCS filed a petition alleging that the child was CHINS because he and Mother both tested positive for THC, hospital staff were concerned about Mother's mental health, and Mother was living with a known drug user. At the initial hearing, evidence was presented about the same, and the trial court placed the child in foster care. At the factfinding hearing in March 2018, Mother had found her own housing, had a job, and had submitted numerous clean drug screens. DCS admitted that Mother had been mostly compliant with their requests, and did not introduce evidence that Mother's conduct was endangering or neglectful of the child. The trial court went on to find the child a CHINS, stating, "I mean I could say that the child's not in need of services as well, because [Mother's] done a lot of things to remedy the situation. I think there's a middle ground here that I'd like to explore, which is an in-home CHINS . . . You know I haven't seen enough that I'm a hundred percent comfortable that we're a hundred – we're all the way there yet. But I do think that I don't see the dangers to the child that I saw when the child was detained either." Id. at 439.

**DCS and Mother agreed that the evidence was insufficient to support a CHINS finding and requested that the Court reverse the trial court's order finding the child to be a CHINS; upon its own review of the record, the Court agreed that the evidence was insufficient to support a CHINS finding.** Id. at 441. IC 34-31-1-1 requires "three basic elements: that the parent's actions or inactions have seriously endangered the child, that the child's needs are unmet, and (perhaps most critically) that those needs are unlikely to be met without State coercion." Id. at 440-441, citing In re S.D., 2 N.E.3d 1283, 1287 (Ind. 2014). DCS agreed there was no evidence Mother was unable to meet the child's needs, or that the child had any unmet needs. Id. DCS noted that the major concern was that Mother could backslide, which it conceded did not meet statutory dictates. Id. DCS also conceded it did not present evidence of how Mother's marijuana use during pregnancy ever harmed the child. Id.

**When a child is born with any amount of a controlled substance in his/her body, IC 34-31-1-10 states that a child is CHINS only if "the child needs care, treatment, or rehabilitation that: (A) the child is not receiving; or (B) is unlikely to be provided or accepted without the coercive intervention of the court".** Id. at 441. DCS conceded it did not present evidence of how Mother's marijuana use during pregnancy ever harmed the child. Id. In agreeing with DCS

that reversal was required, the Court cited In re S.M., 45 N.E.3d 1252, 1256-1257 (Ind. Ct. App. 2015), which opined that there was insufficient evidence to support a CHINS when there was no evidence in the record showing specifically how marijuana positive meconium endangered a child. B.V. at 441. The Court also cited Ad.M. v. Ind. Dept. of Child Services, 103 N.E.3d 709, 714 (Ind. Ct. App. 2018), which similarly held that without actual evidence presented showing why marijuana use harmed or endangered a child, the evidence of marijuana use alone was insufficient to support a CHINS finding. B.V. at 441.