

# Children's Law Center of Indiana



CHINS  
1/25/2019

In **M.M. v. Indiana Dep't of Child Services**, 118 N.E.3d 70 (Ind. Ct. App. 2019), the Court reversed the CHINS adjudication, and held that the CHINS court could have properly considered the custody matter pursuant to IC 31-30-1-13, and that Father's challenge to the services ordered was moot.

Mother and Father were not married when they had three children together, but Father was listed on all three children's birth certificates. Father routinely cared for the children on holidays and weekends. Mother entered into an Informal Adjustment in June 2017 due to substance abuse allegations. Father was not a party to the IA. During an unannounced visit, the FCM discovered a child left home alone and unsupervised. Father indicted this was an ongoing problem at Mother's house. In December 2017, Father requested a welfare check, and the police discovered the house in utter disarray and all children present with no adult. When Mother returned, she was arrested for neglect of a dependent, and DCS filed a CHINS petition and placed the children with Father. At the factfinding hearing, Father requested a continuance so that he could modify custody and restrict Mother's access to the children in the separate custody proceeding, but the trial court denied the request and proceeded with the factfinding hearing. Father presented evidence that he was able and willing to care for the children, he had secured appropriate health insurance and daycare, and that he believed Mother was using illicit substances and was missing supervised visits with the children. DCS expressed concern that without legal custody being modified, Mother retained legal custody and the children could legally be returned to her care outside of the CHINS case. The FCM made multiple recommendations for services for the children and Mother, and testified that based on the children being removed from Mother's home, she believed the coercive intervention of the court was necessary. The only service DCS felt might be useful for Father was parenting education, but DCS did not recommend any case management for Father. The trial court entered standard orders" for parental participation and found the children to be CHINS in March 2018. Father gained full custody of the children in a separate proceeding in August 2018. DCS moved to dismiss wardship, which the trial court granted. Father then appealed.

**The Court reversed the CHNS adjudication, holding that evidence showed that the needs of the children were met, and there was no evidence showing that the coercive intervention of the court was needed to provide the children with services at the time of the factfinding hearing. Id. at 75.** The Court noted that in order to provide a child is a CHINS under IC 31-34-1-1, DCS must prove by a preponderance of the evidence that 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. at 74. CHINS adjudications cannot rest on conditions which no longer exist, and must be focused on the condition of the child and whether that child needs services. Id. The Court noted that Father and DCS agreed in this case that the coercive intervention of the court was not needed to provide services for the children while they were in Father’s care. Id. at 75. However, DCS noted on appeal that it continued to pursue the CHINS matter despite Father being a ready, willing, and able parent, because he did not have legal custody of the children through the civil custody matter, which led to DCS’s concern that the children would be forced to be legally returned to an unfit Mother once the CHINS case was closed. Id. The Court noted that at the time of the CHINS adjudication, the children had been with Father for four months without incident, he had suitable housing and daycare for the children, and was providing shelter, financial support, and all other necessary care without DCS’s assistance. Id. The Court opined that the trial court’s conclusion that the children were CHINS rested on the events occurring before the filing of the CHINS petition, and did not consider the facts and circumstances at the time the case was heard. Id. The Court determined that the “legal possibility of the children returning to Mother’s care does not alone mean that the children required services.” Id.

**IC 31-30-1-13 allows a CHINS court to consider a request for a change of custody which was filed under IC 31-14, and to issue an order modifying custody pursuant to IC 31-14-13-2 and other corresponding statutes; the Court held that an order so issued would survive the termination of a CHINS case. Id. at 77.** A prior version of IC 31-30-1-13 only mentioned the modification of paternity and provided for the survival of those orders. Case law applying that statute opined that since custody and parenting time matters were not included in the language of the statute, any modification made to custody or parenting time by a CHINS court would not survive closure of the CHINS case. Id. at 76; see In re J.B., 61 N.E.3d 308, 312 (Ind. Ct. App 2016).

IC 31-30-1-13 was amended in 2017 and now provides that:

(a) Subject to subsection (b), a court having jurisdiction under IC 31-14 over establishment or modification of paternity, child custody, parenting time, or child support in a paternity proceeding has concurrent original jurisdiction with another juvenile court for the purpose of establishing or modifying paternity, custody, parenting time, or child support of a child who is under the jurisdiction of the other juvenile court because:

- (1) the child is the subject of a child in need of services proceeding; or
- (2) the child is the subject of a juvenile delinquency proceeding that does not involve an act described under IC 31-37-1-2.

...

(c) If, under this section, a juvenile court:

- (1) establishes or modifies paternity, custody, child support, or parenting time of a child; and
- (2) terminates a child in need of services proceeding or a juvenile delinquency proceeding regarding the child;

the order establishing or modifying paternity, custody, child support, or parenting time survives the termination of the child in need of services proceeding or the juvenile delinquency proceeding until the court having concurrent original jurisdiction under

subsection (a) assumes or reassumes primary jurisdiction of the case to address all other issues.

The Court opined that the modifications to this statute after the issuance of the J.B. opinion showed a clear intent from the legislature for a CHINS court to be able to establish or modify custody, child support, or parenting time of a child over whom it has jurisdiction. Id. at 77. The Court noted that Father had filed in the other proceeding a petition to affirm his paternity and request for custody, and DCS acknowledged that the children did not require services when they were with Father, and they would not consider the matter to be a CHINS if Father had legal custody of the children. Id. Mother had notice and an chance to be heard regarding the custody matter, and it was within the CHINS court's authority under IC 31-30-1-13 to consider the request for the change of custody and enter an order modifying custody pursuant to IC 31-14-13-2 which would survive the closure of the CHINS case. Id.

**The Court held that the issue of the parental participation orders was moot; although the orders issued by the trial court did not appear to be supported by the evidence, the CHINS petition had been dismissed by DCS, and the participation orders were no longer in effect. Id. at 77-78.** The Court noted that juvenile courts have the ability and discretion to determine what services and programs are needed for a family within its jurisdiction and to make corresponding orders requiring participation in those services and program. Id. at 77. However, the orders requiring participation in these services and programs must relate to the behavior or circumstances revealed by the evidence. Id. (internal citations omitted). The Court had concerns about the "standard orders" which the trial court had issued and whether they were supported by the evidence; however, the Court ultimately deemed the issue to be moot, as the CHINS and its underlying orders were dismissed, and no relief could be granted to Father. Id. at 77-78.