

Children's Law Center of Indiana



CHINS

1/22/2019

In **Matter of L.N.**, 118 N.E.3d 43 (Ind. Ct. App. 2019), the Court reversed the trial court's determination the child was a CHINS, and held that evidence of mental health issues and low intellect, without more, does not support a CHINS finding based on IC 31-34-1-1.

Parents lived in Arizona in an emergency family shelter, and Mother gave birth to the child in Arizona. Parents moved to Indiana when the child was one month old; they moved into a house, applied for the WIC program, and engaged in service that WIC had offered through Healthy Families and the Hope Center. Parents found a doctor for the child, and took the child there for a well child visit. DCS received a report with concerns about Parents' mental health and their care for the child; the report alleged that Parents believed that the child could walk, talk, and eat adult food, but the child was only four months old. The report also stated Mother was not appropriately handling her bipolar disorder. During the DCS assessment, Mother stated she had been diagnosed with bipolar disorder, had spent time in a psychiatric treatment facility, and took her medications for a time, but then stopped taking them. Mother indicated she had tried to give the child infant cereal one time, but had not tried again since the child did not like it, and that the child was currently exclusively breastfed. Mother signed consent forms to allow the FCM to obtain information from various places Mother and the child were receiving services. Providers at two locations indicated they had concerns about Parents' ability to parent, their lack of supervision, and their lack of knowledge about how to care for a child; providers from the medical clinic did not express any concerns. The FCM was concerned that Parents did not recognize the safety concerns that Mother's untreated bipolar disorder could cause, and was concerned that Mother did not know how to soothe the child other than by breastfeeding the child. DCS removed the child based on these concerns; at the time of the removal, Parents' house had trash and debris in it, minimal furniture, loose screws and nails, medication bottles, lighters, and a bottle full of urine. A CHINS petition was filed, and the trial court compelled Parents to engage in services. Parents began visitation with the child. Mother pumped milk for the child, but Parents stored and transported the milk in an incorrect manner, which one time resulted in Mother delivering milk that was greenish in color. Parents agreed to using goats milk after refusing to use formula. Mother once showed up with only baby food and water for the child, and when Mother was informed that this was insufficient for the child, Mother became extremely difficult to communicate with. After this, the Clinical Director recommended that the visits become therapeutic visits. Parents submitted to psychological evaluations. Mother's results showed bizarre thought processes and odd behavior, behaviors consistent with Schizotypal personality disorder, and an unspecified neurocognitive disorder that could interfere with parenting skills. Father's results showed an overall below average functioning intelligence, which could make it difficult for Father to retain new information and might interfere in parenting.

DCS alleged that Child was a CHINS under IC 31-34-1-1, which provides that a child is a CHINS if: (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. The trial court held a factfinding hearing and found the child to be a CHINS.

DCS did not present evidence to show the impact of Mother's mental illness and Father's low intellect on the child and the child's safety; without that evidence, of Mother's mental illness and Father's low intellect alone could not support a CHINS finding. Id. at 48. IC 31-34-1-1 requires DCS to show that a parent's actions or inactions have seriously endangered the child, that the child's needs are unmet, and that those needs are unlikely to be met without the coercive intervention of the court. Id. at 48, citing In re S.D., 2 N.E.3d 1283, 1286 (Ind. 2014). A CHINS adjudication must focus on the condition of the child, and the juvenile court must consider a family's condition at the time the case was filed, but also at the time the case is heard. Id., citing In re S.D., 2 N.E.3d at 1290. DCS alleged the child was a CHINS because of Parents' unaddressed mental health and health issues, and pointed to evidence of Mother's mental health problems, lack of medication, and other potential issues, and Father's low intellect. Id. However, DCS did not present evidence showing the actual impact of Mother's mental illness or Father's low intellect on the child's safety. Id. While various service providers testified that Mother's mental illness and Father's low intellect could possibly affect their parenting and the child's safety, DCS did not present evidence that Mother's mental illness or Father's low intellect actually did seriously endanger the child. Id. The Court characterized the evidence in the record as "speculation about parenting issues that may or may not materialize in the future." Id. "Indeed, future concerns rather than present facts are not enough to support a CHINS determination." Id. at 49, citing J.J. v. Ind. Dep't of Child Servs., 78 N.E.3d 740, 745 (Ind. Ct. App. 2017). DCS was required to show Parents' action or inactions seriously endangered the child; thus, they had to show a nexus between Mother's mental health or Father's intelligence and Child's actual endangerment. Id. Since DCS did not do so, DCS failed to present evidence sufficient to support this purported basis for the CHINS determination. Id.

Parents' prior homelessness, unsafe home conditions, and problems with feed the child were remedied by the time of the CHINS hearing; since a CHINS adjudication may not rest solely on conditions that no longer exist, DCS did not present evidence sufficient to support a CHINS determination. Id. at 50. DCS had also alleged the child was a CHINS under IC 31-34-1-1 because of Parents' homelessness, their home being unsuitable for young children, and their struggle with understanding how to feed the child. Id. at 49 The Court noted there was no dispute that these were problems with which Parents had struggled. Id. However, the Court noted that courts must consider a family's condition at the time the case was filed, and also at the time the case was heard, in order to avoid punishing parents for past mistakes which have been remedied. Id., citing In re D.J., 68 N.E.3d 574, 577-78 (Ind. 2017). The evidence showed service providers taught Parents how to keep the home clean, the FCM did not have current concerns about the condition of the home, the Parents resolved the breastmilk storage and transportation problems by using goat milk instead, which the child tolerated very well, and Parents engaged with a service provider about food safety and feeding young children. Id. at 49-50. Since the

problems had been remedied, there was not sufficient evidence to support a CHINS determination. *Id.* at 50.

The Court recognized that the CHINS statutes do not require courts to wait until a child is harmed in order for DCS to intervene, but a CHINS finding must be based on facts and reasonable inferences, not on future concerns, or past behavior or circumstances which has been remedied. *Id.* at 50.