

# Children's Law Center of Indiana



## CHINS

1/30/2019

In **In The Matter of M.W.**, 119 N.E.3d 165 (Ind. Ct. App. 2019), the Court held that there was insufficient evidence to support the CHINS adjudication, and reversed the trial court's judgment.

Mother had three minor children, each of whom had different fathers. The child who is the subject of this case underwent grief counseling when her father was found murdered. Mother sought individual therapy for herself and participated in that service throughout the CHINS case. Mother and the three children lived in an appropriate home, and Mother had part time employment due to her disability. The child and one of her sisters (Sister) had a volatile relationship, and the child had a history of behavioral problems, including running away from home, truancy, and marijuana use. In March 2018, the child and Sister got into an argument which became a physical altercation, and Mother eventually had to call the police for assistance in deescalating the fight. When the officer arrived, they transported the child to the hospital due to scratches on her face, and arrested Mother for domestic battery, which was later dismissed. Because Mother was arrested, DCS placed Sister and the other child in relative care, and the child in emergency shelter care. DCS filed a CHINS petition, and Mother participated voluntarily in multiple services and meetings, and ensured that the child and Sister began individual therapy. At the end of April 2018, Sister and the other child were returned to Mother's care; the child was placed out the home despite Mother's and the child's requests to have the child return home.

At the CHINS factfinding hearing, the following evidence was received: (1) the Family Case Manager (FCM) testified that Mother and the children needed individual and family therapy, that DCS' involvement was needed because Mother could not provide a safe and emotionally stable environment, and that the child was emotionally unstable, despite a clinical assessment which showed no such evidence; (2) the family therapist testified that sessions were productive and detailed progress and recommendations for continuing the therapy, that Mother was willing and able to follow through on plans and techniques, but that the child should not return home yet; (3) the child's individual therapist testified that therapy was going well but that the child should not return home yet; (4) a child service professional who administered a parenting assessment for Mother found no concerns; (5) the individual supervising visits between Mother and the children had no concerns about Mother's parenting skills; and (6) Mother testified that while therapy was inconvenient, she liked it and she knew her family needed it, and that she had already engaged these services before DCS became involved.

**The Court found that there was no evidence to support a conclusion that the child’s mental or emotional condition was seriously impaired or endangered as a result of anything done by Mother; behavioral problems alone are not sufficient to support a CHINS finding; and Mother was clearly able to obtain needed services without the trial court’s coercive intervention. Id. at 169.** Given prior case law and current statutory law, the Court was “stunned” that the child was found to be a CHINS. Id. The Court noted that a CHINS case is a civil case in which the State must prove, by a preponderance of the evidence, that the child is a CHINS. Id. at 168, citing In re N.E., 919 N.E.2d 102, 105 (Ind. 2010). There are three elements that the State must so prove: (1) that the child is under age 18; (2) that one of eleven statutory circumstances exist which would make the child a CHINS; and (3) that the child needs care, treatment, or rehabilitation that the child is not receiving and that the child is unlikely receive without the coercive intervention of the court. Id., citing In re N.E., 919 N.E.2d at 105. In prior case law, the Court had called this third element, the necessity of the coercive intervention of the court, perhaps the most critical element. Id. at 169, citing In re S.D., 2 N.E.3d 1283, 1287 (Ind. 2014). In the present case, DCS had alleged that the child was a CHINS under IC 31-34-1-1, which provides that “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.” Id. The Court opined that there was no evidence showing that the child’s mental or physical condition was seriously impaired or endangered by Mother’s actions or inactions. Id. All evidence showed Mother to be a loving, engaged parent, who provided a clean and stable home, adequate financial support, and adequate emotional care for her children. Id. The child’s behavioral issues alone could not support a conclusion that the child was seriously endangered or impaired. Id. Mother took multiple positive steps to address the child’s behavioral and emotional needs; she called the police when she needed help; she sought counseling on her own for herself and the child; she participated voluntarily in all services that DCS had to offer, and was ready and willing to continue these services on her own. Id. Given all these facts, the trial court erred in finding the child to be a CHINS. Id.

**The Court noted that the Marion County Superior Court had recently had multiple CHINS findings reversed for lack of sufficient evidence, and encouraged all participants in the CHINS process and their counsel to be mindful of the Court’s guidance on sufficient evidence in determining whether to pursue a CHINS case, and in determining a CHINS adjudication. Id. at 170.** “There are unquestionably families who truly need the support of a CHINS case, and all will be better served if the involved governmental and judicial entities focus their finite resources on the families who need them, rather than on the families who do not.” Id.