

Children's Law Center of Indiana



CHINS

3/15/2019

In **Matter of A.M.**, 121 N.E.3d 556 (Ind. Ct. App. 2019), the Court held that the trial court did not err in admitting the child's hearsay statute under IC 31-34-13-2 and -3, and that the evidence was sufficient to support the trial court's determination that the child was a CHINS.

Parents are the parents of the child, who spent the first three years of life in relative care due to a prior CHINS adjudication. When the child was four, she lived with Parents and slept in the same bed as them. The child disclosed that Father had molested her, and when a family case manager talked to Parents, Mother did not believe the allegations. Father denied the allegations but left the house. The child underwent a forensic interview, where she disclosed that Father had molested her while she was in bed with him. The FCM, a detective, and a victim advocate watched a live feed in another room. When Mother again indicated to the FCM that she did not believe the allegations, the child was placed outside the home, in a home where her previously adopted older siblings lived. DCS filed a CHINS petition, and sought a child hearsay hearing in order to introduce at the factfinding hearing the abuse disclosures that the child made during the forensic interview. The trial court concluded at the child hearsay hearing that the child's statements had sufficient indications of reliability and that the child was unavailable to testify at the factfinding hearing. The trial court adjudicated the child to be a CHINS.

The trial court acted within its discretion in admitting the child's hearsay statements pursuant to the child hearsay exception found at IC 31-34-13-2 and -3. Id. at 559.

Admission of evidence is within a trial court's discretion and will only be reversed upon a showing of abuse of discretion. Id. Furthermore, erroneous admission of evidence does not necessarily require reversal. Id. The child hearsay exception provides that as long as certain requirements are met, a child's statement or videotape of a child under age fourteen statement is admissible evidence in a CHINS proceeding. Id. at 560. IC 31-34-13-3 provides in relevant part:

A statement or videotape described in section 2 of this chapter is admissible in evidence in an action to determine whether a child... is a child in need of services if, after notice to the parties of a hearing and of their right to be present:

- (1) the court finds that the time, content, and circumstances of the statement or videotape and any other evidence provide sufficient indications of reliability; and
- (2) the child:

...
(C) is found by the court to be unavailable as a witness because:

(i) a psychiatrist, physician, or psychologist has certified that the child's participation in the proceeding creates a substantial likelihood of emotional or mental harm to the child; [or]

...

(iii) the court has determined that the child is incapable of understanding the nature and obligation of an oath.

Parents argued that the content was not reliable, and that the child's inability to recall when or how often she was molested rendered her statements unreliable. Id. at 560-61. The Court disagreed and noted the forensic interview was conducted appropriately according to forensic interview standards, the child disclosed she was molested more than once, and even though he child could not accurately state when the molestation began and ended, the forensic interview testified that the child's inability to do so was typical for a four year old child. Id. Parents also pointed to the lack of specificity in some of the child's responses, but the Court noted the information the child provided was sufficiently specific. Id. The child was also aware that she should only discuss things that had actually happened, and although one doctor expressed concern about the child's fragility, youth, and inability to tell the difference between a truth and a lie, the doctor found that the child could accurately describe prior things that had happened to her. Id. Parents arguments amounted to semantics about whether the child could use and understand certain terms, and her inability to do so made her unreliable. Id. The Court disagreed, and noted that the information provided by various child service professionals indicated that the child's statements were sufficiently reliable and normal for a four year old child. Id.

The parents referred the Court to the protected persons statute found at IC 35-37-4-6, but the Court noted that the protected persons statute was criminal in nature, while CHINS cases are civil in nature, and thus, the protected persons statute did not apply in this case. Id. at 560 n.2 citing In re J.Q., 836 N.E.2d 961, 964 n.1 (Ind. Ct. App. 2005).

The evidence was sufficient to support the CHINS determination. Id. at 561. Pursuant to IC 31-34-1-1, DCS must prove that the child is under age eighteen, "(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 562. The CHINS designation focuses on the condition of the child rather than the act or omission by a caregiver. Id. Parents did not specifically challenge any findings, and the Court noted the unchallenged findings supported the trial court's determination. Id. at 562-63.