



CHINS
12/20/2019

In **In the Matter of Br.B.**, 139 N.E.3d 1066 (Ind. Ct. App. 2019), *trans. denied*, the Court held that the trial court did not err in denying parents motion to dismiss for lack of venue, in admitting certain evidence, and that the Indiana Department of Child Services (“DCS”) carried its burden in showing that the Children’s needs were unlikely to be met without coercive court intervention.

Father and Mother are the parents of Br.B, M.B. and BA.B. Mother is also the parent of Ma.B and Father is that child’s stepparent. In January 2019, DCS received a report of child abuse or neglect regarding all four children. The report was substantiated as to the Father. All four children were removed from Parents’ care. DCS then filed a petition alleging that the children are Children In Need of Services (“CHINS”) because Parents failed to provide them “with a safe, stable, and appropriate living environment free from physical abuse and violence.”

After DCS rested its case at the factfinding hearing, Parents moved for involuntary dismissal pursuant to Indiana Trial Rule 41(B) claiming that DCS had failed to prove venue. The trial court denied the motion and after Parents presented their case, they renewed their motion to dismiss. The trial court took the matter under advisement but never formally ruled on it. It was deemed denied pursuant to Indiana Trial Rule 53.4(B). At the conclusion of the factfinding hearing, the trial court determined the children to be CHINS based on testimony from the children, family case manager, and home based therapist. Parents appealed the CHINS determination to all the children, except for Ma.B.

The trial court did not err in denying Parents’ motion to dismiss for lack of venue; there is no constitutional or statutory requirement that DCS prove venue in a CHINS proceeding. Id. at 1070, 1072. IC 31-32-7-1 states, “If a child is alleged to be a delinquent child or a child in need of services, proceedings under the juvenile law may be commenced in the county: (1) where the child resides; (2) where the act occurred; or (3) where the condition exists.” Parents had moved for involuntary dismissal based on Indiana Trial Rule 41(B), alleging that DCS had failed to prove venue by showing that the children resided, the acts occurred, or the conditions existed in Marion County. Id. at 1071. Parents relied on Baugh v. State, 801 N.E.2d 629, 631 (Ind. 2004), which held venue is not an element of an offense, but the State is required to prove it by a preponderance of the evidence, but not beyond a reasonable doubt. Br.B. at 1071. Parents claimed that there was neither direct nor circumstantial evidence regarding where the children resided or where the allegations occurred and thus did not prove that Marion County was the proper venue. Id. The Court held that Parents improperly relied on Baugh; CHINS proceedings are not criminal proceedings and thus, Parents have no constitutional right to have their case heard in any particular county. Id. IC 31-32-7-1 neither states or suggests that DCS is required to prove venue in a CHINS proceeding. Id. The express language of the statute is permissive, not

mandatory. Id. A CHINS proceeding may be commenced in the county where the child resides, where the act occurred, or where the condition exists, but this is not a requirement. Id. at 1071-72.

Parents have failed to establish that they are entitled to reversal based on the admission of certain evidence. Id. at 1072. Parents argued that their due process rights were violated when the trial court admitted testimony about Father’s status as a sex offender and the conditions of their home. Id. The Court noted Indiana Appellate Rule 66(A), which states that there is “no error or defect” when the impact of the information “is sufficiently minor so as not to affect the substantial rights of the parties.” Id. The CHINS order did not mention Father’s sex offender status; while the CHINS order did mention the conditions of the Parents’ home, the conditions were not the basis for the CHINS finding. Id.

Parents failed to establish that DCS did not carry its burden of proof on the issue of coercive court intervention. Id. at 1072. DCS alleged the children to be CHINS pursuant to IC 31-34-1-1, which provides that a child is a CHINS if, before the child turns 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:

- (A) when the parent, guardian, or custodian is financially able to do so; or
- (B) due to the failure, refusal, or inability of the parent, guardian, or custodian to seek financial or other reasonable means to do so; 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 Court noted that DCS bears the burden of proving that a child meets the statutory definition of CHINS. Id. at 1073. Parents challenged the finding that coercive intervention would be necessary because they voluntarily participated in services. Id. The Court noted that the unchallenged finding of the trial court was that Parents failed to get the Children the therapy they needed during the pendency of the CHINS action. Id. Although Father testified that this did not mean he wouldn’t get therapy for them in the future, the Court found this to be self-serving testimony that the trial court was entitled to disbelieve. Id. Parents failed to establish that DCS did not carry its burden of proof on the issue of coercive intervention. Id.