



## CHINS

8/6/2019

In **In the Matter of R.G.**, 130 N.E.3d 1171 (Ind. Ct. App. 2019), the Court affirmed the lower court's finding that the child was a CHINS, finding the lower court's error in permitting telephonic testimony to be harmless error. The Court ruled that **"DCS presented other evidence of probative value to support the CHINS determination such that the court's error in this regard is harmless.** See Ind. Appellate Rule 66 (providing that we shall not reverse on appeal if an error's 'probable impact, in light of all the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties.'" Id. at 1178.

Parents were being investigated by DCS for abuse and neglect in August 2018, prior to the child's birth. The home was unsanitary, with no running water, lice, and allegations of inappropriate discipline. When the child was born in September 2018, a DCS caseworker visited the home and found a number of unsanitary conditions; the child was co-sleeping in a bed with both parents, "and their bed was covered with pill bottles, clothes hangers, blankets, a supportive infant pillow, plastic bags, a stereo, and other miscellaneous items." Id. at 1174. The parents indicated there was nowhere else for the infant to sleep, so the caseworker provided a pack and play. The child was brought to the pediatrician for a routine well check at five days of age, and the pediatrician noticed unusual bruising on the child. The parents were unable to provide an explanation for the bruises, and the pediatrician was concerned. A battery of tests were ordered, and a report was submitted to DCS and the Child Protection Team at Riley Hospital for Children. DCS requested removal of the child and his siblings due to the ongoing problems with the family's living conditions and the unexplained injuries. This petition for emergency removal was granted, but the family disappeared and the children could not be found.

In October 2018, the family was found in Kentucky, and Kentucky DCS detained the children pursuant to the emergency order in Indiana. The child was placed with maternal grandmother, who took him in for more x-rays upon placement. His results were read by a pediatric radiologist, Dr. Marine, who also reviewed his September 2018 scans. Dr. Marine discovered a "'classic metaphyseal lesion,' which was a different diagnosis than provided by the radiologist who initially reviewed the x-ray." Id. at 1176. Further, Dr. Marine indicated that "such an injury is not typically seen as a result of birth trauma unless perhaps the Child was born breech, which Child was not. Dr. Marine thus found Child's injury to be concerning for physical abuse. She explained that the type of fracture Child suffered would have resulted from a jerk or tug on the leg or some sort of force resulting from shaking." Id.

Upon placement, parents were given supervised visitation due to fears they would run again. The individual who supervised parenting time expressed concerns about the parents' intimidating and threatening behavior. For all the above reasons, DCS filed a CHINS petition for all the children, and a factfinding hearing was held on December 7, 10, and 13, 2018. However, on December 3, only four days prior to factfinding, DCS filed a motion to have Dr. Marine testify

telephonically. The parents objected, citing Administrative Rule 14, which provides (among other things) that thirty day notice to parties of telephonic testimony is required, with opportunities to object and be heard in opposition to the request. The parents' objection was overruled, and Dr. Marine testified telephonically. The children were found to be CHINS.

**The trial court erred in allowing the doctor to testify via telephone absent compliance with Admin. R. 14(b). Id. at 1178.** Admin. Rule 14(b) provides that remote telephonic testimony is permissible is certain requirements are met; there must be good cause, and notice must be given to opposing parties thirty days before the testimony. Id. at 1177-78. It was undisputed that the notice of telephonic testimony was submitted only a few days before the hearing, and was clear that neither DCS nor the trial court complied with Admin R. 14(b). Id. at 1178.

Though noting the trial court erred in overruling the objection and allowing Dr. Marine to testify, the Court of Appeals found that **“DCS presented other evidence of probative value to support the CHINS determination such that the court’s error in this regard is harmless.** See Ind. Appellate Rule 66 (providing that we shall not reverse on appeal if an error’s ‘probable impact, in light of all the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties.” Id. at 1178. In particular, the Court noted that even without Dr. Marine’s testimony, there was sufficient evidence to substantiate a CHINS due to the rebuttable presumption of I.C. 31-34-12-4: **“[i]n cases where a child has injuries that suggest neglect or abuse, it shifts the burden to the party most likely to have knowledge of the cause of the injuries—the parent, guardian, or custodian—to produce evidence rebutting the presumption that the child is a CHINS.’** *Ind. Dep’t of Child Servs. v. J.D.*, 77 N.E.3d 801, 807 (Ind. Ct. App. 2017), trans. denied.” Id. at 1179. The Court reasoned that here, where the child was less than a week old and presenting at the pediatrician with bruising, the burden shifts to the parent to prove they are not responsible for the injuries. Id. Parents failed to meet that burden. Id.

Lastly, Parents argued on appeal that the services ordered in the dispositional decree are “not tailored to reunifying the family and are not related to the reasons for Child’s removal.” Id. at 1179. Here, the parents were ordered to participate in home based counseling, counseling and visitation services, and though DCS had not yet identified providers in Kentucky who could assist parents, the Court found that **“[c]learly the ordered services are aimed at addressing the concerns of physical abuse—especially in a case where a newborn is found to have sustained unexplained injuries.”** Id. at 1179.