



CHINS 4/1/2019

In **Matter of A.R.**, 121 N.E.3d 598 (Ind. Ct. App. 2019), the Court reversed the trial court's CHINS determination, and held that the evidence was insufficient to support the trial court's adjudication of the children as CHINS, specifically, that the coercive intervention of the court was needed in order to protect the children.

Mother was living with her three children at the home of Mother's parents. On the same day Mother's parents asked her to move out, Mother gave birth to her fourth child, who tested positive for methamphetamines. Mother admitted to a family case manager that she was unsure where she would live once discharged from the hospital, and that she did not know how the methamphetamines got into the newborn baby's cord blood. The FCM determined there was an emergency and removed the children from Mother's care. After DCS filed a CHINS petition, Mother and the children all tested positive for methamphetamines, with Mother's levels being high enough to be fatal. Mother was permitted to have parenting time with the children as long as her drug tests were negative. Mother visited regularly with the children and engaged with the case manager. The trial court adjudicated the children to be CHINS after hearing the following evidence: (1) Mother was a registered nurse; (2) Mother was convicted of possession of a controlled substance; (3) Mother had tested positive for methamphetamines; (4) Mother admitted to a case manager that she used methamphetamines while pregnant with her fourth child; (5) Mother's drug test results had been negative from that point forward, other than her prescribed medication; (6) visits between Mother and the children were "outstanding"; (7) the children were very bonded to Mother; (8) Mother parented well and provided everything the children needed; (9) Mother was never under the influence at any visit; (10) Mother was homeless leading up to the hearing, but signed a lease the night before the hearing; (11) Mother had a new full-time nursing position, and her employer knew about Mother's conviction; (12) Mother admitted to past drug use and sought counseling on her own without DCS assistance; and (13) Mother was cooperative with her case manager.

The trial court erred when it adjudicated the children to be CHINS because there was insufficient evidence to show that the children needed care they were not receiving or were unlikely to receive without the coercive intervention of the Court. Id. at 603. IC 31-34-1-1 provides that children are CHINS if their physical or mental condition is serious impaired or endangered as a result of the inability, refusal, or neglect of their parent, guardian, or custodian to supply them with the needed food, clothing, shelter, medical care, education, or supervision, and they need care, treatment, or rehabilitation that they are not receiving and are unlikely to be given without the coercive intervention of the court. The Court noted that the prior case law provides that three basic elements must be met—that the parent's actions or inactions have seriously endangered the child, that the child's needs are unmet, and that those needs will likely

remain unmet without court intervention. Id. at 603, citing In re S.D., 2 N.E.3d 1283, 1287 (Ind. 2014). Additionally, IC 31-34-1-10 provides that a child is a CHINS if the child is born with any amount of a controlled substance in the child's body, and the child needs care, treatment, or rehabilitation that the child not receiving and is unlikely to be given without court intervention. DCS alleged that the coercive intervention of the court was necessary because of Mother's long history of drug use and because Mother initially lied to DCS about her drug use. Id. In making a CHINS determination, courts must consider the family's condition at the time the petition was filed, and the family condition at the time of the hearing. Id. Although the evidence showed a historical drug problem for Mother, the more recent evidence also showed that Mother successfully sought help for her drug problem on her own. Id. at 603-4. There was no evidence of any further positive drug tests, showing that Mother successfully was addressing her drug problem on her own. Id. at 604.

DCS further argued that Mother's job was contingent on passing further drug screens, and court intervention was needed to ensure that Mother maintained her sobriety; however the Court noted this was merely speculation about a future problem. Id. "A mere cause for concern 'is not the touchstone of a CHINS determination, and an unspecified concern about what might happen in the future is insufficient in itself to carry the State's burden of proof.'" Id., citing In re L.N., 118 N.E.3d 43, 49 (Ind. Ct. App. 2019). CHINS statutes do not require courts to wait until a child is physically or emotionally harmed in order to intervene, but CHINS findings must be based on facts and reasonable inferences, not on speculations about future concerns. Id.