



CHINS

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In **Matter of Eq.W.**, 124 N.E. 1201 (Ind. 2019), the Indiana Supreme Court held that the doctrine of res judicata applies in CHINS proceedings, but that Mother had waived her claim by failing to timely raise the matter.

Mother and Father had five children together. After police called DCS based on Parents' behavior in public, DCS filed a CHINS petition. The CHINS petition was based on Parents' alleged impairment and their prior substance abuse problems which had resulted in a CHINS proceeding. DCS asked for a continuance of the factfinding hearing after presenting some evidence in order to present other evidence about Parents' drug screens; however, their motion for telephonic testimony on this issue was denied, and DCS presented no other evidence. The trial court dismissed the petition, and the next day, DCS filed a second CHINS petition, alleging the same facts, plus the drug test results which DCS had unsuccessfully attempted to present at during the first CHINS proceedings. The trial court eventually adjudicated all five children to be CHINS. Mother appealed.

The claim preclusion branch of res judicata applies to CHINS proceedings; CHINS petitions must contain new allegations, and cannot be mere re-filings of prior petitions based on evidence and claims which were decided or could have been decided during an initial CHINS proceeding. Id. at 1211. Res judicata prevents relitigation of issues which are essentially the same as each other, and holds that a prior final judgment is binding against all parties and their privies; it applies when there has been a final adjudication on the merits of the issue between the same parties. Id. at 1208. There are two branches of res judicata: claim preclusion, and issue preclusion; the Court noted that claim preclusion was the branch raised in the present case. Id. at 1209. In order for claim preclusion to apply, four elements must be met: (1) "The former judgment must have been rendered by a court of competent jurisdiction; (2) The former judgment must have been rendered on the merits; (3) The matter now in issue was or might have been determined in the former suit; and (4) The controversy adjudicated in the former suit must have been between the parties to the present action or their privies." Id. (internal citations omitted). The Court opined that while CHINS proceedings are unique in nature and must give special consideration to the protection of parents' due process rights, they are still civil proceedings, and as such, parties to the proceedings are bound by the Indiana Rules of Trial Procedure. Id. The State argued that res judicata did not apply, citing IC 31-34-12-5, which provides that prior acts or omissions of a parent, guardian, or custodian may be considered in making a CHINS determination. Id. at 1210; see also Matter of J.L.V., 667 N.E.2d 186, 190 (Ind. Ct. App. 1996) (holding that Ind. Evid. R. 405(b) allows the admission of evidence of specific instances of a parent's character because "a parent's past, present, and future ability to provide sufficient care for his or her child forms the basis for a CHINS adjudication"). The Court opined that while past acts are most certainly relevant in CHINS proceedings, this relevancy must not be

abused. Id. at 1211. The Court noted that the first CHINS petition was based on Parents' alleged impairment, prior DCS involvement due to substance abuse, and Parents' arrest with the children present. Id. When this petition was dismissed, DCS filed the second CHINS petition, which contained no additional allegations that occurred after the first factfinding. Id. The Court determined that this was an "obvious 'second bite at the apple'". Id. Since res judicata operates to preclude relitigation of issues that were or *could have been* decided during the first CHINS proceeding, DCS could not rely solely on claims and evidence that was available to them at that time, and they failed to present. Id.

Although res judicata can be successfully raise din CHINS proceedings, the Court noted that dismissal on such grounds does not mean DCS is permanently barred from filing another CHINS petition, or from using a parent's past acts or omissions as evidence. Id. at 1212. DCS must demonstrate that the subsequent petition contained new allegations of conduct that took place after the dismissal of the prior proceedings. Id.

Since Mother failed to move for dismissal on the grounds of res judicata, she waived the issue on appeal. Id. at 1213. The Court declined to accept Mother's argument that trial courts must *sua sponte* dismiss a CHINS petition if they perceive that the new filing is precluded by prior litigation. Id. at 1212-13. The Court opined that this is an issue which must be raised by a party. Id. Furthermore, the Court determined that Mother did not raise the issue during her closing argument, despite her argument to the contrary. Id. at 1213. The Court examined Mother's counsel's closing argument, and determined that it did not rise to the level of an oral motion for dismissal on the grounds of res judicata. Id. at 1213-14 The Court noted that res judicata is usually an affirmative defense which must be raised and pled at the earliest opportunity. Id. at 1214.

The trial court did not commit fundamental error by failing to address the issue of res judicata. Id. at 1215. While the fundamental error doctrine may apply to allow for the examination of an otherwise procedurally defaulted, claim, this review is only available when there is a blatant violation of principles, where the harm cannot be denied, and the violation is exceedingly prejudicial. Id. at 1214-15. The Court concluded that since there was no affirmative duty on the part of the trial court to *sua sponte* address the issue of res judicata, there was no fundamental error. Id. at 1215.