



CHINS

5/29/2019

In **In the Matter of E.Y.**, 126 N.E.3d 872 (Ind. Ct. App. 2019), the Court held that the evidence was insufficient to support a finding that Father was unwilling to provide the care the child needed without the coercive intervention of the court.

E.Y. (Child) was born to Mother and Father. Mother has three other children by A.M. Mother and A.M. had a very tumultuous relationship that was characterized by several instances of domestic violence around the children. Mother and A.M.'s relationship ended and she began seeing Father. Mother's other children were bonded with Father and called him "daddy." One of Mother's other children began experiencing behavioral problems and Mother sought therapy for the child. Eventually upon the recommendation of the therapist, the child was admitted to an inpatient psychiatric unit where she revealed to the program's therapist that there was a lot of domestic violence in her home between Mother and Father. Per reporting standards, the therapist relayed this information to the Department of Child Services (DCS). A family case manager (FCM) was assigned to the case and interviewed Mother, Father, and the children. Mother reported that she had been in abusive relationships before but did not expressly name Father as an abuser. Father displayed a willingness to do anything to keep his family together. FCM found most of what the children said to be unremarkable other than their general demeanor when asked about Father. Furthermore, they reported that Father drinks at least one beer a day. FCM recommended that the children remain in the care of Mother in the residence and Father to reside elsewhere.

DCS filed its CHINS petition based on the allegations one of the children made of domestic violence between Mother and Father, and at the initial hearing, the trial court ordered Child to remain in the care and custody of Mother while Father resided elsewhere. The trial court awarded Father with supervised visitation, and was ordered to participate in a batterer's intervention course. Mother and the children were also ordered to participate in services. During the factfinding hearing, the trial court found that Mother and Father had participated in services and Father had not tested positive for alcohol. Mother testified that Father was never abusive and that her issues stem from her previous abusive relationships. Father testified that he has never been arrested or convicted of any kind of act of violence. The Permanency Case Manager (PCM) testified that DCS wanted to remain involved because of the concerns that the children had witnessed domestic violence and not all of them were in therapy. Furthermore, PCM testified that DCS did not investigate whether domestic violence had actually occurred in the home and when Father went to complete the initial assessment for batterer's intervention, the assessor had contacted PCM stating there was not enough information to make a recommendation and questioned why the referral was made. At the conclusion of the factfinding, the trial court took the matter under advisement and later found the Child to be a CHINS.

At a dispositional hearing, the trial court found that Mother had completed all the services, Father had completed about half the batterer's intervention class and was willing to complete the rest, and the children were generally happier when having visits with Father. At the end of the dispositional hearing Father was ordered to complete domestic violence therapy, couple's therapy, and family therapy and the trial court granted his request to return home. Father appeals this decision.

The evidence failed to show that at the time of factfinding hearing, Father was unwilling to provide the child with needed care without coercive court intervention; it was clear that the family had recognized problems and was working towards a positive outcome before DCS's involvement in the case. Id. at 878. Father's main argument was that the trial court abused its discretion when it found the child to be a CHINS. Id. at 877. In order to adjudicate a child as CHINS under IC 31-34-1-1, DCS must prove by a preponderance of the evidence that the child's condition is impaired or endangered and that the child is unlikely to get the help they need without the coercive intervention of the court. Furthermore, the condition of the family must be assessed not only at the time the petition was filed but also when it is heard. Id. at 877. A court cannot simply consider past conditions of the family. Id.

Before the involvement of DCS, Mother and Father were proactively addressing the problems of the children. Id. Mother was seeing a therapist to deal with her issues after several abusive relationships, the family was participating in therapy, and two of Mother's older children were participating in individual therapy. Id. at 877-78. At the time, both parents were gainfully employed, their residence was well maintained, and carried insurance which covered the therapy sessions and children's medical care. Id. at 878. The Court reasoned that although DCS's intervention may have provided for a quicker resolution, it was clear that the family recognized and were addressing the issues. Id. At the time of factfinding, there was no evidence to suggest that Father was unable or unwilling to provide care for the Child, and there was evidence that Father had successfully been completing the services ordered by DCS. Id. None of the evidence presented would justify the conclusion that the coercive intervention of the court was necessary. Id.