



CHINS
8/29/2019

In **The Matter of R.L.**, 133 N.E.3d 173 (Ind. Ct. App. 2019), a rehearing of **In the Matter of R.N.L.**, 126 N.E.3d 864 (Ind. Ct. App. 2019), the Court vacated its prior judgment and affirmed the trial court. The Court held that pursuant to intervening case law from the Indiana Supreme Court, DCS was not precluded from relying on evidence of Mother's prior conduct in bringing a subsequent CHINS petition.

R.L. and J.R. are the parents of R.N.L. ("Child") and another minor child, J.L. At the time of Child's birth, J.L. was not in the care of the parents because of a CHINS substantiation. Five days later, DCS filed a CHINS petition ("2017 CHINS") regarding Child, citing ongoing issues with J.L.'s CHINS case and concerns about the parents' abilities to care for Child. Child was removed from the home and placed in foster care with J.L. The factfinding hearing in J.L.'s CHINS matter was held and on March 2, 2019, the juvenile court denied and dismissed the CHINS petition. Shortly thereafter, the DCS case manager contacted the mother and requested a home visit. Mother denied the case manager's request and stated that the home was not safe for a baby. In response, the DCS case manager "detained" Child with her foster family and filed a new CHINS petition on March 7, 2018 ("2018 CHINS"). In this filing, the case manager noted Mother's claim that the home was unsafe for a baby, along with other allegations relating to Mother's cooperation and progress in the previous CHINS case, Mother's mental health, and domestic violence allegations between the parents. Mother filed to dismiss this petition based on res judicata, arguing that all claims that were included in the 2017 CHINS petition (or could have been included) were barred due to that petition's dismissal. After two days of factfinding that included Mother's objections to any evidence that preceded the filing of the 2018 petition, the juvenile court granted the CHINS. In its finding, the court relied upon Mother's lack of cooperation and progress in services during the 2017 CHINS.

In the prior appellate case, the Court held that the juvenile court erred when it failed to dismiss the claims made by DCS in the 2018 CHINS petition which had already been litigated or could have been litigated in the 2017 CHINS; the Court remanded the matter for further consideration of the second CHINS case without any reference to the prior CHINS case. **In the Matter of R.N.L.**, 126 N.E.3d 864 (Ind. Ct. App. 2019). However, shortly after the R.L. Court issued this opinion, the Indiana Supreme Court issued the opinion of **Matter of Eq.W.**, 124 N.E. 1201, 1211 (Ind. 2019), which held that doctrine of res judicata applies in CHINS proceedings, but that Mother had waived her claim by failing to timely raise the matter. Most relevantly in the **Eq.W.** opinion, the Indiana Supreme Court held that although res judicata can be successfully raised in CHINS proceedings, 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. DCS

must demonstrate that the subsequent petition contained new allegations of conduct that took place after the dismissal of the prior proceedings.

Since the time to petition for rehearing had not yet lapsed, DCS filed a petition for rehearing based on the Matter of Eq.W. opinion, and the R.L. Court granted this petition.

Although the doctrine of *res judicata* applies to CHINS proceedings, *res judicata* does not bar the subsequent filing CHINS petition as long as DCS raises new allegations;

furthermore, a parent's prior actions may be used to support that new CHINS petition.

R.L. at 175. DCS argued that the Court erred when it remanded the matter and prohibited DCS from using evidence from the prior CHINS case in the new CHINS case; the Court characterized this argument as a claim that once DCS filed a new CHINS petition containing a few new allegations, then it was entitled to rely upon all prior allegations and all prior conduct in proving the new CHINS case. Id. The Court opined that Eq.W. provides for the use of prior conduct in bringing a subsequent CHINS, and so reversed its opinion on that matter. Id. The Court noted that Mother filed no response to the request for rehearing, and Mother's arguments from the prior appeal had now been settled by subsequent case law to be invalid. Id. The Court determined that because of the new case law, and the lack of Mother's arguments or response on the petition for rehearing, this was not an appropriate case to "probe the boundaries of the use of such evidence in light of *Eq.W.*" Id. at 176.