



CHINS

7/15/2020

In **Matter of D.S.**, 150 N.E.3d 292 (Ind. Ct. App. 2020), the Court held that the trial court erred in adjudicating the child to be a CHINS and reversed the matter.

The child was born in September 2015 and in November 2016, the trial court adjudicated the child to be a CHINS due to Mother testing positive for amphetamine and methamphetamine and her admission to having a substance abuse problem. The case eventually was dismissed, but in April 2019, Mother and DCS entered into an Informal Adjustment relating to Mother's marijuana use, possible selling of marijuana, and home conditions. Mother failed to submit to fourteen out of twenty-two drug tests, and she failed to comply with the minimal drug screen and substance abuse service requirements. Mother admitted to using marijuana on several occasions when she felt stressed or overwhelmed, but only when the child was not in her care. In January 2020, DCS filed a CHINS petition based on Mother's marijuana use, and the trial court conducted a factfinding hearing. The FCM testified that the child was neglected because Mother used marijuana and she had not obtained employment. The FCM clarified that there was a safety plan in place where Mother would leave the child with Maternal Grandmother when Mother was overwhelmed, but the FCM was unsure that Mother was a sober caregiver at all times. The FCM opined that the child's basic needs were met, but that court intervention was needed due to Mother's lack of engagement and participation with the Informal Adjustment. The trial court adjudicated the child to be a CHINS, and Mother appealed.

DCS did not carry its burden in showing that Mother's use of marijuana while the child was not in care seriously endangered the child; the trial court erred in adjudicating the child to be a CHINS. The child was alleged to be a CHINS under IC 31-34-1-1, which requires that DCS prove by a preponderance of the evidence that the child's: "physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent... to supply the child with necessary food, clothing, shelter, medical care, education, or supervision: (A) When the parent, guardian, or custodian is financially able to do so; or (B) Due to the failure, refusal, or inability of the parent, guardian, or custodian to seek financial or other reasonable means to do so". DCS must also show that the child needs care or treatment that the child is not receiving and that the coercive intervention of the court is required. *Id.* at 295. The Court noted that the trial court must consider a family condition both at the time the case was filed as well as their condition at factfinding. *Id.* Mother argued that the trial court erred because there was no evidence the child was in danger or that her needs would go unmet without court intervention. *Id.* The Court opined that one of the most critical elements that DCS must prove is that a child's needs will go unmet unless the State intervenes. *Id.* The Court noted that the evidence did show that Mother admitted to a substance problem, that she turned to illicit substances when she felt stressed or overwhelmed, and that Mother consistently failed to submit drug screens and admitting to continued use. *Id.* at 295-96. However, Mother denied ever using

marijuana while the child was in care. Id. at 296. The Court noted other similar case law dealing with substance abuse outside of the presence of the child and noted that those cases generally held that one time or use or illicit substance outside of the presence of the child does not necessarily demonstrate that a child has been endangered. Id., citing Perrin v. Marion County Officer of Child Servs., 866 N.E.2d 269, 271 (Ind. Ct. App. 2007) (reversing the trial court’s determination on appeal, finding that a “single admitted use of methamphetamine outside of the presence of the child and without more, is insufficient to support a CHINS determination”); and Ad.M v. Ind. Dept. of Child Servs., 103 N.E.3d 709, 713-14 (Ind. Ct. App. 2018) (reversing a CHINS determination because “evidence of one parent’s use of marijuana and evidence that marijuana ha[d] been found in the family home, without more, does not demonstrate that a child has been seriously endangered for purposes of [IC] 31-34-1-1”). The Court also noted that prior case law holds that there must be evidence that a parent’s drug use or the presence of drugs in the home seriously endangers the child. Id., citing Ad.M v. Ind. Dept. of Child Servs., 103 N.E.3d at 714. The D.S. Court noted that this case law was similar to the facts of this case, as: (1) DCS did not present evidence of drug use while the child was in Mother’s care; (2) the FCM conceded that the child’s basic needs were met; (3) there was a safety plan in effect for Mother to leave the child with Maternal Grandmother if Mother felt overwhelmed; and (4) the FCM’s concern that illegal substances impairs your thinking, responses, and normal actions was not sufficient to support a CHINS determination. D.S. at 296.