



CHINS

4/23/20

In **In re L.T.**, 145 N.E.3d 864 (Ind. Ct. App. 2020), the Court held that: (1) Dr. Blum was improperly permitted to testify via telephone, as DCS and the trial court failed to comply with Indiana Admin. R. 14(B); (2) Even though Dr. Blum's telephonic testimony was improperly admitted, the error was harmless; (3) The investigative report was not hearsay and was properly admitted; (4) The investigative report was not impermissible character evidence; (5) There was sufficient evidence to show that the child was endangered and in need of court intervention; and (6) DCS carried its burden in showing the child was a CHINS under IC 31-34-1-2.

Mother and Father are the parents to I.T., R.A., E.T., and L.T.; only L.T. is the subject of this appeal. The older three children were adjudicated to be CHINS prior to L.T.'s birth due to domestic violence, and both the children and Mother sustained injuries due to Father's domestic violence towards them. Father was allowed back into the home for a trial home visit, but he again injured one of the older children. Mother provided another explanation other than Father's abuse of the child, but the child reported the abuse to the FCM. Mother agreed to stay with maternal grandmother and away from Father. Dr. Blum examined the child and indicated that Mother's alternate explanation was not plausible, and that the injuries were likely sustained as a result of abuse. Meanwhile, Mother indicated to the FCM that Father had been physically abusive towards her, even while she was pregnant, and described other abuse Father had perpetrated against the children. Father eventually admitted only to spanking the child. DCS then filed a petition alleging that L.T. was a CHINS because of the physical abuse directed at Mother and the other children in the home. Four days before the factfinding hearing, DCS filed a motion to allow Dr. Blum to testify telephonically. Mother objected, but the trial court granted the motion. The hearing included evidence of various incidents of domestic violence, of no contact orders and of Mother's and Father's belief that the no contact orders were not necessary and that they wished to reunite, of Mother's minimal compliance with services, and Father's unwillingness to participate in any services.

Since DCS and the trial court did not comply with Indiana Admin. R. 14(B) regarding timelines for telephonic testimony and making findings regarding the need for telephonic testimony, the trial court erred in allowing Dr. Blum to testify via telephone. Id. at 869.

Parents argued that the trial court erred in allowing Dr. Blum to testify via telephone during the factfinding hearing. Id. at 868-69. Indiana Admin. R. 14(B) provides that a trial court may use telephonic methods of testimony if the parties consent and the consent is recorded, or if the trial court finds there is good cause, on its own motion or the motion of a party. Good cause is defined in the Rule as whether there was due diligence to secure the physical presence of the witness, if effective cross examination is possible, the complexity of the proceedings, the importance of the testimony, the importance of physical presence with respect to the credibility and demeanor of the witness, wither undue surprise or unfairness would result, and any other

factors a trial court deems relevant. Indiana Admin. R. 14(B). A motion for telephonic testimony must be served thirty days in advance, and other timelines apply to objections and hearings on the matter. Indiana Admin. R. 14(B). A trial court may find cause to alter the timelines if a motion is so made. Indiana Admin. R. 14(B). The Court noted that DCS did not dispute that its motion was filed less than thirty days before the hearing, and that the trial court did not enter written findings of fact and conclusions of law as required by Indiana Admin. R. 14(B). Id. at 869. The Court opined that the trial court did not comply with the Rule, and therefore, the trial court erred in allowing Dr. Blum to testify telephonically. Id. However, DCS presented substantial amounts of other probative evidence which supported the CHINS determination, so the error was harmless. Id.

The Court determined that since the investigative report was not admitted for the truth of the matter assert, it was not hearsay and was properly admitted. Id. at 870. Parents argue that the trial court erred in admitting an investigative report which was attached to a probable cause affidavit regarding Father’s 2010 criminal conviction; Parents alleged that the document contained inadmissible hearsay statements. Id. at 870. The investigative report narrated statements made by a DCS caseworker, Dr. Blum, and a nurse. Id. Parents object, but DCS responded that the document was foundational to the criminal charges pending against Father, and the trial court admitted the document. Id. The Court noted the definition of hearsay and emphasized that the statements must be offered to prove the truth of the matter asserted. Id. The Court found that the record indicated that the investigative report was admitted to support the reason that Father was charged with domestic battery, not that the statements therein were true. Id.

The investigative report was not inadmissible character evidence; character evidence of a parent is permitted as part of the assessment as to whether a child is a CHINS. Id. at 870. Parents argued that the investigative report was inadmissible character evidence, as it was admitted entirely to establish a domestic violence pattern. Id. at 870. The Court noted extensive prior case law holding that when a child is alleged to be a CHINS under IC 31-34-1-1, a parent’s character is a material issue in the proceeding. Id. (internal citations omitted). Ind. Evid. R. 405(b) allows for admission of specific instances of a parent’s character because their past, present, and future ability to provide adequate care for their child is the basis for the CHINS determination, and their character is part of that assessment. Id.

The trial court did not err in concluding that the child was endangered and was in need of the coercive intervention of the court; although the evidence focused mostly on the domestic violence the other children were subjected to, the child was present and was also exposed to the incidents described. Id. at 872. Parents alleged that there was no evidence the child was in in danger or that his need would go unmet. Id. at 871. In order to adjudicate a child to be a CHINS under IC 31-34-1-1, DCS must prove by a preponderance of the evidence that “(1) 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; and (2) The child needs care, treatment or rehabilitation that: (A) The child is not receiving; and (B) Is unlikely to be provided or accepted without the coercive intervention of the court. In making a CHINS determination, a trial court must consider the family’s condition at the time the case is heard as

well as when it was filed; CHINS adjudications cannot be based solely on circumstances which have ceased to exist. Id. at 871. Furthermore, CHINS adjudications must be based on evidence presented at the factfinding hearing, not allegations in the petition. Id. CHINS inquiries exist to determine if a child requires services that the child is unlikely to receive without the court's intervention; a CHINS adjudication focuses on the condition of the child, not the guilt of the parents. Id. A CHINS adjudication requires three elements: (1) the parent or caregiver's actions or inactions have seriously endangered the child; (2) the child's needs are unmet; and most importantly, (3) the child's needs will remain unmet unless the State intervenes. Id. The Court noted that Parents' main arguments focused on Dr. Blum's testimony; however, the Court noted that even without Dr. Blum's testimony, there was sufficient evidence to support the CHINS determination. Id. The Court noted: (1) the long pattern of domestic violence by Father against Mother; (2) the domestic violence while Mother was pregnant; (3) Father's pending domestic violence and battery charges; (4) Mother's injuries; (5) Father's physical violence towards the children; (6) the injuries the children sustained as a result of Father's abuse; (7) the children's reports of Father's abuse towards them; (8) Mother's belief that no contact orders were not necessary and that the children were not in danger; (9) Father's testimony that without the no contact order, Mother and Father would reunite; and (10) the FCM's belief that Mother would allow Father to be around the children and that Mother would not engage in any services without a court order. Id. at 871-72. The Court noted that while much of this evidence focused on the other children in the house, the child in this case was clearly being exposed to extreme domestic violence, and it was not illogical for the trial court to conclude that the child was endangered and would not receive help without the intervention of the court. Id. at 872.

DCS proved by a preponderance of the evidence that the child was a CHINS under IC 31-34-1-2. Id. at 872. IC 31-34-1-2(c) provides that a child is a CHINS if the child lives in the same household as an adult who has been charged with a domestic battery offense committed against another child living in the home. The Court noted that Father was indeed charged with a count of domestic violence against another child while Father was living with Mother during a trial home visit. Id. The Court again noted that the child was not likely to receive needed protection without the trial court's intervention. Id.