



CHINS  
1/27/21

In **Matter of M.P.**, 162 N.E.3d 585 (Ind. Ct. App. 2021), the Court held that DCS did not prove that the coercive intervention of the court was needed to protect the children, and therefore, the trial court erred in adjudicating the children to be CHINS.

Mother and Father had two children together, and Father signed paternity affidavits for the children. Mother moved away and Father did not know their whereabouts for ten years. Father lived in Georgia. Father was able to reinitiate contact with the children in 2019 and began sending support to Mother. Later in 2019, one child was struck on the wrist with a baseball bat in a domestic altercation between Mother and her boyfriend, and shortly thereafter Mother left the children home alone and attempted to stab the ex-boyfriend. The children were removed and placed in foster care; DCS filed a CHINS petition the next day, and among other things, alleged that Father had demonstrated an ability to parent the children or protect the children while in Mother's care. At the factfinding hearing, Mother admitted the children were CHINS. Evidence showed that Father had contacted DCS the same day and requested placement, but that the FCM had not done so because he didn't live in Indiana, and they didn't have evidence he was the father. Father provided evidence that he had a stable home, a job, regular contact with the children, and provided support. The DCS permanency case manager expressed concern about Father because she did not have a background check or a drug screen yet but did not have any information as to why that had not been done yet. She also explained that a home study in Georgia had not yet been done but indicated no proper steps had been taken in order to make the home study happen. The trial court adjudicated the children to be CHINS.

**The coercive intervention of the court was not needed; DCS failed to take proper steps to conduct its investigation into placement with Father, and all their concerns were mere speculation. Id. at 592-93.** 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. Id. at 590-91. DCS also alleged the child was a CHINS pursuant to IC 31-34-1-2, which requires proof that the child's physical or mental condition is seriously impaired or seriously endangered due to injury by the act or omission of the child's parent in addition to proof of the element of the need for coercive intervention of the court. Id. at 591. Father alleged that the coercive intervention of the court was not needed, and DCS failed to prove it was needed. Id. 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 and must only determine that a CHINS finding is needed where the parents lack the ability to provide for a child's needs, not merely encounter difficulties in meeting a child's needs. Id. Mother's admission that the children were CHINS was not dispositive as to Father; furthermore, the trial



court improperly shifted the burden to Father to show he could provide the children with a stable living environment, rather than letting the burden properly rest with DCS to show that Father had not done so. Id. The Court noted prior case law and cautioned trial courts allowing piecemeal litigation of CHINS cases, which would allow DCS to use procedural tactics to strong out CHINS proceedings until enough evidence had been collecting, while all the while keeping children from their parents. Id. 591-92.

The Court noted that the evidence did not support a finding that the coercive intervention of the court was needed; DCS failed to properly communicate with the child welfare services in Georgia in order to secure a home study or to perform its own traveling home study. Id. at 592. The Court noted the evidence did show that Father had a positive relationship with the children, that they spoke daily with Father, that one child demanded to be placed with Father, that he voluntarily supported the children, that he took steps to secure a larger residence for himself, the children, and his family, that he was compliant with all requests, and that he was employed. Id. Any reservations that DCS had about Father were mere speculation, given its lack of proper investigation, and a CHINS proceeding is “no place for conjecture.” Id. A lack of prior parental involvement and parenting skills is not a sufficient CHINS basis. Id. The Court also opined that while the initial placement in foster care was clearly done on an emergency basis and appropriate, juvenile courts should not “simply export circumstances warranting emergency removal into considerations about whether ongoing coercive intervention of the State is truly necessary.” Id. 592-93.

Because the Court determined that the trial court erred in finding that the coercive intervention of the court was needed, the Court declined to reach Father’s challenge to DCS’s decision to place the children in foster care. Id. at 593.