

Children's Law Center of Indiana



CHINS

2/20/13

In **In Re A.M.-K.**, 983 N.E.2d 210 (Ind. Ct. App. 2013), the Court affirmed the juvenile court's CHINS parental participation orders in part, reversed the court's order in part, and remanded the case for further proceedings. The six-year-old child and his nine-year-old half-sister (Sister) were removed from Mother's custody by the Indiana Department of Child Services (DCS) and neglect was substantiated because Sister was left alone in a hotel room and Mother was admitted to a psychiatric facility, leaving no one to care for the children. Mother was taken to a hospital for mental health evaluation and treatment by an Indianapolis Metropolitan Police Department Officer who located Mother behind a hotel "sitting completely nude on the sidewalk" after swimming nude in a nearby creek. Officer became concerned for Mother's mental health when he observed that Mother was demonstrating odd behavior, such as "emotional swings from...crazed laughter to yelling into the sky... 'in the name of Jesus Christ I have seen the light.'" Officer detained Mother to take her to a hospital for mental health evaluation and treatment. Mother told the DCS family case manager that she: (1) had removed her two children from school to come to Indianapolis "for a natural healing experience"; (2) had left the six-year-old child with his father "a few weeks prior to [the incident]"; (3) had attempted suicide by overdosing on prescription medications and alcohol; (4) had been diagnosed with "post-traumatic stress disorder, a pseudo seizure disease, and a neuro cardio disease" but had stopped taking her medication a week ago. Sister had previously been adjudicated a CHINS as a result of Mother's 2009 suicide attempt, but the case was closed in March 2010. Mother was involuntarily committed for mental health treatment for several weeks and was diagnosed with bipolar disorder and prescribed lithium. Mother was subsequently taken off lithium and prescribed Geodon, because lithium had elevated her blood pressure and caused an episode with her heart condition. Upon Mother's discharge from commitment, Mother's primary care physician took her off Geodon and told her to schedule a follow-up appointment in a year. Mother claimed that she had "a bad allergic reaction" to Geodon and that it "made [her] very sick...to where [she] couldn't sleep and where [her] heart was puttering." Mother began having supervised parenting time with her children, but her parenting time was suspended in December 2011. In March 2012, Mother participated in a psychological evaluation, which recommended in part that Mother participate in a psychiatric evaluation to determine if she would benefit from anti-psychotic medication. Mother also began individual counseling with a home-based therapist referred by DCS.

At the CHINS fact-finding hearing held over two days in April and May 2012, the court heard testimony from Mother's therapist that: (1) Mother had experienced "minimal progress" in therapy; (2) Mother's thinking patterns sometimes tended to be egocentric and it was hard for her to differentiate what was best for her children and what she wanted; (3) Mother would become "overwhelmed" regarding the need to discipline both children during visits; (4) the therapist recommended that Mother continue therapy and participate in a psychiatric evaluation because Mother had been "diagnosed with different variations of a psychotic disorder by more than one professional" and because "research shows that medication sometimes is helpful in treatment" and "therapy alone is not going to be as effective." The court also heard testimony from the child's stepmother that: (1) she had personally observed Mother acting "not all there" and talking to herself; (2) Mother told stepmother that "when she gets in the car she just does what God tells her to and closes her eyes and she automatically gets to her destination somehow"; (3) Mother threatened to jump off a balcony; (4) when Sister told Mother she was hungry, Mother gave Sister some wood pieces and asked Sister to chew on them; (5) when Sister refused, Mother chased Sister around the yard to try to get her to chew on the wood pieces. At the fact-finding hearing, Mother disagreed with the bipolar diagnosis, said that she was "unwilling" to get a psychiatric evaluation, and she believed that taking medications is "against [her] religion" and could produce side effects that interfere with her heart condition. At the May fact-finding hearing, Mother's therapy with the home-based therapist had been discontinued, and Mother was resistant to continuing further therapy. The juvenile court also heard evidence on the custody modification petition filed by Sister's father. The juvenile court found that the child was a CHINS, but modified custody of Sister to Sister's father and found that Sister was not a CHINS. A dispositional hearing was held on June 13, 2012, and DCS submitted a pre-dispositional report that included all of its recommendations for the child and Mother. DCS recommended that Mother participate in a number of services, including a psychiatric evaluation, that Mother follow all recommendations from that evaluation, and that Mother meet all her personal, medical, and mental health needs, including taking prescription medications as prescribed. The Guardian ad Litem concurred in these recommendations. DCS failed to submit a parental participation petition as to Mother. Mother raised no objections to most of DCS's recommendations, but she specifically objected to the provision directing her to take all medications as prescribed. The juvenile court ordered Mother to comply with the DCS's recommended plan of participation in its entirety. Mother appealed.

The Court concluded that DCS's failure to file a parental participation petition did not require that the Court vacate the entire participation order, including the requirement that Mother participate in a psychiatric evaluation. *Id.* at 216. Mother did not challenge the CHINS determination, but challenged the authority of the juvenile court to enter a parental participation order. Mother also challenged the court's authority to order Mother to take any medications as prescribed. The Court first examined Mother's contention that, because DCS filed to submit a parental participation petition prior to the dispositional hearing, the trial court was without authority to enter a parental participation order at all. The Court looked to IC 31-34-16-3, which lists the caption and elements of a parental participation petition, and IC 31-34-16-4, which provides that the juvenile court is to hold a hearing on the petition concurrently with either

a dispositional or dispositional modification hearing. *Id.* at 215. The Court noted that IC 31-34-19-1(a)(2) provides that one of the purposes of a dispositional hearing is to consider “the necessity, nature, and extent of the participation by a parent, a guardian, or a custodian in the program of care, treatment, or rehabilitation of the child.” *Id.* The Court observed that a few cases from different panels of the Court have held that the filing of a parental participation petition is jurisdictional, and that, without it, the juvenile court has no authority to order parental action. *Id.*, citing *Mikel v. Elkhart Cnty. Dep’t. of Public Welfare*, 622 N.E.2d 225, 229 (Ind. Ct. App. 1993) and *In Re M.R.*, 934 N.E.2d 1253, 1256 (Ind. Ct. App. 2010). The Court found these cases distinguishable from the present case. *Id.* The Court observed that in *Mikel*, the Court reversed a juvenile court’s finding that a father was in contempt for failing to abide by previous orders entered at the initial hearing and at the time the children were adjudicated as CHINS, but a separate dispositional hearing was not held. *A.M.-K.* at 215. The Court said that in *M.R.*, the Court vacated a parental participation order as to an alleged father in part because a parental participation petition had not yet been filed but also because the man had not yet been adjudicated as a parent to one of the children involved in the CHINS proceedings. *A.M.-K.* at 215. The Court noted that, in the instant case, although DCS failed to file a formal parental participation petition as described in IC 31-34-16-3, it did file a predispositional report that included all of its recommendations for the proposed plan of care, treatment, rehabilitation and placement of the child and also summarized recommendations for how Mother should obtain assistance in fulfilling her parental obligations and explained why such assistance was necessary. *Id.* The Court also noted that: (1) the DCS family case manager who prepared the predispositional report was present at the dispositional hearing and available for cross examination about the recommendations contained within the report; (2) Mother specifically agreed to almost all of the recommendations, objecting only to the provision that required Mother to take any medications as prescribed; (3) Mother acquiesced in the procedures utilized by the juvenile court in ordering her to complete various services and treatments. *Id.* at 215-216. The Court said that it appeared that the DCS predispositional report, although it did not have the statutorily required title for a parental participation petition, nonetheless substantially complied with the requirements of IC 31-34-16-3. *Id.* at 216.

The Court said that DCS did not present sufficient evidence to support the trial court’s order requiring Mother to take all medications as prescribed. *Id.* at 217. Mother also contended that the juvenile court’s order requiring her to take all medications as prescribed violates her constitutional right to direct her own medical treatment. The Court noted that the Indiana Supreme Court has recognized that competent adults are entitled to make informed decisions about their medical care and that of their children. *Id.* at 216, citing *In Re Lawrance*, 579 N.E.2d 32, 38-39 (Ind. 1991). The Court said that this right is not without limitation; for example, a parent may not refuse life-saving treatment for his child, and a court may order that an adult be compelled to take medications in certain instances. *Id.*, citing *Schmidt v. Mut. Hosp. Servs. Inc.*, 832 N.E.2d 977, 981-82 (Ind. Ct. App. 2005) and *In Re Mental Health Commitment of M.P.*, 510 N.E.2d 645, 647-48 (Ind. 1987). The Court noted that a juvenile court generally has broad discretion in determining the programs and services in which a parent should participate in order to pursue reunification with his child, but the Court has held that “the requirements must

relate to some behavior or circumstance that was revealed by the evidence.” Id., quoting In Re A.C., 905 N.E.2d 456, 464 (Ind. Ct. App. 2009). The Court stated that, where a parent objects to an order directing a parent to take all medications as prescribed and presents evidence of side effects and religious beliefs supporting that objection, additional evidence is necessary to overcome the parent’s constitutionally protected liberty interest in remaining free of unwarranted intrusions into the mind and body. Id. The Court noted that, to obtain a forced medication order in an involuntary commitment case, the State must prove by clear and convincing evidence that: (1) a current and individual medical assessment of the patient’s condition has been made; (2) the assessment resulted in the honest belief of the psychiatrist that the medication will be of substantial benefit in treating the condition suffered, and not just in controlling the behavior of the individual; (3) the probable benefits from the proposed treatment outweigh the risk of harm to, and personal concerns of, the patient. Id. at 216 n.5, citing M.P., 510 N.E.2d at 647. The Court said that the trial court must also determine that the treating physician has evaluated and rejected every alternative form of treatment because no less restrictive treatment exists and the order may not be indefinite. A.M.-K. at 216 n.5, citing M.P., 510 N.E.2d at 647-48.

The Court observed that, although Mother offered uncontradicted evidence that the anti-psychotic medications she was prescribed had serious side effects that interfered with her heart condition and also raised a religious objection to the medications, DCS presented no testimony from a psychiatrist that suggested, let alone proved, that an order directing Mother to take any particular medication was necessary for her to adequately parent the child. Id. at 217. The Court also found an inherent problem where, as here, the parental participation order does not direct Mother to take a specifically recommended medication based on a doctor’s evaluation, but instead requires Mother to take any and all medications without regard to her objections and possible side effects. Id. The Court concluded that DCS presented sufficient evidence to support the juvenile court’s remaining orders, including the requirement that Mother participate in a psychiatric evaluation. Id.