CHINS

2/7/17

In **In Re D.J. v. Department of Child Services**, 68 N.E.3d 574 (Ind. 2017), the Court reversed the trial court's CHINS determination. Id. at 581. When the CHINS proceeding began, Parents had two children who were four years old and fourteen months old. On the evening of July 16, 2015, Mother was bathing the children in the upstairs bathroom of the home. Mother left the children alone in the bathtub for about two minutes, and found the younger child lying face down in the water when she returned. Mother grabbed the child, flipped him over to allow the remaining water to drain from his body, and called for an ambulance. While waiting for the ambulance to arrive, Mother attempted "CPR like activity", and the child began gurgling, although he was not breathing easily or well. On July 17, 2015, a Fort Wayne Police detective and a DCS case worker obtained Parents' consent to inspect the family home. Both the detective and the case worker noticed an extremely bad odor when they entered the home. They also observed that the home was very cluttered and in complete disarray. There were no beds for the children, and Parents stated that the family all slept together in the same bed. Parents found that the co-sleeping arrangement helped Mother breastfeed the younger child, alleviated the older child's night terrors, and helped the older child's autism. DCS removed the children from Parents' care, placed them with their grandparents, and filed a CHINS petition for the children on July 21, 2015. DCS began required services with Parents, including psychological evaluations, drug screens, parenting curriculum, homemaker services (cleaning the home and maintaining cleanliness), home-based individual and family therapy, unsupervised visitation for Father, and supervised visitation for Mother.

When the trial court held the factfinding hearing in October 2015, Parents had completed or were in the process of completing all of the services that DCS required. On November 13, 2015, the trial court found the children to be CHINS, and scheduled the dispositional hearing on December 3, 2015. The court issued its dispositional order on January 5, 2016, and ordered the children to stay with grandparents. Father was granted unsupervised parenting time, and Mother was granted supervised parenting time. Mother and Father filed separate notices of appeal challenging the CHINS determination on December 11, 2015 and December 14, 2015 respectively. The notices were filed after the court held the dispositional hearing but before the court entered its dispositional order. The trial court issued the notice of completion of clerk's record on January 6, 2016. The Court of Appeals dismissed Parents' appeal with prejudice based on lack of jurisdiction. Parents sought transfer to the Indiana Supreme Court, and the Supreme Court granted transfer.

The Court explicitly stated that, to the extent Indiana case law leaves any doubt, a CHINS determination by itself is not a final appealable judgment. Id. at 578. Quoting In Re J.L.V.,

Jr., 667 N.E.2d 186, 188 (Ind. Ct. App. 1996), the Court explained that a trial court's "finding of CHINS status is a mere preliminary step" to final disposition of the matter. D.J. at 578. The Court noted that even after making a CHINS determination, the court: (1) is still required to hold a dispositional hearing to determine the child's placement, care, and treatment, and the parents' role; and (2) must then issue written findings and conclusions in a dispositional decree. Id.

By filing notices of appeal from a non-final CHINS determination, Parents forfeited their right to appeal. Id. at 579. The Court noted that a party initiates an appeal by filing a notice of appeal within thirty days after entry of an appealable order. Id. at 578. The Court said the reviewing court is not deprived of jurisdiction if the notice is belated or premature. Id. The Court opined "the only two prerequisites under our appellate rules are (i) the trial court must have entered an appealable order, and (ii) the trial court must have entered the notice of completion of the clerk's record on the CCS." Id. Quoting Ind. Appellate Rule 9(A)(5), the Court said, "unless the Notice of Appeal is timely filed, the right to appeal shall be forfeited except as provided in [Post-Conviction Rule] 2." D.J. at 579. Citing In Re Adoption of O.R., 16 N.E.3d 956, 970-71 (Ind. 2014), the Court opined that an untimely notice of appeal does not divest a reviewing court of jurisdiction. D.J. at 579.

Given the purpose of Indiana's appellate rules, the Courts' preference for deciding cases on their merits, precedent from the Court of Appeals, and the important parental interest at stake, the Supreme Court chose to disregard Parents' forfeiture and decide the merits of the case. Id. at 580. Citing In Re Adoption of O.R., 16 N.E.3d at 971-72, the Court opined that, although it is never error for an appellate court to dismiss an untimely appeal, the Court has jurisdiction to disregard the forfeiture and resolve the merits. D.J. at 579. The Court noted that Indiana's Rules and precedent give reviewing courts authority "to deviate from the exact strictures" of the appellate rules when justice requires. In Re Howell, 9 N.E.3d 145 (Ind. 2014). D.J. at 579. Quoting American States Ins. Co. ex rel. Jennings, 258 Ind. 637, 640, 283 N.E.2d 529, 531 (1972), the Court observed that "[a]lthough our procedural rules are extremely important…they are merely a means for achieving the ultimate end of orderly and speedy justice." D.J. at 579.

Concluding DCS failed to prove by a preponderance of the evidence that Parents required the court's ongoing coercive intervention to insure the children received proper care, the Court reversed the trial court's determination that the children were CHINS. Id. at 581. The Court looked to its opinion in In Re S.D., 2 N.E.3d 1283, 1287 (Ind. 2014), in which the Court held that "[n]ot every endangered child is a child in need of services," and not every endangered child needs "the State's *parens patriae* intrusion into the ordinarily private sphere of the family." D.J. at 580. The Court said that DCS must prove the three statutory elements in IC 31-34-1-1 [CHINS neglect statute] by a preponderance of the evidence, namely: (1) the child is under eighteen years of age; (2) the child's physical or mental condition is seriously impaired or endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and (3) the child needs care, treatment, or rehabilitation that the child is not receiving, and is unlikely to be provided or accepted without the coercive intervention of the

court. D.J. at 580. The Court agreed with DCS that the first two elements had been proven by the preponderance of the evidence. Id. The Court found that the third element, namely, that Parents were unlikely to attend to the children's care or treatment without the court's coercive intervention, was not sufficiently supported by the record. Id. Quoting In Re S.D., 2 N.E.3d at 1289-90, the Court said that when determining CHINS status under IC 31-34-1-1, particularly the "coercive intervention" element, courts "should consider the family's condition not just when the case was filed, but also when it is heard." D.J. at 580. The Court found that the trial court's CHINS orders included factual findings which amply supported its conclusion that Parents required coercive intervention *early* in the CHINS process, but the findings did not show that Parents needed *ongoing* coercive intervention throughout the process (emphasis in opinion). Id. at 581. The Court also found that Parents did not need coercive intervention by the time of the factfinding hearing, which was held months later. Id. The Court noted the following evidence, which showed that Parents eventually cooperated with and satisfactorily completed DCS services: (1) a social worker testified that Parents completed the parenting curriculum; (2) the visitation supervisor and family coach could tell that Parents began implementing the parenting curriculum during visits; (3) the therapist testified that Parents were extremely compliant with services, no more therapy was needed, and all goals had been met; and (4) Parents had voluntarily secured individual and family services for the older child's autism. Id.