

Children's Law Center of Indiana



CHINS

6/8/16

In ***In Re J.B.***, 55 N.E.3d 903 (Ind. Ct. App. 2016), a CHINS case, the Court of Appeals reversed and remanded the order of the Elkhart Circuit Court (Circuit Court), which discharged the parents and children and terminated the CHINS case. *Id.* at 906. Mother and Father are the parents of two children, who were eleven years old and eight years old at the time of the CHINS adjudication. Prior to the filing of the CHINS case in Circuit Court, Father had established his paternity of the children in Elkhart Superior Court 6 (Superior Court), and Superior Court had awarded joint legal and physical custody of the children to Mother and Father. On July 12, 2015, Mother and the children were involved in a car accident. Mother was using methamphetamine and “black[ed] out” immediately before the accident, methamphetamine and needles were found in Mother’s purse, and the children were not properly restrained. Mother had been struggling with methamphetamine abuse for about a year. DCS filed a CHINS petition for the children in Circuit Court, and a detention hearing was held. Circuit Court removed the children from Mother’s home and placed them with Father. At the initial hearing on August 3, 2015, Mother admitted that the children were CHINS based on the car accident and her drug use. Father admitted that the children were CHINS because they were not safe in Mother’s care and he could not restrict the children’s visits with Mother because he and Mother shared custody. Circuit Court found the children to be CHINS and followed DCS’s recommendation for services, which were for Mother only. A dispositional hearing was scheduled for September 3, 2015. Before the dispositional hearing, DCS filed a “Motion for Change of Custody” in the Circuit Court CHINS case. The motion alleged that there had “been a substantial change in one or more of the factors which the Court may consider under Indiana Code 31-17-2-8 for purpose[s] of modifying custody under the order entered in Elkhart Superior Court 6.” DCS asked Circuit Court to give Father full custody of the children and to close the CHINS case. Circuit Court held a hearing on September 3, 2015, following which it entered an order giving Father sole legal and physical custody of the children and giving Mother supervised parenting time with the children. Circuit Court then discharged the children and parents and terminated the CHINS case, one month after the children were found to be CHINS. Mother appealed.

The Court held that, while Circuit Court could enter a CHINS dispositional decree that removed the children from Mother and authorized DCS to place them with Father, as soon as Circuit Court discharged the parties to the CHINS case, it lost jurisdiction, and Superior Court’s joint custody order in the paternity case controlled. *Id.* at 906. Mother challenged Circuit Court’s jurisdiction to modify custody of the children in the CHINS case. The Court looked to IC 31-30-1-1 and IC 31-30-1-13, noting that: (1) juvenile courts have “exclusive original jurisdiction” over CHINS cases, except as provided in IC 31-30-1-13; (2) a trial court that has jurisdiction of a child custody proceeding in a paternity case has “concurrent original jurisdiction” with a juvenile court for the purposes of modifying the child’s custody; (3) IC 31-

30-1-13 extends custodial decision-making to paternity courts during the pendency of CHINS proceedings. Id. at 905. The Court observed that Father did not file an independent action for custody in Superior Court (the paternity court), but DCS sought to modify Superior Court's custody order in Circuit Court, which had jurisdiction over the CHINS case. Id. The Court noted that when a child is found to be a CHINS, the court exercising juvenile jurisdiction: (1) must hold a dispositional hearing within thirty days to consider "placement of the child" (IC 31-34-19-1(a)); (2) may remove the child from home and authorize DCS to place the child in another home, shelter care facility, child caring institution, group home, or secure private facility (IC 31-34-20-1(a)(3)); and (3) shall discharge the child and the child's parent when it finds that the objectives of the dispositional decree have been met (IC 31-34-21-11). Id. at 905-06. Citing IC 31-30-2-1(a)(1), the Court said that a juvenile court's jurisdiction over a CHINS and over the child's parent ends when the court discharges the child and parent. Id. at 906.

The Court concluded that, because it appeared that Circuit Court would not have discharged the parties and terminated the CHINS case unless it thought that Father was awarded full custody, the Court reversed and remanded the case for further proceedings. Id. at 906.