CHINS

5/12/15

In **In Re J.K.**, 30 N.E.3d 695 (Ind. 2015), the Supreme Court reversed the CHINS adjudication. Id. at 696. The seventeen-year-old child and her mother (Mother) lived with the child's maternal grandmother and uncle. Mother and Father were married, but had long been separated. Their divorce was pending with child custody issues remaining unresolved. In May 2013, DCS initiated a CHINS proceeding alleging that the child had finished her work shift at 9:00 p.m. and arrived at home to find her grandmother had locked her out of the house for coming home too late. When DCS contacted Mother, she told them she was tired of the child and would sign the child over to DCS. DCS also alleged that Father refused to talk to them while he was at work or take time off to do so.

When the CHINS factfinding hearing began, Mother admitted that the child was a Child in Need of Services. Father denied, stating that he intended to seek either custody of the child through the divorce or placement through the CHINS case, and that he did not believe the child would be a Child in Need of Services if she were in his care. From the first few minutes of the hearing, the trial court expressed impatience. Father proposed placement in his home as a possible solution to the overlap between custody in the divorce case and placement in the CHINS case. Mother objected, and the child confirmed that Father had prevented the child from contacting Mother during previous times when the child had stayed with him. When Father replied to express willingness to permit communication and establish a parenting time schedule, the court interjected, "Just for giggles, how does this affect the CHINS? All I want to know is does he admit or are we trying it? I don't want the divorce either. It's not my job." When Father's counsel reiterated that Father did not admit the child was a CHINS, the trial court: (1) called the parties' dispute "ridiculous and retarded"; (2) faulted the parties for "stupidity"; (3) continued the case and ordered the parties into mediation; (4) said the divorce was being poorly handled; (5) recommended to the child that she should attend the mediation to "[m]ake your parents mind"; and (6) said, "I'll warn [the mediator]" about the case. Id. at 697.

The parties reached no agreement in mediation and returned to court in October 2013 for a continuation of the factfinding hearing. The child proposed to be placed with Father and to have regularly scheduled parenting time with Mother. The parties had nearly reached an agreement on the child's placement, except for confirming whether the child could be bused to her current high school from Father's home in a neighboring school district since Father's work schedule (and, as revealed at a subsequent hearing, a suspended driver's license) prevented him from taking her to school. At that point, the trial court stated, "I am adjudicating [the child] as a Child in Need of

Services." Father objected. During another heated colloquy, the trial court told Father, "If I were you, I'd waive factfinding otherwise you're going to find your butt finding a new job. I'll be happy to give you what you want sir and I will order custody to you and then you will be responsible for ensuring that she gets to school every day. Do you want that? We can play that game. They only do it for kids in foster care and court ordered placements, they don't do it for others." The trial court said, "It's 5:30 sir…", and Father then admitted that the child was a CHINS. The court adjudicated the child to be a CHINS in accordance with Father's admission. Father appealed, arguing that the trial court's comments deprived him of a fair tribunal and coerced his admission.

The Court found that the cumulative effect of the trial court's comments and demeanor had a direct impact on Father accepting the court's leading suggestion to "waive fact-finding", and that such coercion was fundamental error. The Court reversed the CHINS adjudication, concluding that the trial court's remarks and conduct in their cumulative effect breached the court's duty of impartiality. Id. at 700. The Court observed that: (1) it affords trial judges ample "latitude to run the courtroom and maintain discipline and control of the trial"; (2) particularly in bench trials, courts have discretion to question witnesses sua sponte "to aid in the factfinding process as long as it is done in an impartial manner"; (3) the Court tolerates a "crusty" demeanor towards litigants as long as it is applied evenhandedly; (4) judges at all times "must maintain an impartial manner and refrain from acting as an advocate for either party"; (5) a "trial before an impartial judge is an essential element of due process" (multiple citations omitted). Id. at 698-99. The Court said that the right to an impartial judge is no less vital in CHINS cases than in any other proceeding. Id. at 699. Quoting In Re G.P., 4 N.E.3d 1158, 1165 (Ind. 2014), the Court noted that CHINS proceedings are "subject to the same due process analysis as a proceeding terminating a parent's relationship with a child." J.K. at 699. One of those requirements is a "fair proceeding." In Re C.G., 954 N.E.2d 910, 916 (Ind. 2011). J.W. at 699.

The Court has found fundamental error when a trial judge's comments, demeanor, or conduct indicated bias, and bench trials demand an impartial judge (multiple citations omitted). Id. The Court noted Lake Cnty. Div. of Family and Child Servs. v. Charlton, 631 N.E.2d 529, 529 (Ind. Ct. App. 1994), in which the Court of Appeals reversed the trial court's decision because the judge, before hearing any testimony, expressed an opinion on the merits based on evidence previously presented in a collateral proceeding, thereby violating the judge's "duty to remain impartial and refrain from making unnecessary comments or remarks." J.W. at 699.

The Court noted that, at the first hearing, the trial court: (1) complained that the dispute made "[m]y hair hurt [ ]."; (2) told the parties that their dispute was "ridiculous," "retarded," indicative of "stupidity," "just nuts," and otherwise, "not what this Court is for,"; and (3) stated it would "warn" (rather than merely instruct or advise) the appointed mediator. Id. at 700. The Court said those remarks strongly suggested to the parties that they would not receive a "fair trial before an impartial judge" (multiple citations omitted). Id. The Court said that the second hearing confirmed that impression because: (1) the court called the parties "knuckleheads" for failing to resolve their dispute in mediation; (2) the court adjudicated the child a CHINS without having received any sworn testimony; (3) when Father's counsel objected, the court persuaded Father to change his mind by stating that he would otherwise "find [his] butt finding a new job if he

wanted to 'play that game'," and expressing frustration at the time of day; and (4) only then did Father relent and say, contrary to his counsel's statements moments earlier, that the child was a Child in Need of Services. Id. The Court must consider the "cumulative effect" of a trial court's comments because: (1) even relatively minor remarks can compound into prejudice, and (2) the full context can mitigate comments that seemed damaging in isolation (multiple citations omitted). Id. The Court found that the prejudicial effect of the statements compounded with repetition through two hearings. Id. The Court stressed the cumulative effect of the court's statements as dispositive. Id. at n.1. The Court said that, although trial courts are required to treat all litigants with respect at all times, the Court also recognizes that judges are not immune from the emotional effects of the cases they hear. Id. at n.1.

The Court said that its reversal need not be accompanied by remand because the child has long since become eighteen years old. Id. at n.2. The Court opined that reversal of the CHINS adjudication was moot, save for the issue of public importance the case presented. Id. at n.2.