

Children's Law Center of Indiana



CHINS

7/28/09

In ***In Re J.L.***, 919 N.E. 2d 561 (Ind. Ct. App. 2009), the Court affirmed the trial court's determination that the child is a Child in Need of Services. Hamilton County Department of Child Services (DCS) filed a petition on August 15, 2008 alleging the thirteen-month-old child of a seventeen-year-old Mother to be a CHINS as defined by IC 31-34-1-1 due to the following: (1) Maternal Grandmother, Mother, the child, and Maternal Grandmother's child resided in the same home, and Maternal Grandmother acknowledged using illegal narcotics while the children were in her care and custody; (2) Maternal Grandmother stated that Mother had stolen marijuana from Maternal Grandmother in the past and that Mother used heroin; (3) Mother acknowledged using illegal narcotics, including smoking marijuana with Maternal Grandmother in their bathroom, using marijuana since she was fifteen years of age, and snorting heroin approximately three months ago while her child was in her care and custody. At the November 7, 2008 fact-finding hearing, the evidence included: (1) Maternal Grandmother's testimony that she and Mother smoked marijuana in the bathroom of their home two or three times a week after the child and Maternal Grandmother's child were in bed; (2) although the child has a heart murmur, she is well taken care of, and is receiving adequate medical attention; (3) the house was clean and orderly; (4) Mother admitted heroin use three months prior to her assessment interview with the family case manager; (5) Mother admitted to using marijuana since she was fifteen years old; (6) Mother had also used marijuana and heroin on September 4, 2008, the day of her first drug screen. The Court specifically found that the child was a CHINS because Mother and Maternal Grandmother were carrying on a criminal enterprise within their home by smoking marijuana which could constitute a common nuisance, and because the only adults responsible for the children's care were regularly consuming marijuana. Mother appealed.

The Court found that Mother knowingly exposed the child to an environment of illegal drug use, which resulted in endangering the child's physical or mental condition because the thirteen-month old child was left without any responsible adult care and supervision. IC 31-34-1-1. *Id.* at 564. Mother contended that DCS did not present sufficient evidence to support the trial court's CHINS determination, claiming that DCS must show that the child was actually present during the drug use. The Court noted that IC 31-34-12-3 states that DCS has the burden of proving by a preponderance of the evidence that the child is a CHINS. *Id.* at 563. The Court found Mother's argument unpersuasive that the child was never endangered because the child was always asleep in her bed while Mother abused controlled substances. *Id.* The Court noted its opinion in *Perrine v. Marion County Office of Child Services*, 866 N.E. 2d 269, 277

The Derelle Watson-Duvall Children's Law Center of Indiana - A Program of Kids' Voice of Indiana
9150 Harrison Park Court, Suite C • Indianapolis, IN 46216 • Ph: (317) 558-2870 • Fax (317) 558-2945
Web Site: <http://www.kidsvoicein.org> • Email: info@kidsvoicein.org

(Ind. Ct. App. 2007), where the Court reversed the trial court's CHINS determination, finding that a "single admitted use of methamphetamine, outside the presence of the child and without more, is insufficient to support a CHINS determination." J.L. at 563. The Court contrasted the Perrine decision, which focused on a single admitted drug use, with the instant case where Mother conceded to a lengthy history of drug abuse, including smoking marijuana two to three times per week. Id. at 564. The Court noted that "[e]ven the filing of the CHINS petition was insufficient to deter Mother's drug use as she continued using up to the date of her drug screens." Id. The Court said: (1) unlike Perrine, there is clear evidence that the child was in the residence while Mother and Maternal Grandmother were using illegal substances in the bathroom; (2) the fact that the child was asleep in another room does not alter the finding that the child was in Mother's care and custody; (3) while Mother was under the influence of marijuana at the time the child was in the residence, Mother essentially abandoned the child without any responsible adult supervision; (4) a parent's duties do not end merely because a child is asleep. Id.