

Children's Law Center of Indiana



CHINS

10/25/2007

In ***In Re J.V.***, 875 N.E.2d 395 (Ind. Ct. App. 2007), the Court affirmed the trial court's adjudication of the four children of Mother and Father to be CHINS. Many of the facts are included below in the findings section. Briefly, police officers arrived at Parents' home in response to a 911 call at 2:00 a.m. on February 19, 2006. They were admitted and found, among other things, a digital camera that contained pictures of, among other things, Mother naked in separate photographs with each of two of the children. The officers left the camera where they found it, and when other officers returned at least a day later with a search warrant, they found the digital camera empty of pictures and missing the memory card. The memory card was not found. Parents appealed the trial court's finding that the children were CHINS.

The Court declined to apply the exclusionary rule to CHINS proceedings, inasmuch as the costs of applying the exclusionary rule to CHINS proceedings outweigh the benefits it would have to deter illegal searches and seizures. *Id.* at 401. The Court noted that (1) the fact that evidence was seized in violation of the Fourth Amendment does not mean that the evidence will be suppressed for every purpose in every proceeding; (2) the exclusionary rule is a judicially created prophylactic device, and it only applies to areas where its remedial objectives are thought most effectively served; and (3) it has been recognized that the rule is most effective when its deterrent benefits outweigh its substantial social costs. The Court reviewed *State, Ind. Dep't of Revenue v. Adams*, 762 N.E.2d 728 (Ind. 2002), in which the Indiana Supreme Court declined to apply the exclusionary rule in Controlled Substance Excise Tax (CSET) proceedings to evidence seized following an unconstitutional search by criminal authorities, because the costs of applying the exclusionary rule to CSET proceedings were found to outweigh the limited benefits. *Id.* at 400. The Court opined that application of the exclusionary rule to CHINS proceedings would serve to undermine several important State interests including: (1) strengthening family life by assisting parents to fulfill their parental obligations; (2) removing children from families only when it is in the child's best interest or in the best interest of public safety; (3) providing a judicial procedure that ensures fair hearings, recognizes and enforces the legal rights of children and their parents, and recognizes and enforces the accountability of children and parents; (4) promoting public safety and individual accountability by the imposition of appropriate sanctions; (5) encouraging effective reporting of suspected or known incidents of child abuse or neglect; (6) providing effective child services to quickly investigate reports of child abuse or neglect; (7) providing protection for an abused or a

neglected child from further abuse or neglect; and (8) providing rehabilitation services for an abused or neglected child and the child's parent, guardian, or custodian. Id. at 400-01.

Admitting into evidence testimony regarding photographs, rather than the photographs themselves, was not an abuse of discretion in that it was consistent with the exception to the best evidence rule of evidence which allows for the admission of evidence of the contents of a photograph where the original is lost or destroyed unless the proponent lost or destroyed the original in bad faith. Id. at 401-02.

According to the Court, in order to invoke this exception to the best evidence rule, the proponent of the evidence must demonstrate that the original was lost or destroyed by showing that a diligent but unsuccessful search has been made in the place or places where the original was most likely to be found. The Court reviewed the relevant evidence and concluded that it showed the officers made a diligent search for the photos and memory card, and were unable to find them in the place where they were most likely to be found, Parents' residence. Id. at 401-02.

Sufficient evidence was presented to support the trial court's determination that the children were CHINS. Id. at 403. To Parents' contention that the trial court's findings related to alleged sexual abuse must be based on the standard of proof of beyond a reasonable doubt, the Court responded that the present case only determined that the children were CHINS, a civil determination, and, thus, the appropriate standard of proof was a preponderance of the evidence. Id. at 402 n.1. In finding the evidence sufficient the Court noted the following evidence: (1) police officers arrived at Parents' residence on February 19, 2006 in response to a 911 call; (2) Mother allowed them into the residence to make sure everything was fine; (3) inside, the officers observed women's lingerie, high heels, and many empty beer bottles in the living room; (4) when the officers spoke to Father, he admitted that he and Mother had been engaged in "kinky sex" on the couch in the living room which the officers observed was within sight of the children's bedrooms; (5) the officers discovered a digital camera that contained pictures of Mother, naked, on the couch in the living room in sexual poses and pictures of Mother and Father engaged in sex acts; (6) there were also pictures of one of the children with Mother, who was naked, and in at least one of these pictures, the child was touching Mother in her vaginal area; (7) there were naked pictures of Mother with another of the children who was giving the thumbs up sign to whoever was taking the picture; (8) Mother had a long history of involvement with DCS beginning in 1987, that she did not complete or benefit from the services provided to her by DCS, and that her parental rights to four other children had been previously involuntarily terminated. Id. at 402-03.