

Children's Law Center of Indiana



CHINS

10/10/2008

In ***In Re K.B.***, 894 N.E.2d 1013 (Ind. Ct. App. 2008), the Court reversed the trial court's order granting the media access to the CHINS records of Mother's two children. On April 1, 2008, the three-year-old brother of the two children died. On April 4, 2008, the State filed criminal charges against Mother and Father for the child's death and battery and neglect of the two living children. On April 2, 2008, CHINS petitions were filed regarding the two children, and on the same day they were determined to be CHINS. On April 14, 2008, relying on IC 31-39-2-10, the trial court, apparently sua sponte and without notice or a hearing, issued an order granting the media access to the CHINS records of the two living children. In response to Mother's motion to correct error which was filed April 16, 2008, and which contained as an exhibit an article from a local newspaper detailing the children's injuries and asserting that the trial court would allow media access to the hearings regarding custody of the two children, the trial court held a hearing on April 24 at which DCS echoed Mother's concerns regarding media access. The trial court denied the motion to correct error and Mother appealed.

Because there is not specific ongoing threat to the safety or welfare of the community, the trial court abused its discretion in disclosing the children's CHINS records. *Id.* at 1017. The Court stated that its decision was based on the limited record in the case and noted that (1) the record in the case was not well-developed; (2) the trial court issued its order without notice to the parties and without conducting a hearing; (3) there is no indication that any person actually requested access to the children's records; (4) the DCS echoed Mother's concerns about releasing the records; (5) the order was issued less than two weeks after the investigation and resulting CHINS determination; (6) the heart of Mother's complaint appeared to be the release of the "caseworker's report of preliminary inquiry & investigation," which was very detailed and was filed on April 2, 2008; and (7) the local newspaper article filed with the motion to correct error appeared to quote the caseworker's investigatory report at length. *Id.* at 1014-15.

The Court began its analysis with the issue of whether the caseworker's investigatory report should have been released, and concluded that the report was confidential and should not have been made available to the public. *Id.* at 1015-16. In reaching this finding, the Court, (1) looked to IC 31-33-18-1(a) "which specifically controls the investigation of child abuse and neglect," and concluded that the investigatory report and any other information obtained during the investigation was confidential; (2) then looked to IC 31-33-18-2 which governs the release of an investigatory report and does not include media representatives in its list of persons to whom an investigatory report may be made available; and (3) found that, given the

specific language of IC 31-33-18-2, “it is clear that the legislature intended to limit the persons who had access to these confidential reports.” Id. at 1015.

The Court then analyzed IC 31-39-2-10, which the trial court had relied on in releasing the records, and stated:

We agree it is unclear under what circumstances the legislature intended any interested person to be able to access juvenile court records. We invite the legislature to clarify this ambiguity so as to ensure the confidentiality of legal records involving children.

Nevertheless, we need not determine this issue today because even assuming that [IC] 31-39-2-10 applies to CHINS proceedings, we conclude that the trial court abused its discretion in disclosing [the two living children’s] CHINS records.

Id. at 1016-17.

Noting that the trial court stated in its order that it was granting access to the records to educate the public, address the community’s interest in the welfare of the children, and to give the public new insight into the workings of the trial court and DCS, the Court stated that these goals are laudable, but they need not be achieved at the expense of the children’s privacy interests. The Court opined that the children here are entitled to the same privacy and confidentiality that are offered to other children involved in less notorious CHINS proceedings, and public awareness about either child abuse, our court system, or DCS, does not warrant the disclosure of the children’s CHINS records because awareness can be achieved by a variety of less intrusive measures. Id. at 1017.