

Children's Law Center of Indiana



CHINS

3/13/12

In **In Re K.D.**, 962 N.E.2d 1249 (Ind. 2012), the Court reversed the trial court's CHINS determination and remanded the case to the trial court to provide Stepfather with a fact-finding hearing. Stepfather and Mother have been married for five years. Mother has two children, ages seventeen and fourteen years at the time of the filing of the CHINS petition on November 2, 2009. DCS, Mother, and Stepfather had previously entered into a program of informal adjustment in 2009 because DCS learned that Stepfather had been convicted of child molesting as a Class A felony and criminal confinement as a Class C felony fifteen years earlier, had been incarcerated, and had never completed any sex offender treatment. When asked about his convictions, Stepfather blamed the then twelve-year-old victim and the victim's mother, refused to take responsibility for the child molestation, and indicated his convictions were a result of a plea agreement to avoid additional convictions and jail time. According to the informal adjustment terms, Mother and Stepfather agreed to maintaining an appropriate home and complete home-based counseling, and Stepfather agreed to complete a sex-offender program, which included completion of a sexual history questionnaire, participation in group counseling sessions, and completion of a polygraph examination. At the end of the six-month term of the informal adjustment, DCS requested additional time for Stepfather to complete the sex-offender treatment. Stepfather did not complete the sexual history or polygraph, missed eight weekly counseling sessions, and refused to participate in the sessions when he attended.

On November 2, 2009, DCS filed a CHINS petition, which Mother admitted on December 10, 2009. Specifically, Mother admitted that she and Stepfather had failed to complete all services under the informal adjustment agreement, that Stepfather is an untreated sexual offender and has not yet completed his sexual offender treatment, and that Mother continues to allow him to live in the home. Stepfather denied that the children were CHINS. The trial court set the matter for a dispositional hearing for Mother and a contested fact-finding hearing for Stepfather. Prior to the fact-finding hearing scheduled for Stepfather, the Indiana Supreme Court decided **In Re N.E.**, 919 N.E.2d 102 (Ind. 2010). Based on its interpretation of **In Re N.E.**, the trial court converted the fact-finding hearing scheduled for Stepfather into a contested dispositional hearing. The trial court concluded that a contested fact-finding hearing as to Stepfather was not required. At the contested dispositional hearing, the trial court swore in witnesses, took testimony, and allowed Stepfather's counsel to cross-examine witnesses, challenge the admissibility of evidence, and offer exhibits and witnesses. The trial court asked for closing arguments, allowed for proposed

findings, and took the matter under advisement. At the conclusion of the hearing, the trial court ordered Stepfather to leave the family home for the safety of the children. DCS was ordered to immediately remove the children if Stepfather did not leave. Stepfather told the court, “I ain’t going nowhere. You can forget that.” On April 5, 2010, the trial court entered findings of fact and conclusions of law, which held that the children had been previously adjudicated CHINS, that Stepfather was now ordered to complete a sexual-offender treatment program, and ordered Stepfather to remain out of the home until further recommendation of the parties. Stepfather appealed the CHINS adjudication. A majority of the Court of Appeals found that Stepfather was denied due process by not receiving a fact-finding hearing. In Re K.D., 942 N.E.2d 894, 901 (Ind. Ct. App. 2011). The Indiana Supreme Court granted transfer to clarify any ambiguity that exists regarding the differences between a CHINS adjudication and the procedural due process safeguards that are in place for parties to a CHINS disposition.

The Court opined that DCS must prove all three basic elements of each CHINS statute, and that each parent, guardian, or custodian has the right to challenge those elements. Id. at 1254. The Court stated that DCS must prove: (1) the child is under the age of eighteen; (2) one of the eleven different statutory circumstances codified in IC 31-34-1-1 through 11 exists that make the child a CHINS; and (3) the child needs care, treatment or rehabilitation that the child is not receiving and that the child is unlikely to be provided or accepted without the coercive intervention of the court. Id. at 1253. The Court noted that juvenile law is constructed upon the foundation of the State’s *parens patriae* power, rather than the adversarial nature of *corpus juris*. Id. at 1255. Quoting In Re N.E., 919 N.E.2d at 106, the Court observed that the purpose of the CHINS adjudication is to “protect the children, not punish parents” and that the CHINS proceeding focuses on “the best interests of the child, rather than guilt or innocence as in a criminal proceeding.” K.D. at 1255.

The Court held that whenever a trial court is confronted with one parent wishing to make an admission that the child is in need of services and the other parent wishing to deny the same, the trial court shall conduct a fact-finding hearing as to the entire matter. Id. at 1260. The Court noted that apparent conflict arises between IC 31-34-10-8 and IC 31-34-11-1. Id. at 1255. IC 31-34-10-8 states that if a parent, guardian, or custodian admits [the allegations in the CHINS petition], the juvenile court shall do the following: (1) enter judgment accordingly; (2) schedule a dispositional hearing. IC 31-34-11-1 states that the juvenile court shall hold a fact-finding hearing if the allegations of the petition have not been admitted. Quoting Patrick v. Miresso, 848 N.E.2d 1083, 1086 (Ind. 2006), the Court said that “[w]here two statutes are in apparent conflict, they should be construed, if it can be reasonably done, in a manner so as to bring them into harmony.” K.D. at 1255. The Court said that: (1) in this case DCS alleged the children to be CHINS based on actions of both Mother and Stepfather; (2) N.E., 919 N.E.2d at 105 states that a CHINS adjudication “focuses on the condition of the child” and “does not establish culpability on the part of a particular parent;” (3) a CHINS adjudication is dependent on DCS proving by a preponderance of the evidence a number of statutorily defined criteria; (4) there is no evidence in the record at a fact-finding hearing in this case that Stepfather was an

untreated sex offender or how that made the children CHINS. K.D. at 1256. The Court said that lack of a fact-finding hearing for Stepfather distinguishes this case from In Re N.E., where the father received a fact-finding hearing where he presented evidence and cross-examined witnesses. K.D. at 1256.

The Court noted that In Re N.E., 919 N.E.2d 106, correctly stated, “[b]ecause a CHINS determination regards the status of the child, a separate analysis as to each parent is not required in the CHINS determination stage.” K.D. at 1256. The Court opined that while a separate analysis as to each parent is not *always* required, it is sometimes necessary. (Emphasis in opinion). Id. In the present case, the Court determined that a separate analysis was necessary because allegations were made regarding each parent, and each parent could challenge that the coercive intervention of the court was necessary. Id. The Court explained that situations exist such as when parents are divorced or separated, where an admission by one parent would be incapable of providing a factual basis for the CHINS adjudication. Id. The Court said that in those situations, one parent could not admit the child is a CHINS based on allegations of what occurred in the other parent’s home, unless that parent had first-hand knowledge of what transpired. Id. The Court explained: (1) such an attempted admission would likely fall short of establishing a factual basis for the event; (2) allowing this type of admission could lead to vindictive admissions, designed to attack the other parent; (3) speculation is not enough for a CHINS finding. Id. The Court clarified that In Re N.E. does not stand for the proposition that anytime a parent makes an admission that the child is a CHINS, such adjudication automatically follows. K.D. at 1256. The Court acknowledged that in many situations, it is common for the children to have absent or even unknown parents, in which situations where it is critical that DCS properly serve all parties, by publication, if necessary. Id. at 1257. The Court said that if the absent parent is not present, then a default judgment could be entered, and it would be unnecessary to give that absent parent “a second bite at the apple” of the fact-finding hearing. Id.

The Court held that, under these facts, the contested dispositional hearing did not provide Stepfather due process because he was not given an opportunity to contest the CHINS allegations. Id. at 1258. The Court applied the due process factors outline in Matthews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L. Ed.2d 18 (1976), and observed that the private interests affected by the CHINS fact-finding proceeding are substantial. K.D. at 1259. The Court noted that the CHINS adjudication places a parent one possible step closer to the filing of a termination-of-parental rights petition. Id. The Court identified the countervailing interest of not affording a parent the opportunity to contest the fact-finding is a swift CHINS adjudication, but noted that IC 31-34-11-1 has codified certain deadlines for fact-finding hearings to be held. Id. The Court pointed out that parents have fewer protections in a dispositional hearing than they have in a fact-finding hearing; therefore, it would be advantageous for DCS to proceed to a contested dispositional hearing and by-pass the fact-finding hearing because the juvenile court can admit the DCS dispositional report even if it includes hearsay. Id. The Court opined that a

contested dispositional hearing does not cure the lack of a fact-finding hearing when the facts warrant such a hearing. Id.

The Court found that its decision in this case is consistent with previous case law on CHINS and termination of parental rights issues and consistent with the ultimate social welfare policy of juvenile law. Id. The Court noted that it is important to take extra time to provide due process for parents to avoid jeopardizing any termination or adoption proceedings for lack of due process during the CHINS adjudication stage. Id. The Court said that such an issue could lead to an even longer period of time for a child to gain ultimate permanency, and that focusing on due process of the parents at the CHINS adjudication stage ultimately benefits all parties, including the child. Id.