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## CHINS

10/15/03

In **In Re K.F.**, 797 N.E.2d 310 (Ind. App. 2003), decided October 15, 2003, the Court of Appeals held that the permanency plan order in the CHINS proceeding did not dispose of all claims as to all parties, and thus the order was not an appealable final judgment. Both the mother and the father had learning disabilities. The father's I.Q. was 65, and he was mildly mentally retarded, with his reading, spelling, and arithmetic abilities at a first grade level. The father was diagnosed with bipolar disorder and took psychotropic medication under the care of a physician. The mother was born with fetal alcohol syndrome and cocaine addiction and had an I.Q. of 72. She was hospitalized for mental problems at the age of fourteen. Her reading abilities were at a sixth-grade level; her spelling abilities were at a fourth grade level, and her arithmetic abilities were at a third grade level. Her level of intellectual functioning was borderline. When the two children were one-year-old and three-months-old, the trial court granted the LaPorte County Office of Family and Children's ("OFC") requests for the OFC to take custody of them and to file a petition that they were children in need of services ("CHINS"). The petition alleged that the younger child was diagnosed with "failure to thrive" caused by the parents' inability or refusal to provide her with proper nutrition and a clean and healthy home environment. She allegedly refused to consume nutrients and lost weight while in her parents' custody. As a result, the younger child was hospitalized on two occasions and while hospitalized, would eat and gain weight. The petition also alleged that the unsanitary home environment contributed to her failure to thrive and to the older child's respiratory illness. An amended CHINS petition, filed four months later, alleged that the older child had been diagnosed with a "failure to thrive" caused by a lack of nutrition and that neither child had received proper immunization. Three months after filing the amended complaint, at an initial hearing, the parents admitted to the allegations contained in the amended CHINS petition. The trial court found it was in the children's best interests to remain in foster care and set a dispositional hearing. Two months later, the trial court entered its dispositional order which adopted the agreement reached by the parties calling for the reunification of the family, the provision of services to the parents, and the continuation of foster care for the children. Six months later, the OFC filed a permanency report recommending that the children remain in foster care and that the OFC initiate proceedings to terminate the parents' parental rights. A permanency hearing was held. The trial court found that it was in the children's best interests that the OFC proceed with termination of parental rights. Upon appeal, the parents presented the issue of whether proceedings to terminate parental rights were appropriate merely because the parents had learning difficulties and were being treated for mental illness. The Court of

Appeals stated that it found significant that the parents' parental rights were not terminated by the permanency plan order. The Court of Appeals, sua sponte, raised one dispositive issue: whether the trial court's order on the permanency plan was an appealable final judgment.

**The trial court's approval of a permanency plan does not dispose of all claims as to all parties, and thus was not an appealable final judgment.** The Court of Appeals' jurisdiction is defined by Indiana Appellate Rule 5, which states that the Court of Appeals has jurisdiction in appeals from final judgments, interlocutory orders, and agency decisions. The trial court's permanency plan order is not an agency decision, nor is there any indication, in this case, that the appellants proceeded under Appellate Rule 14 governing interlocutory appeals. The relevant issue was whether the permanency plan order was a "final judgment." Indiana Appellate Rule 2(H) defines when an order is a "final judgment." In this case, Rule 2(H)(1), which states "a judgment is a final judgment if it disposes of all claims as to all parties," was the only relevant subsection. See In re M.R., 452 N.E.2d 1085 (Ind. Ct. App. 1983) (stating that judicial economy prohibits the appeal of trial court action until it is finally and completely at an end.) The trial court's permanency plan was final in the sense that it called for the initiation of proceedings to terminate parental rights, which would bring an end to the CHINS phase of the case and require the filing of a new cause of action to initiate the termination proceedings. See State ex rel. Gosnell v. Cass Circuit Court, 577 N.E.2d 957, 958 (Ind. 1991). However, the permanency plan order was not final in the sense that it did not dispose of the essential issue which the parents challenged upon appeal, i.e. the propriety of terminating their parental rights. In other words, the parents were not adversely affected by the permanency plan with regard to the issue which they presented upon appeal. The only way in which the permanency plan affected the parents was that it approved the initiation of proceedings which could result in the termination of their parental rights. Such proceedings do not prejudice the parents unless and until termination occurs. The Court of Appeals concluded that the permanency plan order from which the parents sought to appeal was not an appealable final judgment. See In re M.R., 452 N.E.2d at 1089 (holding that CHINS finding was not an appealable final order because only after dispositional decree were the rights of the finally determined.) In this case, the Court of Appeals did not have jurisdiction over the matter and dismissed the appeal.