

# Children's Law Center of Indiana



## CHINS

4/7/14

In ***In Re L.P.***, 6 N.E.3d 1019 (Ind. Ct. App. 2014), the Court reversed the juvenile court's determination that Mother's six-year-old child was a CHINS. On June 14, 2013, a caseworker from Sullivan County Department of Child Services conducted a visit to Mother's home as a result of hotline report. Mother agreed to submit to a drug screen and tested positive for methamphetamine. DCS removed the child to the residence of the maternal great-grandmother and initiated CHINS proceedings. Over the next several weeks, Mother voluntarily submitted to ten additional drug screens and tested negative. At the factfinding hearing conducted on August 7, 2013, the DCS case manager testified that: (1) Mother had one positive and ten negative drug screens; (2) the child appeared to be "well-cared for;" (3) the case manager had no reason to believe that Mother had any continued involvement with a houseguest whose presence caused DCS concern. At the conclusion of the hearing the juvenile court commended Mother for her employment and "exemplary" conduct during the proceedings, but observed that methamphetamine has caused "tragic" effects in the county and that DCS has a "zero tolerance level for that," with which the court affirmatively agreed. The juvenile court entered its conclusion of law, findings of fact, and order determining the child to be a CHINS due to Mother's admission to using methamphetamine shortly before the initiation of the investigation and her positive test for methamphetamine. The child was returned to Mother's care, with continued DCS involvement, and Mother appealed.

**The Court held that the factual finding of an isolated use of methamphetamine, without more, did not support the conclusion of law that the child was a CHINS.** *Id.* at 1021. The Court observed that the State must prove by a preponderance of the evidence that a child is a CHINS, citing IC 31-34-12-3 and *In Re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). *L.P.* at 1020. The Court looked to IC 31-34-1-1, the CHINS neglect category under which DCS alleged that the child was a CHINS, and noted that the State was required to prove that "the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision." *Id.* Although Mother did not challenge the juvenile court's factual findings, she contended that the factual finding that she had used methamphetamine on a single occasion could not support the juvenile court's conclusion of law that the child was a CHINS. In support of her argument, Mother directed the Court's attention to *Perrine v. Marion County Office of Child Services*, 866 N.E.2d 269 (Ind. Ct. App. 2007). The Court noted that the *Perrine* Court reversed the CHINS determination, holding that "a

single admitted use of methamphetamine, outside the presence of the child and without more, is insufficient to support a CHINS determination.” L.P. at 1021, quoting Perrine at 277. The Court noted the State’s argument that, since the Perrine case was decided in 2007, methamphetamine use has been recognized as an epidemic. L.P. at 1021. The Court said that, although methamphetamine use may indeed be epidemic, the relevant inquiry in this case was whether Mother’s child was seriously impaired or endangered and in need of care and supervision unlikely to be provided without the intervention of the court. Id. The Court observed that, in this case, as in Perrine, the State proved a single use of methamphetamine and there was no suggestion that it took place in the presence of the child. L.P. at 1021. The Court also noted that, in this case, even more compelling than the circumstances in Perrine, Mother thereafter voluntarily and consistently took drug screens with negative results. L.P. at 1021.