

Children's Law Center of Indiana



CHINS

07/20/2007

In **In Re M.W.**, 869 N.E.2d 1267 (Ind. Ct. App. 2007), the Court reversed the juvenile court's adjudication of the children as CHINS as to Mother.

DCS failed to prove its case because the record is devoid of any credible evidence that Mother had physically harmed her sons or that she abused alcohol as set forth in the CHINS petition. Thus, the juvenile court erred in determining that the children were CHINS. *Id.* at 1271. The Court noted that (1) at the factfinding hearing, the Mother and the children denied that Mother abused alcohol or harmed the children and the son who had reported physical abuse testified that he had made it up; (2) the supporting evidence presented by Marion County DCS consisted of the MCDCS investigator testifying to the content of reports received by MCDCS and (3) "the MCDCS failed to present any competent evidence in support of its allegation that Mother had an alcohol problem, and any evidence at all that Mother had physically abused the children. No witness testified to ever having seen any abuse occur or to having seen any physical evidence of abuse. And it was not [Mother's] burden to disprove the MCDCS's allegation that she had abused the children." *Id.* at 1270-71. The Court held that, "despite the trial court's determination that neither [Mother] nor her sons were credible, the MCDS nonetheless failed to prove its case."

Friedlander, J., dissented with opinion.