

Children's Law Center of Indiana



CHINS

11/30/15

In **In Re S.M.**, 45 N.E.3d 1252 (Ind. Ct. App. 2015), the Court reversed the trial court's CHINS adjudications of Mother's four children, who were born in 2008, 2009, 2010, and 2014. Father M is the father of the three oldest children, and Father G is the father of the youngest child. DCS had substantiated: (1) allegations regarding domestic violence between Mother and Father M in 2008; (2) allegations that Mother had smoked marijuana while pregnant in 2009; (3) allegations regarding domestic violence between Mother and Father G in 2010. On December 12, 2014, DCS filed a petition alleging that the four children were CHINS after the youngest child's meconium tested positive for marijuana at the time of his birth. Mother tested negative for marijuana when the youngest child was born. At the factfinding hearing on April 10, 2015, DCS stipulated that Mother had completed random drug screens approximately every two weeks since January 2015, and all of her screens were negative. Mother had also participated in home-based therapy, with no evidence in the record that her participation was reluctant or unsuccessful. Mother also completed a substance abuse assessment, but the assessor did not recommend that Mother participate in substance abuse treatment. Mother admitted that she used marijuana on one occasion while she was pregnant, but before she knew she was pregnant. Mother said that she stopped smoking marijuana as soon as she learned she was pregnant. Mother was unemployed, but had a second job interview scheduled at the time of the factfinding, Father G helped her financially, and Mother also received food stamps. Father G was receiving treatment for his substance abuse through an open CHINS case involving a child by a different mother. Mother and the children were living with Father G in his home. When Father G's substance abuse became a problem, he voluntarily moved out of the home so the children were not exposed to drug use. Father G paid the rent and utilities for the home, and Mother's name was not on the lease. Mother testified that, if Father G asked her to move out of the home, she and the children would move to a shelter until she found a permanent residence. Mother testified that she could find and maintain housing and stability without DCS assistance. There was no evidence that Mother or Father G ever used drugs in the children's presence.

The juvenile court found all four of the children were CHINS. The CHINS adjudication was based on the following reasoning: (1) Mother's history of substance abuse; (2) Father G's recent positive screens and failure to complete substance abuse treatment; (3) Mother's inability to maintain a home for the children absent the assistance of Father G; (4) Father M's inability to ensure the safety of his children while in the custody and care of Mother. The juvenile court held a dispositional hearing and ordered Mother to participate in home-based therapy, home-based case management, and random drug screens.

The Court opined that the evidence was “woefully insufficient to support” the CHINS adjudication under IC 31-34-1-1 (the neglect statute) and that the juvenile court erred in finding the children to be CHINS under this statute. Id. at 1255-56. The Court looked to In Re S.D., 2 N.E.3d 1283, 1287 (Ind. 2014), where the Supreme Court interpreted IC 31-34-1-1 to require “three basic elements: that the parent’s actions or inactions have seriously endangered the child, that the child’s needs are unmet, and (perhaps most critically) that those needs are unlikely to be met without State coercion.” S.M. at 1255. The Court found there was *no* evidence in the record that at any point in time, any of the children were endangered (emphasis in opinion). Id. The Court said there was *no* evidence that the children have ever lacked food, shelter, or love and care (emphasis in opinion). Id. at 1256. The Court observed that, although there was concern about a possible future occasion in which Mother and the children would be asked to move out of Father G’s home, that had not happened at the time of the factfinding. Id. The Court said that even if Mother and the children needed to move, Mother had a contingency plan and was confident she could continue to meet the children’s needs. Id. The Court opined that a CHINS finding may not be based on the mere facts of an unemployed parent, a family on food stamps, or a family living in a shelter while seeking stable housing. Id. The Court noted that “the record [was] wholly devoid of a single example of the children’s needs going unmet.” Id.

The Court found that there was insufficient evidence to support the youngest child’s CHINS adjudication pursuant to IC 31-34-1-10. Id. at 1256. The Court opined that there was no evidence in the record showing *how*, specifically, having a marijuana-positive meconium endangered the youngest child (emphasis in opinion). Id. The Court observed that, since Mother stipulated that the youngest child’s meconium was positive for marijuana at birth, the first prong of the statute was met. Id. at 1256. The Court noted that the second prong of the statute required DCS to prove that the child needed care, treatment, or rehabilitation that he was not receiving or that would be unlikely to be provided without the coercive intervention of the court. Id. at 1256-57. The Court found the record devoid of any evidence that the youngest child needed any care, treatment, or rehabilitation that he was not receiving. Id. at 1257.