

Children's Law Center of Indiana



CHINS

2/2/10

In ***In Re S.W.***, 920 N.E.2d 783 (Ind. Ct. App. 2010), the Court affirmed the trial court's determination that the seventeen-year-old child was a Child in Need of Services (CHINS). On June 24, 2009, the Peru Police Department investigated a call from the mother of the seventeen-year-old child's friend reporting that the child's friend had run away. The caller told police that the child's friend had been last seen with the child in a parked vehicle in front of the child's home. An officer from the Peru Police Department went to the child's home at about 10:00 p.m. and asked the child's father if he knew the child's whereabouts. The child's father told the police officer that he did not know the child's whereabouts because he had been asleep, and that he did not want to know the child's whereabouts. The child's mother told the police officer that the child was probably out with a friend and was expected home by 11:00 p.m. About the same time, a deputy from the Miami County Sheriff's Department noticed the child and her friend walking down the road in a rural area of the county about twelve miles from the child's home. The deputy stopped, and was told by the children that they had been at a boy's house and the friend's uncle was on his way to pick them up. The deputy asked the child for her phone number. The child's mother answered the phone, and the deputy began explaining the situation. The child's father cut in on the phone conversation and told the deputy that they were not coming to pick up the child. The child's father then hung up the phone. The deputy took both children to the Peru Police Department's station. The child's friend was released. The deputy called the DCS family case manager, who met with the child at the police station and attempted to call the child's parents several times but was unable to contact them. The child told the family case manager that drug use and domestic violence had occurred in her home following DCS's involvement with her family one year prior. The family case manager sought and received an emergency oral detention order from the judicial officer on call. A hearing was held the next day, and the trial court ordered continued detention, appointed a special advocate for the child, and authorized DCS to file a CHINS petition. The child was given a drug test and tested positive for marijuana.

At the factfinding hearing the deputy acknowledged that when he took the child into custody, she was not out beyond curfew and had committed no crime or infraction. The deputy testified that "anything could happen to her" in the rural location where he had found the child and her friend, and that Child Protection Services had instructed him to bring the child to the police station. The family case manager testified that she had not instructed the deputy that the child needed to talk to the case manager before the child could be released, but after the case manager spoke with the child, the case manager determined that the child did not want to go home and needed to be

placed in a shelter facility for the time being. During the trial, the court admitted over objection evidence that the child had been given a drug test which indicated that the child had used marijuana. The child clarified that the marijuana in her system was present due to her drug usage at graduation parties which had occurred approximately one month prior to the June 24th incident. The day after the factfinding hearing, the trial court issued a written order affirming DCS's intervention, ordering relative placement in the Peru school district so the child could attend Peru High School, and setting the matter for a dispositional hearing on August 19, 2009. At the dispositional hearing, the court focused on the child's current placement. The child was living with her aunt, but a pre-dispositional statement submitted to the court stated that the child was staying with her parents. DCS clarified that the aunt's home had been approved for the child and that DCS had no objection to the child residing there. The trial court determined that the child was a CHINS pursuant to IC 31-34-1-1, which requires the State 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." The trial court also incorporated the following findings, inter alia, from the DCS pre-dispositional report in its order: (1) the child's parents informed police that they did not want their daughter returned home; (2) the child's father hung up the telephone on officers and refused to answer telephone calls from officers and the family case manager; and (3) the child tested positive for marijuana, and DCS recommended that the child submit to random drug screens, with the possibility of having to attend IOP classes at Four County Counseling Center if she tests positive for drugs. The child and her parents filed notices of appeal by their respective trial counsel, but only one Appellant's brief was filed naming the child as the Appellant.

Where the trial court has entered findings of fact and conclusions of law, the Court will not set aside the judgment unless it is clearly erroneous. The trial court's findings of fact, conclusions of law, and judgment are considered clearly erroneous only if a review of the whole record leads the Court to a definite and firm conviction that a mistake has been made. *Id.* at 787, citing *In Re J.Q.*, 836 N.E.2d 961, 966 (Ind. Ct. App. 2005).

The Court concluded that the trial court did not abuse its discretion when it admitted evidence of the seventeen-year-old child's drug use at the CHINS factfinding hearing. *Id.* at 790. The child claimed that the evidence that she had used drugs was developed through an illegal search, arguing: (1) the drug test was administered when she was illegally detained; and (2) the drug test results were not admissible because she was not given the opportunity to consult with an attorney or her parents prior to taking the drug test, citing IC 31-37-8-4 and *In Re Gault*, 387 U.S.1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967). The Court was unpersuaded by this argument, and disagreed that the child was illegally detained, noting that at the time of the drug test DCS had probable cause to believe that the child was a CHINS due to a lack of supervision by her parents and DCS had sought and received a judicial order for the temporary custody. *S.W.* at 788. The Court also disagreed with the child's denial of consultation argument, noting that both IC 31-37-8-4 and *In Re Gault* specifically deal with delinquency proceedings as opposed to CHINS proceedings. *Id.* The Court said that the child "cites no authority which

would support a claim that DCS cannot have a child in its custody for that child's protection submit to a drug test." Id.

The Court also disagreed with the child's contention that the evidence of her drug use is irrelevant. The Court noted that DCS alleged that the child was a CHINS primarily due to a lack of parental supervision, and "a child's drug use can be a direct product of a lack of parental supervision." Id. The Court cited Ind. Evidence Rule 401, which states that relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. The Court opined that the child's drug use could be a direct result of a lack of parental supervision; therefore the evidence of her drug use was relevant to the CHINS proceedings. Id.

The Court also was not persuaded by the child's contention that she was provided no notice that her drug use would be litigated at the CHINS hearing. In response to the child's contention, the Court noted: (1) by citing IC 31-34-1-1 as the authority by which the child was a CHINS, DCS alleged that the child's parents were not supplying her with "necessary food, clothing, shelter, medical care, education, or supervision" so lack of adequate parental supervision was undoubtedly the focus of the proceedings; (2) the factual allegations of the CHINS petition also provided notice to the child that her drug use could be an issue because the CHINS petition explicitly stated the child's report to the case manager that domestic violence, drug use, and abuse had occurred in the home; and (3) DCS provided the results of the child's drug test to the child's counsel and her parents prior to the hearing. Id. at 789. The Court concluded that the child and her parents had ample notice that the child's drug use could be an issue in the CHINS proceedings. Id.

The Court concluded that DCS presented sufficient evidence to prove by a preponderance of the evidence that the child's physical or mental condition was seriously endangered by her parents' refusal or neglect to provide necessary supervision. Id. at 790. The child argued that her parents' refusal to come get her did not rise to the level of seriously endangering her physical or mental condition because the police station was located approximately six blocks from her home and she could have just walked home or the police could have driven her home. The child also contended that she told the deputy she had a ride coming and he could have let her go with her ride. The Court responded that the child's complaints about the actions of the police carry little weight because her father told the deputy to handle the situation. Id. The Court also noted that: (1) the deputy found the child walking along a country road at 10:45 p.m. approximately twelve miles from her home; (2) the parents refused to pick the child up; (3) the parents did not inquire about the child's whereabouts when she did not return home; (4) the parents chose to ignore repeated phone calls to their home; and (5) the child told the family case manager that domestic violence, drug use, and abuse were occurring in her home. Id.