

Children's Law Center of Indiana



CHINS

5/29/2007

In ***In Re V.C.***, 867 N.E.2d 167 (Ind. Ct. App. 2007), the Court affirmed the juvenile court's consolidation of paternity and CHINS actions involving the same child, adjudication of the child as a CHINS as to Mother, the modification of custody of the child to Father, and the award of damages to Father. The child was born on December 28, 1999, and in October 2000, Father filed a petition to establish the child's paternity. In January 2001, the juvenile court issued an order granting Father's petition, establishing the child's paternity, and granting Father parenting time with the child. Over the next three years, usually just before or just after Father exercised overnight or extended visitation, Mother made numerous reports to Child Protective Services (CPS) regarding Father's alleged sexual abuse of the child. In July 2004, the parties executed an Agreed Entry and Order, which provided that, if there were further allegations of sexual abuse, Mother would take the child to an emergency room, physician, psychologist, or therapist before contacting CPS. In May 2005, Mother took the child to the therapist who the child had been seeing for more than a year. Mother told the therapist that the child had something to tell her. The child told the therapist that Father had molested her. On May 11, 2005, the therapist contacted CPS and reported the alleged molestation. Later that month, following additional reports to CPS alleging neglect of the child, the Marion County Department of Child Services (DCS) filed a petition alleging that the child was a CHINS. The petition stated, among other things, that DCS determined the child to be a CHINS because Mother had failed to protect the child from being molested by her Father. At the initial hearing on the petition, Father asked DCS to amend the CHINS petition to add the allegation that the child was a CHINS because Mother was endangering the child's mental health. DCS said it could add the allegation regarding Mother but it did not want to amend anything about Father. The juvenile court said it would not tell DCS what to put in the petition, but DCS was free to amend it. The petition was never amended. In June 2005, Father filed a petition in paternity court to modify custody of the child. The petition alleged that Mother was coaching the child to fabricate the molestation accusations, and requested damages due to the alleged willfulness of Mother's actions. On August 11, 2005, Father filed a motion to consolidate the paternity and CHINS cases and requested that one fact-finding hearing be held on all issues related to the care of the child. The juvenile court granted Father's motion, and on September 7 and 8, 2005, held a hearing on all matters pertaining to the child. On December 30, 2005, the juvenile court orally granted Father's petition for a custody modification but ordered that the child temporarily be placed with her paternal grandmother pending issuance of the juvenile court's findings. On January 17, 2006, the juvenile court entered its judgment, which adjudicated the child a CHINS as to Mother, but not as to Father. Mother appealed.

Mother waived appeal regarding consolidation of the cases because she did not object to the consolidation or request a continuance during the twenty-three days between the juvenile court's grant of Father's motion to consolidate, and the factfinding hearing. *Id.* at 177.

The juvenile court did not err in adjudicating the child as a CHINS as to Mother on grounds different from those set forth in the CHINS petition. *Id.* at 179. To address this issue, the Court referenced Ind. Trial Rule 15(B) and quoted it in relevant part. The Court cited *Baker v. Midland-Ross Corp.*, 508 N.E.2d 32, 35-36 (Ind. Ct. App. 1987), *trans. denied* which notes: (1) Pursuant to T.R. 15(B), issues not set out in the pleadings may be tried by the express or implied consent of the parties; (2) The functions of the issues, whether formed by the pleadings, pre-trial orders, or contentions of the parties, is to provide a guide for the parties and the court as they proceed through trial; (3) Either party may demand strict adherence to the issues raised before trial; (4) If the trial court allows introduction of an issue not raised before trial, an objecting party may seek a reasonable continuance in order to prepare to litigate the new issue; (5) However, where the trial ends without objection to the new issue, the evidence actually presented at trial controls; (6) Consequently, neither pleadings, pretrial orders, nor theories proposed by the parties should frustrate the trier of fact from finding the facts that a preponderance of the evidence permits; (7) Because fairness compels certain restraints, however, there are limits upon the principle of amending pleadings through implied consent; (8) For example, a party is entitled to some form of notice that an issue that was not pleaded is before the court; and (9) Notice can be overt, as where the unpleaded issue is expressly raised prior to or sometime during the trial but before the close of the evidence, or implied, as where the evidence presented at trial is such that a reasonably competent attorney would have recognized that the unpleaded issue was being litigated. *V.C.* at 178. In applying this guidance to the case at hand, the Court stated: "Here, consent will be found if Mother had overt or implied notice that evidence was being presented that her acts or omissions were seriously endangering the child's physical and mental health." *Id.* In this regard, the Court observed that, three months before the fact-finding hearing, Father asked DCS to amend the CHINS petition to allege that the child was a CHINS because Mother was endangering the child's mental health, and "the transcript reveals a plethora of evidence elicited without objection at trial that Mother had such notice." *Id.* According to the Court testimony revealed that (1) Mother engaged in a pattern of false accusations of sexual abuse against Father that was harmful to the child and had a detrimental effect upon the child's relationship with both Father and his family; and (2) Mother's acts of enrolling the child with three different sexual abuse therapists where she was constantly interrogated and educated about sexual abuse, subjecting the child to repeated invasive medical exams that such a young child should not have to undergo, and repeatedly examining the child's genitalia on a regular basis for signs of sexual abuse, have caused psychological, emotional, and mental harm to the child. The Court concluded, "The evidence presented in this case clearly indicates an issue regarding Mother's acts that seriously endangered [the child's] mental health," and, "This issue was therefore tried by consent under T.R. 15(B)." *Id.* at 178-79.

Sufficient evidence supports the juvenile court's findings in the CHINS adjudication and custody modification, and the Court found no error in the juvenile court's findings of facts and conclusions of law. *Id.* at 181-82. The Court cited I.C. 31-34-12-3 regarding DCS' burden of proving by a preponderance of the evidence that the child was a CHINS and

quoted (1) I.C. 31-34-1-2 for the definition of a CHINS; (2) I.C. 31-14-13-6 regarding the circumstances under which custody may be modified; and (3) I.C. 31-14-13-2 regarding the factors to be considered in determining custody. *Id.* at 179-80. Mother challenged approximately thirty of the juvenile court's four hundred and fifty-eight findings of fact and conclusions of law contained in its sixty-page order. The Court reviewed only the five challenged findings of fact and the two challenged conclusions of law the Court found to be relevant to the CHINS adjudication and the modification of custody. It found all five challenged findings of fact to be supported by the record and both challenged conclusions to be supported by the facts. *Id.* at 180-81.

The juvenile court did not err in awarding Father compensatory damages of \$51,867.39 and punitive damages of \$50,000, where Mother indirectly communicated an abuse allegation to DCS through the child's therapist by coaching and encouraging the child to report sexual abuse allegations that Mother knew to be false, and which Mother knew the therapist would be required to report. *Id.* at 183. Mother argued that it was the therapist rather than Mother that reported the abuse to DCS. The Court noted that (1) the juvenile court awarded the damages pursuant to I.C. 31-33-22-3 which imposes liability on one who intentionally communicates an abuse report knowing the report to be false; and (2) "communication can be either direct or indirect. See e.g., Quality Foods, Inc. v. Holloway Assocs. Prof'l Eng'rs and Land Surveyors, Inc., 852 N.E.2d 27, 32 (Ind. Ct. App. 2006) (stating principal's direct or indirect communication can install a reasonable belief in the mind of a third party that another individual is his agent)." *Id.* at 182. The Court also found that an affidavit completed by Father's attorney detailing the costs (totaling \$51,867.39) accrued from the date of the filing of the CHINS petition through trial which affidavit was admitted into evidence without objection, was sufficient evidence to support the \$51,867.39 damages award. *Id.* at 182-83.

Riley, J., dissented with separate opinion because "(1) I do not believe Father's request to amend the CHINS petition effectively notified Mother that the threat she posed to [the child] would be an issue at trial, and (2) I believe it was improper to consolidate the CHINS action with Father's paternity and custody action." *Id.* at 183.