

Children's Law Center of Indiana



CHINS

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In **M.K. v. Indiana Dept. of Child Services**, 964 N.E.2d 240 (Ind. Ct. App. 2012), the Court reversed the trial court's CHINS adjudication and remanded for proceedings consistent with this decision. Mother, Father, and their three children were residents of Baltimore, Maryland. Father was employed as a sales representative for three different food companies, and Mother was a substitute teacher in the Baltimore school system. On January 10, 2011, Father left the family's Baltimore apartment to tend to his seriously ill mother in Texas. When he left, he gave Mother at least \$250 cash. Mother and Father also had money in Bank of America accounts, which they could access with a debit card. A few days after Father's departure, a kitchen fire in an adjacent apartment caused the family's apartment to be closed for repairs, and Mother and the children were forced to temporarily evacuate. Mother and the children stayed briefly in a motel and then at the home of Mother's ex-boyfriend, who was the father of her two teenage daughters. Mother was assaulted by her ex-boyfriend, and left with the three children. Mother took the children on a Greyhound bus to Fort Wayne, Indiana, where she hoped to contact some relatives whom she had seen listed on an ancestry website and to assess the city for a possible relocation. Although the bus schedule indicated a day-time arrival on Thursday, January 20, 2011, a winter storm caused numerous delays en route, and Mother and the children arrived in Fort Wayne on Saturday, January 22, 2011, at 4:30 a.m. The bus station was closed and there was no local bus service, so Mother borrowed a cell phone to call 311, the Fort Wayne call-for-help number. When a police officer arrived, Mother asked him to transport her and the children to an inexpensive motel. Instead, the officer transported them to a nearby shelter, where they stayed for two days. When local bus service resumed on Monday, Mother and the children went to a motel for two days. On January 26, 2011, four days after their arrival in Fort Wayne, Mother stopped by a United Way office, inquired about temporary assistance, and the Allen County Department of Child Services (DCS) was notified.

On January 27, 2011, DCS filed a CHINS petition, alleging that Mother had come to Fort Wayne with no plan for housing and that she and Father had failed to provide basic necessities and stable housing for the children. DCS amended its petition on February 23, 2011, and the trial court held a factfinding hearing on March 16, 2011, and issued findings of fact and conclusions thereon, designating the children as CHINS. Mother and Father filed notices of appeal on April 14, 2011. The trial court held a dispositional hearing on May 12, 2011, and issued its dispositional order, which incorporated by reference the trial court's earlier findings. The

findings stated in part: (1) Mother left Baltimore with three of her five minor children without having made arrangements for their shelter in Fort Wayne; (2) Mother has not been able to maintain housing for the children; (3) the children had been previously removed from the care of the parents while in Texas; (4) Father knew or should have known that Mother relocated to Fort Wayne without provision for the children's care; (5) from the observations of the parents' demeanor and contradictions in their testimony, the Court has concern with regard to their mental health.

The Court declined DCS's request to dismiss the appeal because Mother and Father had filed their notices of appeal before the trial court issued its final dispositional order on the CHINS petition. *Id.* at 244. The Court noted that in *In Re J.V.*, 875 N.E.2d 395, 399 (Ind. Ct. App. 2007), *trans. denied* (2008), the Court opined that only after a dispositional hearing has been held is there a final, appealable order because the disposition finally determines the rights of the parties. *M.K.* at 244. The Court further noted that the *J.V.* court decided to address the appeal on its merits because a dispositional hearing was conducted, and a final appealable judgment existed. *M.K.* at 244. The Court therefore decided to address this CHINS appeal on its merits. *Id.*

The Court concluded that the CHINS designation was clearly erroneous. The Court found that the record did not support a conclusion that, in January 2011, the children were endangered by any neglect on the part of Mother or Father or that Mother or Father were unable or unwilling to supply them with stable housing, food, clothing, care, or supervision. *Id.* at 246-47. Although Mother and Father had filed separate appellant's briefs, the Court, citing *In Re N.E.*, 919 N.E.2d 102, 106 (Ind. 2010), said that the Court need not conduct a separate analysis concerning each parent. *M.K.* at 244. The Court said that this case involves an intact family that experienced unusual circumstances, including: (1) Father had to leave Baltimore to tend to his seriously ill mother in Texas; (2) through no fault of their own, Mother and the children were temporarily displaced from their Baltimore apartment by a kitchen fire in an adjacent apartment; (3) this circumstance disconnected Mother from her landline phone, Father's only means of communicating with her; (4) after enduring two days of subpar motel accommodations, Mother sought lodging with her ex-boyfriend and father of her two teenage daughters and was then assaulted by him; (5) Mother then took the children to Fort Wayne to contact relatives; (6) a winter storm caused Mother and children to arrive in the pre-dawn hours in Fort Wayne, when no local bus service was available; (7) Mother had money for a motel and took the children from a shelter to a motel as originally planned. *Id.* at 245. The Court opined that this evidence does not support the trial court's finding that Mother relocated to Fort Wayne without a plan for housing and was unable or unwilling to provide the children with stable housing. *Id.* at 245-46. The Court also noted that Mother and Father had a stable housing arrangement for the children in Baltimore; that, while in Fort Wayne, Mother stayed in contact with her Baltimore landlord regarding the progress of repairs to the apartment; Mother left her two teenage daughters in Baltimore; the rent was paid on her Baltimore apartment through at least the end of February; and Mother and Father still had a valid lease on that apartment. *Id.* at

246. The Court found that, at *most*, Mother traveled to Fort Wayne to assess the city's possibilities as a future home (emphasis in opinion). *Id.* The Court further noted: (1) Mother never intended to go to a shelter and was taken to a shelter due to the police officer's refusal to take her to an inexpensive motel; (2) Mother packed ample supplies for the children during their stay in Fort Wayne; (3) the DCS case manager testified that the children appeared to be fed and properly clothed in winter attire; (4) Mother had cash to pay for a motel, money in her bank account, and social security income for her two teenage daughters; and (5) Father's sales representative job enabled him to work from different locations, including Texas. *Id.*