

Children's Law Center of Indiana



CHINS

3/30/17

In **Matter of D.P.**, 72 N.E.3d 976 (Ind. Ct. App. 2017), the Court reversed the trial court's finding that the eleven-year-old child was a CHINS. *Id.* at 985. On March 28, 2016, the Marion County Office of the Department of Child Services (DCS) filed a CHINS petition for the child. The petition alleged that on March 11, 2016, Father was taken to a hospital because he was acting "bizarrely," was found to be on drugs, and had a history of substance abuse. The petition also alleged the child had missed twenty-three days of school and was suffering from educational neglect. On April 14, 2016, the trial court held a pre-trial hearing, ordered the child to remain in Mother's care and custody, and ordered Father to leave the home. The trial court conducted a factfinding hearing on August 29, 2016. Father did not appear at the hearing, but was represented by counsel. At the outset of the hearing, Mother agreed the child was in need of services because pending domestic violence charges were filed against Father. The DCS family case manager testified: (1) she had learned on the day of the hearing from the "Marion County Jail website" that Father was incarcerated; (2) the last drug screens she had for Father were positive; (3) DCS had concerns about domestic violence in the family; and (4) Mother stated that she "doesn't know when [Father]'s under the influence, and he's reported that he'll be an addict for the rest of his life," which concerned the case manager. The trial court sustained the objection of Father's counsel to the case manager's statement on Father's positive drug screens and no more evidence was presented on Father's drug use. The DCS attorney informed the court there was a cause number for a domestic violence charge against Father, and there was a no-contact order with Mother listed as the victim. The court took judicial notice of Father's criminal court cause number, and that it was a felony case in a Marion County court. DCS made no attempt to present any evidence to support its allegation that the child was subject to educational neglect because of multiple school absences. After the case manager testified, both DCS and Father rested, and the trial court announced that the child was a CHINS. In its CHINS order, the trial court stated it was taking "judicial notice" of preliminary reports and other filings during the course of the proceedings. The court entered a dispositional order as to Mother, and scheduled a dispositional hearing for Father to be held on September 22, 2016. Father did not appear for the dispositional hearing, and his counsel confirmed that Father was still incarcerated "pending trial." The trial court then proceeded to disposition for Father, ordering him to complete a "Fatherhood Engagement Program." Father appealed. The Court addressed the dispositive issue of whether there was sufficient evidence to support the CHINS determination.

The Court opined that, under the circumstances, Mother's CHINS admission, which was based on Father's conduct, was not binding upon Father or conclusive evidence that the child was a CHINS. *Id.* at 982. The Court noted that DCS alleged neglect, as defined by IC 31-34-1-1, as the only statutory basis for finding the child to be a CHINS. *Id.* at 980. Citing In Re

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S.A., 15 N.E.3d 602, 607 (Ind. Ct. App. 2014), *trans. denied*, the Court also noted that DCS bears the burden of proving by a preponderance of the evidence that a child is a CHINS. D.P. at 980. Citing S.A., 15 N.E.3d at 611-612, the Court opined it is not enough for DCS to prove that one or the other of a child's parents suffers from shortcomings; rather, there must be evidence that parents are unlikely to meet a child's needs, absent coercive court intervention. D.P. at 980. Citing In Re S.D., 2 N.E.3d 1283, 1287 (Ind. 2014), the Court explained that evidence of a child's endangerment is not by itself enough to warrant a CHINS finding and the State's *parens patriae* intrusion into family life. D.P. at 980.

The Court commented that DCS appeared to try the instant case almost entirely upon Mother's admission and judicial notice. Id. at 981. Citing In Re N.E., 919 N.E.2d 102, 106 (Ind. 2010), the Court said it is true that one parent's admission that his or her child is a CHINS may be sufficient to support a CHINS adjudication; it is not necessary to find that a child is a CHINS with respect to both parents. D.P. at 981. Quoting N.E., 919 N.E.2d at 105, the Court noted, "[a] CHINS adjudication focuses on the condition of the child... [T]he acts or omissions of one parent can cause a condition that creates the need for court intervention." D.P. at 981. The Court also looked to In Re K.D., 962 N.E.2d 1249, 1256 (Ind. 2012), in which the Indiana Supreme Court opined that, unlike in the N.E. case, it was necessary to prove allegations against both the mother and the stepfather to support a CHINS finding. D.P. at 981. Quoting K.D., 962 N.E.2d at 1259, the Court noted that "[w]e hold that when one parent wishes to admit and another parent wishes to deny the child is in need of services, the trial court shall conduct a fact-finding hearing as to the entire matter." D.P. at 981-82. The Court explained, "[t]he necessary takeaway after K.D. is that, although one parent's admission *may* be sufficient to support a CHINS adjudication, it is not *automatically* sufficient." (Emphasis in opinion.) D.P. at 981. The Court also noted that in the instant case Mother's admission accused primarily Father of conduct that was endangering the child. Id.

On the issue of the trial court's judicial notice of the charges against Father, the Court found it inappropriate to delve into such matters as the content of the probable cause affidavit, which would cross the line into alleged facts that would not be capable of being readily determined as accurate. Id. at 984. The Court looked to Ind. Evidence Rule 201, and stated that, with respect to court records, the Rule states the fact of a record's existence may be judicially noticed under subsection (a) [a fact that can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned] or under subsection (b) law contained within records of a court of this state. Id. at 983. The Court opined that Evid. R. 201 does not provide for judicial notice of all facts contained within a court record. Id. Quoting Brown v. Jones, 804 N.E.2d 1197, 1202 (Ind. Ct. App. 2004), *trans. denied*, the Court said that even if court records may be judicially noticed, "facts recited within the pleadings and filings that are not capable of ready and accurate determination are not suitable for judicial notice." D.P. at 983. Again quoting Brown, 804 N.E.2d at 1202, the Court said, "[u]nless principles of claim preclusion apply, judicial notice should be limited to the fact of the record's existence, rather than to any facts found or alleged in the record of another case." D.P. at 983. The Court explained that applying these principles to the instant case, taking notice of substantive facts contained in preliminary filings would exceed the proper bounds of judicial notice principles. Id.

The Court noted that DCS relied almost entirely upon judicial notice to present evidence of domestic violence to the trial court. Id. at 984. The Court also noted that no documentation was presented to the court regarding charges against Father. Id. The Court commented that it would have been preferable to provide actual documents, but it was not fatal to the trial court's taking judicial notice of the charges against Father, "[b]ecause Indiana's implementation of a unified statewide electronic case management system (CMS) is well underway," and "many court records will soon likewise be at the fingertips of any court, litigant, or member of the general public." D.P. at 984, quoting Horton v. State, 51 N.E.3d 1154, 1161-62 (Ind. 2016). The Court concluded the trial court properly took the correct approach to judicial notice of the charges against Father; thus, the Court was left with no detailed information on the alleged battery incident. Id. at 984.

Despite Mother's CHINS admission, the Court concluded DCS failed to meet its burden of proving the child was a CHINS in light of Father's refusal to concede to Mother's admission and the lack of admissible evidence to support all the elements of a CHINS action. Id. at 985. Quoting K.B. v. Indiana Dep't of Child Services, 24 N.E.3d 997, 1003 (Ind. Ct. App. 2015), the Court acknowledged that "a child's exposure to domestic violence can support a CHINS finding." D.P. at 984. The Court said a single incident of domestic violence in a child's presence may support a CHINS finding, and domestic violence need not necessarily be repetitive. K.B. at 1003-04. D.P. at 984. The Court noted that, in the instant case, there was no evidence that domestic violence ever occurred in the child's presence, no evidence as to the impact of the incident upon the child, and no evidence on whether the coercive intervention of the court was necessary to protect him. Id. DCS cited Matter of M.R., 452 N.E.3d 1085, 1089 (Ind. Ct. App. 1983), for the proposition that "once the juvenile court determines a child has a CHINS condition, the court may infer that such condition would continue in the absence of court intervention", but the Court opined that M.R. was no longer valid authority. D.P. at 985. Quoting In Re S.D., 2 N.E.3d 1283, 1285, 1290 (Ind. 2014), the Court said the Indiana Supreme Court has clearly established that the question of whether coercive intervention is necessary is a separate and distinct element of a CHINS action that DCS must prove. D.P. at 985. The Court found the S.D. opinion supported its conclusion that the mere fact of Father's domestic violence arrest was not enough by itself to establish that the coercive intervention of the court was necessary to protect the child. D.P. at 985. The Court said the scant evidentiary record as to Father, and almost exclusive reliance on questionable judicial notice were fatal to DCS's case. Id.