CHINS

10/17/03

In **Reynolds v. Dewees**, 797 N.E.2d 798 (Ind. Ct. App. 2003), the Court of Appeals affirmed the paternity court's decision to modify custody, from the mother to the father, of a child under the jurisdiction of the juvenile court because the child was the subject of a child in need of services (CHINS) proceeding. The mother filed a petition in the paternity court to establish the paternity of her child, who was one-year-old. Nine months later, the father stipulated to paternity, and by agreement of the parties, the mother was awarded custody of the child. Three months prior to the parties' agreement that the mother was to have custody, the Office of Family and Children ("OFC") filed a petition in the county's juvenile court alleging that the child was a CHINS. The child was removed from the mother's home for failure to thrive, lack of supervision, and verbal abuse. Two years after the filing of the CHINS petition, the juvenile court temporarily placed the child with the father, and one month later, the juvenile court issued an order permanently placing the child with the father. Eight months later, while the CHINS case was still pending in the juvenile court, the father filed a petition for change of custody in the paternity court. One year later, the paternity court awarded the father temporary custody of the child, and four months later, after a trial, the paternity court granted the father's petition and awarded him permanent custody of the child. On appeal, the mother argued that that the paternity court lacked jurisdiction to make a custody determination because the juvenile court had exclusive jurisdiction to decide custody matters once a CHINS action commenced, and therefore the paternity court's judgment was void.

Indiana Code 31-30-1-13, by its express terms, gives a court having paternity jurisdiction concurrent original jurisdiction with a juvenile court to modify custody of a child, even when that child is the subject of a pending CHINS proceeding. The mother asserted a long line of Indiana cases establishing that the commencement of a CHINS proceeding vested the juvenile court with exclusive jurisdiction with respect to custody matters until the parties were either discharged or the juvenile court transferred the cause. The Court of Appeals stated that this argument, once wholly accurate, was no longer a correct statement of the law. On July 1, 1999, IC 31-30-1-13, which governs the jurisdiction of child custody proceedings in the paternity proceeding, became effective; the present case was the first published decision that applied or interpreted the statute. As the mother argued, there were a number of decisions holding that a juvenile court had exclusive jurisdiction to decide custody matters once a CHINS action commenced. However, the Court of Appeals presumed that the legislature considered those decisions when it amended IC 31-30-1 to add section thirteen, which by its express terms gives a

court having paternity jurisdiction concurrent original jurisdiction with a juvenile court to modify custody of a child, even when that child was the subject of a pending CHINS proceeding. IC 31-30-1-13(a). The Court of Appeals also observed that the legislature contemporaneously amended IC 31-30-1-1, the introductory section of the article that outlines a juvenile court's original jurisdiction, to state that a juvenile court has exclusive original jurisdiction in CHINS proceedings except as provided, inter alia, in IC 31-30-1-13 . The legislature's amendments clearly intend to extend custodial decision–making authority to paternity courts during the pendency of a CHINS proceeding. The Court of Appeals distinguished this case from Fox v. Arthur, 714 N.E.2d 305 (Ind. Ct. App. 1999), on which the mother relied, because Fox was a dissolution, not a paternity, matter and further because it involved consolidation and transfer, which were not issues in the present case. The Court of Appeals, in light of IC 31-30-1-12 and -13, declined to follow Fox's general proposition that once a CHINS petition was filed all other courts lost jurisdiction to act in custody matters. The mother also relied on In Re Adoption of E.B., 733 N.E.2d 4 (Ind. Ct. App. 2000), trans. denied. E.B. involved an adoption proceeding filed by third parties during the pendency of a CHINS proceeding, as opposed to a custody modification request filed by a father with whom the child had been placed in a pending CHINS action. In the present case, IC 31-30-1-13 expressly provided the trial court with concurrent original jurisdiction, allowing it to act on the father's modification request while the CHINS proceeding was pending; however, IC 31-30-1 did not provide equivalent concurrent jurisdiction to a probate court, and thus the probate court in E.B. lacked the jurisdiction to proceed on the adoption petition while the CHINS case was pending. Accordingly, the Court of Appeal's holding was not affected by the E.B. decision. Significantly, the authority of a court with paternity jurisdiction to modify child custody during the pendency of a CHINS action is not without limits. Subsection (b) of IC 31-30-1-13 provided in pertinent part that when a court having jurisdiction in a paternity proceeding modified custody as provided in subsection (a), the modification was effective only when the juvenile court with jurisdiction over the CHINS proceeding…(1) entered an order approving the child custody modification; or (2) terminated the CHINS proceeding. In the present case, the Court of Appeals did not know with certainty whether the CHINS action was dismissed after the paternity court awarded custody to the father in 2003. Therefore, in affirming the paternity court's modification from the mother to the father, the Court of Appeals only held that IC 31-30-1-13 vested the paternity court with the requisite jurisdiction to enter the order and did not determine whether or when that modification became effective.