

Children's Law Center of Indiana



CHINS

5/31/18

In **Ad.M. v. Indiana DCS**, 103 N.E.3d 709 (Ind. Ct. App. 2018), Mother appealed a determination that her three children are CHINS, arguing that the trial court erred in making its determination. The Court of Appeals agreed and held that marijuana use alone does not constitute child endangerment necessitating court intervention, nor does an isolated incident of domestic violence, and that the family's situation must be considered at the time a CHINS matter is heard.

The police and Department of Child Services ("DCS") were called to a trailer in response to a distress call from the family's oldest child, who had witnessed domestic violence between Mother and the father of her third child ("Father"). The police discovered six marijuana plants and arrested the trailer's owner ("B.V."). Mother denied owning the marijuana plants, and then made plans to move back to her own home. Two different DCS caseworkers visited her home shortly after, and noted brown faucet water, little food, bruising on the oldest child's face, and dirty conditions. Mother refused to take a drug test at that time. DCS filed a CHINS petition, and told Mother the living conditions were unsuitable. Mother called Father, and the family moved in with Father's mother. About one week later, Mother called DCS and informed them that the family had moved into a motel and were going to move back into the trailer. When DCS informed Mother that the trailer would need to be cleaned, Mother complied. Mother filed for a protective order against Father. B.V. provided childcare for Mother while she was at work, but refused to consent to a drug test. Mother consented to a hair follicle drug test, which came back positive for marijuana. About a month later, Mother had another drug test positive for marijuana. DCS filed for a CHINS determination under I.C. 34-31-1-1, which "require[s] 'three basic elements: that the parent's actions or inactions have seriously endangered the child, that the child's needs are unmet, and (perhaps most critically) that those needs are unlikely to be met without State coercion.' In Re S.D., 2 N.E.3d at 1287." Id at 713. During trial, there was no evidence presented by DCS that drug use or domestic violence were ongoing issues that seriously endangered the children, that the children's needs were not being met because of the drug use, nor that State intervention was necessary. However, the children were adjudicated to be CHINS.

When making a determination as to whether a child is a CHINS, court must consider "the family's condition not just when the case was filed, but also when it is heard." Gr. J. v. Ind. Dep't. of Child Servs., 68 N.E.3d 574, 580 (Ind. 2017); this aids in avoiding punishing parents for past mistakes which have been corrected. Ad.M. at 714. The Court noted that there was no testimony that Mother used drugs in the children's presence or that she was unable to meet their needs due to her drug use. Id. at 714. There was also no testimony that her one time use negatively impacted the children. Id. The Court noted prior case law has held that sporadic

marijuana use did not support a CHINS finding when there was no evidence that the children were endangered or that the parents used drugs in the presence of the children. Id. citing A.M. v. Ind. Dep't. of Child Servs. (In re S.M.), 45 N.E.3d 1252, 1255–56 (Ind. Ct. App. 2015). The Court noted that similar logic applied to the isolated incidents of domestic violence. DCS asserted that the children were CHINS due to domestic violence because “Mother moved in with Father approximately one week after the incident, Mother has not filed for a dissolution of her marriage to Father, Mother did not file for the protective order right away, Ad.M. had expressed concerns to Taylor about the domestic violence, and Mother has not received counseling or taken Ad.M. to be evaluated by a therapist.” Id. at 714. However, the Court noted that the only evidence presented showed one incident of domestic violence, that Mother and the children have since moved away from Father, and Mother has a protective order against Father. Id. The Court concluded that the present circumstances did not support a CHINS determination. Id. The Court opined that while the circumstances leading to a CHINS petition being filed are relevant, courts must also consider a family’s present circumstances. Id. Her, the Court noted that many, if not all, of the problems had been remedied or otherwise addressed without the coercive intervention of the Court. Id.

It was DCS’s burden to show that Mother’s actions or inactions seriously endangered the Children; DCS did not present any such evidence, and therefore, the trial court erred when it found the children to be CHINS. Id.