

# Children's Law Center of Indiana



**CHINS**  
2/21/2019

In **K.A.H. v. IN Dep't of Child Services**, 119 N.E.3d 1115 (Ind. Ct. App. 2019), the Court affirmed the trial court's CHINS adjudication and held that there was sufficient evidence to show that the child was a CHINS.

Mother's children lived with her and Mother's Boyfriend, and witnessed extensive domestic violence perpetrated against Mother. Mother left the children in Boyfriend's care because she believed Boyfriend was only violent with her. DCS was called due to the two year old having a black eye and petechiae, but the case was unsubstantiated because Mother offered an explanation. Mother allowed Boyfriend to watch the children again, despite the younger child telling Mother that his head hurt. When the older child returned home, Boyfriend would not allow the older child in the house; Boyfriend called Mother and told her the younger child was nonresponsive. The younger child was eventually taken to the hospital and died. He had significant bruising in various stages of healing that showed multiple blows from a closed fist, and blunt force trauma. DCS removed the older child from Mother's care, placed her with Maternal Grandparents, and gave Mother and Father supervised parenting time. At the factfinding hearing, DCS introduced a videotaped forensic interview in order to use the child hearsay exception. The State charged Mother with neglect of a dependent. The trial court made extensive findings of fact and conclusions of law and found the child to be a CHINS.

**The Court held that DCS established that the child was a CHINS pursuant to IC 31-34-1-1; Mother and the deceased child suffered extreme physical trauma, and Mother's failure to recognize the effects of the domestic violence upon on her parenting and her remaining child's well-being necessitated the coercive intervention of the Court. Id. at 1123.** Mother argued that the trial court erred in finding that the child was seriously impaired or endangered as a result of her inability, refusal, or neglect to supply the child with appropriate shelter or supervision. Id. at 1121. Specifically, Mother argued that the trial court erred in finding that Mother failed to prevent the child from seeing domestic violence, that the child observed Mother being victimized by Boyfriend, and that the child was present when Boyfriend killed the child's younger sibling. Id. Mother also argued that Boyfriend's arrest resolved the issue of domestic violence in the home, and that Mother and the child had no need of the coercive intervention of the court because they were in ongoing counseling and because the child was placed with Maternal Grandparents, who were part of Mother's support system. Id.

The trial court's key findings included: (1) that before the CHINS proceedings began, Mother did not recognize the extent to which she and her children were in danger; (2) despite being

previously abused, Mother did not recognize that was again being abused by Boyfriend; (3) given the likelihood of domestic violence continuing for Mother, Mother required services so that she could protect herself and ensure the safety of remaining children. Id. at 1118-19. The Court noted the following evidence which supported the trial court's findings and judgment: (1) the forensic interview of the child, where the child disclosed she had seen Boyfriend battering Mother; (2) evidence showing that Mother was not truthful about the extent of the abuse she experience at Boyfriend's hands; (3) testimony regarding the detrimental effects on a child of witnessing ongoing domestic violence and experiencing the death of a sibling due to that domestic violence; (4) Mother's testimony, which minimized the abuse she experienced, while also relaying extensive abuse, and confirmed the presence of the children for the domestic violence; (5) Mother's testimony, which indicated she had not been concerned for the children's safety, because she assumed that Mother was the only victim; (6) Mother's testimony about several prior relationships marked with domestic violence; (7) the child was aware that Boyfriend had killed her younger sibling; (8) other evidence showing Mother lacked appreciation of the danger she was in until her child died, despite multiple warning signs and injuries leading up to the child's death; and (9) that Mother did not seek any help or counseling until after her child's death. Id. at 1118-19, 1122-23.

**The Court opined that while a CHINS finding is not a determination of parental fault, Mother's arguments about the circumstances leading to the CHINS petition being "remedied" by Boyfriend's arrest showed a lack of awareness of the seriousness of the situation. Id. at 1123.** The Court found the injuries the deceased child suffered disturbing, as well as the fact that the injuries were clearly ongoing and that Mother claimed to have no knowledge of the injuries. Id. The Court noted that domestic violence was clearly an ongoing pattern in Mother's life, and spoke to her ability to protect her children from ongoing domestic violence. Id. The Court opined that it agreed with the trial court that "although it is too late for [M.G.], it is not too late to protect" the child at issue in this case. Id. The Court cited prior case law holding that it is not necessary to wait until a child is physically or emotionally harmed in order to intervene. Id., citing In re R.P., 949 N.E.2d 395, 401 (Ind. Ct. App. 2011).