

Children's Law Center of Indiana



CHINS

4/8/2019

In **B.T. v Indiana Dept. of Child Servs.**, 121 N.E.3d 665 (Ind. Ct. App. 2019), the Court reversed the trial court's finding that the child was CHINS.

DCS removed the child and his half-brother from Mother's care in February 2018 due to allegations of neglect and Mother's drug use. The child was eight months old at the time, and Father was identified as the putative father. This was the first time that Father had any knowledge of the child, as Mother had not disclosed her pregnancy or subsequent birth. Father's initial hearing was held in March 2018, at which time he requested a genetic test to establish paternity. The trial court agreed, but ruled that no parenting time would be ordered for Father until paternity was established. A paternity hearing was scheduled for April 2018. In June, a CHINS factfinding was held for Mother but Father asked for a continuance, to allow genetic testing to be completed. The trial court granted his motion, moving his factfinding to August 2018.

At the August 2018 factfinding, Father did not appear because he was at work. The family case manager testified that paternity had been established, and that Father had attended one visitation thus far. The case manager had not visited Father's home, did not know if Father could support the child, and did not observe the Father with the child during their visit. However, the case manager testified that "DCS wished to see Father and Child develop a healthy bond and for Father to demonstrate his parenting abilities before closing Father's case." *Id* at 9. The trial court ruled that the child was CHINS, ordering Father to participate in father's engagement services. Father appealed this ruling.

Because Father established paternity, there was a presumption that he was a fit caretaker until DCS proved otherwise by the preponderance of the evidence. In re D.B., 43 N.E.3d 599, 606 (Ind. Ct. App. 2015), *trans. denied*. Because DCS did not overcome that presumption, we conclude that the trial court's CHINS determination was not supported by the evidence and was clearly erroneous. See In re D.J., 68 N.E.3d at 578." *Id.* at 14. The Court of Appeals notes that an adjudication of CHINS "requires 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 1283, 1287 (Ind. 2014)." *Id.* at 13. Here, the DCS case manager testified that Father had not known about the child until he was notified of the child's removal, had not been permitted to spend time with the child until paternity had been established, and had participated in parenting time when he could. "After Father's paternity was established and prior

to the trial court entering its order on fact-finding as to Father, DCS did not evaluate Father's home, did not evaluate Father's ability to provide for Child's needs, and did not observe Father with Child. DCS concedes, and we agree, that this evidence did not support the trial court's CHINS determination as to Father, especially since it did not support a conclusion that Father was unlikely to provide for Child's care without the coercive intervention of the court. I.C. § 31-34-1-1(2)(B); In re S.D., 2 N.E.3d at 1287.