



CHINS

4/14/2020

In **Matter of K.Y.**, 145 N.E.3d 854 (Ind. Ct. App. 2020), the Court concluded that IC 31-34-12-4 was not unconstitutional on its face, that the evidence in the record was sufficient to raise the presumption, and that Mother did not rebut the presumption.

After DCS received a report of abuse, the assessment worker met with the child and observed facial bruising on the child, as well as on her arm from her shoulder to her wrist. Mother admitted to hitting the child with a belt due to the child's attitude but alleged that the child had a skin condition which caused her to scratch herself while itching, and that the child bruised easily. Mother also offered that the child may have run into something, explaining the bruising. Mother never provided documentation of the skin condition despite DCS requests. DCS filed a CHINS petition, and the trial court ultimately found the child to be a CHINS.

DCS alleged the child was a CHINS under IC 31-34-1-1 [child's mental or physical condition is seriously impaired/endangered as a result of inability, refusal, or neglect of parents to supply child with needed food, clothing, shelter, medical care, education, or supervision] and IC 31-34-1-2 [child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent]. Both of these statutes also require DCS to prove that the child needs care, treatment, or rehabilitation that the child is not receiving and will not likely receive without the coercive intervention of the court.

DCS further invoked IC 31-34-12-4 (the Presumption Statute), which allows for a rebuttable presumption to be raised that the child is a CHINS "because of an act or omission of the child's parent, guardian, or custodian if competent evidence of probative value is introduced by DCS that: (1) the child has been injured; (2) at the time the child was injured, the parent, guardian, or custodian had the care, custody, or control of the child; (3) the injury would not ordinarily be sustained except for the act or omission of a parent, guardian, or custodian; and (4) there is a reasonable probability that the injury was not accidental. If the rebuttable presumption is successfully raised, it applies to all the statutory CHINS elements, including the coercive intervention element.

The Presumption Statute, which allows for a presumption that a child is a CHINS under certain circumstances, was not unconstitutional. Id. at 862. Mother argued that the Presumption Statute was unconstitutional because it created a lesser standard of proof and placed a burden on the parent to prove no abuse occurred. Id. at 861. The Court noted that prior case law holds that in cases "where a child has injuries that suggest neglect or abuse, it shifts the burden to the party most likely to have knowledge of the cause of the injuries—the parent, guardian, or custodian—to produce evidence rebutting the presumption that the child is a CHINS." Id., citing

Ind. Dep't of Child Servs. v. J.D., 77 N.E.3d 801, 807 (Ind. Ct. App. 2017), *trans. denied*. The Court decided that even though Mother had failed to raise the issue at the trial court level, it would not decide the issue on waiver alone because of the constitutional nature of the claim. Id. The Court noted that the Presumption Statute does not affect the burden of proof, but it does shift the burden to the parent going forward; DCS still has an obligation to prove every element in the Presumption Statute. Id. The Court noted criminal case law which determined that presumption statutes are constitutional “provided no constitutional right of [sic] accused is destroyed thereby, the presumption is subject to rebuttal, and there is some rational connection between the fact proved and the ultimate fact presumed.” Id. at 861-62. The Court noted that for this Presumption Statute, there is a rational connection between the facts that DCS must prove (a child suffered a non-accidental injury while in a parent’s care that would not normally have occurred without act or omission) and the fact which may then be presumed (that the child is a CHINS). Id. at 862. Furthermore, the parent has the opportunity to rebut the presumption by providing contrary evidence. Id.

DCS presented sufficient evidence to support the raising of the rebuttable presumption that the child was a CHINS. Id. at 862. The Court noted that the DCS only needed to provide some “relevant and admissible evidence tending to establish the elements of the Presumption Statute in order to shift the burden of production” to Mother. Id., citing J.D. at 809. The Court noted the following evidence: (1) the child had injuries on her face and arm; (2) Mother intentionally hit the child with a belt multiple times; (3) the child was in Mother’s care at the time; (4) the belt caused the injuries; (5) there was a reasonable probability that the injuries were not accidental because Mother admitted to the intentional hitting. Id. Mother argued that the lack of medical evidence indicated that the injuries could have been accidental or not from the belt; however, the Court noted that medical evidence was not necessarily required, and that in this case, expert medical evidence was hardly required in order to make the logical connection. Id.

Mother failed to present sufficient evidence to rebut the presumption that the child was a CHINS. Id. at 863. Mother argued that the child had a skin condition which was mistaken for belt injuries, but Mother never presented evidence of this skin condition. Id. at 862. “The juvenile court was not obligated to credit Mother’s explanations that Child was clumsy and had fallen off a hoverboard and hit a table at virtually the same time Mother admitted to hitting Child with a belt and that the fall caused the injuries rather than the discipline.” Id. at 862-63. The Court declined to reweight the evidence or to rejudge the credibility of the witnesses and parties. Id. at 863.

The Court opined that even if the rebuttable presumption had not been successfully raised, or if Mother had successfully rebutted the presumption, the evidence supported the finding that the child was a CHINS. Id. at 863. A crucial part of a CHINS inquiry is to determine whether a child needs services that the child will not receive without court intervention. Id. The Court noted that Mother believed corporal punishment was fine as long as she left no injuries, and the Court was mindful that corporal punishment was legal in Indiana; however, the punishment must be reasonable, and the fact the child sustained bruising was indicative of its unreasonableness. Id. Furthermore, Mother would not voluntarily participate in services and believed she did not need services. Id. Therefore, the coercive intervention of the court was needed. Id.