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**IN THE  
COURT OF APPEALS OF INDIANA**

IN RE THE MATTER OF R.D.A., )  
A CHILD IN NEED OF SERVICES, )  
)  
LARRY D. ALSPACH, the child's father, )  
)  
Appellant-Respondent, )  
)  
vs. )  
)  
MIAMI COUNTY DEPARTMENT OF CHILD )  
SERVICES, )  
)  
Appellee-Petitioner. )

No. 52A02-0704-JV-362

APPEAL FROM THE MIAMI CIRCUIT COURT  
The Honorable Daniel C. Banina, Judge  
Cause No. 52C01-0704-JC-38 formerly  
52D01-0310-JC-34

**October 17, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Larry Alspach appeals the trial court's determination that his son, R.D.A., is a child in need of services ("CHINS"). We affirm.

### **Issues**

Alspach raises three issues, which we combine and restate as the following:

- I. whether R.D.A.'s current CHINS determination was made in violation of Alspach's due process rights; and
- II. whether there is sufficient evidence to support the CHINS determination.

### **Facts**

R.D.A. was born in 1992 to Alspach and Bonnie Duttenhaver, who were married at the time but divorced in 1993. Duttenhaver has custody of R.D.A. In October 2003, the Miami County Department of Child Services<sup>1</sup> ("DCS") requested and received permission to file a petition alleging that R.D.A. was a CHINS because he substantially endangered his own health or the health of others. The petition alleged that R.D.A. was physically aggressive towards his mother and younger brother, N.A., and that he engaged in fire-setting activities. Additionally, R.D.A. had received inpatient behavioral treatment in July 2003. He has been diagnosed with depression, ADHD, and Bipolar Disorder and at various times has taken medications such as Zoloft, Adderall, Risperdal, Clonidine, and Depakote.

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<sup>1</sup> This office was known at the time as the Office of Family and Children. For the sake of simplicity we refer to the office's current name.

The CHINS petition alleged that Alspach's whereabouts were unknown and he was not served with a copy of it. At the initial hearing on October 28, 2003, Duttenhaver admitted that R.D.A. was a CHINS. Alspach was not at the hearing. The trial court did not order R.D.A.'s removal from Duttenhaver's care, but ordered that a variety of services be started for R.D.A. The record indicates that DCS has no interest in terminating Duttenhaver's parental rights, because she has been complying with services for R.D.A.'s treatment to the best of her ability.

The trial court conducted a number of review hearings on R.D.A.'s case over the next three years. DCS never attempted to contact Alspach or provide him with notice of the CHINS hearings, although on more than one occasion the trial court informed counsel for the DCS that it knew of Alspach's whereabouts because he was appearing in court for other proceedings. At the conclusion of a review hearing held in May 2004, R.D.A. asked the trial court if he could "beat the crap out of Larry?" Tr. p. 30. As this comment indicates, there is ample evidence in the record that R.D.A. and Alspach have a very strained relationship, which evidently became much worse when Alspach remarried in 2003.

In July 2004, R.D.A. was placed in a behavioral facility after he had threatened adults trying to persuade him to obey Duttenhaver with sharp objects. He had also choked a five-year-old neighbor and knocked her to the ground. R.D.A. was released from the facility at some point. However, in September 2006, R.D.A. again was ordered to a behavioral facility because he was regularly truant and was being verbally abusive to

a DCS caseworker and a court appointed special advocate (“CASA”) who tried to persuade him to go to school.

The trial court conducted another review hearing on October 3, 2006. Alspach appeared at this hearing, which was his first appearance in the CHINS case, and expressed confusion as to why he had never been notified of the case. After the review hearing was held, the trial court had a discussion with Alspach in which it said, “we’ll basically start at square one today with you.” Id. at 102. It provided Alspach with copies of filings in the case, including the original CHINS petition. It also advised Alspach of his rights as an alleged CHINS parent, including the right to deny that R.D.A. was a CHINS and the appointment of counsel to represent Alspach at a factfinding hearing if he denied that R.D.A. was a CHINS. Alspach indicated that he wanted an attorney. The trial court appointed counsel for Alspach and set a status hearing concerning only him for October 17, 2006, at which time Alspach denied that R.D.A. was a CHINS. The trial court then set a factfinding hearing to determine whether R.D.A. was a CHINS for November 28, 2006.

At this hearing, the trial court received evidence and testimony from DCS, Duttenhaver, and Alspach. On December 12, 2006, the trial court entered an order finding, again, that R.D.A. was a CHINS, and leaving his placement with Duttenhaver. Pursuant to this finding, the trial court entered a dispositional order on February 15, 2007. Alspach now appeals.

## Analysis

### *I. Due Process*

Alspach contends he was denied due process when he was not notified of the CHINS proceeding until nearly three years after it had begun. The right to raise one's children without interference from the State "is more basic, essential, and precious than property rights and is protected by the Due Process Clause." In re A.H., 751 N.E.2d 690, 701 (Ind. Ct. App. 2001), trans. denied. "Although due process has never been precisely defined, the phrase expresses the requirement of 'fundamental fairness.'" Id. (quoting In re M.M., 733 N.E.2d 6, 10 (Ind. Ct. App. 2000)). Due process requires notice, an opportunity to be heard, and an opportunity to confront witnesses. In re M.L.K., 751 N.E.2d 293, 295-96 (Ind. Ct. App. 2001).

Indiana Code Section 31-34-10-2 provides:

- (a) The juvenile court shall hold an initial hearing on each [CHINS] petition.
- (b) The juvenile court shall set a time for the initial hearing. A summons shall be issued for the following:
  - (1) The child.
  - (2) The child's parent, guardian, custodian, guardian ad litem, or court appointed special advocate.
  - (3) Any other person necessary for the proceedings.
- (c) A copy of the petition must accompany each summons. The clerk shall issue the summons under Rule 4 of the Indiana Rules of Trial Procedure.

On appeal, DCS makes no attempt to refute Alspach's assertion that it should not have been difficult to ascertain his whereabouts in October 2003 or thereafter and that DCS failed to exercise proper diligence in attempting to notify him of the CHINS proceeding.

Regardless, DCS contends Alspach's procedural due process rights were adequately protected when, after Alspach made his first appearance in the case in October 2006, the trial court provided him an opportunity to litigate, with the assistance of appointed counsel, the issue of whether R.D.A. was a CHINS. We agree with DCS. We addressed a similar scenario, under wardship statutes predating the CHINS statutes, in Tucker v. Marion County Department of Public Welfare, 408 N.E.2d 814 (Ind. Ct. App. 1980). There was no dispute in that case that the Marion County Welfare Department obtained temporary wardship over two children in violation of the parents' due process rights. However, the trial court later held a hearing to determine whether to make the children permanent wards of the Welfare Department and found that they were, in fact, neglected children. The parents had notice of this hearing and were given an opportunity to be heard. On appeal, we held, "While there may have been errors of constitutional dimension in the temporary wardship determination, we have no effective or practical means of remedying the violation of appellant's rights, if any, at this point in time." Id. at 817. We concluded that reversal of the wardship "is not an option." Id.

The same is true here. We cannot undo the three years during which R.D.A. was a CHINS before Alspach began participating in the case. Additionally, Alspach was afforded the opportunity to and did contest R.D.A.'s CHINS status in a factfinding hearing at which he was assisted by counsel. After considering Alspach's evidence and

arguments, the trial court again found that R.D.A. is a CHINS. We do not know what other remedy could be afforded to Alspach to rectify his previous failure to receive notice of the CHINS proceedings. Such failure could not justify depriving R.D.A. of needed services for the indefinite future, which would be the effect of accepting Alspach's apparent position that the November 28, 2006 factfinding hearing conducted in accordance with his due process rights nevertheless was null and void.<sup>2</sup>

Alspach also claims a deprivation of his due process rights because the trial court failed to ask R.D.A. himself, as opposed to his mother, whether he admitted or denied being a threat to his own health or the health of others. Indiana Code Section 31-34-1-6 authorizes a CHINS proceeding if "the child substantially endangers the child's own health or the health of another individual" and the intervention of the trial court is needed to ensure that the child receives the treatment he or she needs. Indiana Code Section 31-34-10-7 states, "If a petition alleges that the child is a child in need of services under IC 31-34-1-6, the juvenile court shall determine whether the child admits or denies the allegations. A failure to respond constitutes a denial."<sup>3</sup> There is no dispute here that R.D.A. was alleged to be a CHINS under Section 31-34-1-6, but that the trial court never asked R.D.A. personally whether he admitted or denied the allegations.

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<sup>2</sup> The issue of whether Alspach's three-year absence from the CHINS proceedings could be held against him if DCS attempts to terminate his parental rights in the future is not something we need to address today.

<sup>3</sup> For all other CHINS allegations, it is the child's parent, guardian, or custodian who must admit or deny the allegations. See I.C. § 31-34-10-6.

Alspach fails to convince us that this noncompliance with the letter of the CHINS statutes deprived Alspach of due process or of any of his rights as a parent. The requirement that a trial court inquire personally of a child who is alleged to be a CHINS under Section 31-34-1-6 is not designed to protect any rights of the parents as opposed to the child him- or herself. In any event, Alspach himself did deny that R.D.A. is a CHINS, and based upon that denial the trial court conducted a factfinding hearing to determine whether R.D.A. is a CHINS. It makes little difference whether the denial came from Alspach or R.D.A. We cannot perceive how Alspach was prejudiced on this issue.

Alspach also apparently contends that because R.D.A. was alleged to be a CHINS under Section 31-34-1-6, the trial court was required to appoint a CASA or guardian ad litem (“GAL”) for R.D.A. at the initial hearing in October 2003, but a CASA was not appointed for R.D.A. until a few months later. See I.C. 31-34-10-3. We again fail to see how this affected Alspach’s due process rights. GALs and CASAs are appointed to protect the child’s interests, not the parents’ interests. See In re A.L.H., 774 N.E.2d 896, 901 (Ind. Ct. App. 2002). A parent cannot claim prejudice even if a trial court completely fails to appoint a GAL or CASA during a CHINS proceeding. See id. Alspach cannot seek reversal of R.D.A.’s CHINS status on the basis that the CASA appointment was a few months late. In sum, we hold that the trial court’s December 12, 2006 CHINS determination, made after the November 28, 2006 hearing, was not obtained in violation of Alspach’s due process rights.

## *II. Sufficiency of the Evidence*

Next, we address Alspach's contention that there is insufficient evidence to support the determination that R.D.A. is a CHINS. DCS had the burden of proving by a preponderance of the evidence that R.D.A. is a CHINS. See In re T.H., 856 N.E.2d 1247, 1250 (Ind. Ct. App. 2006). The trial court did not enter specific findings as to why it believed R.D.A. is a CHINS; therefore, contrary to Alspach's request, we will review that finding as a general judgment. See Boetsma v. Boetsma, 768 N.E.2d 1016, 1019 (Ind. Ct. App. 2002), trans. denied. We will affirm a general judgment if it can be sustained upon any legal theory consistent with the evidence. Id. When we review the sufficiency of evidence for a CHINS determination, we consider only the evidence and reasonable inferences therefrom that are most favorable to that determination. In re A.H., 751 N.E.2d at 695. "We neither reweigh the evidence nor reassess the credibility of the witnesses." Id.

As noted earlier, R.D.A. was alleged and found to be a CHINS under Indiana Code Section 31-34-1-6 because he "substantially endanger[ed] the child's own health or the health of another individual" and the intervention of the trial court was needed to ensure that he receives the treatment he needs. At the November 28, 2006 factfinding hearing, Duttenhaver and DCS caseworker Angela Bokin testified that R.D.A. allegedly was molested in 1995 and again in 1998 or 1999. He has been receiving counseling almost continuously since he was about three years old, although he recently has become reluctant to go to counseling. He has had outbursts where he has been physically aggressive to Duttenhaver, including pulling her hair, and to his siblings, including

slamming his brother's head against a car and kicking his sister in the ribs. Before the initial CHINS determination in 2003, R.D.A. frequently was setting things on fire inside the home. However, R.D.A. has been less violent since the DCS has provided programs and treatment for him.

R.D.A. has been diagnosed with depression, ADHD, and Bipolar Disorder, for which he has taken and takes a variety of medications. He has had to receive inpatient mental health or behavioral treatment on several occasions. Most recently, shortly before the hearing, R.D.A. was sent to a facility because he was refusing to go to school and was calling Bokin names when she tried to persuade him to go to school. As for Alspach's interactions with R.D.A. since the summer of 2003, they have been virtually non-existent, limited mostly to brief contacts when Alspach would have visitation with R.D.A.'s brother. R.D.A. has expressed his intense dislike of Alspach and does not want to have visitation with him.

Although the evidence presented at the November 28, 2006 hearing might have been somewhat insubstantial on specific incidents of violent conduct in the recent past, still there was ample evidence presented that R.D.A. has serious mental health and behavioral issues that have required medication, intensive counseling, and sometimes institutionalization to keep under control. Those issues have contributed to physical aggression by R.D.A. in the past. It also is plain that Duttenhaver acting alone has great difficulty in dealing with R.D.A.'s issues and frequently needs the direct intervention of persons such as DCS caseworkers and CASAs to help her. For the three years preceding the November 2006 factfinding hearing, Alspach was absent from R.D.A.'s life and

provided no assistance to Duttenhaver in addressing R.D.A.'s behavioral issues. This has nothing to do with whether Alspach knew there was an ongoing CHINS proceeding, or with who is to "blame" for R.D.A. not wanting to have any contact with his father. The CHINS determination is not about punishing Alspach for not being a part of R.D.A.'s life for the past several years, but instead is about ensuring that R.D.A. receives the care and treatment that he clearly needs. We conclude that the trial court's CHINS determination is supported by sufficient evidence.

### **Conclusion**

The trial court's most recent determination that R.D.A. is a CHINS was not obtained in violation of Alspach's due process rights and is supported by sufficient evidence. We affirm.

Affirmed.

KIRSCH, J., and ROBB, J., concur.