In the

United States Court of Appeals

For the Seventh Circuit

No. 21-3028

ASHLEY W., *et al.*,

Plaintiffs-Appellees,

v.

ERIC HOLCOMB, GOVERNOR OF INDIANA, *et al.*,

Defendants-Appellants.

Appeal from the United States District Court for the
Southern District of Indiana, Evansville Division.
No. 3:19-cv-00129-RLY-MPB — **Richard L. Young**, *Judge*.

ARGUED MARCH 30, 2022 — DECIDED MAY 16, 2022

Before EASTERBROOK, WOOD, and HAMILTON, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. Like *Nicole K. v. Stigdon*, 990 F.3d 534 (7th Cir. 2021), this case entails challenges to aspects of Indiana's system for resolving child-welfare matters, which the state calls CHINS (for Children in Need of Services). When the state's Department of Child Services identifies a situation that appears to involve the neglect or abuse of a child, it files a petition and asks a judge for relief, which may include

the child's placement with foster parents. The litigation ends only when the court determines that the child's parents can resume unsupervised custody, the child is adopted, or the child turns 18.

Our opinion in *Nicole K.* quoted at length from the state's description of the CHINS procedure, and that description will help to understand this case too:

> The State's intervention begins with a report of suspected child abuse or neglect. Upon receipt of such a report, the Indiana Department of Child Services initiates an assessment of the allegation. See Ind. Code §§ 31-33-7-1 *et seq*., 31-33-8-1 *et seq*. If the Department is able to substantiate the allegation of abuse or neglect, it may then initiate a CHINS proceeding by filing a CHINS petition on the child's behalf. See Ind. Code ch. 31-34-9 *et seq*.
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> The trial court must hold an initial hearing within ten days of the Department's filing of a CHINS petition, Ind. Code §31-34-10-2(a), earlier (within two days) if the child has been removed from the home upon the Department's assessment of the reported abuse or neglect. See Ind. Code §§ 31-34-5-1(a), 31-34-10-2(j). During the initial hearing, the parents are asked to admit or deny the allegations in the petition: If the parents deny the allegations, then the court must generally hold a fact-finding hearing within 60 days, Ind. Code §31-34-11-1, and if after that hearing the court determines that the child is a CHINS, it must then schedule a dispositional hearing to occur within 30 days of the CHINS determination. Ind. Code §§ 31-34-11-2, 31-34-19-1(a). But if the parents admit the allegations at the initial hearing, the court enters judgment and schedules a dispositional hearing. See Ind. Code §§ 31-34-10-8, 31-34-10-9(a), (c).
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> During the dispositional hearing, the court considers appropriate placement and treatment for the child and then enters a dispositional decree. See Ind. Code §31-34-19-1, ch. 31-34-20 *et seq*. The court's dispositional decree not only provides for the child's placement and services, but in most cases it also spells out the services in which the parent must engage to remedy the conditions

that led to the CHINS adjudication. See Ind. Code §§ 31-34-20-1, 31-34-21-5.5; cf. Ind. Code §31-34-21-5.6 (providing for narrow circumstances under which services are not required).

After the court enters the dispositional decree, it periodically reviews the case—at least once every six months—to ensure that the child's case plan, services, and placement continue to serve the child's best interests. Ind. Code §§ 31-34-21-2, 31-34-21-4.5, 31-34-21-5(a). The court takes into account a host of considerations, including whether the child requires additional services or counseling and the extent to which the child's parent, guardian, or custodian has enhanced the ability to fulfill parental obligations and has cooperated with reunification efforts. See Ind. Code §31-34-21-5(b). In the course of its review, the court also considers whether to prepare or implement a permanency plan for the child. Ind. Code §31-34-21-5(b)(15).

CHINS cases remain open until "the objectives of the dispositional decree have been met," Ind. Code §31-34-21-11, which can mean several things, such as reunification or termination of parental rights and adoption, among others. If reunification is not a viable option, the State may initiate a termination of parental rights (TPR) proceeding. See, e.g., Ind. Code §§ 31-34-21-7.5, 31-35-2-1. The CHINS case continues until the child achieves permanency, which often does not occur until after the TPR proceeding (including any appeals) concludes. See Ind. Code §§ 31-19-11-6; 31-34-21-11.

In a CHINS or TPR proceeding, state law entitles the child's parents to counsel as a matter of right, while the child does not have such a statutory entitlement, see Ind. Code §§ 31-32-4-1, 31-34-4-6(a)(2)(A)—though the state trial court does have discretion to appoint counsel for the child, see Ind. Code §31-32-4-2(b), and the Department can request appointment of counsel for the child as well. But in practice, trial courts rarely have occasion to consider whether to appoint counsel to children in CHINS cases.

The child's interests … are neither unrepresented nor disregarded. In addition to the State's *parens patriae* protection, most children are represented by a Guardian ad Litem (GAL), a Court Appointed Special Advocate (CASA), or both. See Indiana Youth

> Institute, *2019 Indiana Kids Count Data Book* 23 (2019) ("In 2017, 29,630 Hoosier children were designated as Children in Need of Services. … In 2017, 4,273 volunteers spoke for abused and neglected Hoosier children in 30,480 CHINS cases."). Indeed, one of the first things a court does upon the filing of a CHINS petition is to determine whether appointment of such an advocate is warranted. Ind. Code §31-34-10-3. State law requires the court to appoint a GAL or CASA in abuse and neglect cases, *id*., but courts may appoint a GAL or CASA even if not required, see Ind. Code §31-32-3-1; *Gibbs v. Potter*, 77 N.E. 942, 943 (Ind. 1906).

990 F.3d at 536–37.

Plaintiffs in this suit, ten minors who are or were subject to CHINS proceedings, contest almost every aspect of that process. They contend that Indiana violates the Due Process Clause of the Constitution's Fourteenth Amendment as well as federal and state law. They want the court to issue a detailed regulatory injunction specifying better procedures for both the Department's operations and CHINS proceedings. The injunction would cover how the Department investigates child welfare before CHINS proceedings begin, when the Department may or must initiate CHINS proceedings, and what relief the Department may or must pursue in a CHINS court.

Indiana (as we call the defendants collectively) asked the district court to dismiss. It argued that the plaintiffs lack standing and that, at all events, the CHINS process is the right forum for plaintiffs' arguments, given the abstention principles laid out in *Younger v. Harris*, 401 U.S. 37 (1971). We know from *Moore v. Sims*, 442 U.S. 415 (1979), that *Younger* applies to state-initiated child-welfare litigation. See also, e.g., *Brunken v. Lance*, 807 F.2d 1325, 1330–31 (7th Cir. 1986); *Milchtein v. Chisholm*, 880 F.3d 895 (7th Cir. 2018). Indiana maintained that, under these decisions, abstention is mandatory. But the district court denied the request to abstain and

likewise declined to dismiss the suit on jurisdictional grounds. 467 F. Supp. 3d 644 (S.D. Ind. 2020). Later the district court certified this order for interlocutory review, 2021 U.S. Dist. LEXIS 214154 (S.D. Ind. Sept. 21, 2021), and we granted the state's petition for leave to appeal. See 28 U.S.C. §1292(b).

Indiana repeats the arguments it presented to the district court: that plaintiffs lack standing, that a federal court lacks jurisdiction under the *Rooker-Feldman* doctrine to review any issue decided in a CHINS proceeding, and that *Younger* requires abstention. Plaintiffs concede that the *Rooker-Feldman* issue is reviewable on appeal but maintain that other arguments are not, because Indiana did not adequately (in plaintiffs' eyes) flag them for the district judge's attention when seeking a §1292(b) certification, and because the judge did not identify these issues as deserving appellate consideration. Yet although §1292(b) tells district judges to consider whether some "controlling question of law" justifies interlocutory review, the thing certified to the court of appeals is the court's order, not the issue that prompted the certification. Once an order has been certified, *every* legal question affecting the order's propriety is open on appeal. *Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199 (1996). The order that the district court certified is the one declining to dismiss the whole suit, and every issue that might affect the validity of that order is before us now. That order briefly discussed plaintiffs' claims on the merits, but we start and end with the question whether the suit should have been dismissed on procedural grounds.

Indiana contends that the plaintiffs lack standing. The district judge replied, in essence, that *of course* the plaintiffs have standing—as litigants in CHINS proceedings, they are vitally concerned with questions such as the size and training of the

Department's staff, whether the Department does its utmost to prevent siblings from being sent to different foster homes, how often CHINS reviews occur, and so on. It is hard to disagree with that view in the abstract—but also hard to accept that standing should be resolved in the abstract. The question is whether issues such as the ones we have mentioned (plaintiffs and the district court identify many more) matter to these plaintiffs in a way that a court could redress. And the answer to that question depends on whether *Younger* channels some or all of plaintiffs' contentions into the CHINS proceedings.

When this suit began there were ten plaintiffs, all of them parties to CHINS proceedings. Today only two remain—at least, only two plaintiffs have live claims. Six of the ten have been adopted, so their CHINS proceedings have been closed and the Department no longer supervises their care. Two of the ten have turned 18, and as adults they are no longer subject to the Department's supervision. That leaves only two plaintiffs. We need to figure out which, if any, of their requests should be submitted to the CHINS court under *Younger* and which remain for federal adjudication.

The district judge concluded that "none" is the answer for which claims are subject to *Younger*. He gave two reasons. 467 F. Supp. 3d at 650–52. First, he pointed to the scope of relief that plaintiffs are seeking, including "an injunction requiring [the Department] to maintain caseloads and accepted professional standards for all workers providing direct supervision and planning for children as well as an order requiring [the Department] to periodically verify and report that it is meeting those standards." *Id*. at 651. The judge thought that relief of this kind could not be provided in a CHINS proceeding. Second, he observed that a CHINS court does not

automatically appoint a lawyer for every child (though it does appoint counsel for parents who can't afford lawyers). The judge stated that the absence of counsel for children renders every CHINS proceeding constitutionally inadequate and justifies federal disregard of the state's process.

Neither of these reasons suffices. Take the first. That plaintiffs have sought some relief (potentially) unavailable in a CHINS case may establish standing, but it does not demonstrate that a federal court may adjudicate *all* of plaintiffs' claims. Disputes that can be resolved in a CHINS case must be resolved there. It is essential to determine which is which. We were reluctant in *Nicole K.* to resolve *Younger* arguments about CHINS proceedings as an all-or-none matter; the scope and complexity of CHINS proceedings makes a one-size-fits-all solution inapt. For the same reason, however, the existence of some issues outside the ambit of a CHINS proceeding does not mean that *Younger* drops out of the picture.

As for the absence of automatic counsel at public expense: the district court's opinion predates *Nicole K.*, which held that the Constitution does not entitle every child in a CHINS proceeding to the appointment of counsel. It is enough, *Nicole K.* concludes, that every child has an adult representative (such as a guardian ad litem) and an opportunity to seek the appointment of counsel if specialized legal aid would be helpful. Parents automatically receive counsel, and that plus adult representation for children (many guardians ad litem are themselves lawyers, and all are experienced in child-welfare proceedings) meets constitutional standards. It follows from *Nicole K.* that the absence of automatic counsel at public expense for every child in a CHINS proceeding does not permit

a federal court to deem all CHINS proceedings defective and bypass the state judiciary.

So it becomes important to know just what relief the two children with live claims want that could not be provided by the judge in a CHINS proceeding. Much of the oral argument of this appeal was devoted to that subject, and counsel for the plaintiffs could not identify any. Counsel observed, for example, that many children could benefit from hearings at intervals shorter than six months, but counsel conceded that the judge hearing the CHINS case has authority to reduce the time between hearings if that seems appropriate. And so it went for many other possible subjects.

Much of the relief proposed by plaintiffs' complaint and briefs concerns how child-welfare investigations are handled before CHINS proceedings begin. Yet both of the remaining plaintiffs (indeed, all ten original plaintiffs) were already in CHINS proceedings when the case began. They do not have any current interest in how pre-litigation investigations are conducted. (Counsel did not contend that their CHINS proceedings are likely to be dismissed, re-investigated, and refiled. Cf. *Los Angeles v. Lyons*, 461 U.S. 95 (1983); *Weinstein v. Bradford*, 423 U.S. 147 (1975).) All that matters to plaintiffs today is what happens during their CHINS proceedings.

Counsel contended at argument that many placements are too slow—in part because there aren't enough people willing to serve as foster parents—or are made less than optimally. Counsel asserted that the bureaucracy moves sluggishly and makes too many mistakes. But what can a federal court do about these things that a CHINS judge could not? Counsel did not have an answer. We could imagine, as a potential response, a contention that the state must increase the payments

offered to people willing to be foster parents, or that the Department needs money to hire more social workers so that the caseload of each may be reduced, but counsel for the plaintiffs disclaimed any argument that a federal court could or should increase the agency's budget. Cf. *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989) (state or state official is not a "person" for the purpose of monetary relief under 42 U.S.C. §1983). Yet, short of ordering the state to come up with more money, it is hard to see what options are open to a federal court but closed to a CHINS court.

Counsel also contended that a federal court could insist that some provisions in state law, which counsel thinks underenforced, be fully enforced. This sounds like a problem that CHINS judges can fix, if the state laws and regulations are pointed out to them. But whether or not a CHINS judge would step in, a federal court cannot. It is improper for a federal court to issue an injunction requiring a state official to comply with state law. See *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 97–124 (1984).

For the reasons we have given, the live contentions in this litigation all may be resolved by judges in CHINS proceedings. It follows that *Younger* and *Moore v. Sims* require the federal judge to abstain. The sort of questions that lie outside the scope of CHINS proceedings, such as how the Department handles investigations before filing a CHINS petition, do not affect the status of the two remaining plaintiffs. Any contentions that rest on state law also are outside the province of the federal court. It follows that this suit must be dismissed.

REVERSED