

# Children's Law Center of Indiana



## CHINS

8/15/14

In ***In Re S.A.***, 15 N.E.3d 602 (Ind. Ct. App. 2014), the Court concluded that the trial court erred in adjudicating the child to be a CHINS and reversed the CHINS adjudication. *Id.* at 612. The child was born on August 18, 2011, in Indianapolis. Although Father was present for the child's birth, he did not establish paternity until after the commencement of the CHINS proceedings. Father spent the first two years of the child's life serving on active duty in the United States Navy. When Father was discharged from the Navy in November, 2013, he had seen the child only one other time since the child's birth. Father conceded that he had never paid any child support or furnished any items for the child's care. On June 22, 2013, DCS received a report of child neglect involving Mother and the child. The report alleged that: (1) Mother's habitual heroin use prevented her from adequately caring for the child and the child's maternal grandmother (Grandmother) had taken the child into her home; (2) Mother used heroin in the child's presence; (3) Mother and her boyfriend had a violent relationship and were living in a motel; (4) the child had scars on his hands from cigarette burns. DCS visited Grandmother's home and was informed that she and the child's stepgrandfather were seeking temporary guardianship over the child. On June 25, 2013, DCS interviewed Mother, who eventually admitted that she had been using heroin for two years, but denied that she used heroin in the child's presence and that her relationship with her boyfriend was violent. Because the child was already living with Grandmother, DCS did not take the child into custody. DCS had no information about the child's alleged Father other than his name, and attempted to contact him through the social media website Facebook.

On June 27, 2013, the trial court authorized DCS to file a CHINS petition. The CHINS petition contained details about Mother's extensive drug use and lack of stable housing and claimed that the child's "alleged [F]ather... has not successfully demonstrated the ability and willingness to appropriately parent his [c]hild, and his whereabouts are currently unknown." The trial court held a joint detention and initial hearing, found that the child's removal from Mother's custody was necessary to protect him, granted temporary wardship of the child to DCS, and ordered that the child be placed with Grandmother. Father was not present at the initial hearing, and Mother explained that she had not seen Father for more than a year and was unaware of his whereabouts. The trial court directed DCS to serve Father or publish notice before the next hearing. Although it was unclear whether DCS was able to serve Father with notice of the hearing, Father became aware of the CHINS proceedings and filed a motion requesting "scientific paternity testing" on July 25, 2013. In his motion, Father explained that he was stationed in Corpus Christi, Texas,

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and requested that he be permitted to appear at future hearings telephonically. At the August 2, 2013 initial hearing, Father appeared by telephone and requested the assistance of counsel. The trial court entered a denial of the allegations raised in the CHINS petition on Father's behalf, appointed a public defender to represent him, granted Father's motion to establish paternity, and ordered Father, Mother, and the child to undergo DNA testing. On September 13, 2013, DCS and Mother submitted an agreement to the court in which Mother admitted to certain allegations in the CHINS petition, and the trial court adjudicated the child to be a CHINS. The trial court then held a dispositional hearing and ordered Mother to participate in DCS-recommended services and that the child remains with Grandmother. The court rescheduled the proceedings relating to Father because the DNA testing results were not yet available.

Father's paternity of the child was established on November 4, 2013. At a hearing on November 15, 2013, Father's attorney appeared on his behalf, requested a factfinding hearing, and conveyed Father's desire to be granted custody of the child. The trial court set the matter for a factfinding hearing and granted Father supervised parenting time. When Father was discharged from the Navy at the end of November 2013, he moved to his parents' home in Indianapolis and obtained employment with United Parcel Service. Father contacted DCS and the child's court appointed special advocate and spent time with the child at Grandmother's house every day. DCS did not observe any of the visits, but Grandmother reported to DCS that, with the exception of some nervousness and difficulty with diaper changing, Father interacted well with the child. The day before the factfinding hearing, Father attended a Child and Family Team Meeting with DCS and the court appointed special advocate during which Father disclosed: (1) that he had been diagnosed and treated for post-traumatic stress disorder (PTSD) while on active duty; (2) he was hospitalized for four months at University Behavioral Health in Denton, Texas, because he "was having difficulty sleeping, [he] couldn't cope with [his] emotions, [and] was dealing with extreme depression;" (3) after he was released from the hospital in May of 2013, he briefly attended counseling, but was no longer receiving treatment.

On December 20, 2013, the trial court held a factfinding hearing at which DCS and the court appointed special advocate recommended that the trial court continue the CHINS adjudication, that Father should undergo a psychological evaluation, and testified about their concerns regarding the child's unfamiliarity with Father and Father's lack of prior parenting experience. At the close of the evidence, the trial court acknowledged that Father's inability to care for the child was due to his out-of-state military service, but criticized Father for his failure to establish paternity "a lot sooner" and also expressed its concern that Father could not precisely recall when he had been released from his PTSD treatment program. The trial court emphasized Mother's near-completion of services and explained its preference that the child eventually be released to Mother. The trial court issued written findings in support of its decision to continue the CHINS adjudication. On January 10, 2014, the court conducted Father's dispositional hearing and ordered Father to complete a parenting assessment, comply with any recommended services, and submit documentation on his PTSD treatment or, alternatively, undergo a psychological evaluation. Father appealed. On appeal, Father contended that the record was devoid of evidence or findings by the trial court to support the conclusion that the child's "mental or physical condition continued to be seriously impaired or seriously endangered as a

result of the inability, refusal, or neglect of *Father* to supply... him with necessary food, clothing, shelter, medical care, education, or supervision.” (Emphasis in opinion.)

**The Court found that the trial court deprived Father of a meaningful opportunity to be heard by adjudicating the child as a CHINS prior to Father’s factfinding hearing (emphasis in opinion).** *Id.* at 609. Although the issue was not raised by father or DCS, the Court first addressed same procedural irregularities in the case and their impact on Father’s due process rights. *Id.* at 608. The Court observed that, three months after the trial court adjudicated the child to be a CHINS based on Mother’s admission, the court held a factfinding hearing and found the child to be a CHINS “as to [F]ather” based on the allegation in the initial petition. *Id.* Citing *In Re K.D.*, 962 N.E.2d 1249, 1255 (Ind. 2012), the Court noted that a child may be found to be a CHINS based on the action or inaction of both parents or only one parent, or even where neither parent has committed any wrongdoing. *S.A.* at 608. The Court said that Mother’s admitted drug use could be a sufficient basis for the CHINS adjudication, notwithstanding Father’s initial contribution to the child’s neglect. *Id.* at 608-089. The Court, quoting *In Re K.D.*, at 1254, noted that a CHINS adjudication requires that DCS prove each of the elements in the CHINS statute, and “each parent has the right to challenge those elements.” *S.A.* at 609. The Court said that, while Father might not be able to dispute the factual allegations admitted by Mother, “he has the right to contest the allegation that his [c]hild needs the coercive intervention of the court”, and, in these situations, due process requires that the trial court “conduct a fact-finding hearing as to the entire matter.” *In Re K.D.* at 1259. *S.A.* at 609. The Court held that, because a court cannot issue separate adjudications for each parent, the CHINS determination should be based on a consideration of the evidence in its entirety. *Id.*

The Court also noted that the trial court did not issue a dispositional decree or written findings reflecting its consideration of the statutory factors as required by IC 31-34-19-6 and IC 31-34-19-10. *Id.* at 610. The Court said that, by failing to issue a dispositional decree that specifically addressed, in part, its bases for placing the child with Grandmother rather than Father and for ordering participation in services seemingly unrelated to the allegations in the CHINS petition, the trial court violated the mandates of IC 31-34-19-6 and IC 31-34-19-10. Quoting *In Re N.E.*, 919 N.E.2d 102, 108 (Ind. 2010), the Court said that the trial court “may well have interfered with Father’s rights in the upbringing of [the child]” *S.A.* at 610.

**The Court found that there was insufficient evidence to support the CHINS adjudication; thus, the trial court erred in adjudicating the child to be a CHINS.** *Id.* at 612. Father did not dispute the trial court’s findings that he did not establish paternity until after the CHINS petition was filed and that he never offered any support for the child’s care while serving in the military, but maintained that he was now employed and in a position where he could care for and support the child. The Court, quoting *In Re R.S.*, 987 N.E. 2d 155, 159 (Ind. Ct. App. 2013), observed it is well established that “a CHINS adjudication may not be based solely on conditions that no longer exist. The trial court should also consider the parents’ situation at the time the case is heard.” *S.A.* at 611. The Court noted the following evidence: (1) by the time of the factfinding hearing, Father had been discharged from the Navy, had moved back to Indianapolis and had secured employment; (2) Father had contacted DCS and the court appointed special advocate as soon as he returned to Indianapolis and began developing a relationship with the child; (3) Father filed a motion for paternity testing upon learning of the CHINS petition and prepared a bedroom

for the child at his parents' home; (4) Father plans to stay with his parents, where the child is welcome, until he saves enough money to purchase his own home; (5) Father testified that he can take care of the child because they get along well, he has an "amazing support group" of relatives, and that, although he is slower at putting on the child's diapers and pajamas, he gets them on and the child doesn't mind. Id. Quoting In Re S.D., 2 N.E.3d at 1283, 1287 (Ind. 2014), the Court said our supreme court has established that the State's intrusion into parental rights should be limited to instances "where parents lack the *ability* to provide for their children, not merely where they encounter *difficulty* in meeting a child's needs (emphasis in S.D.). S.A. at 611. The Court said DCS must establish that Father is unlikely to meet the child's needs absent coercive court intervention Id. at 611-12. The Court found that neither the trial court's findings nor the other evidence in the record supported such a conclusion. Id. at 612. The Court said that, in this case, Father resolved the allegations raised in the CHINS petition by the time of the factfinding hearing. Id.

Although DCS and the court appointed special advocate also proffered "safety" concerns stemming from Father's PTSD diagnosis as supporting the need for a CHINS finding, the Court noted that the issue of Father's PTSD was not raised in the CHINS petition as a basis for DCS involvement. The Court observed that, after Father disclosed his diagnosis, DCS relied upon it as a *post hoc* justification for coercive intervention. Id. The Court found Father's voluntary admission of his PTSD history to be indicative of the fact that court intervention would not be necessary to compel Father into treatment. Id. The Court noted Father's testimony that: (1) he successfully completed PTSD treatment in the military ward of a behavioral health hospital and he continued to see a counselor after his release until it was no longer necessary and (2) part of Father's treatment regime was learning how to "understand [ ] when you have warning signs of things going awry." Id. The Court found no other basis in the record to support the trial court's conclusion that, even if Father requires additional PTSD treatment, he is unlikely to obtain such treatment without coercive intervention. Id. The Court quoted In Re K.D., 962 N.E. 2d at 1256 that "[s]peculation is not enough for a CHINS finding." S.A. at 612.