

# Children's Law Center of Indiana



## CHINS

8/18/16

In **In Re A.H.**, 58 N.E.3d 951 (Ind. Ct. App. 2016), a CHINS case, the Court reversed the juvenile court's CHINS adjudication of a seventeen-year-old child who had mental health issues and behavior problems and remanded with instructions to vacate the CHINS adjudication. *Id.* at 956. The child had a difficult past. She was the victim of bullying at school, which was so serious that she was admitted to a psychiatric hospital. At the age of fourteen, the child became pregnant, and when she was eight months pregnant, she was raped. As a result of these traumas, the child was often violent, police were called to the child's home several times, and the child was arrested on some of these occasions. She was diagnosed with anxiety disorder, separation anxiety, and depression, and Mother took the child to receive mental health care since the child was in fifth or sixth grade. In June 2015, DCS became involved with the child's family when it received a report that the child had struck her brother. A family case manager spoke to Mother, who stated that she had been taking the child to mental health providers, but the child refused to participate in the services. The child refused to speak to the case manager.

On July 14, 2015 DCS filed a CHINS petition for the child, which alleged that her "physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision." The juvenile court held an initial hearing on the CHINS petition, but Mother was not present as DCS had not served her. The court ordered in home placement, therapy, and a psychological evaluation for the child. At the next hearing two weeks later, DCS still had not served Mother and had not arranged any services. The court noted that Mother was willing to participate in services and ordered DCS to ensure that the services ordered at the initial hearing were arranged for the family by the end of the day. At each of the CHINS hearings on August 4, August 18, and August 25, 2015 the court found that DCS still had not arranged a psychological evaluation for the child. On August 25, 2015 the court "admonishe[d] DCS for not having the referral for the psychological evaluation for [Child] in place [and] order[ed] that DCS have the psychological evaluation... in place for [Child] within 48 hours." On September 2, 2015 the child became violent with her sister, and Mother called police and asked them to take the child to the hospital, where Mother hoped a psychological evaluation would be completed. DCS eventually referred Mother to Damar, but when Mother contacted Damar, she was told that Damar does not perform psychological evaluations. The first evaluation of the child began at her home on September 14, 2015 by Midtown Mental Health. Midtown required a second evaluation, but the Midtown representative who went to the child's home on October 14, 2015 did not have the training required to complete the evaluation. A psychological evaluation for the child was finally completed in November, 2015 by another agency, but the results were not available at the time of the factfinding hearings on November 16

and November 23, 2015. The juvenile court found the child to be a CHINS based on reasoning that Mother was unable to get the help the child needed, the child had a lot of issues which she had been displaying since she was in fifth or sixth grade, and the child's therapist had made some progress in getting the child to "open up" therapeutically. At the dispositional hearing in December 2015, DCS informed the court that Mother was doing everything she could to get help for the child, but progress was held up because the child "really doesn't want the help." The juvenile court entered its dispositional order on December 15, 2015. Mother appealed.

**Finding insufficient evidence that medical care was unlikely to be provided or accepted without the coercive intervention of the juvenile court, the Court reversed and remanded the CHINS adjudication with instructions to vacate it.** *Id.* at 956. The Court noted that, as part of her appeal, Mother challenged a January 12, 2016 order in which the juvenile court denied DCS's recommendation that the CHINS case be closed because the child had reached the age of eighteen. *Id.* at 953. The Court said the January order was issued after the dispositional order that Mother was currently appealing; therefore, it was not properly before the Court. *Id.* The Court found that DCS alleged that the child was a CHINS pursuant to IC 31-34-1-1, and observed that the Indiana Supreme Court has interpreted this provision to require "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." *A.H.* at 954, quoting *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). The Court found that, in this case, there was no evidence to support a finding that Mother would not provide care to the child without the coercive intervention of the court. *A.H.* at 955. The Court observed that, in making the CHINS adjudication, the juvenile court focused on the word "unable" in the statute [IC 31-34-1-1], and the judge stated "the statute also says unable and I do think that you've been unable for whatever reason to get the help your daughter needs." *Id.* The Court explained that the statute does not simply say "unable", but focuses on a parent's "inability, refusal or neglect...to supply the child with necessary food, clothing, shelter, medical care, education, or supervision." (Emphasis in opinion.) *Id.* The Court said there was no evidence in the record that Mother failed "to supply" the child with the help she needed, noting that there were no missed appointments with a therapist, there were no services Mother refused, and there were no medications Mother was unable to provide. *Id.* The Court understood DCS's and the juvenile court's frustration that the child had not yet recovered from the unimaginable traumas she had suffered, but clarified that, unless the lack of recovery was attributable to some action or omission by Mother, the lack of recovery alone could not support a CHINS determination. *Id.* The Court found the CHINS adjudication "particularly troubling in this case, given DCS's inexcusable lack of diligence in referring the child for a psychological evaluation." *Id.* The Court observed that, for DCS to fail to refer the child for a psychological evaluation for four months and despite multiple court orders, and then to pursue a CHINS petition in which it claimed that Mother was unable to supply the child with medical care, "is simply indefensible". *Id.* at 955-56. The Court questioned why the juvenile court put absolutely no consequences in place for DCS's repeated failures to comply with court orders, and said that DCS should not be permitted to violate court orders with impunity. *Id.* at 956. The Court observed that the coercive power of the State into family life was not appropriately applied to a parent who sought reasonable care for her traumatized child, merely because that care was unsuccessful through no fault of the parent. *Id.* at 951.