

# Children's Law Center of Indiana



## CHINS

1/7/15

In ***In Re L.C.***, 23 N.E.3d 37 (Ind. Ct. App. 2015), *trans. denied*, the Court reversed the trial court's CHINS adjudication of the nine-year-old child and remanded the case to the trial court for a new fact-finding hearing. *Id.* at 38. Father and Mother were in a dating relationship for nearly seventeen years and, during this time, the child was born. After the relationship ended, Father established paternity and obtained full custody of the child. In May 2013, the child went to live with Mother because of the child's reported "personal issues." On February 11, 2014, following a report of domestic violence between Mother and her boyfriend that occurred in front of the child, the juvenile court authorized and DCS filed a CHINS petition on the child. The petition alleged that: (1) Mother had been hospitalized after an altercation with her boyfriend; (2) Mother suffered a seizure after the incident and admitted that she was under the influence of alcohol during the incident; (3) the child witnessed the boyfriend punch Mother; and (4) Father is "unable to ensure the child's safety and well-being while in the care and custody of [Mother]." The child was removed and placed in therapeutic foster care. On February 25, 2014, Father appeared at the initial hearing, where he denied the allegations of the CHINS petition. Following the hearing, the trial court determined that the child should remain in the therapeutic foster care.

On April 8, 2014, Mother admitted the allegations in the CHINS petition. The juvenile court conducted a fact-finding hearing on April 8 and April 14, 2014. On April 8, at the beginning of the fact-finding hearing and before hearing any evidence, the court stated, "I will accept the admitted language, adjudicate [L.C.] to be a child in need of services." After testimony was presented on April 8, but before the hearing resumed on April 14, the court issued an order finding that: (a) it is in the best interest of the child to be removed from the home environment; (b) remaining in the home would be contrary to the health and welfare of the child; (c) the child is in need of services. The court heard additional evidence on April 14. On April 22, 2014, the court held a dispositional hearing, at which it continued the CHINS adjudication as to the child. Following the dispositional hearing, the court issued an order, which provided in relevant part: (1) [Father] allowed [the child] to return to the care of her mother... despite having knowledge that [Mother] had an issue regarding her consumption of alcohol without taking steps to assess whether this situation and been rectified; (2) while [Father] was not involved in the events which led to the filing of [this] action, his failure to insure that [the child] was properly supervised placed her in an endangering environment; (3) the coercive intervention of this Court is necessary to ensure that [the child] is placed in a safe environment until [Father] is provided services to learn to ensure [the child's] safety. The court granted DCS wardship of the child

ordered Father to participate in reunification services, and placed the child in a temporary in-home trial visit with Father. Father appealed.

**The Court concluded that the juvenile court erred by adjudicating the child a Child in Need of Services before the completion of the fact-finding hearing.** *Id.* at 42. The Court looked to IC 31-34-1-1, which states that a child is a Child in Need of Services if, before the child becomes eighteen years of age:

- (1) the child’s 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; and
- (2) the child needs care, treatment, or rehabilitation that:
  - (A) the child is not receiving; and
  - (B) is unlikely to be provided or accepted without the coercive intervention of the court.

*Id.* at 39. Quoting *In Re N.E.*, 919 N.E. 2d 102, 106 (Ind. 2010), the Court noted that “[T]he purpose of a CHINS adjudication is to protect children, not to punish parents.” *L.C.* at 39. The Court also observed that: (1) a CHINS adjudication is not a determination of parental fault but rather is simply a determination that a child is in need of services and is unlikely to receive those services without the court’s intervention; and (2) CHINS proceedings are civil actions and the State must prove by a preponderance of the evidence that a child is a CHINS. *N.E.*, 919 N.E. 2d 105. *L.C.* at 39. Father claimed that the juvenile court violated his due process rights by depriving him of “a meaningful CHINS hearing.” Quoting *In Re K.D.*, 962 N.E. 2d 1249, 1257 (Ind. 2012), the Court said that, “[d]ue process protections at all stages of CHINS proceedings are vital because [e]very CHINS proceeding has the potential to interfere with the rights of parents in the upbringing of their children.” *L.C.* at 40.

Quoting *In Re G.P.*, 4 N. E. 3d 1158, 1165-66 (Ind. 2014), the Court noted that the resulting balance of: (1) the private interests affected by the proceeding; (2) the risk of error created by the State’s chosen procedure; and (3) the countervailing government interest supporting use of the challenged procedure, must provide “the opportunity to be heard at a meaningful time and in a meaningful manner.” *L.C.* at 40. Quoting *In Re T.N.*, 963 N.E. 2d 467, 469 (Ind. 2012), the Court observed that when “one parent wishes to admit and one parent wishes to deny the child is in need of services, due process requires the juvenile court to conduct a factfinding hearing.” *L.C.* at 40. Quoting *In Re V.C.*, 967 N.E. 2d 50, 52-53 (Ind. Ct. App. 2012), the Court noted that “during a CHINS proceeding, a parent is entitled to (1) cross-examine witnesses; (2) obtain witnesses or tangible evidence by compulsory process; and (3) introduce evidence on his behalf.” *L.C.* at 40. The Court opined that the procedure employed by the juvenile court with respect to Father’s factfinding hearing in the *L.C.* case has been expressly rejected by the Indiana Supreme Court. *Id.* at 42. The Court concluded that, because Father challenged the allegations in the CHINS petition, due process required the completion of a factfinding hearing, including the presentation of evidence and argument by both parents, if present in person or by counsel, before the child was adjudicated a CHINS. *Id.*