

Children's Law Center of Indiana



CHINS

3/21/17

In *In Re N.C.*, 72 N.E.3d 519 (Ind. Ct. App. 2017), the Court reversed the juvenile court's CHINS adjudication and remanded to the juvenile court to vacate the CHINS finding. *Id.* at 527. The child, who was six years old when the CHINS proceedings began, is the youngest of four half-siblings who have the same mother. Each child has a different father. This appeal concerns only the six-year-old child and his father (Father). On April 27 and 28, 2016, DCS received reports indicating that Mother was using methamphetamine while caring for her children. The DCS case manager spoke to each of the children at school on April 28, and eventually spoke to Mother by phone. Mother admitted to using methamphetamine in the recent past, but refused to meet with the case manager without a court order. Because of Mother's admission, DCS arranged for the child and his half-siblings to begin staying with their maternal aunt as of April 28, 2016. In the ensuing days, Mother had multiple contacts with law enforcement after reporting her house was bugged, making suicidal threats, and complaining that maternal aunt would not return Mother's children to her. When the DCS assessment began, Mother and Father already had a prior case with a DR designation concerning support and custody issues for the child in Monroe Circuit Court. On April 29, 2016, Father filed a petition to modify custody in the Monroe Circuit Court, alleging that the child's situation was harmful to him and that DCS had indicated it was going to take action. On May 5, 2016, a CHINS petition was filed alleging that: (1) Mother admitted to recently using methamphetamine and refused to submit to a drug screen; (2) Mother was suicidal and admitted to a hospital for treatment; (3) one of the children reported there was domestic violence in the home between Mother and her boyfriend; (4) one of the children reported her belief that Mother was using drugs due to Mother's sudden weight loss and odd behavior; (5) Mother refused to cooperate with DCS and had a history with DCS. The petition also named the children's fathers and noted the four fathers were noncustodial parents.

Before the CHINS factfinding hearing was held, the Circuit Court held a hearing on the DR case, at which Father, Mother, and DCS appeared. Mother did not object to Father being awarded temporary custody of the child, but objected to a final custody determination before the CHINS factfinding hearing was completed. Noting that the child was the subject of a CHINS proceeding and that the juvenile court and DCS both approved the child's placement with Father, the Circuit Court found the evidence supported granting Father temporary custody in the DR case. The Circuit Court did not make a permanent change of custody, and stated that it would hold a hearing on either parent's request if the CHINS case was dismissed or the parties were discharged at a later date because the dispositional goals of the CHINS case were achieved. At the CHINS factfinding on September 1, 2016, the only testimony related to Father was that the child had been placed with him pursuant to the Circuit Court order for about two months, that the DCS case manager had visited Father's home the night before the hearing, the visit went well

and everything looked appropriate, and there were no allegations against Father. The juvenile court found the child to be a CHINS, noting that Father's custody order was temporary. At the dispositional hearing on September 27, 2016, the case manager testified that DCS had no current concerns that Father was using drugs and that Father had made the child available for visits with Mother and his half-siblings. The juvenile court issued a dispositional decree, stated that the court had concurrent jurisdiction with the Circuit Court on the issue of the child's custody, and said that if there was a modification of custody, then the CHINS case would be dismissed. The juvenile court awarded wardship of the children to DCS, and ordered the family to comply with the recommendations in the DCS report, which included twenty recommendations for Father. Following entry of the dispositional order, Father filed a notice of appeal.

Concluding DCS did not prove by a preponderance of the evidence that the coercive intervention of the court was necessary to ensure the child's well-being, the Court found the juvenile court erred in adjudicating the child to be a CHINS. *Id.* at 526. The Court first noted: (1) it appeared from a review of the lower court's records that juvenile court had discharged the parties in the child's CHINS case at a CHINS review hearing on February 2, 2017; (2) Mother had asked the Circuit Court for a hearing to modify the temporary custody order granting custody of the child to Father so custody could be returned to her; (3) Father had petitioned the Circuit Court for permanent custody of the child; and (4) a custody modification hearing is scheduled on June 1, 2017. *Id.* at 523-24. The Court said these events might seem to make the issues raised by Father in his appeal moot, but the Court concluded that a decision on the merits was warranted and necessary. *Id.* at 524. The Court opined that even a short-lived CHINS adjudication has serious consequences for families, and if the child's CHINS adjudication was erroneous, it must be corrected to protect the integrity of the family. *Id.*

In his appeal, Father contended the juvenile court erred in adjudicating the child to be a CHINS because there was no evidence the child's needs would go unmet in the absence of the coercive intervention of the court. The Court quoted *In Re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014), which states, "[n]ot every endangered child is a child in need of services, permitting the State's *parens patriae* intrusion into the ordinarily private sphere of the family." *N.C.* at 524. Quoting *In Re S.D.*, 2 N.E.3d at 1290, the Court noted that particularly when determining whether the coercive intervention of the court is necessary, the juvenile court "should consider the family's condition not just when the case is filed, but also when it is heard." *N.C.* at 524. The Court noted that although Father had petitioned the Circuit Court for custody of the child even before the CHINS petition was filed, the evidence supported the conclusion the coercive intervention of the court was necessary early in the CHINS proceedings because Father did not obtain a temporary custody order until two months after the CHINS petition was filed. *Id.* at 525. The Court opined that by the time the factfinding hearing occurred, Father had obtained a custody order, had custody of the child for two months, and DCS had no concerns about Father or the child's placement with him. *Id.* The Court said the domestic violence and substance abuse had occurred in *Mother's* home, and the child was no longer in that home (emphasis in opinion). *Id.* The Court observed that whatever neglect the child experienced due to Mother's issues at the outset of the case was rectified by being placed in Father's home by the time of the factfinding hearing. *Id.* The Court found that neither the juvenile court's findings nor the evidence in the record

supported the juvenile court's conclusion that its intervention was required *at the time of the fact-finding hearing* in order to protect the child's health and safety (emphasis in opinion). Id.