

Children's Law Center of Indiana



CHINS

2/12/15

In **In Re S.A.**, 27 N.E.3d 287 (Ind. Ct. App. 2015), *trans. denied*, the Court of Appeals granted the petition for rehearing filed by DCS on the Court's opinion in **In Re S.A.**, 15 N.E.3d 602 (Ind. Ct. App. 2014). The Court reaffirmed its prior opinion. Id. at 293. The facts of the case are discussed at **In Re S.A.**, 15 N.E.3d 602 (Ind. Ct. App. 2014), which was issued on August 15, 2014. The Court in **In Re S.A.**, 15 N.E.3d 602 at 612 found that there was insufficient evidence to support the CHINS adjudication; thus the trial court erred in adjudicating the child to be a CHINS.

On rehearing, the Court held that reversal of the CHINS adjudication did not effectively send the child back to Mother, who admitted that she needed help with substance abuse. Id. at 287. In its petition for rehearing, DCS contended that: (1) Mother had sole custody of the child; (2) Mother admitted she needed help with substance abuse and was not prepared to receive the child back into her care; (3) by reversing the CHINS adjudication, the Court effectively placed the trial court in the position of immediately returning the child to Mother. Father pointed out that he had filed a petition for modification of custody in the child's paternity case and had asked the trial court to hear evidence on his petition so the child could be released to him if no basis was found for continuing the child's CHINS status. The court denied Father's request. The Court was unsympathetic to modify custody to DCS's claims because the trial court had an opportunity to modify custody to Father but chose not to do so. Id. at 292. The Court said that the parties had not indicated whether a hearing had been held on Father's custody petition or whether a ruling had been issued, but the Court presumed that a hearing would be held and a ruling issued in due course if this had not occurred already. Id.

On rehearing, the Court clarified that, when the CHINS adjudication *can* involve both parents at the same time, it *should* involve both parents at the same time so there is one adjudication as to all facts pertaining to the entire matter (emphasis in opinion). Id. at 292. The Court was fully aware that, pursuant to IC 31-34-11-1, the trial court "shall complete" a factfinding hearing on a CHINS petition not more than sixty days after the petition is filed, with a sixty-day extension permissible if all parties consent, and that the court "shall dismiss the case without prejudice" upon motion if those deadlines are not met. Id. at 292 n.3. The Court clarified that, if multiple hearings are unavoidable, then the trial court should, if at all possible refrain from adjudicating the child a CHINS until evidence has been heard from both parents. Id. at 292-93. The Court opined that if an adjudication is unavoidable before evidence has been heard from

the second parent, then the trial court must give meaningful consideration to the evidence provided by the second parent in determining whether the child remains a CHINS. Id. at 293.