

Children's Law Center of Indiana



CHINS

2/12/14

In ***In Re S.D.***, 2 N.E. 3d 1283 (Ind. 2014), the Indiana Supreme Court reversed the trial court's CHINS adjudication of Mother's two-year-old child, who had gone into cardiac arrest in a South Bend hospital as a result of previously undiagnosed cardiomyopathy. *Id.* at 1291. On March 26, 2012, Mother, the parent of four older children, took her youngest two-year-old child to an emergency room in Gary because of rapid respirations. The emergency room transferred the child to a hospital in South Bend, and then the child was transferred to Riley Hospital in Indianapolis. At Riley Hospital, the child was given a tracheostomy and a gastrostomy and placed on a ventilator. Initially, the child's four siblings stayed with relatives in Gary while Mother remained at the hospital in Indianapolis with the two-year-old child and was actively involved in the child's care. During the siblings' spring break in early April, Mother abandoned the family's rental home and belongings in Gary and moved to Indianapolis. For several weeks, the family's housing was transient and Mother failed to enroll the school-aged siblings in school, became disengaged from the two-year-old child's care plan and spent less time with the child. DCS took custody of all five of Mother's children in early May with Mother's consent to allow Mother to focus on the two-year-old child's treatment. CHINS petitions were filed on all of Mother's children, based on the two-year-old child's special medical needs and Mother's lack of steady housing and other needs for the children. By the time of the factfinding hearing, Mother had moved into a three bedroom duplex, renovated it adequately for the family to live in, DCS had returned the four older siblings to her care, the two-year-old child no longer needed the ventilator, Mother and a DCS approved back up caregiver had finished two classroom sessions of tracheostomy training, and Mother had learned how to administer medication through the child's gastrostomy tube. At the factfinding hearing, DCS's position was that Mother had "done a lot," but she had also "received a lot of help," and "still needs a lot of help," because (1) the child could not be released from Riley Hospital and returned home until Mother and the backup caregiver had completed a 24 hour practice sessions at the hospital on caring for the child's tracheostomy; (2) Mother's ongoing ability to pay rent remained uncertain; and (3) Mother had not shown an ability to navigate social assistance programs without caseworker's help. Mother's position was that she had needed help when she first moved to Indianapolis, but had been resourceful on her own, and had chosen not to rely on government assistance while family support was available; wherefore, none of the children were still CHINS. The trial court found that Mother was providing for the older siblings at the time of the factfinding, released wardship, and closed the case as to the older siblings. The trial court found the two-year-old child to be a

CHINS because no one in the home had “completed the medical training needed” to meet her “special medical needs.” Mother appealed, and the Court of Appeals affirmed the trial court’s decision. The Indiana Supreme Court granted transfer, thus vacating the Court of Appeals opinion.

The Court opined that the evidence could not reasonably support an inference that Mother was likely to need the court’s coercive intervention to complete the last step of medical training, and, when the coercion is not necessary, the State may not intrude into a family’s like. *Id.* at 1290. The Court observed that a CHINS adjudication under IC 31-34-1-1 requires three basic elements: (1) that the parent’s actions or inactions have seriously endangered the child; (2) that the child’s needs are unmet; and (3) (perhaps most critically) that those needs are unlikely to be met without State coercion. *Id.* at 1287. Quoting *Lake Cnty. Div. of Family & Children Servs. v. Charlton*, 631 N.E. 2d 526, 528 (Ind. Ct. App. 1994), the Court said the final element guards against unwarranted State interference in family life, reserving that intrusion for families where the parents lack the *ability* to provide for their children, not merely where they “encounter *difficulty* in meeting a child’s needs.” (Emphasis in opinion). *S.D.* at 1287. The Court said that its review of whether coercive intervention was required must also account for the trial court’s judgment that the four older siblings were *not* in need of services (emphasis in opinion). *Id.* at 1288. The Court noted that, when the CHINS petitions were filed, Mother had not enrolled the children in school, having been unsure where to enroll them until their housing stabilized. *Id.* The Court also found the fact that Mother had obtained housing, renovated it, and furnished it without DCS help, supported Mother’s assertion that she had been very resourceful on her own, without the State’s coercion. *Id.* The Court said that the evidence favorable to finding the child to be in need of services was limited to evidence that Mother had difficulty establishing priorities, some indication that Mother might not comply voluntarily with DCS’s services, and her failure to complete the 24-hour home care training, although she had long known of that requirement. *Id.* at 1289. The Court believed that any reasonable view of those facts must also account for Mother’s larger situation—an impoverished single Mother of five, who was forced to abruptly uproot and relocate to a new city to tend to her toddler’s life-threatening illness, while continuing to provide for her other children. *Id.* The Court said that even though some of Mother’s decisions were questionable, the Court could not say that she was less effective under duress than any similarly situated parent of a special-needs child. *Id.* The Court could not say Mother was unwilling or unable to do so without the court’s compulsion, so the State’s coercive intervention into the family could not stand. *Id.* at 1290.

The Court opined that Mother’s appeal was not moot due to the harmful collateral consequences for Mother of a CHINS adjudication. *Id.* at 1290. After the Supreme Court granted transfer in this case, DCS moved to dismiss Mother’s appeal, alleging that it was moot because the child had been returned to Mother’s care, the CHINS case had been closed, and no effective relief could be granted. The Court agreed with Mother that a CHINS finding could have harmful collateral consequences for a parent, and that reversal would grant real relief to Mother. *Id.* The Court noted that a prior CHINS finding: (1) can relax the State’s burden for terminating parental rights pursuant to IC 31-35-2-4(b)(2)(B)(iii), which states that termination may be proven if a child has been adjudicated CHINS on two prior occasions without proving either that the conditions resulting in the child’s removal will not be remedied or that continuing the

relationship threatens the child's well-being; (2) may have adverse job consequences such as precluding Mother from employment with any DCS contractor; (3) may preclude Mother from becoming a licensed foster parent. Id.