



CHINS
2/20/20

In **A.C. v. Ind. Dep't of Child. Servs. (In re M.S.)**, 140 N.E.3d 279 (Ind. 2020), the Indiana Supreme Court held that the 120-day statutory constraint on a CHINS proceeding may only be extended for good cause; in this case, since Mother herself moved for a good faith continuance which placed the CHINS proceeding past the 120-day limit, the Court affirmed the trial court's denial of Mother's motion to dismiss the CHINS proceeding. Id. at 280.

DCS filed a CHINS petition on November 12, 2017 regarding the child, who was removed from Mother's care and was placed with Maternal Grandmother. IC 31-34-11-1(a) provides that a factfinding hearing must be completed with sixty days, with an allowable sixty-day extension under subsection (b). The sixty-day time period would expire in mid-January 2018, and the 120 total allowable time would expire on March 15, 2018. The matter was continued to February 23, 2018; Mother requested discovery from the police department relating to the death of one of Mother's other children. The discovery request resulted in a hearing to quash a subpoena, and at the hearing, Mother requested a continuance in order to resolve the discovery dispute. The trial court indicated this might place the matter beyond the 120-day statutory limit, but all parties, Mother included, agreed to waive the 120-day requirement. A full factfinding hearing was held on March 16, 2018, and at the hearing, Mother submitted voluminous video recordings into evidence; consequently, the trial court gave Mother additional time to identify which videos were most relevant to the CHINS petition. On April 10, 2018, Mother requested more time, and the factfinding hearing was eventually concluded on April 17, 2018. The final order adjudicating the child as a CHINS was issued on October 8, 2018. At the October 31, 2018 dispositional hearing, Mother requested that the CHINS matter be dismissed because it was completed outside the 120-day statutory limit, and Mother cited recent case law from the Court of Appeals on the topic. The trial court denied this request, and Mother appealed. The Court of Appeals reversed and remanded the matter to the trial court with instructions to dismiss the case in Matter of M.S., 124 N.E.3d 1234, 1237 (Ind. Ct. App. 2019). Transfer was granted.

The trial court did not abuse its discretion in granting Mother's request for a continuance, as Mother demonstrated good cause for doing so; in turn, because Mother showed good cause for a continuance, the trial court did not err in denying Mother's motion to dismiss the CHINS proceeding for exceeding the 120-day limit. The Court noted that the Court of Appeals decided several cases regarding the timelines in IC 31-34-11-1; two such cases were Matter of J.R., 98 N.E.3d 652 (Ind. Ct. App. 2018) (holding that a factfinding hearing must be completed within 120 days, and failure to do so is grounds for dismissal) and Matter of T.T., 110 N.E.3d 441, 443 (Ind. Ct. App. 2018) (holding that the General Assembly clearly intended the 120-day limit to be a hard deadline, even when the mother had acquiesced to DCS's request for a continuance placing the matter past 120 days; there was no provision for waiver of the 120 day limit). Id. at 283. The Court noted that these cases, both of which had not sought transfer to the

Indiana Supreme Court, were instructive but not controlling in its decision. Id. The Court opined that while it was clear the General Assembly had made CHINS cases a priority and had provided a mechanism for their dismissal if the requirements were not met, the trial court had not acted contrary to law in denying Mother's motion to dismiss. Id. First, Matter of J.R. and Matter of T.T. presented factually different circumstances from the present case, where Mother herself moved for the continuance for good cause, and explicitly waived both the 60-day and the 120-day time limits. Id. at 283-84. Second, CHINS proceedings are civil proceedings which are subject to the Indiana Rules of Trial Procedure. Id. at 284. When a statute is in conflict with a Trial Procedure Rule, the Trial Procedure governs on matters of procedure. Id. (internal citations omitted). The Court opined that IC 31-34-11-1 is a procedural rule because it governs timelines and mechanisms for extending timelines; thus, even though the statute provides a hard deadline, the Indiana Trial Rules allow for trials to be postponed or continued at the discretion of the court and for good cause shown. Id., citing Ind. Trial R. 53.5. This trial rule allowing for a good cause continuance trumps the procedural requirements of IC 31-34-11-1. Id. Lastly, allowing for a good cause continuance past the hard 120-day deadline provides all parties with fairness and effectuates legislative intent over strict literal meaning of words. Id. at 284-85. Since the purpose of a CHINS proceeding is to protect children, and not punish parents, trial courts are given great discretion on matters such as continuances. Id. The Court noted that unlike IC 31-34-11-1(a), which provides that the 60-day limit may be extended for any reason, IC 31-34-11-1(b) and Ind. Trial R. 53.5 allow permit for a matter to be extended past the 120-day deadline for good cause. Id. at 285. In a footnote, the Court urged trial court to carefully consider where there was a true showing of good cause, which may require a hearing to determine if good cause was shown; the Court urged trial courts to make a finding on the record that good cause was shown for an extension of time. Id. at 285, n.3.