



CHINS

7/31/20

In **Matter of E.T.**, 152 N.E.3d 634 (Ind. Ct. App. 2020), the Court held (1) Father waived his ability to allege that the factfinding hearing and the disposition hearing were outside the allowed timeframe, and Father showed no fundamental error in their occurring outside the allowed timeframe; and (2) Father failed to show any due process error in finding the child to be a CHINS with respect to him in a separate proceeding from Mother's admission that the child was a CHINS.

The trial court did not commit fundamental error when it held Father's factfinding hearing and disposition hearing outside the statutory timeframes. Id. at 639-40. In response to Father's argument, DCS argued that the fundamental error doctrine did not apply because Father received a fair and full hearing and he failed to show substantial harm. Id. at 638. IC 31-34-11-1 provides:

- (a) Except as provided in subsection (b), unless the allegations of a petition have been admitted, the juvenile court shall complete a factfinding hearing not more than sixty (60) days after a petition alleging that a child is a child in need of services is filed in accordance with IC 31-34-9.
- (b) The juvenile court may extend the time to complete a factfinding hearing, as described in subsection (a), for an additional sixty (60) days if all parties in the action consent to the additional time.
- ...
- (d) If the factfinding hearing is not held within the time set forth in subsection (a) or (b), upon a motion with the court, the court shall dismiss the case without prejudice.

IC 31-34-19-1 provides:

- (a) The juvenile court shall complete a dispositional hearing not more than thirty (30) days after the date the court finds that a child is a child in need of services...
- (b) If the dispositional hearing is not completed in the time set forth in subsection (a), upon a filing of a motion with the court, the court shall dismiss the case without prejudice.

The trial court has the ability to enlarge the 120-day timeline if good cause is shown. IC 31-34-9-7. The Court noted that Father's factfinding hearings and dispositional hearings were held outside the statutory timeframes. Id. at 639. However, all relevant statutes provided a mechanism for addressing this—Father's ability to file a motion to dismiss, which he did not do. Id. In order to preserve this right and the ability to appeal the issue, a party must file the motion to dismiss. Id. (internal citations omitted). Father failed to do so, so his argument was waived. Id. Father

sought to avoid waiver by alleging fundamental error, which requires an error to be so egregious and antithetical to fundamental due process that the trial court should have acted despite a party's failure to do so. Id. at 639-40. Father did not identify any harm that made a fair hearing impossible; he had both hearings in full, he had counsel, and had a meaningful chance to contest the CHINS allegations. Id. Furthermore, Father's arguments that this undercut his ability to bond with the child failed; he was given a permanency plan of reunification and was granted time to complete services and establish a relationship. Id.

The trial court did not violate Father's due process rights by adjudicating the child to be a CHINS in a separate proceeding involving Mother without giving him an opportunity to be heard. Id. at 642. The Court noted that the focus of a CHINS proceeding is the child and their best interests, not the guilt of a parent. Id. at 640. "Because a CHINS determination regards the status of the child, a separate analysis as to each parent is not required in the CHINS determination stage." Id. (internal citations omitted). The Court noted that due process and prior case law demands that, when one parent wishes to admit and the other parent wishes to deny CHINS allegations, the juvenile court must conduct a factfinding hearing. Id. at 640-41 (internal citations omitted). Generally, parents have the ability to cross examine witnesses, obtain witnesses and evidence, and introduce evidence. Id. at 641. Father asserted that the trial court's determination that the child was a CHINS as to Mother deprived him of due process, as he did not participate in that process, where Mother admitted the allegations. Id. Father relied heavily on In re S.A., 15 N.E.3d 602 (Ind. Ct. App. 2014), affirmed on rehearing at 27 N.E.3d 287 (Ind. Ct. App. 2015). However, the Court found this distinguishable from S.A.; separate hearings were unavoidable in this case, because of the protective order and domestic violence between Mother and Father. Id. The Court also noted that despite Father's allegations, the trial court did not actually adjudicate the child to be a CHINS based on Mother's admission alone. Id. at 642. Father had his own hearing and all proper chances to cross examine witnesses and present evidence, and the CHINS determination was based on the evidence at Father's hearing. Id.