

# *Children's Law Center of Indiana*



CHINS

8/25/17

In In Re L.S., 82 N.E.3d 333 (Ind. Ct. App. 2017), the Court affirmed the trial court's denial of the CHINS petition for Parents' three children, who were born on October 14, 2005; January 27, 2008; and November 5, 2009. Id. at 342. Parents were married. Their children were previously adjudicated CHINS in 2014 based on Father's "violence against Mother." After the 2014 CHINS case was closed, Parents continued marital counseling and counseling and medication for their oldest child, who was diagnosed with Disruptive Mood Disregulation Disorder (DMDD) and Attention Deficit Disorder (ADD). On October 28, 2016, law enforcement responded to the family's home after a 911 call on a domestic violence incident in the children's presence. Mother cooperated with law enforcement and reported that: (1) Father had "belted" Mother back before he grabbed the oldest child and wrestled her to the ground; and (2) Father held Mother by the neck against the wall while screaming very loudly in her ear. Father had spanked the oldest child with a belt after she struck him in the head with a suitcase. DCS filed a CHINS petition for the children. On November 15, 2016, a court issued a protection order that restrained Father from any contact with Mother or the children.

The trial court held a factfinding hearing on the CHINS petition on three days, beginning on January 12, 2017 and concluding on April 21, 2017. On April 24, 2017, the court issued its order denying the CHINS petition. The Court noted the trial court's findings, which included:

(1) Mother filed a Petition for Dissolution of Marriage on November 15, 2016; (2) a provisional dissolution order awarded Mother possession of the marital residence, and issues of custody, parenting time, and support were referred to Tippecanoe Superior Court II pending the conclusion of the CHINS proceeding; (3) Mother had gained employment as a substitute teacher and was renewing her teaching license for future employment; (4) Father was residing in his van or at a homeless shelter, and his employment had been terminated; (5) the oldest child was receiving therapy twice per month, and the therapist believed the child had made progress with decreasing her anxiety and had improved her ability to manage emotions consistently; (6) the oldest child's therapist reported a current diagnosis as Adjustment Disorder, Mixed and ADD, but did not believe the child met the criteria for DMDD; (7) the children had continued to remain in Mother's care since the onset of the CHINS case; (8) Mother had demonstrated a willingness to protect the children from Father, including reporting violations of the Order for Protection; (9) the trial court found that coercive intervention was not necessary due to the dissolution case, the existing Order for Protection, and the retention of firearms by the Sheriff.

**The Court opined that Father's challenge to the trial court's interlocutory denials of his requests for supervised visitation with the children was moot. Id. at 338-39. The Court noted that the dissolution court had sole jurisdiction over parenting time issues in this case. Id. at 338.**

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The Court observed that Parents had agreed to weekly supervised parenting time for Father with the two youngest children, and that Father would work with the oldest child's therapist towards attending therapy with the oldest child. Id.

**The Court found the trial court did not violate Father's right to due process in scheduling the factfinding hearing dates or in issuing its final order.** Id. at 339. Father contended that his right to due process was violated because the factfinding order was entered 159 days after DCS filed the CHINS petition. Father maintained that IC 31-34-11-1 required the trial court to complete a factfinding hearing not more than sixty days after the CHINS petition was filed, and stated that he had not agreed to any continuance or extension. The court responded that Father was incorrect, noting: (1) the first day of the factfinding hearing, January 12, 2017, was held within the statutory sixty day timeframe; (2) at the conclusion of the January hearing, Father's counsel expressly asked for a hearing date that would accommodate a "longer" hearing; (3) Father did not object to the March 8, 2017 hearing date; (4) at the conclusion of the March 8 hearing, Father's counsel agreed to the proposed April 21, 2017 hearing date; (5) the trial court issued its final order three days after the factfinding hearing was concluded. Id.

**The Court found Father had not demonstrated that he was denied his right to due process in his efforts to "present evidence" during the factfinding hearing.** Id. at 339. Father complained that: (1) he was "given twelve (12) minutes to present evidence"; and (2) the trial court "sternly directed [him] to 'limit' his answers" when DCS examined him. The Court found Father's contentions on this issue were "entirely without merit." Id. The Court observed that, over the course of three days, Father was able to examine and cross-examine multiple witnesses, and Father testified at all three hearings. Id.

**The Court held the trial court's denial of the CHINS petition was not clearly erroneous.** Id. at 341-42. Father claimed the trial court erred when it did not find a rebuttable presumption under IC 31-34-12-4 that two of the children were CHINS. The Court noted DCS alleged that all three children were victims of neglect and that the oldest child and the middle child were victims of abuse. Id. at 340. The Court looked to IC 31-34-12-4, which provides that there is a rebuttable presumption that a child is a CHINS because of the act or omission of a parent if the State introduces competent evidence of probative value that the child has been injured; at the time the child was injured, the parent had care, custody or control of the child or legal responsibility for the care, custody, or control of the child; the injury would not ordinarily be sustained except for the parent's act or omission; and there is a reasonable probability that the injury was not accidental. Id. In response to Father's argument, the Court responded that Father had not directed the Court to any evidence presented at the factfinding hearing that the children had suffered *injuries* as a result of an act or omission by Father or Mother, but only directed the Court to evidence that a "physical altercation" occurred involving the two children, Father, and Mother (emphasis in opinion). Id. at 341. The Court found Father had not demonstrated error on this issue. Id.

Father contended that the trial court should have found the children to be CHINS based on his admission that they were CHINS. The Court explained that, while Father's admission was

evidence in support of a CHINS determination, the trial court was not *required* to find the children were CHINS based on his admission (emphasis in opinion). *Id.*

Father also contended the evidence, which included that there was domestic violence in the home and that Mother stopped giving medication to the oldest child, did not support the trial court's conclusion that the coercive intervention of the court was unnecessary. The Court disagreed, noting that: (1) since Father had left the home and Mother obtained the protection order, there was no more domestic violence; (2) Mother testified she had "discussions with the oldest child's doctor" before discontinuing the child's medication; (3) Mother presented evidence that she had taken several measures to prevent domestic violence between herself and Father and to protect the children from domestic violence in the future. *Id.* at 341. The Court found Father's contentions amounted to a request to reweigh the evidence, which the Court will not do. *Id.*