

Children's Law Center of Indiana



CHINS

7/28/16

In ***In Re S.K.***, 57 N.E.3d 878 (Ind. Ct. App. 2016), a CHINS case, the Court reversed the juvenile court's order adjudicating Parents' four children to be CHINS. *Id.* at 883. Mother and Father were married in 2002, and had four daughters, who were born in 2003, 2004, 2005, and 2007. Mother and Father filed for dissolution of their marriage, and Father was awarded temporary custody of the children. The dissolution case was dismissed and a final custody determination was never made. The children continued living with Father. For three years, they lived in Mooresville and attended Mooresville schools. Next, Father and the children lived with the father's aunt and uncle for nine months, and the children attended Wayne Township schools in Indianapolis. At the beginning of 2015, Father's housing and employment became unstable, and he and the children lived with a friend and then in a hotel with the children's paternal grandfather. Father did not have enough money to pay the hotel bill. When Father knew that he and the children were about to become homeless, he took the children to live with Mother at the end of May, 2015. During this period of instability, the children changed schools twice, attending schools in Monrovia and Plainfield. The children attended school at all times and maintained above average grades. On June 10, 2015, DCS received a report that Mother's boyfriend was using illegal drugs in the children's presence. On June 15, 2015, the DCS case manager went to Mother's home and interviewed the children. The oldest three children told the case manager they had never seen Mother or her boyfriend take any pills. The youngest child said that Mother's boyfriend "takes a lot of pills for his back." The case manager took samples from Mother and her boyfriend for drug screening, and left the children with Mother. On June 19, 2015, Mother's drug screen was positive for methamphetamine and amphetamine. Mother also admitted taking Aderall on the morning she gave the sample. The case manager removed the children, placed them with Mother's aunt and uncle (Aunt and Uncle), and administered a second drug screen. Mother tested positive for amphetamine, but the level had dropped. DCS continued screening Mother weekly, and all subsequent screens were negative. On June 22, 2015, the case manager contacted Father, who said he was still looking for an apartment, and at that time, the best place for the children was with Aunt and Uncle. Ten days later, after the juvenile court placed the children in the care of DCS, Father moved into a home with his girlfriend, their five-month-old son, and the girlfriend's son from a former relationship. Two weeks after moving into his new home, Father told the case manager that he would take the children if Mother could not take them.

DCS filed a CHINS petition, and the juvenile court held a factfinding hearing on August 12 and 26, 2015. At the hearing, Father testified that he wanted the children and it was in their best interests to live with him, but he needed financial help. Father testified that he earned \$11.25 per hour working in a warehouse, and that he had received only \$20 in child support during the four

years the children lived with him. Uncle also testified that: (1) the children withdrew and refused to speak to Aunt or Uncle after visits and telephone calls with Parents; (2) he observed all of the visits and did not hear anything that would lead to the children's withdrawal; (3) the children disliked Father's girlfriend and were upset when her name came up in conversation; (4) when he discussed the children's behavior with Mother, she recommended that the children see a counselor. The juvenile court concluded that the children's emotional condition was "seriously endangered as a result of the inability, refusal, or neglect of their parents to provide shelter, education, and supervision." The court concluded that the children were experiencing stress, that their emotional condition was seriously endangered if they did not receive counseling, and "[t]he parents are unlikely to provide or accept counseling for the girls without the Court's coercive intervention." The court adjudicated the children to be CHINS. Mother and Father appealed, challenging the sufficiency of the evidence supporting the CHINS adjudication.

The Court concluded the juvenile court's determination that the children were CHINS was clearly erroneous. *Id.* at 883. Citing *In Re A.C.*, 905 N.E.2d 458, 461 (Ind. Ct. App. 2009), the Court explained that, in reviewing a trial court's CHINS determination: (1) it considers whether the evidence supports the findings and whether the findings support the judgment; and (2) findings are clearly erroneous when the record contains no facts to support them, either directly or by inference, and a judgment is clearly erroneous when it relies on an incorrect legal standard. *Id.* at 881-82. The Court noted that the CHINS petition was filed pursuant to IC 31-34-1-1, and, according to *In Re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014), a CHINS adjudication under this statute "requires three basic elements: that the parent's actions or inactions have seriously endangered the child, that the child's needs are unmet, and (perhaps most critically) that those needs are unlikely to be met without State coercion." *S.K.* at 882. The Court opined that the record and findings did not support a conclusion that the children lacked shelter, education, or supervision. *Id.* The Court observed that: (1) the children and Father had stable housing for nearly four years; (2) it was not until 2015 that Father went through a period of extreme housing instability, and he brought the children to Mother before they became homeless; (3) Father found stable housing without state intervention and before the factfinding hearing; (4) the fact that both parents have struggled with housing, even endured periods of homelessness, did not support the juvenile court's conclusion that the children were endangered, particularly when the children have never been without shelter. The Court opined that there was no evidence that the children had been deprived of an education, despite the fact that they have changed schools multiple times. *Id.* The Court observed that the record reflected the children had not only consistently attended school, but also maintained above average grades. *Id.*

The Court was not persuaded that the positive drug screens by Mother and her boyfriend for methamphetamine and amphetamine on a day when they were the sole caregivers for the children was sufficient to establish the children were endangered. *Id.* The Court noted that: (1) Mother tested positive for methamphetamine and amphetamine twice, four days apart, and her subsequent weekly drug screens were negative; (2) the children reported to the case manager that they had not seen Mother take pills so she did not expose them to her drug use; (3) the case manager left the children with Mother on the day Mother tested positive, leading to the inference that Mother was not impaired at the time; (4) the Court previously held that the "finding of an isolated use of methamphetamine, without more, does not support the conclusion of law that [the child] was a CHINS", quoting *In Re L.P.*, 6 N.E.3d 1019, 1021 (Ind. Ct. App. 2014). *S.K.* at 883.

The Court opined that the juvenile court's findings did not support its conclusion that the children's emotional health was seriously endangered. Id. The Court noted that none of the children's counselors testified about the nature or extent of any emotional or mental health issues the children had, leaving the juvenile court to rely upon the observations of the children's parents and caretakers. Id. The Court held that the following findings were not sufficient to support the conclusion that the children were *seriously* endangered (emphasis in opinion): (1) the children did not get along with Father's girlfriend; (2) the children sometimes quarrel and say hateful things to each other; (3) the children are upset and withdraw after visits with Mother; (4) the children are anxious about having to move or change schools. Id. The Court opined the conclusion that coercive intervention was required to obtain counseling for the children was unsupported because the only evidence was Uncle's testimony that Mother suggested the children receive counseling. Id.