

Children's Law Center of Indiana



CHINS

10/27/17

In **Matter of S.C.**, 96 N.E.3d 597 (Ind. Ct. App. 2017), the Court reversed and remanded the juvenile court's determination that Father's two-year-old child was a CHINS. *Id.* at 580. The child was born out of wedlock on January 23, 2015. On June 22, 2016, Mother filed a Verified Petition to Establish Paternity of Child and Provide Support. Mother's petition alleged that either Father or S.S. was the biological father of the child. DCS received a report of child abuse/neglect on June 24, 2016. The report alleged that, while the child was in the home with Mother and S.S., Mother shot S.S. in the head and fled the scene with the child after the incident. The report also alleged that S.S. was in the intensive care unit in unstable condition after undergoing surgery for his wounds. On June 29, 2016, DCS filed a CHINS petition alleging that the child and his half-sibling were CHINS pursuant to IC 31-34-1-1 due to neglect. The child was placed in foster care, and his half-sibling was placed with his maternal aunt. On August 18, 2016, the juvenile court held a factfinding hearing for Mother, and she admitted that her children were CHINS. On August 26, 2016, the paternity court ordered the case concerning Father's paternity of the child transferred to the juvenile court and 'bundled' for purposes of pretrial motion and trial with the CHINS case pursuant to Marion Superior Court, Civil Division Rule 76.2. DCS filed an amended CHINS petition naming S.S. and Father as alleged fathers of the child. On September 22, 2016, the court ordered both S.S. and Father to provide a DNA sample to establish paternity of the child. The results, reported on September 29, 2016, were discussed at the October 6, 2016 pre-trial hearing and the court noted that Father "could not be ruled out as the alleged father of [the child]." The court stated that Father had a right to parenting time with the child. The court ordered that S.S. be dismissed from the CHINS action based on DNA test results that he was not the biological father of the child.

On November 22, 2016, DCS filed an affidavit with the court requesting placement of the child with Father, stating that Father had been visiting with the child twice weekly, visits were going well and there were no safety concerns, and Father's home was appropriate for placement of the child. The court granted the request. At the final pretrial hearing, Father's counsel stated that Father needed to establish paternity and wanted to pursue custody outside of the CHINS case. On February 9, 2017, at the factfinding hearing, Father's counsel asked the court to enter a decree of paternity but stated there was no agreement on custody of the child. The court responded that, due to recent case law, it was unable to order custody if there was not an agreement. Father and DCS agreed to stipulated facts, including that DNA test results confirmed Father's paternity, no paternity decree had been entered, Mother remained incarcerated on pending charges of attempted murder, with a jury trial date of April 10, 2017, and the child had been placed with Father on November 23, 2016. Based on the stipulations and noting Father was the child's noncustodial parent, the court adjudicated the child to be a CHINS. In its findings, the

The Derelle Watson-Duvall Children's Law Center of Indiana - A Program of Kids' Voice of Indiana
9150 Harrison Park Court, Suite C • Indianapolis, IN 46216 • Ph: (317) 558-2870 • Fax (317) 558-2945
Web Site: <http://www.kidsvoicein.org> • Email: info@kidsvoicein.org

court stated that a change in custody would deprive Mother of the reasonable opportunity to work toward reunification and would be in contravention of the policy and purpose of the CHINS action as stated in Indiana statute and reiterated in recent case law. Neither DCS nor Father requested any services. The court also entered a dispositional order, which included that the court was not ordering services for Father.

On July 17, 2017, a CCS entry was recorded in the child's paternity case. The order noted that Mother was incarcerated, Father was given physical and legal custody of the child, and Mother would have phone contact with the child at Father's discretion. Father was ordered to provide health insurance for the child, and the matter was transferred to the Marion Circuit Court, Paternity Division for all future matters.

Based upon the juvenile court's findings that Father was the child's biological father and DCS had no concerns for the child's safety in Father's care, the Court concluded that the CHINS adjudication was clearly erroneous. *Id.* at 586. Father argued that DCS did not prove the child's physical or mental health was seriously impaired or endangered and did not prove the child needed care, treatment, or rehabilitation that he was not receiving. *Id.* at 584. Father asserted that, since both the paternity case and the CHINS case were before the juvenile court, the court could have entered a custody order in the CHINS case, entered the paternity decree and awarded initial custody, or taken the CHINS case under advisement until the paternity decree and custody order was issued. *Id.* DCS argued: (1) there was no paternity decree or custody order which legally allowed Father to act on behalf of the child regardless of the DNA testing that indicated Father was the child's biological parent; (2) a change of custody for Father could not be accomplished without holding a hearing in which Mother was provided an opportunity to challenge Father's motion; and (3) Father could not make decisions on the child's behalf without a change of custody determination. *Id.* at 585.

The Court observed that the July 17, 2017 paternity order, which granted Father physical and legal custody if the child with Mother to have telephone contact at Father's discretion, might make Father's appeal moot. *Id.* at 583. The Court concluded that a decision on the merits was warranted and necessary because a CHINS adjudication, even one that is short-lived and naturally resolved by the circumstances of the case may jeopardize future family stability. *Id.* Citing *Matter of N.C.*, 72 N.E.3d 519, 524 (Ind. Ct. App. 2017), the Court explained that "[i]f a CHINS adjudication is indeed erroneous, it must be corrected to protect the integrity of the family moving forward." *S.C.* at 583.

The Court noted that the issue was whether the juvenile court's CHINS adjudication for the child was clearly erroneous. *Id.* Citing *In re N.E.*, 919 N.E.2d 102, 106 (Ind. 2010), the Court also noted that a CHINS designation focuses on the condition of the child rather than an act or omission by the parent. *S.C.* at 583. Citing *In re K.D.*, 962 N.E.2d 1249, 1259 (Ind. 2012), the Court explained that "DCS must prove three elements for a juvenile court to adjudicate a child as a CHINS; it must first prove the child is under the age of eighteen, it must prove one of the eleven statutory circumstances that would make a child a CHINS, and finally, in all cases, DCS must prove the child needs care, treatment, or rehabilitation that he or she is unlikely to be

provided or accepted without the coercive intervention of the court.” S.C. at 585. Quoting In re S.D., 2 N.E.3d 1283, 1287 (Ind. 2014), the Court observed that the final element requires the coercive intervention of the court into the family and “guards against unwarranted State interference in family life, reserving that intrusion for families ‘where parents lack the ability to provide for their children,’ not merely where they ‘encounter difficulty in meeting a child’s needs.’” S.C. at 585. Quoting K.B. v. Indiana Dep’t of Child Servs., 24 N.E.3d 997, 1001 (Ind. Ct. App. 2017), the Court clarified that a CHINS adjudication “may not be based solely on conditions that no longer exist. The trial court should also consider the parents’ situation at the time the case is heard.” S.C. at 585. The Court opined that DCS did not prove by a preponderance of the evidence that the “care, treatment, or rehabilitation” that the child was and had been receiving from father during the three months prior to the factfinding hearing necessitated the coercive intervention of the court. Id. at 585-6. The Court noted the parties’ written stipulation of facts, which included that the child had been placed with Father and DCS had no safety concerns for the child during this placement, did not support the CHINS adjudication at the time of the factfinding hearing. Id. at 586.