 *s can arbitrarily*

*Children’s Law Center*

*of Indiana*

**CHINS**

4/17/18

In **In The Matter of J.R.**, 98 N.E.3d 652 (Ind. Ct. App. 2018), the Court reversed the juvenile court’s judgment and remanded the case with instructions to dismiss the Department of Child Services’s CHINS petitions without prejudice. The Court held that the juvenile court erred in denying Parents’ motion to dismiss the CHINS petitions, when Parents’ motions were based on the fact that the factfinding hearing was not completed within the statutorily required sixty-day period after the filing of the CHINS petitions. Id. at 653. The Court also opined that DCS could not simply refile the CHINS petitions with the same evidence, as statutory law and case law requires CHINS petitions and determinations to be based on the current conditions of the children at the time the petitions are filed. Id. at 655.

In September 2016, DCS filed CHINS petitions on the children after receiving reports that Father was abusing them. The juvenile court began the factfinding hearing on November 29, 2016, and was supposed to complete the factfinding hearing on February 6, 2017. On December 27, 2016, Parents objected to having the factfinding hearing continued to that date, as it was outside the sixty day limit set forth by IC 31-34-11-1. The juvenile court overruled the objection, and on January 11, 2017, Parents moved to dismiss based on these grounds. The juvenile court denied Parents’ motion to dismiss, completed the factfinding hearing on February 6, 2017, and found the children to be CHINS on February 23, 2017. Parents filed a notice of appeal from the CHINS determinations on April 10, 2017. Parents also filed a motion to set aside the juvenile court’s judgment, which was denied, and Parents their notice of appeal from this denial on August 10, 2017.

**The juvenile court erred when it denied Parents’ motion to dismiss, which was based on the juvenile court’s failure to complete the factfinding hearing within the sixty days required by IC 31-34-11-1; furthermore, prior case law providing that juvenile courts were not absolutely required to complete a factfinding hearing within the timeframes provided at IC 31-34-11-1 had been superseded by amendments to the statute.** Id. at 655. IC 31-34-11-1(a) provides that “[e]xcept 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.” IC 31-34-11-1(b) then provides that this time frame to complete the factfinding hearing may be extended by the juvenile court “for an additional sixty (60) days if all parties in the action consent to the additional time.” Lastly, IC 31-34-11-1(d) provides that if the factfinding hearing is not completed within sixty days, and if all the parties do not consent to an additional sixty days in which the factfinding hearing can be completed, then if the court “shall dismiss the case without prejudice” if a motion requesting dismissal under these conditions is filed. The Court noted since questions of law are reviewed under a de novo standard, it owed no deference to the juvenile court’s statutory interpretation. Id. at 654. Prior case law, in interpreting a prior version IC 31-34-11-1, had determined that “shall” was directory and not mandatory, since there was no penalty in the statute itself for failing to complete a factfinding hearing within the sixty days. Parmeter v. Cass Cnty. Dep’t of Child Servs., 878 N.E.2d 444, 448 (Ind. Ct. App. 2007). J.R. at 654. Parmeter specifically held that “the term ‘shall’ is directory when the statute fails to specify adverse consequences, the provision does not go to the essence of the statutory purpose, and a mandatory construction would thwart the legislative purpose.” Parmeter at 448; J.R. and M.R. at 654-55. However, IC 31-34-11-1 was amended in 2012 after Parmeter in order to add the specific penalty of required dismissal without prejudice if the factfinding hearing was not competed within the allotted timeframe. J.R. and M.R. at 655. The Court concluded that the legislative intent was plain at this point, and that the clear intent of the statute was to force factfindings hearing to completed within a certain timeframe. Id. The Court determined that Parmeter was no longer good law on this point, as it had been superseded by the later amended statute. Id. The Court opined that if juvenile courts were allowed to ignore these deadlines, the juvenile courts could easily set matters for completion well outside the time frame with no consequences. Id. Therefore, it was mandatory that the juvenile court compete the factfinding hearing within the time frames required by IC 31-34-11-1, and since it did not do so, the juvenile court erred in failing to dismiss the CHINS petitions against Parents when Parents filed their motion to dismiss. Id.

**The Court noted that while it would certainly be possible for DCS to refile the CHINS petitions, DCS was not able to simply refile the same CHINS petitions, as CHINS petitions and determinations must be present and rely upon evidence regarding the current conditions of the children at the time of the refiled petition.** Id. at 655. The Court noted that part of refiling a CHINS involves DCS seeking approval from juvenile court to refile the petitions, and this approval can only be given after a probable cause determination. Id. IC 31-34-9-2 provides that in a probable cause hearing, the juvenile court shall: “(1) Consider the preliminary inquiry and the evidence of probable cause that is contained in the report of the preliminary inquiry or an affidavit of probable cause. (2) Authorize the filing of a petition if the court finds probable cause to believe that the child is a child in need of services.” Furthermore, case law underscores the principle that “a CHINS finding should consider the family’s condition not just when the case was filed, but also when it is heard.” In Re S.D., 2 N.E.3d 1283, 1290 (Ind. 2014). J.R. and M.R. at 655. Consequently, if DCS attempts to refile a CHINS petition after it was dismissed under IC 31-34-11-1, DCS cannot rely on evidence that was admitted at the original CHINS factfinding hearing; DCS would have to submit new evidence regarding the conditions of the children at the time of the refiling of the petition. Id.