



CHINS

6/18/2019

In **In the Matter of J.S.**, 130 N.E.3d 109 (Ind. Ct. App. 2019), an interlocutory appeal, the Court affirmed the trial court's decision holding that the failure to hold a factfinding hearing within 120 days of the filing of the petition did not require the dismissal of the CHINS case.

Mother had three children, one of them being J.S., and all three were adjudicated as Children in Need of Services (CHINS). DCS alleged that one of J.S.'s siblings had sustained injuries consistent with abuse and removed the Children from Mother's care. Mother was provided with court-appointed counsel. On November 13, 2017, a factfinding hearing was set for January 18, 2018. Mother was appointed new counsel on January 17, 2018 and subsequently filed a motion to continue the factfinding hearing. Mother then informed the court that she and DCS had reached an agreement, although she did not indicate what the terms were, and requested a non-contested factfinding hearing to be conducted thirty to forty-five days in the future. The factfinding hearing was conducted on February 26, 2018, and on March 1, 2018, the trial court adjudicated all three children as CHINS.

After the factfinding was completed outside the 120-day requirement, and after the adjudication, Mother moved to dismiss the CHINS case in regard to J.S., the oldest child. That motion was denied, and Mother filed this interlocutory appeal arguing that IC 31-34-11-1(d) required dismissal of a CHINS case when a factfinding hearing is not completed within 60 days or 120 days if the parties have consented.

The Court opined that Mother was attempting to use this motion to dismiss in place of an appeal; Mother had consented to the adjudication of the child as a CHINS, and now was trying to collaterally attack the adjudication by way of timeliness of the adjudication. *Id.* at 113. IC 31-34-11-1 provides, "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..." Furthermore, it provides that the 60 days may be extended by an additional 60 days if "all parties in the action consent to the additional time." The statute provides as a remedy in the event that the hearing is not held within the 60-day or 120-day requirement, upon a motion, the court *shall* dismiss the case without prejudice. Mother's sole argument was that the factfinding hearing was held outside of 120 days after the filing of the CHINS petition entitling her to dismissal of the CHINS case at any point during the proceedings. DCS countered, saying that Mother's right to dismissal after the adjudication is not absolute.

The Court noted that prior case requiring dismissal under these circumstances dealt with motions for dismissal prior to the adjudication of a child as CHINS. Thus, the Court determined that the determinative issue was whether the legislative purpose would be served by allowing a motion to

dismiss for failing to hold a factfinding within 120 days after a child has been adjudicated as CHINS. The Court found that it does not. The Court reasoned that Mother's motion for dismissal is, in effect, being used in place of an appeal. The Court noted that Mother consented to the adjudication of J.S. as a CHINS. Mother did not appeal this decision and has now instead decided to collaterally attack it. The statute's purpose was to allow for quick adjudication of a child's status and the time requirements cannot be used as a mechanism to set aside a CHINS adjudication after it has been entered. The ruling of the trial court denying Mother's motion to dismiss was affirmed.