



CHINS  
6/10/22

In **In re R.A.M.O.**, 190 N.E.3d 385 (Ind. Ct. App. 2022), the Court affirmed that the juvenile court did not abuse its discretion in continuing the factfinding hearing beyond the 120-day timeframe and rejected Mother’s argument that the court’s decision to continue the matter violated her due process rights.

DCS opened an informal adjustment because of Mother’s untreated mental health issues and her inability to care for Child. Shortly after, DCS received a report of neglect of the Child by the staff at Riley Hospital for Children. Upon visitation to the hospital, the case manager noticed Child was left unattended, required assistance to sit upright, and had a flat spot on the back of her head. Mother also reported the presence of domestic violence in their household. Subsequently, DCS removed Child from Mother’s care, filed a CHINS petition. The juvenile court set a factfinding date, but the parties requested a later date so that they could continue to attempt mediation. All parties agreed to waive the requirement for factfinding hearings to be held within sixty days after the filing of a CHINS petition. DCS then requested, and the court granted, a continuance on the day of the factfinding because it was found that Mother, according to a psychological evaluation, was mentally incompetent and needed to be appointed a guardian. Mother’s counsel asked that a new factfinding date be set within 120 days for the CHINS petition being filed. The day before the factfinding date, the DCS attorney went into labor and could not find substitute counsel due to mandatory DCS attorney training. DCS filed a motion for continuance, which was granted. DCS then filed a third motion for continuance because two essential witnesses who performed neuropsychological evaluations on Mother were unavailable to testify on the day of the factfinding hearing. The evaluations were relevant to understanding Mother’s ability to comprehend the proceedings and parent Child. The juvenile court found good cause to reset the hearing and granted DCS’s motion. At the new hearing, the court found that Mother’s inability to provide Child with adequate care severely impaired Child’s physical condition. The conditions of the home posed a danger to Child, as does Mother’s inability to protect Child from domestic violence. Ultimately, the court ordered the Child be removed from the home.

**The juvenile court did not err when it reset the factfinding hearing beyond the 120-day deadline upon the request of DCS. Id. at 392.** Although a trial court must dismiss a CHINS petition if a factfinding hearing is not held within 120 days of the petition being filed, a party may move for a continuance if they can show ‘good cause’ for why a continuance is necessary. Id. at 389 (citing In re M.S., 140 N.E. 3d 279, 280-81 (Ind. 2020)). Further, trial courts have discretion when ruling on motions for continuances, including when deciding if a party has shown good cause. Id. (citing M.S. at 285). The appellate court thus only reverses a finding of good cause by the trial court when it is “clearly against the logic and effect of facts and circumstance or reasonable inferences to be drawn therefrom.” Id. (quoting In re K.W., 178 N.E. 3d at 1206). Mother argues that the court abused its discretion in failing to hold the factfinding hearing within 120 days; however, the Court points out that the Indiana Code allows the

aggrieved party to file a motion to dismiss to enforce her rights. Id. at 390. Mother did not file a motion to dismiss, thus waiving her argument. Id. Mother's argument for abuse of discretion was aimed at each granting of continuance, but the 120-day deadline was not violated until the third continuance. Id. As such, she argues that the abuse of discretion occurred because each continuance delayed her factfinding hearing. Id. The Court rebukes this claim stating that the lower court found good cause to reset each time a continuance was requested. Id. Additionally, the court only rescheduled the final hearing for two weeks after the 120-day deadline, which would not prejudice Mother much. Id. at 391. The Court also notes that, without the physicians' testimonies, the court and parties would have been prejudiced, meanwhile, Mother has neither shown nor asserted that the continuances prejudiced her. Id.

**The lower court did not violate Mother's Due Process rights in granting continuance, nor was Mother denied effective assistance of counsel. Id. at 392.** Arguments may not be raised for the first time on appeal. Id. (citing Ind. Bureau of Motor Vehicles v. Gurtner, 27 N.E.3d 306, 311 (Ind. Ct. App. 2015)). As such, when Mother failed to raise her due process argument in the lower court, she waived the right to raise it on appeal. Id. Even if Mother had raised the issue in the lower court, the Court points out that she has failed to show how the factfinding hearing was unfair or how she was "denied the opportunity at a reasonable time." Id. Mother also attempts to argue that she was denied effective counsel because counsel failed to file a motion to dismiss; however, the Court says that the motion would have failed regardless. Id. Further, the Court asserted that Mother's counsel "vigorously advocated" for her, rebuking her claim that her counsel was ineffective. Id.