

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of A.J. and J.J.,
Children in Need of Services,
C.J. and C.L.J.

Appellants-Respondents,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

April 5, 2022

Court of Appeals Case No.
21A-JC-1971

Appeal from the
Perry Circuit Court

The Honorable
M. Lucy Goffinet, Judge

Trial Court Cause Nos.
62C01-2104-JC-120
62C01-2104-JC-121

Molter, Judge.

[1] C.J. (“Mother”) and C.L.J. (“Father”) (collectively, “Parents”) have two children, J.J. and his younger sister, A.J., who suffers from intellectual disabilities. The juvenile court adjudicated both A.J. and J.J. (collectively, “Children”) as Children in Need of Services “(CHINS”) after A.J. reported she was having a sexual relationship with J.J. On appeal, Parents contend (a) the juvenile court abused its discretion when it admitted into evidence at the factfinding hearing A.J.’s out-of-court statements because Parents argue they were inadmissible hearsay, and (b) the evidence was insufficient to support the CHINS adjudications. Finding no error, we affirm.

Facts and Procedural History

[2] J.J. (born in 2007) and A.J. (born in 2009) reside in Perry County with Parents. During A.J.’s early elementary school years, she was diagnosed with intellectual disabilities, speech and language impairment, ADHD, separation anxiety, and generalized anxiety disorder. She also has an individualized education program for a “mild” intellectual disability and is considered “a lower functioning student.” Tr. Vol. 2 at 24.

[3] DCS has previously been involved with the family five times. This includes 2015 substantiations for substance abuse and Father wrecking a car while impaired with children in the vehicle; a January 2017 substantiation due to Father’s methamphetamine use; and a November 2018 substantiation for neglect due to Father’s illegal substance abuse, lack of food, and poor home conditions. Soon after a CHINS adjudication was closed in June 2019, DCS received reports that A.J. and J.J. were having sex.

- [4] When DCS spoke to Parents about this, they said they “didn’t know why anyone would believe a child who has ADHD and seizures,” Tr. Vol. 2 at 53, and they would not allow a pregnancy test for A.J. DCS did not arrange a forensic interview, seek a sexual abuse examination, or open a new CHINS case, but it bought alarms for both A.J.’s and J.J.’s bedroom doors so Parents could monitor them.
- [5] In April 2021, during her sixth grade, A.J. told Anthony Keown, a behavior intervention specialist at her school, that she was pregnant because she had sex with J.J. “many times.” *Id.* at 17–19. A.J.’s disclosure provided extensive details about her alleged sexual activities with J.J. *Id.* at 17–21.
- [6] On April 20, 2021, DCS received a report that A.J. was having sex with J.J. Family Case Manager (“FCM”) Tasha George spoke with Parents and Children at their home about A.J.’s statements. Mother told FCM George that A.J.’s allegations were not true. FCM George pulled A.J. aside to talk to her, and when A.J. mentioned something about “sex and a secret,” Mother looked at A.J. “very sternly.” *Id.* at 33. FCM George was concerned that Parents were not doing enough to ensure A.J.’s safety based on their “very negative reaction and [that they] were not willing to consider the possibility” that A.J. was having sex with J.J. *Id.* at 37.
- [7] The next day, A.J. was forensically interviewed by Jade Marinin. A.J. was reluctant to talk because she was afraid of getting in trouble, but she eventually disclosed that she and J.J. were having sex. FCM George then talked to

Parents again. Mother told FCM George that she had a video in which A.J. admitted she was lying. FCM George reviewed the video, and she could hear Mother's voice on the video, "yelling at . . . A.J., asking her why she's lying." *Id.* at 37–38. A.J. appeared distressed in the video. When FCM George spoke with Parents after the forensic interview, they repeated that A.J.'s allegations were not true, and they remained unwilling to address the concern of an inappropriate relationship between A.J. and J.J.

[8] On April 23, 2021, DCS filed separate CHINS petitions for A.J. and J.J. DCS removed A.J. from the home, and based on A.J.'s allegations, DCS filed a CHINS petition for A.J. under both Indiana Code sections 31-34-1-1 (inability, refusal, neglect) and Indiana Code section 31-34-1-3 (child is a victim of a sex offense). DCS's CHINS petition for J.J. relied on the same allegations but alleged he was a CHINS only under Indiana Code section 31-34-1-1 (neglect), and DCS did not remove J.J. from the home.

[9] In early May, Melissa J. Steinkamp, Psy.D., met with A.J. to conduct a child hearsay evaluation. A.J., who was then twelve years old, struggled to give information about herself during the interview. When asked how old she was, she said she was twenty years old, although it was possible she was joking. A.J. did not know what grade she was in. She claimed to have two boyfriends but did not know their names. A.J. was "alert and oriented" but did not understand the purpose of the evaluation, had a limited verbal capacity, some of her responses to questions seemed "incongruent" to the topic at hand, and she suddenly became withdrawn when asked to discuss J.J. Appellants' Joint

App. Vol. 2 at 57, 61. According to Steinkamp, this suggested significant emotional distress.

[10] Steinkamp concluded A.J. would “likely suffer substantial emotional or mental harm as a result of testifying in court.” *Id.* at 61. Later in May, DCS petitioned to introduce A.J.’s statements under Indiana Code sections 31-34-13-2 and 31-34-13-3, the child hearsay statutes. The petition included A.J.’s statements that DCS intended to introduce, and it incorporated Steinkamp’s findings and conclusions.

[11] The factfinding hearing was held on July 16, 2021. At the beginning of that hearing, DCS advised the juvenile court that Steinkamp found A.J. was unavailable to testify because she would suffer emotional or mental harm if she were to testify. DCS thus asked the juvenile court to admit statements A.J. made to Steinkamp during the interview, the videotape of those statements, and other out-of-court statements A.J. made to several witnesses.

[12] Parents objected to Steinkamp’s conclusion that A.J. was unavailable to testify, arguing Steinkamp’s certification used the wrong legal standard. Her certification stated A.J. would “likely suffer constant emotional or mental harm as a result of testifying in court,” Tr. Vol. 2 at 12, rather than tracking the statutory language verbatim in Indiana Code section 31-34-13-3(C)(i) and stating that A.J.’s participation in the fact-finding hearing “creates a *substantial* likelihood of emotional or mental harm” (emphasis added). The juvenile court

overruled Parents' objection, and the matter proceeded to the evidentiary phase of the hearing.

[13] Keown testified that A.J. told him she was pregnant because she and J.J. had sex “many times” in her bedroom after Parents had gone to bed or when Father was away at work. *Id.* at 17–19. Keown said A.J. described sex with J.J. as J.J. being on top of her and that his “private area touched her private area,” which felt good. *Id.* at 18–19. Keown testified that he did not ask A.J. leading questions and that she was “forthcoming on her own.” *Id.* at 19. He estimated that A.J.’s “ability to accurately reflect facts was a ‘6’ on a scale of ‘1–10.’” *Id.* at 28.

[14] FCM George testified about A.J.’s description of sex with J.J.:

She reported that their bad spots go together. She reported it a little bit hurts but then feels good. She described different positions that they do this in. She talked about them taking their clothes off and going on the bed. She—I asked what [J.J.] does, and she said that he humps. And I asked her what he humps, and she said, “me.” She said that this happens when her mom is sleeping and her dad is at work or with friends.

Id. at 32–33. FCM George also said A.J. claimed she had sex with J.J. “hundreds of times” in her bedroom. *Id.* at 39–40.

[15] FCM George testified that it was hard to maintain A.J.’s focus when they spoke, but A.J. still “seemed very comfortable” talking to her. *Id.* at 35. It did not appear A.J. was making these disclosures to seek attention. *Id.* FCM

George also confirmed that A.J. has speech and language impairments and, even though it was hard to understand her, she was “able to accurately communicate with people.” *Id.* at 48.

[16] FCM George testified that Parents did not believe A.J.’s claims. *Id.* at 35–36. Mother said that A.J. and J.J. would not have time to have sex because J.J. was on the phone all the time, up to fourteen hours each day. *Id.* at 35. Mother also said A.J. was “on her period so that could not be true.” *Id.* at 36. FCM George was concerned with Parents’ responses because they had a “very negative reaction and were not willing to consider the possibility and address the concerns to ensure child A.J.’s safety,” other than giving Children separate bedrooms. *Id.* at 37–38, 42.

[17] FCM Bailey Robbins was also assigned to this case. She discovered that the door alarms installed after A.J.’s prior allegations about sex with J.J. were not working. *Id.* at 52. Mother told FCM Robbins that the alarms “had fallen off the doors and had broken,” but Mother did not say when this happened. *Id.* FCM Robbins testified that Parents had not addressed this issue. *Id.* at 56. Mother testified that she “may get something for the door” but also testified that child A.J. “doesn’t really get out.” *Id.* Yet, Mother also testified that A.J. had sneaked out through her bedroom window. *Id.* at 64–65.

[18] At the end of the fact-finding hearing, the juvenile court stated:

When I take into account the totality of everything from statements that were made to [Keown], statements that were made to [FCM George][, statements made at the forensic

interview . . . I can't discount that even with all of her disabilities that [A.J.] has she was accurately able--not—well, not accurately, but she was able to describe with great detail for her age sex laying down, sex up against the wall, sex on my knees, talked about her private parts, talked about the movements, and was able to reiterate that multiple times

I don't see how this isn't affecting [J.J.] I believe it's probably strongly affecting his mental health

There's—there's too much for this Court to be able to sit here and blindly say that I don't believe that the State has met its burden. And for these reasons, I'm going to find the children—I'm going to adjudicate the children to [be] Children in Need of Services.

Tr. Vol. 2 at 74-75.

[19] On August 11, 2021, the court entered its CHINS adjudication order under Indiana Code section 31-34-1-1 for both Children, and under section 31-34-1-3 for child A.J.:

1) The totality of [A.J.'s] statements made to multiple individuals, including to [Keown], FCM George, and at her forensic interview cannot be disregarded because of her intellectual disabilities.

2) Given her age and disabilities, [A.J.] was able to describe sexual encounters with [J.J.] in great detail, including talking about private parts, describing sexual positions, and movements.

3) [A.J.] is aware that [Parents] don't want her to talk about any sexual relationship with [J.J.], but still made disclosures on multiple occasions [sic].

....

6) There is too much evidence for the Court to say DCS has not met its [sic] burden.

Appellants' Joint App. Vol. 2 at 90–91. The court entered its dispositional order on August 16, ordering Parents into reunification services.

Discussion and Decision

I. Hearsay

[20] Parents challenge the admission into evidence at the factfinding hearing of A.J.'s hearsay statements to her teacher, FCM George, and to the forensic interviewer. The admission of evidence is entrusted to the juvenile court's sound discretion. *In re A.M.*, 121 N.E.3d 556, 559 (Ind. Ct. App. 2019), *trans. denied*. We will reverse only if the appellant demonstrates "an abuse of discretion, meaning that the trial court's decision is against the logic and effects of the facts circumstances before it." *Id.*

[21] One way a child's out-of-court statement which is material to determining whether a child is a CHINS is admissible at a factfinding hearing is if the juvenile court finds: (a) the time, content, and circumstances of the child's statement and any other evidence provide sufficient indications of reliability, and (b) the child is unavailable because a mental health professional has

certified that the child’s participation in the proceeding creates a substantial likelihood of emotional or mental harm to the child. *See* Ind. Code § 31-34-13-2; Ind. Code § 31-34-13-3. Parents concede A.J. was unavailable under the statute, but they dispute that her statements were reliable.¹ This argument fails for three reasons.

[22] First, it is waived. A party generally waives appellate review of an argument unless the party first made that argument in the trial court. *GKC Ind. Theatres, Inc. v. Elk Retail Invs., LLC.*, 764 N.E.2d 647, 652 (Ind. Ct. App. 2002). While on appeal Parents argue that the unavailability prong is satisfied but not the reliability prong, they took the opposite approach in the juvenile court, challenging unavailability but not reliability. Tr. Vol. 2 at 12–13.

[23] Second, the juvenile court made sufficient findings about the reliability of A.J.’s statements. In its oral ruling, the juvenile court found A.J.’s statements were reliable because, considering the totality of her statements to Keown, FCM George, and the forensic interviewer, the court could not “discount that even with all of her disabilities [A.J.] . . . was able to describe with great detail for her age sex laying down, sex up against the wall, sex on [her] knees, talked about

¹ Father’s Appellant’s Br. at 14 (“Father acknowledges the report provided sufficient evidence for the court to find A.J. was an unavailable witness under Indiana Code section 31-34-13-3(2)(C)(i). However, no evidence was presented, and the court did not expressly find, that the time, content, and circumstances of the statement or any other evidence provided sufficient indications of reliability.”); Mother’s Appellant’s Br. at 11 (“Mother does not challenge the finding that A.J. was unavailable as a witness. . . . However, the court did not find that the time, content and circumstances of the statements – or any evidence at all – provided sufficient indicia of reliability.”)

her private parts, talked about the movements, and was able to reiterate that multiple times.” Tr. Vol. 2 at 74–75. Similarly, in its written order, the juvenile court found that despite A.J.’s intellectual disabilities, her statements, in totality, could not be disregarded because she could describe sexual encounters with J.J. in great detail, “including talking about private parts, describing sexual positions, and movements.” Appellants’ Joint App. Vol. 2 at 90–91. Both Keown and FCM George offered testimony that supports these findings. *See In re Des. B.*, 2 N.E.3d 828, 836 (Ind. Ct. App. 2014) (“We consider whether the evidence supports the findings . . .”).

[24] Third, and finally, Parents’ argument that the remaining evidence showed that A.J.’s statements were unreliable because of her intellectual disabilities is an impermissible request to reweigh the evidence. *In re D.J.*, 68 N.E.3d 574, 577–78 (Ind. 2017).

II. Sufficiency of Evidence

[25] A CHINS proceeding is a civil action and thus requires the State to prove by a preponderance of the evidence that a child is a CHINS as defined by statute. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). “Preponderance of the evidence” “simply means the greater weight of the evidence.” *Kishpaugh v. Odegard*, 17 N.E.3d 363, 373 (Ind. Ct. App. 2014) (quotation omitted). On appellate review of a juvenile court’s determination that a child is in need of services, we do not reweigh the evidence or judge the credibility of the witnesses. *In re S.D.*, 2

N.E.3d 1283, 1286 (Ind. 2014). Rather, we consider only the evidence and reasonable inferences supporting the juvenile court’s decision. *Id.* at 1287.

[26] Where, as here, the juvenile court enters findings of fact and conclusions thereon, we apply a two-tiered standard of review. *In re A.M.*, 121 N.E.3d 556, 561 (Ind. Ct. App. 2019), *trans. denied*. We first consider whether the evidence supports the findings and then whether the findings support the judgment. *Id.* Because Parents do not challenge any specific findings, we must accept those findings as correct. *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1991). We will set aside the juvenile court's findings and conclusions only if they are clearly erroneous and our review of the record leaves us firmly convinced a mistake has been made. *Id.*

[27] The CHINS petition for A.J. was filed under Indiana Code section 31-34-1-1 and Indiana Code section 31-34-1-3, and the CHINS petition for J.J. was filed only under Indiana Code section 31-34-1-1. Indiana Code section 31-34-1-1 provides, in relevant part:

A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) the child’s physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child’s parent . . . to supply the child with necessary . . . shelter . . . or supervision:

. . . . and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

Ind. Code § 31-34-1-1. Indiana Code section 31-34-1-3 provides: “A child is a child in need of services if, before the child becomes eighteen (18) years of age: (1) the child is the victim of an offense under: . . . (C) IC 35-42-4-3 [child molesting].”

[28] Both Mother and Father argue the evidence was insufficient to support the CHINS adjudications because those adjudications hinged on A.J.’s statements, and those statements were not credible. As explained in the previous section, the juvenile court did not abuse its discretion in finding A.J.’s hearsay statements to be reliable, and we cannot second guess the juvenile court’s credibility determinations. *In re S.D.*, 2 N.E.3d at 1286.

[29] Mother also argues that DCS failed to present sufficient evidence that (1) Parents’ actions seriously endangered A.J. and J.J. because of Parents’ neglect; (2) A.J. and J.J.’s need for supervision were unmet; (3) those needs were unlikely to be met without State coercion; and (4) A.J. was a victim of child molesting. *See* Ind. Code §§ 31-34-13-2, 3. But Mother’s argument simply parrots the statutory language without additional legal argument and without identifying facts supporting her argument, so she has waived this issue. *See* Ind. Appellate Rule 46(A)(8)(a) (argument section of appellant’s brief “must contain

the contentions of the appellant on the issues presented, supported by cogent reasoning”). *Jarman v. State*, 114 N.E.3d 911, 915 n.2 (Ind. Ct. App. 2018), *trans. denied*. Mother’s argument also again asks us impermissibly to reweigh the evidence. *In re S.D.*, 2 N.E.3d at 1286.

[30] In any event, DCS presented sufficient evidence to support the CHINS adjudications. The evidence that A.J. and J.J. often had sex in A.J.’s room while Parents were asleep established that the physical or mental conditions of A.J. and J.J. were impaired by Parents’ neglect and their failure to supply the Children with the necessary supervision. *See* Ind. Code § 31-34-1-1(1)(A), (B). The testimony of FCM George and FCM Bailey showed that A.J. and J.J need care, treatment, or rehabilitation, which they are not receiving and are unlikely to receive without the coercive intervention of the court. *See id.*

[31] Also, Parents refused to create a reasonable safety plan even though A.J. was alleging now, and had alleged years earlier, that she was having sex with J.J. Parents’ responses to A.J.’s allegations were “very negative,” including that they were unwilling to consider that the allegations may be true and unwilling to take necessary precautions to ensure A.J.’s safety. Tr. Vol. 2 at 37. The only measure Parents would accept was maintaining separate bedrooms for A.J. and J.J., but the evidence showed that was not working, and Parents did not even repair or replace the alarms that had fallen off the Children’s bedroom doors.

[32] Finally, DCS proved, by preponderance of the evidence, that A.J. was a CHINS under Indiana Code section 35-34-4-3 because she was a victim of child

molesting as the evidence showed that she was “a child under fourteen (14) years of age, [who] knowingly or intentionally perform[ed] or submit[ted] to sexual intercourse.” Substantial evidence established that she was having sex with J.J. when she was under the age of fourteen. Therefore, the juvenile court did not commit clear error in adjudicating A.J. and J.J. as CHINS.

[33] Affirmed.

Riley, J., and Robb, J., concur.