

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

In the Matter of:

M.E. (Minor Child),  
*Child in Need of Services,*

and

A.H. (Mother) and S.E. (Father),  
*Appellants-Respondents,*

v.

Indiana Department of Child  
Services,  
*Appellee-Petitioner*

June 28, 2023

Court of Appeals Case No.  
22A-JC-2373

Appeal from the Vigo Circuit  
Court

The Honorable Sarah K. Mullican,  
Judge

The Honorable Daniel W. Kelly,  
Magistrate

Trial Court Cause No.  
84C01-2204-JC-357

**Memorandum Decision by Chief Judge Altice**  
Judges May and Foley concur.

**Altice, Chief Judge.**

**Case Summary**

- [1] A.H. (Mother) and S.E. (Father) each appeal the trial court’s adjudication of their minor child M.E. (Child) as a child in need of services (CHINS). Mother and Father challenge the sufficiency of the evidence, and Father also argues that the trial court improperly took judicial notice of allegations in a petition for a protective order filed by Father’s wife (Stepmother).
- [2] We affirm.

**Facts & Procedural History**

- [3] When Child was born to Mother and Father in April 2017, she was a drug-exposed infant, and the Indiana Department of Child Services (DCS) filed a CHINS petition the next month. The case was dismissed on DCS’s motion in December 2017, based on compliance with services before adjudication.
- [4] In January 2020, Mother was arrested and charged with Level 6 felony battery for allegedly striking Father in the face in front of Child and three other children. A no contact order was issued, and the criminal charges remain pending.
- [5] DCS filed a second CHINS petition involving Child in April 2020, alleging substance abuse and domestic violence in the home. It was also alleged that

Father had continually denied DCS access to the home and had refused to submit to a drug screen. Mother, as Child's custodial parent, addressed DCS's concerns before the factfinding hearing, resulting in the case being dismissed in December 2020. By this time, Mother and Father were no longer living together.

[6] At some point Father married Stepmother, and they had a child together, N.E., in January 2021. They each had older children too but not all were in their custody. In January 2021, DCS attempted to investigate a report of child abuse/neglect related to one of Stepmother's children, but Father and Stepmother refused to cooperate with the assessment and denied entry to their home. As a result, in February 2021, DCS sought and obtained an order compelling Father and Stepmother to allow DCS to speak with the children and enter the home. Father and Stepmother did not comply with the court's order, and DCS received another report through the child abuse hotline on March 5, 2021, involving allegations related to one of Child's school-aged siblings.

[7] In October 2021, Father, Stepmother, and N.E. were living at a friend's home because theirs was without power. Stepmother was experiencing postpartum depression at the time. When they returned to their home to gather items with N.E., Father and Stepmother engaged in an argument outside the home as Stepmother was experiencing a mental health breakdown. Before leaving for the hospital, Father handed off infant N.E. to a neighbor without food or clothing. The neighbor eventually called law enforcement. DCS took custody

of N.E. in the middle of the night when Father and Stepmother could not be located.

[8] N.E. was adjudicated a CHINS in December 2021<sup>1</sup> with the trial court noting in its findings the parents' appearance and behavior at the initial hearing, the declining state of their housing and overall lives, and their adamant refusal to submit to drug screens when ordered by the court. On January 7, 2022, the court issued the dispositional order. Then, Father and Stepmother steadfastly refused to engage in any court-ordered services, including visitation with N.E., or to cooperate with DCS.

[9] In the meantime, Mother, Child's custodial parent, was arrested on January 18, 2022, and charged with battering her boyfriend. About six weeks later, she was charged in a separate criminal matter with, among other things, Level 3 felony burglary resulting in bodily injury and an arrest warrant was issued, resulting in her arrest in early April. Mother placed Child in Father's care during much of this time.

[10] DCS received reports related to Child in February and April 2022. The first expressed concerns of domestic violence, ongoing substance use, and poor living conditions in Father and Stepmother's home. Family Case Manager (FCM) Bailee Poore went to the home fifteen to twenty times between February and April to make an assessment, but no one would answer the door. She was

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<sup>1</sup> Another of Stepmother's children was also adjudicated a CHINS at the same time.

able to eventually reach Mother, who expressed concerns about domestic violence and substance use in Father's home. Mother agreed to call FCM Poore the next time she had Child in her care, but Mother never contacted her. FCM Haylie Wilhite also made multiple failed attempts to go inside Father and Stepmother's home to locate and check on Child and to assess the home conditions as required in N.E.'s open CHINS case.

[11] The second report came when Child was staying at the home of a family friend on April 11, 2022. When FCM Poore came to the home that day for an assessment, Child was scared and asked if FCM Poore was "a bad stranger" who would take her to jail. *Transcript* at 51. FCM Poore and the friend managed to calm Child, and FCM Poore then observed and photographed injuries on various parts of Child's body at different stages of healing. These included a bruise the size of a hand on the front of Child's throat, bruises on her biceps and lower arm, a healing black eye, and a bruise/laceration on her lower back. When FCM Poore asked about her neck injury, Child revealed that Stepmother had choked her. Upon further questioning, Child "didn't say anything she disassociated and just stared blankly for like five (5) minutes and would not respond." *Id.* FCM Poore took Child into DCS custody.

[12] After multiple attempts on the day of removal, FCM Poore eventually spoke with Mother over the phone that night. Mother became angry when she realized Child would not be released into her custody. When Mother visited with Child the next day, Mother's behavior was erratic, so FCM Poore asked her to take a drug screen. Mother refused because "she wasn't clean right

now.” *Id.* at 56. FCM Poore tried to talk about Child’s injuries, but Mother was “in denial” and explained that “[Child] was clumsy, that it could be dirt, that it wasn’t bruising.” *Id.* Mother then finally admitted to FCM Poore that there was bruising and that it was a safety concern for Child to be in Father’s home. DCS could not contact Father or Stepmother upon Child’s removal, despite a representative and law enforcement going to their home.

[13] On April 13, 2022, DCS filed the instant petition alleging Child to be a CHINS. The allegations in the petition included: Child had many unexplained bruises all over her body; Father’s home did not meet minimum standards; Child had not been bathed in recent days or weeks; Child reported that Father and Stepmother often fight verbally and physically; Stepmother had choked Child; Mother was arrested the prior week for burglary and battery, among other things; and Mother, Father, and Stepmother had a substantial history with DCS including N.E.’s open case, in which Father and Stepmother were noncompliant and cut off all communication with DCS. DCS also alleged that the coercive intervention of the court was necessary to “provide a safe and clean home, free of domestic violence, and with proper supervision and personal hygiene.” *Mother’s Appendix* at 35.

[14] At the initial/detention hearing on April 13, 2022, Mother attended and requested appointed counsel. Father and Stepmother failed to appear. A continued initial hearing was held the next week. Father and Stepmother appeared and requested appointed counsel, and Mother, with counsel, admitted the allegations in the petition and that Child was a CHINS. At another

continued initial hearing on April 26, Father and Stepmother appeared with separate counsel and denied the allegations. Mother later rescinded her admissions with the trial court's approval and was granted permission to participate in the factfinding hearing.

[15] While the CHINS petition was pending, Mother tested positive for methamphetamine on April 20. Additionally, Stepmother obtained an ex parte order of protection against Father on May 2 and filed for divorce on May 6. Stepmother moved into a domestic abuse shelter for about two weeks and began "completing visits [with her children] and started some services." *Transcript* at 80. During one visit, Stepmother informed FCM Wilhite that Father "went crazy on her after [Child] was removed." *Id.* at 108. Further, when Stepmother left Father, he posted a video on Facebook of him burning some of her belongings.<sup>2</sup>

[16] Although Father continued to not comply with the court order in N.E.'s case and did not schedule visits with Child, he did show up at the DCS office in May during one of Mother's visits with Child. He refused to leave and insisted on being let in the visitation room, which could not occur because of the no contact order in place between Mother and Father. He had to be escorted out of the building by a security guard and then, when he would not leave the

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<sup>2</sup> Father later claimed during the factfinding hearing that he also owned the items that he burned because they constituted marital property. Even if the items were solely Stepmother's, he asserted, "that's not violence, that's like a civil suit[]" at best." *Id.* at 102.

outside premises, DCS had to call law enforcement because Child's placement felt intimidated.

[17] At the factfinding hearing on June 6, 2022, Mother failed to appear but was represented by counsel, Father chose to proceed pro se, and Stepmother appeared and was represented by counsel. Father and Stepmother denied any domestic abuse in their home and indicated that, despite the protective order still in existence,<sup>3</sup> Stepmother was back living with Father. Stepmother acknowledged that she had pending criminal charges from an incident about three weeks prior, but she claimed she did not recall the details.<sup>4</sup> Stepmother also denied ever harming Child, and Father testified that Child had been staying with a family friend for a few days before being seen by FCM Poore with bruises. Father conveyed that they would obtain marriage/family counseling on their own but that they needed no other services and did not want to deal with DCS.

[18] Several representatives of DCS testified about the family's history with DCS and particularly Father and Stepmother's ongoing refusal to allow FCMs into their home to make needed assessments and their overall lack of compliance with the court-ordered services in N.E.'s CHINS case. FCM Poore detailed

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<sup>3</sup> Upon Stepmother's motion, the protective order and divorce action were dismissed by the trial court on June 21, 2022.

<sup>4</sup> On May 16, 2022, under Cause No. 84D04-2205-CM-1716, Stepmother was charged with domestic battery against Father and two counts of battery against two other individuals. This criminal case remains pending.



Child's concerning physical condition, demeanor, and assertions on the day of removal. FCM Wilhite expressed concerns over domestic violence, physical abuse, and the condition of Father and Stepmother's home. As for Mother, FCM Wilhite noted substance abuse and housing instability – testifying that Mother “reports to be couch hopping.” *Id.* at 86.

[19] The trial court issued an order on June 8, 2022, finding Child to be a CHINS. The court determined that it could not find by a preponderance of the evidence that Father or Stepmother had physically abused Child “given the lack of clarity about the time frame of when the bruising occurred” related to when she was staying with the family friend. *Mother's Appendix* at 47. The trial court, however, found other evidence in support of its decision to adjudicate Child as a CHINS.

[20] Specifically, the court noted in its order that in N.E.'s case, Father and Stepmother went eight months without visiting N.E. or completing any court-ordered services and that DCS had been left unable to determine whether conditions inside the home had improved due to the parents' total lack of response. The court also noted the parties' various pending criminal matters: Mother's 2020 charges for domestic battery of Father in the presence of children; Mother's 2022 charges for domestic battery of another individual; and

Mother's 2022 charges for burglary, residential entry, and battery resulting in bodily injury.<sup>5</sup>

[21] The trial court also found as “[p]erhaps the most damning evidence” in support of Child’s CHINS status to be “the ongoing domestic violence in the home of [Father and Stepmother] subsequent to [N.E.’s] CHINS adjudication.” *Id.* at 47. The court continued in its order:

The court has taken judicial notice of a sworn petition for order of protection filed by [Stepmother] against [Father] on May 2, 2022, under Cause No. 84D04-2205-PO-2730.<sup>[6]</sup> In that petition, [she] alleged under oath that the following incidents have occurred:

#1 April 2022

Before I escaped, [Father] would slap me in my face, choke me, and not let me out of the house.

#2 April 2022

During sex [Father] started choking me so hard it broke blood vessels in my face.

#3 Undated

[Father h]as left me tied up so long I urinated on myself.

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<sup>5</sup> The trial court failed to list the domestic battery and simple battery charges filed against Stepmother only weeks before the factfinding hearing.

<sup>6</sup> The correct cause number is 84D02-2205-PO-2730.

Now that I am at the Coda Shelter [Father] circles around waiting for me to come out.

Judge Christopher Newton issued an ex parte order of protection on May 2, 2022 in that case; however, the order that was sent to [Father] at the purported marital residence by certified mail was returned as unclaimed, with a note from the Post Office that the home was vacant. Also in May, 2022, while staying in a CODA shelter, [Stepmother] filed [for divorce] and ... that summons was also returned as unclaimed with an indication that the home was vacant.

Despite [Stepmother's] extremely serious allegations and the aforementioned order of protection, the parties testified that they have resumed living together. The court finds by a preponderance of the evidence that there is and has been ongoing domestic violence in [Father and Stepmother's] home that presents a danger to [Child's] physical and emotional well-being. The court finds that [Child] is a [CHINS] based upon domestic violence in the home of both parents, Mother's recent felony arrests with charges pending, and the unresolved issues that led to [N.E.'s] CHINS adjudication in December 2021.

While Father and Stepmother testified that they do not need the coercive intervention of the court to address any issues that may imperil [Child], they presented no evidence of any services they have engaged in on their own to address the circumstances that endanger [Child]. In fact, they steadfastly deny that there are any issues that they need to address with services. And, finally, they have persistently failed to comply with services that have been court-ordered with respect to [N.E.] for the past six months or with virtually any aspect of the dispositional order entered in that case.

*Mother's Appendix at 47-48.*

[22] The dispositional hearing was held on June 28, 2022, and the trial court issued a dispositional order the next month. Mother and Father filed separate appeals, which have been consolidated. Additional information will be provided below as needed.

## **Discussion & Decision**

[23] A CHINS proceeding is a civil action that requires DCS to prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). On review, we neither reweigh the evidence nor judge the credibility of the witnesses and will consider only the evidence and reasonable inferences that support the trial court's decision. *Id.* We will reverse upon a showing that the decision of the trial court was clearly erroneous. *Id.* Further, in family law matters, we generally grant latitude and deference to trial courts in recognition of the trial court's unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony. *In re A.M.*, 121 N.E.3d 556, 561-62 (Ind. Ct. App. 2019), *trans. denied.*

[24] There are three elements DCS must prove by a preponderance of the evidence for a child to be adjudicated a CHINS:

DCS must first prove the child is under the age of eighteen; DCS must prove one of eleven different statutory circumstances exist that would make the child a CHINS; and finally, in all cases, DCS must prove the child needs care, treatment, or rehabilitation that he or she is not receiving and that he or she is unlikely to be

provided or accepted without the coercive intervention of the court.

*Id.* (footnote omitted); *see also* Ind. Code § 31-34-1-1. The CHINS statutes do not require a court to wait until a tragedy occurs to intervene; rather, a child is a CHINS when he or she is endangered by parental action or inaction that is unlikely to be remedied without coercive intervention by the court. *See In re C.K.*, 70 N.E.3d 359, 364 (Ind. Ct. App. 2016), *trans. denied*.

[25] The purpose of a CHINS adjudication is to protect the children, not punish the parents. *K.D.*, 962 N.E.2d at 1255. The focus of a CHINS proceeding is on “the best interests of the child, rather than guilt or innocence as in a criminal proceeding.” *Id.* (quoting *In re N.E.*, 919 N.E.2d 102, 106 (Ind. 2010)). Further, when determining CHINS status, particularly the coercive intervention element, courts should consider the family’s condition not just when the case was filed, but also when it is heard to avoid punishing parents for past mistakes when they have already corrected them. *In re D.J.*, 68 N.E.3d 574, 580-81 (Ind. 2017). This element “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.’” *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014) (quoting *Lake Cnty. Div. of Family & Children Servs. v. Charlton*, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994)).

[26] Father’s first argument on appeal is that the trial court erred in taking judicial notice of the allegations contained in Stepmother’s sworn petition for a

protective order, which was filed between the time Child was removed and the CHINS factfinding hearing. Father acknowledges that the trial court could properly take judicial notice of the existence of the petition but not of the specific allegations therein.

[27] We review a trial court’s decision to take judicial notice of a matter, like other evidentiary decisions, for abuse of discretion. *Horton v. State*, 51 N.E.3d 1154, 1157 (Ind. 2016). Under Indiana Evidence Rule 201(a), a court may judicially notice:

(1) a fact that:

(A) is not subject to reasonable dispute because it is generally known within the trial court’s territorial jurisdiction, or

(B) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(2) the existence of:

(A) published regulations of governmental agencies;

(B) ordinances of municipalities; or

(C) records of a court of this state.

A court may also judicially notice a law, which includes “records of a court of this state.” Evid. R. 201(b)(5).

[28] In *Matter of D.P.*, 72 N.E.3d 976, 983 (Ind. Ct. App. 2017), the majority observed that Evid. R. 201 does not allow a court to judicially notice every fact contained within a court record.

Even if court records may be judicially noticed, facts recited within the pleadings and filings that are not capable of ready and accurate determination are not suitable for judicial notice. Unless principles of claim preclusion apply, judicial notice should be limited to the fact of the record's existence, rather than to any facts found or alleged within the record of another case.

*Id.* (internal citations and quotations omitted). Thus, in *D.P.*, a CHINS case, the majority held that the trial court could not take notice of substantive facts alleged in preliminary DCS filings regarding the father's drug use. *Id.* (“[I]f a trial court hearing a CHINS matter could simply rely upon the facts alleged in such preliminary filings, it would seem to obviate the need for a fact-finding hearing.”). Further, regarding domestic violence, the court could only take notice of the criminal charges filed against the father, not the facts contained in the probable cause affidavit filed in support. *Id.* at 984. The CHINS adjudication was reversed in *D.P.* because DCS failed to present any independent, admissible evidence at the factfinding hearing regarding Father's drug use and the only evidence of domestic violence was the existence of one pending criminal charge, with no further information.

[29] Here, the trial court did not only take judicial notice of Stepmother's filing of a petition for a protective order, it also considered the factual allegations included therein. Father argues that the allegations did not constitute facts capable of

being readily determined as accurate. The State counters by arguing that, unlike in *D.P.*, the relevant facts alleged in the court records – Stepmother’s petition – were made under oath and relied upon by another trial court in issuing the ex parte order of protection.

[30] No matter if the trial court erred in relying on the allegations in Stepmother’s petition, there was other probative evidence of domestic violence, unlike in *D.P.* Specifically, the evidence established that Mother sought and obtained a protective order against Father (and filed for divorce) between the time of Child’s removal and the factfinding hearing. Mother also moved into a domestic violence shelter for about two weeks, and Father reacted by posting a video on Facebook of him burning some of her belongings, which he tried to justify at the factfinding hearing. During this time, Stepmother told FCM Wilhite that Father “went crazy on her after [Child] was removed.” *Transcript* at 108. There were also domestic battery charges filed against Stepmother only weeks before the factfinding hearing, of which she provided evasive testimony, and Mother had two pending domestic battery cases (one with Father as the alleged victim), as well as other criminal charges. In sum, there was ample undisputed evidence to establish by a preponderance of the evidence that domestic violence was a concern here.

[31] With this in mind, we turn to Mother’s and Father’s challenges to the sufficiency of the evidence supporting the CHINS adjudication. Besides domestic violence, the record includes other concerning evidence. Mother’s arrests and criminal charges in early 2022 caused her to place Child in Father’s



home, a home that she had expressed concerns about to DCS. At the same time, Father had an open CHINS case involving N.E. and was blatantly disregarding the dispositional order in that case by not complying with any court-ordered services, not visiting N.E., and not permitting DCS into the home to assess the living conditions.<sup>7</sup> DCS received a neglect report regarding Child in February 2022, which FCM Poore was unable to assess despite going to Father's home fifteen to twenty times. The record suggests that Father was concealing Child from DCS.

[32] When another report came in to DCS in April 2022, FCM Poore was finally able to assess Child at another individual's home, away from Father. Child had just turned five years old, was fearful of talking to FCM Poore, and had bruises on her body at various stages of healing, including a black eye and a hand-size bruise on her neck. Aside from Child's statement to FCM Poore that the bruise on her neck came from Stepmother choking her, no other injuries were explained. While the trial court indicated in its order that it could not find by a

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<sup>7</sup> As Father observes, a panel of this court, in a split decision, reversed N.E.'s CHINS adjudication on October 24, 2022. *In re N.E.*, 198 N.E.3d 384 (Ind. Ct. App. 2022), *trans. not sought*. The majority held that DCS failed to present sufficient evidence of domestic violence or ongoing inadequate living conditions in the home. The court noted that DCS had established only that the couple had a verbal disagreement outside their home while Stepmother was experiencing a mental health crisis and that the home was without electricity and was smelly and cluttered on that date. *See id.* at 392 ("While Mother had a mental breakdown and the family home was found to inadequate on October 13, 2021, these conditions were voluntarily remedied by the parties, and therefore they are insufficient to support a CHINS determination."). Judge Vaidik dissented.

Regardless of the reversal in *N.E.*, the fact remains that the dispositional order in that case was in effect from early January 2022 to the reversal in October 2022, and during those many months, Father chose not to comply with the order or visit with N.E. Further, he actively thwarted DCS's efforts to assess both the conditions of the home and the subsequent reports related to Child.

preponderance of the evidence that Stepmother or Father had physically abused Child, we note that the multiple unexplained injuries were still worrisome considering the totality of the evidence.

[33] After Child was taken into DCS custody, Mother tested positive for methamphetamine, and she did not appear at the factfinding hearing. Father participated in the factfinding hearing but did nothing in the nearly two months between the time of Child's removal and the hearing to cooperate with DCS in this case or in N.E.'s. Father had not even scheduled visits with Child. At the factfinding hearing, Father steadfastly denied domestic violence or other issues in his home that needed to be addressed with services.

[34] In light of the totality of the circumstances and the deference given to a trial court in these matters, we cannot conclude that the trial court clearly erred by adjudicating Child a CHINS.

[35] Judgment affirmed.

May, J. and Foley, J., concur.