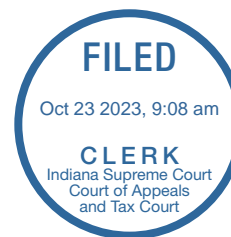


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



---

### ATTORNEY FOR APPELLANT

Mark K. Leeman  
Leeman Law Office  
Logansport, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
Katherine A. Cornelius  
Deputy Attorney General  
Indianapolis, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

In the Matter of: J.R., A.J., and  
E.B. (Minor Children), Children  
in Need of Services

K.R. (Mother),  
*Appellant-Respondent,*

v.

Indiana Department of  
Child Services,  
*Appellee-Petitioner*

October 23, 2023

Court of Appeals Case No.  
23A-JC-1095

Appeal from the Fulton Circuit  
Court

The Honorable A. Christopher  
Lee, Judge

Trial Court Cause Nos.  
25C01-2302-JC-18  
25C01-2302-JC-19  
25C01-2302-JC-20

**Memorandum Decision by Judge Weissmann**  
Chief Judge Altice and Judge Kenworthy concur.

## **Weissmann, Judge.**

- [1] K.R. (Mother) appeals the trial court's determination that her three children are children in need of services (CHINS). Mother claims the Indiana Department of Child Services (DCS) failed to prove her children have needs that are unlikely to be met without court intervention. As the record reveals recent drug activity and domestic violence in Mother's home, we affirm.

## **Facts**

- [2] Mother's three children are 11-year-old A.J., 7-year-old J.R., and 3-year-old E.B. (collectively, Children). Each child has a different father. Before E.B. was born, J.R. and A.J. were found to be CHINS based on domestic violence by J.R.'s father against Mother and Mother's struggles with substance abuse. At the time, Mother was using methamphetamine while also undergoing treatment for an opiate addiction at a methadone clinic. At a review hearing in March 2018, the CHINS court found that Mother was non-compliant with services and continued to use marijuana and methamphetamine. A month later, the court appointed separate guardians for A.J. and J.R. and terminated the CHINS case.
- [3] But A.J.'s guardian soon placed A.J. back in Mother's care without court permission. In January 2020, the court terminated J.R.'s guardianship and returned him to Mother's custody. Mother gave birth to E.B. three months later. Although A.J. had been living with Mother for years, the court did not terminate A.J.'s guardianship until December 2022. By that point, Children were living with Mother.

- [4] In February 2023, Mother sought treatment at a hospital emergency room for what she believed were parasites in her ears and throat. A drug test revealed that Mother had amphetamines, benzodiazepines, tetrahydrocannabinol (THC), and methadone in her system.
- [5] Later that month, DCS investigated a report that Children were neglected. E.B.'s father, who had lived with Mother for more than four years, told the DCS investigator that Mother was abusing Adderall. He also reported that Children accompanied Mother on her drug buying expeditions. Mother was acting "crazy" and complaining about bugs and parasites crawling on her, according to E.B.'s father. Tr. Vol. II, p. 35. Mother took E.B. to the hospital emergency room for an alleged parasite problem, but the hospital discharged him without finding any evidence of parasites.
- [6] DCS petitioned to find Children to be CHINS based on neglect. At the initial hearing on that petition, Mother tested positive for amphetamines and cannabinoids. The incarcerated fathers of A.J. and J.R. admitted their children were CHINS. But Mother and E.B.'s father (Father) denied the allegations. The trial court therefore set the CHINS petition for a fact-finding hearing. Mother tested positive for amphetamines and THC in a drug screen two weeks before the fact-finding hearing.
- [7] At the factfinding hearing, Mother invoked her Fifth Amendment right against self-incrimination when asked whether she had used or tested positive for illegal drugs during the past year. Father also tried to avoid answering questions about

Mother's drug use but ultimately denied the accuracy of his statements to the DCS investigator. He claimed he had been confused by the investigator's questions—an assertion that the trial court did not deem credible.

[8] Eleven-year-old A.J.—Mother's oldest child—testified that Mother and Father fought and that Mother would throw household items at Father and hit him. A.J. described the couple's fighting as so loud that it would keep her awake at night. A.J. further testified that Mother regularly took two types of orange pills, which Mother bought from two men. Mother also used a smoking device to ingest a herbal substance in A.J.'s presence.

[9] Mother sometimes required A.J. to urinate in a cup. According to A.J., Mother then would freeze the urine, heat it up before a drug test, and place the urine in a bag that she would wrap around her stomach under her clothes before going to the methadone clinic.

[10] The trial court found Children to be CHINS. Although parents provided Children with necessities like food and shelter, the court concluded that Mother and Father “don't seem to appreciate the impact of their domestic trouble and [Mother's] substance abuse on the children” and that they are unlikely to “seek the individual and family services needed to address their issues” absent court coercion. App. Vol. II, p. 186. Mother appeals.

## **Discussion and Decision**

[11] Mother contends DCS failed to prove Children were CHINS under Indiana Code § 31-34-1-1, which specifies:

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, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision:
  - (A) when the parent, guardian, or custodian is financially able to do so; or
  - (B) due to the failure, refusal, or inability of the parent, guardian, or custodian to seek financial or other reasonable means to do so; 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.

DCS must prove these statutory requirements by a preponderance of the evidence. *Matter of Ar.B.*, 199 N.E.3d 1232, 1237 (Ind. Ct. App. 2022).

[12] Mother does not contest that Children are seriously impaired or seriously endangered. She merely challenges the trial court's finding that Children need care, treatment, or rehabilitation that they are not receiving and are unlikely to receive without court coercion.

[13] When analyzing Mother's claim of insufficient evidence, we consider only the evidence, and any reasonable inferences drawn from it, that supports the trial court's judgment. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). Without reweighing the evidence or judging the credibility of the witnesses, we will

reverse the trial court's decision "only upon a showing that the decision . . . was clearly erroneous." *Id.*

[14] Contrary to Mother's claim, DCS proved by a preponderance of the evidence that Children were CHINS. Mother argues that she and Father are meeting all of Children's needs and that Children will not be exposed to illegal drug use because she is in drug treatment. According to Mother, court coercion is not needed under these circumstances.

[15] Yet the evidence shows that Children lacked a safe home and proper supervision, given Children's exposure to domestic abuse and Mother's purchase and use of drugs in Children's presence. We have recognized that domestic violence adversely affects a child's development. *In re E.M.*, 4 N.E.3d 636, 644-45 (Ind. 2014). Father, who continued to live with Mother, admitted that the couple had engaged in domestic violence previously, although he disputed A.J.'s account of recent domestic violence. The trial court credited A.J.'s testimony over Father's, and we will not disturb that determination of witness credibility.

[16] Further, we find ample evidence that Mother continued to expose Children to her drug lifestyle even while she was in drug treatment. The children joined her when she purchased drugs. Mother sought A.J.'s urine to evade drug tests. And children observed Mother using drugs. A child's exposure to illegal drug use poses an actual and appreciable danger to the child. *In re J.L.*, 919 N.E.2d 561, 563 (Ind. Ct. App. 2009) (quoting *White v. State*, 547 N.E.2d 831, 836 (Ind.

1989)). The threat is two-fold: the child may see the parent using the drugs, and the parent who is responsible for the child’s care and custody may be impaired. *See id.* In the latter circumstance, the parent “essentially abandon[s]” the child, leaving the child “without any reasonable supervision.” *Id.*

[17] The trial court properly found that these harmful circumstances were likely to continue absent coercive court intervention. A trial court need not “wait until a tragedy occurs to intervene” in the parent-child relationship. *In re A.H.*, 913 N.E.2d 303, 306 (Ind. Ct. App. 2009). Mother had a history of non-compliance with services that continued throughout this case. She visited with Children only once during the month between their removal and the CHINS factfinding hearing. She cancelled one other scheduled visit and then declined to respond to any further contacts from visitation providers. And in response to A.J.’s detailed testimony outlining the harmful violence and drug activity to which Children were exposed, Mother was defiant. She accused A.J. of lying and claimed the child was troubled. The trial court properly determined Children were CHINS.

[18] We affirm the trial court’s CHINS judgment.

Altice, C.J., and Kenworthy, J., concur.