

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of:

C.S. and A.S. (Minor Children)
Children in Need of Services,

and

Ch.S. (Father),
Appellants-Respondents,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

April 28, 2023

Court of Appeals Case No.
22A-JC-2164

Appeal from the Madison Circuit
Court

The Honorable Stephen J. Koester,
Judge

Trial Court Cause Nos.
48C02-2105-JC-134
48C02-2105-JC-135

Memorandum Decision by Judge Bailey
Judges Brown and Weissmann concur.

Bailey, Judge.

Case Summary

- [1] Ch.S. (“Father”) appeals the trial court’s adjudication of his minor children, C.S. and A.S. (collectively, “the Children”), as children in need of services (“CHINS”).¹ Father presents a single issue for our review, which we restate as whether the trial court clearly erred when it adjudicated the Children to be CHINS. We affirm.

Facts and Procedural History

- [2] C.S. was born March 9, 2011, and A.S. was born March 1, 2012. On April 16, 2021, the Indiana Department of Child Services (“DCS”) received a report that Father was “on the run” with the Children after Father had been implicated in a “stabbing incident.” Tr. Vol. 1 at 43. The report further indicated that Father was using cocaine. DCS Family Case Manager (“FCM”) Zachary Allgood investigated the report and spoke with Father’s ex-wife, Maarkana Schmitt. Schmitt stated that Father was not on the run but was “out of town” for work at the time and that Father had left the Children in her care. *Id.* at 45. On May 6, Father was arrested on allegations of robbery and aggravated battery. Following his arrest, FCM Allgood spoke with Father. Father indicated that he planned to leave the Children in Schmitt’s care and that Schmitt had a “power

¹ The whereabouts of the Children’s mother, B.S., is unknown, and she does not participate in this appeal.

of attorney document that covered the [C]hildren.” *Id.* Father had intended to execute documents to make Schmitt a legal guardian but never did.

[3] While the Children were in Schmitt’s care, C.S. exhibited “mental health behaviors.” *Id.* In particular, C.S. was “getting aggressive” and “threatening violence” toward Schmitt and A.S. *Id.* As a result of C.S.’s behaviors, on May 17, Schmitt took C.S. to a mental health hospital for a “formal evaluation” of his mental health. *Id.* However, the facility would not allow Schmitt to enroll C.S. because she was neither a parent nor a legal guardian. Because C.S. was “having behaviors that jeopardized his safety, Ms. Schmitt’s safety, and [A.S.’s] safety” and because those behaviors “wouldn’t be able to appropriately get addressed . . . without someone having placement of them,” DCS detained the Children and officially placed them in the care of Schmitt so that Schmitt could “secure whatever [C.S.] needed for his mental health.” *Id.* at 46.

[4] Following the Children’s placement in her care, Schmitt and A.S. informed DCS that “they didn’t necessarily feel comfortable” having C.S. returned to the house after the completion of his evaluation. *Id.* at 48. As such, after his evaluation, C.S. was placed in the home of his paternal grandmother. Thereafter, DCS learned that Schmitt “had packed up all of [A.S.’s] things, dropped her and those items off” at a friend’s house, and “just sort of left her there without notifying” DCS. *Id.* DCS then placed A.S. in relative care.

[5] C.S. continued to exhibit unsafe behaviors, and, as a result, he underwent “multiple placement changes.” *Id.* at 70. C.S. would “act out” and “steal

things,” and he would make “risky decisions.” *Id.* at 72. C.S. would “climb the side of the house,” “jump off the roof,” and try to get out of a moving vehicle. *Id.* at 72. At one particular placement, C.S. had two foster parents plus additional caregivers who were able to provide C.S. with twenty-four-hour supervision. Despite that level of care, C.S. continued to engage in risky behavior. C.S. stole from multiple stores, “handcuffed himself” to a closet door, snuck out of the home, and took a bow and arrow out of a locked shed and “point[ed] it at other children.” *Id.* at 80. C.S. was ultimately placed in emergency shelter care.

[6] On May 19, DCS filed petitions alleging that the Children were CHINS.² FCM Sheila Fahkreddine put in referrals for services, including home-based therapy, a clinical interview and assessment, a request for a diagnostic evaluation, life skills, and family therapy. Father ultimately posted bond and was released from incarceration on July 13. Following his release, Father’s cooperation with services was “intermittent.” *Id.* at 74. Father would only participate “when he want[ed] to meet with” DCS. *Id.* Father’s involvement was “not on the terms of the provider or the department,” but it was “what [F]ather wants when [F]ather wants it.” *Id.*

² DCS filed a separate petition for each child. Father provided a copy of the petition as it relates to A.S., but he has not provided a copy of the petition alleging C.S. to be a CHINS. However, the CCS demonstrates that DCS did file such a petition and that it was based on an allegation of “Basic Neglect.” Appellant’s App. Vol. 2 at 10.

- [7] One of the services required Father to call a number every day to determine if he was required to submit to a drug test on that day. Father missed twenty-five calls, eleven of which were “unforgiven[.]” *Id.* at 76. Father completed some of the drug tests, and he tested positive for cocaine on two occasions: once on November 5, 2021, and once on March 2, 2022. *See Ex. Vol. 1* at 11, 15. During the proceedings, Father discussed his living conditions with FCM Fakhreddine. Father informed FCM Fakhreddine that he lived in a trailer and that he “did not have the ability in the trailer . . . to appropriately house” the Children. *Tr. Vol. 1* at 82. He also indicated that he intended to secure other housing.
- [8] Prior to C.S.’s placement at the emergency shelter, Father was “able to have visits throughout the week and on Sundays.” *Id.* at 125. However, Father only “utilized Sundays.” *Id.* Father “wasn’t utilizing visitation time during the week,” and he was not routinely visiting the Children. *Id.* FCM Fakhreddine did not place the Children in Father’s care at any point because of “the no shows for visitations” as well as concerns regarding “the ability to parent,” “stability regarding housing,” and “ongoing sobriety[.]” *Id.* at 128.
- [9] The court held a fact-finding hearing on DCS’s petitions. At that hearing, DCS presented the testimony of Patricia Bode, the Children’s home-based therapist. Bode testified that C.S. had been diagnosed with post-traumatic stress disorder

from a “trauma”³ he had sustained and ADHD. *Id.* at 64. Bode further testified that both Children would benefit from continued services but that C.S. would need treatment that is “more intensive” in nature. *Id.* at 66.

[10] DCS also presented the testimony of FCM Fahkreddine. FCM Fahkreddine testified that C.S. “needs constant 24-hour supervision.” *Id.* at 70. She also testified that C.S. would likely need “multiple caregivers” who understand his trauma. *Id.* at 71. She further testified that she had “a volume of concerns” for the Children that “all center around [Father’s] basic ability to meet” the Children’s needs. *Id.* at 78. In particular, she testified that she was concerned about Father’s “lack of stability” and Father’s “ability to consistently and constantly parent his children in a way that is conducive to their well-being and that is an approach that would not . . . further cause trauma.” *Id.* at 77. She also expressed concerns regarding Father’s intermittent drug use and how that would affect his “ability to parent the children[.]” *Id.* In addition, she had “concerns of [C.S.’s] mental health and how that would be navigated[.]” *Id.* at 78.

[11] When asked if the case would “resolve itself without the coercive intervention of the court,” FCM Fahkreddine responded: “I don’t see how it could. It hasn’t thus far.” *Id.* at 82. FCM Fahkreddine also testified that Father has not requested that the Children be placed with him “one single time.” Tr. Vol. 2 at

³ It is not clear from the record what the trauma was, but it apparently involved his mother. See Tr. Vol. 1 at 239.

58. Rather, she testified that Father “has not pursued getting . . . his children back in the home with him.” *Id.* at 59. FCM Fahkreddine also testified that Father did not provide a plan for C.S.’s mental health treatment, a plan for the care of the Children while he worked, or the identity of any caregivers for the Children if he were to be convicted and incarcerated in the pending criminal case.

[12] The Children’s Court-Appointed Special Advocate (“CASA”) testified that, based on her observations of the Children and statements the Children had made to her regarding past trauma, the Children “are definitely in-need of services” and that they need “continued therapy[.]” Tr. Vol. 1. at 230. She further testified that she would not recommend reunification with Father “based upon what [she has] seen.” *Id.*

[13] Following the fact-finding hearing, the court entered its findings of fact, conclusions thereon, and judgment in which it adjudicated the Children to be CHINS. The court then entered its dispositional order and ordered Father to, among other things, maintain safe and stable housing, not use illegal substances, submit to random drug screens, meet “all the medical and mental health needs” of the Children, and participate in Fatherhood Engagement. Appellant’s App. Vol. 2 at 18. This appeal ensued.

Discussion and Decision

[14] Father contends that the trial court erred when it adjudicated the Children to be CHINS. Our Supreme Court previously set out our standard of review:

When reviewing a trial court’s CHINS determination, we do not reweigh evidence or judge witness credibility. *In re S.D.*, 2 N.E.3d 1283, 1286 (Ind. 2014). “Instead, we consider only the evidence that supports the trial court’s decision and [the] reasonable inferences drawn therefrom.” *Id.* at 1287 (citation, brackets, and internal quotation marks omitted). When a trial court supplements a CHINS judgment with findings of fact and conclusions of law, we apply a two-tiered standard of review. We consider, first, “whether the evidence supports the findings” and, second, “whether the findings support the judgment.” *Id.* (citation omitted). We will reverse a CHINS determination only if it was clearly erroneous. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). A decision is clearly erroneous if the record facts do not support the findings or “if it applies the wrong legal standard to properly found facts.” *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997) (citation omitted).

Gr. J. v. Ind. Dep’t. of Child Servs. (In re D.J.), 68 N.E.3d 574, 577-78 (Ind. 2017) (alterations in original). “A CHINS proceeding focuses on the best interests of the children, not the ‘guilt or innocence’ of either parent.” *M.P. v. Ind. Dep’t of Child Servs. (In re D.P.)*, 72 N.E.3d 976, 980 (Ind. Ct. App. 2017).

[15] DCS alleged that the Children were CHINS pursuant to Indiana Code Section 31-34-1-1 (2022), which provides that a child is a child in need of services if, before the child becomes eighteen 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; 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. Our Supreme Court has interpreted this provision to require “three basic elements: that the parent’s actions or inactions have seriously endangered the child, that the child’s needs are unmet, and (perhaps most critically) that those needs are unlikely to be met without State coercion.” *J.B. v. Ind. Dep’t. of Child. Serv. (In re S.D.)*, 2 N.E.3d 1283, 1287 (Ind. 2014).

[16] On appeal, Father alleges that the court erred when it adjudicated the Children to be CHINS because the “evidence failed to show any needs of the [C]hildren that have not been or could not be met by the father if his children were in his custody.” Appellant’s Br. at 8. Father maintains that “there was no showing of a necessity for the [C]hildren to be made CHINS except for Father’s arrest.” *Id.* at 9. However, Father’s argument on appeal is simply a request that we reweigh the evidence, which we cannot do.

[17] The evidence most favorable to the court’s order demonstrates that DCS initially detained the Children because Father had left them in the care of someone who did not have the authority to get the Children the treatment they needed. Indeed, when Father left for a work trip, he left the Children with Schmitt without having made Schmitt a legal guardian. And while the Children were in Schmitt’s care, C.S. exhibited “aggressive” behavior, and he was “threatening violence.” Tr. Vol. 1 at 45. As a result, Schmitt attempted to

have C.S. evaluated by a mental health hospital, but the hospital would not allow Schmitt to enroll C.S. because she was not a legal guardian.

[18] The evidence also demonstrates that DCS did not place the Children with Father after his release from incarceration because of issues with his housing. In particular, Father admitted to FCM Fahkreddine that he lived in a trailer but that he “did not have the ability in the trailer . . . to appropriately house” the Children. *Id.* at 82. FCM Fahkreddine twice attempted to view the trailer but was unable to do so. And, while Father indicated that he was going to obtain other housing, he had not yet done so.

[19] Further, during the underlying proceedings, Father’s participation in services was “intermittent,” and he only did “what [F]ather wants when [F]ather wants it.” *Id.* at 74. Father only visited the Children on Sundays even though he “was able to have visits throughout the week[.]” *Id.* at 125. In addition, Father missed twenty-five calls for drug screens, eleven of which were unforgiven. And, while he did submit to some drug tests, he twice tested positive for cocaine, with the most recent test occurring in March 2022, only a few months before the fact-finding hearing on the CHINS petition. In addition, Father did not request that the Children be placed with him “one single time,” and he did not “pursue” getting the Children back in the home. Tr. Vol. 2 at 58-59.

[20] The evidence also shows that C.S. “needs constant 24-hour supervision” and that he would likely need “multiple caregivers” who understand his trauma. Tr. Vol. 1 at 70-71. And Bode and the CASA both testified that both of the

Children would benefit from continued services and continued therapy. But Father had not made a plan for the Children’s ongoing mental health treatment, and he had not identified a plan for the care of the Children while he worked or a plan for their care in the event he is incarcerated. As a result, DCS has concerns regarding “the ability to parent,” “stability regarding housing,” and “ongoing sobriety[.]” *Id.* at 128. And FCM Fahkreddine testified that the case would not “resolve itself without the coercive intervention of the court.” *Id.* at 82. Similarly, the CASA testified that the Children need “continued therapy” and that she could not recommend reunification with Father. *Id.* at 230.

Conclusion

[21] The evidence most favorable to the court’s judgment supports the court’s conclusion that the Children’s needs are unmet and that those needs are unlikely to be met without State coercion. We therefore hold that the trial court did not clearly err when it adjudicated the Children to be CHINS. We affirm the trial court’s order.⁴

[22] Affirmed.

Brown, J., and Weissmann, J., concur.

⁴ To the extent Father asserts that the dispositional order does not contain “any discussion of efforts by DCS to reunite the Children with their father,” Father has not provided any authority to demonstrate that any such omission would require this Court to reverse the CHINS adjudication. Appellant’s Br. at 9.