

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of: A.M.P.,

Child in Need of Services,

A.T. (Mother) and J.P. (Father),

Appellants-Respondents,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

May 23, 2023

Court of Appeals Case No.
22A-JC-2876

Appeal from the Elkhart Circuit
Court

The Honorable Elizabeth A.
Bellin, Magistrate

Trial Court Cause No.
20C01-2206-JC-000044

Memorandum Decision by Judge May
Judges Mathias and Bradford concur.

May, Judge.

- [1] A.T. (“Mother”) and J.P. (“Father”) (collectively, “Parents”) appeal the adjudication of their child, A.M.P. (“Child”) as a Child in Need of Services (“CHINS”). Parents argue the trial court’s findings did not support its conclusion that Child was a CHINS. We affirm.

Facts and Procedural History

- [2] Child was born to Parents on March 8, 2006. On April 24, 2022, Child’s adult sister (“Sister”) came to Parents’ house to retrieve items to move to Sister’s new residence. While Sister was there, Child began taking Child’s personal items out of the house and indicated to Parents she was going to live with Sister. As Child attempted to remove those items, Mother kicked Child in the leg “to try and get [Child] to fall down[.]” (Tr. Vol. II at 60.) Mother also “grabbed on [Child’s] arm” so Mother could remove the items from Child’s hands. (*Id.* at 61.)
- [3] At some point during the incident, Father called the police. When police arrived on scene, they observed Child’s injuries. Mother told police she was “trying to stop [Child] from running away.” (App. Vol. II at 27.) Parents agreed to let Child stay with Sister for the night of April 24, 2022, “to defuse the

situation.” (Tr. Vol. II at 99.) Sometime thereafter, Parents directed Child to come home, but Child did not do so, and Parents reported Child as a runaway.¹

[4] On April 28, 2022, DCS received a report that Child “had bruises and other injuries that were allegedly caused by [Parents].” (*Id.* at 40.) DCS Family Case Manager (“FCM”) Andi Trowbridge investigated and discovered Child was not living with Parents, but instead with her Sister. When FCM Trowbridge spoke with Child at Sister’s house, she observed “bruises and then there was an abrasion on [Child’s] leg near the ankle.” (*Id.* at 41.) FCM Trowbridge took pictures of the injuries. FCM Trowbridge asked Parents for permission to take Child to the hospital for an examination and Father consented. At the hospital, a doctor examined Child and determined she had “25 bruises . . . and then the abrasion.” (*Id.* at 45.)

[5] On May 11, 2022, FCM Trowbridge spoke with Parents. During the interview, Mother yelled at FCM Trowbridge and Parents yelled at each other. FCM Trowbridge “had to break up multiple, um, verbal altercations between [Parents] in the 15 minutes [she] was there.” (*Id.* at 45-6.) Parents initially “denied using any sort -- any form of physical discipline with [Child], you know, completely.” (*Id.* at 46.) However, Mother later told FCM Trowbridge that “[Child] was trying to exit the home through a window” and Mother “shut the window and it was on [Child’s] leg.” (*Id.*) The interview took place outside

¹ The runaway allegation meant Child was a Dual Status Child, as she had a pending case in juvenile court and also was the subject of a CHINS case. We do not examine Child’s status as a Dual Status Child.

the house and FCM Trowbridge did not go into the family residence during the interview because she “did not feel safe.” (*Id.*)

[6] “[R]oughly two months” after the April 24, 2022, incident, Child returned to Parents’ home. (*Id.* at 100.) On June 3, 2022, DCS filed a petition alleging Child was a CHINS based on the injuries she sustained as part of the April 24, 2022, incident. On June 23, 2022, the trial court held its initial hearing on the matter during which the trial court appointed counsel for Parents. On September 19, 2022, the trial court held a fact-finding hearing. During the hearing, Child testified she did not want to live with Parents because it was a “toxic environment.” (*Id.* at 77.) Child also testified interactions with Parents involve “a lot of yelling” but they do not “really get physical.” (*Id.* at 79.) She indicated sometimes Father would “kick down a door and stuff” and Mother “throws things, or breaks things[.]” (*Id.*)

[7] FCM Trowbridge testified she was concerned about Child’s “safety in the home kind of due to her demeanor, and the volatile interactions that [she], personally, observed between [Parents].” (*Id.* at 47.) FCM Trowbridge indicated she believed Child would not receive the proper care without the trial court’s intervention because “[Parents] both denied causing injury to [Child] and they both said that they would -- would not participate in a DCS case.” (*Id.* at 48.)

[8] At the end of the hearing, the trial court adjudicated Child as a CHINS. Child then asked to be removed from the home because she was “in fear for her safety and in fear of retaliation from her testimony if returned home.” (App. Vol. II at

109.) The trial court granted Child’s request and removed her from Parents’ home. The trial court held a hearing regarding Child’s placement on September 21, 2022. The trial court ordered Child reside in kinship placement, where she had been since September 19, 2022, when the trial court granted her request for removal from Parents’ home. The trial court also allowed Parents “supervised visitation at the discretion of [Child].” (*Id.* at 138.)

[9] On September 26, 2022, the trial court entered its order adjudicating Child as a CHINS. On October 20, 2022, the trial court held the CHINS dispositional hearing. During the hearing,

Mother was admonished three times, after the Court did order that Mother be removed because she continued to yell and interrupt the Court thereby prohibiting the Court from completing proceeding on this matter. Mother and Father both stood and voluntarily removed themselves from the courtroom.

(Tr. Vol. II at 190.) At the end of the hearing, the trial court ordered Parents to, among other things, complete parenting assessments, participate in individual and family therapy, participate in supervised visitation if “it is therapeutically [sic] appropriate and a therapist determines that it would be okay for a supervised visitation to occur[,]” and cease all contact with Child via social media until a therapist determines it is appropriate that social media contact resume. (*Id.* at 191.)

Discussion and Decision

[10] Parents argue the trial court erred when it adjudicated Child as a CHINS. Because a CHINS proceeding is a civil action, DCS must prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code. *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). DCS alleged Child was a CHINS pursuant to Indiana Code sections 31-34-1-1, 31-34-1-2, and 31-34-12-4. Indiana Code section 31-34-1-1 states:

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.

Pursuant to Indiana Code section 31-34-1-2, a child can be a CHINS if her “physical or mental health is seriously endangered due to injury by the act or omission of the child’s parent, guardian, or custodian.” Finally, Indiana Code section 31-34-12-4 states, in relevant part:

A rebuttable presumption is raised that the child is a child in need of services because of an act or omission of the child’s parent, guardian, or custodian if the state introduces competent evidence of probative value that:

(1) the child has been injured;

(2) at the time the child was injured, the parent, guardian, or custodian:

(A) had the care, custody, or control of the child; or

(B) had legal responsibility for the care, custody, or control of the child;

(3) the injury would not ordinarily be sustained except for the act or omission of a parent, guardian, or custodian; and

(4) there is a reasonable probability that the injury was not accidental.

[11] A CHINS adjudication focuses on the needs and condition of the child, rather than the culpability of the parent. *In re N.E.*, 919 N.E.2d at 105. The purpose of a CHINS adjudication is not to punish the parent but to provide proper services for the benefit of the child. *Id.* at 106. “[T]he acts or omissions of one

parent can cause a condition that creates the need for court intervention.” *Id.* at 105. “A CHINS adjudication can also come about through no wrongdoing on the part of either parent[.]” *Id.*

While we acknowledge a certain implication of parental fault in many CHINS adjudications, the truth of the matter is that a CHINS adjudication is simply that - a determination that a child is in need of services. Standing alone, a CHINS adjudication does not establish culpability on the part of a particular parent. Only when the State moves to terminate a particular parent’s rights does an allegation of fault attach. We have previously made it clear that CHINS proceedings are “distinct from” involuntary termination proceedings. The termination of the parent-child relationship is not merely a continuing stage of the CHINS proceeding. In fact, a CHINS intervention in no way challenges the general competency of a parent to continue a relationship with the child.

Id. (citations omitted). “In cases where a child has injuries that suggest neglect or abuse, it shifts the burden to the party most likely to have knowledge of the cause of the injuries - the parent, guardian, or custodian - to produce evidence rebutting the presumption that the child is a CHINS.” *Ind. Dep’t of Child Servs. v. J.D.*, 77 N.E.3d 801, 807 (Ind. Ct. App. 2017), *trans. denied*.

[12] Here, the trial court determined Child was a CHINS based on Indiana Code sections 31-34-1-1, 31-34-1-2, and 31-34-12-4. The trial court made several findings outlining the timeline of events that occurred during the incident on April 24, 2022. Additionally, it found, specific to Indiana Code section 31-34-12-4:

17. I.C. 31-34-12-4 creates a rebuttable presumption that the Child is a child in need of services when there exists evidence that the Child has been injured, and at the time of that injury the parents had legal responsibility for the care, custody, and control of the child, the injury would not normally be sustained except for an act or omission by a parent, and that there is a reasonable probability that the injury was not accidental.

18. The Child testified that the injuries she sustained were not accidental in that Mother was actively trying to keep her from removing her things from the home and had kicked her, grabbed her, and shut a window on her.

19. Had Mother not resorted to physical violence, the Child would not have the injuries she sustained.

20. Parents had a legal responsibility for this Child and had reported Child as a runaway by indicating they did not give the Child permission to leave the home.

(App. Vol. II at 109.) Based thereon, the trial court concluded, “Parents have not rebutted the presumption that this Child is a child in need of services.” (*Id.*) Parents do not challenge the trial court’s findings or whether they support the trial court’s conclusion Child was a CHINS pursuant to Indiana Code section 31-34-12-4.

[13] During the April 24, 2022, incident, Mother kicked Child, grabbed Child as she attempted to leave the family home, and shut a window on Child’s leg resulting in injury to Child. When DCS investigated the report of abuse, FCM Trowbridge observed an abrasion and multiple bruises on Child’s legs. A

subsequent medical exam revealed twenty-five bruises on Child's legs as well as an abrasion near one of her ankles. Mother admitted closing the window on Child's leg because she didn't want Child to leave the house.

[14] In their appellate brief, Parents challenged Child's adjudication as a CHINS under Indiana Code sections 31-34-1-1 and 2. However, because the trial court also determined Parents had not rebutted the presumption Child was a CHINS pursuant to Indiana Code section 31-34-12-4, and Parents do not challenge that conclusion, we need not address the arguments regarding Indiana Code sections 31-34-1-1 and 2. *See Matter of R.G.*, 130 N.E.3d 1171, 1179 (Ind. Ct. App. 2019) (appellate court need not address Parent's arguments about Indiana Code sections 31-34-1-1 and 2 if it concludes "that the rebuttable presumption set out in I.C. § 31-34-12-4 applies . . . and that Parents failed to rebut the presumption"), *trans. denied*. Therefore, we conclude the trial court did not err when it adjudicated Child as a CHINS because DCS proved Child was presumptively a CHINS pursuant to Indiana Code section 31-34-12-4 and Parents did not rebut that presumption. *See, e.g., Matter of K.Y.*, 145 N.E.3d 854, 862-3 (Ind. Ct. App. 2020) (affirming child's adjudication as a CHINS based on Indiana Code section 31-34-12-4 because DCS presented sufficient evidence to prove mother hit child with a belt causing bruising on child's face and multiple scratches and bruises to other parts of child's body), *trans. denied*.

Conclusion

[15] As DCS presented sufficient evidence Child was presumptively a CHINS pursuant to Indiana Code section 31-34-12-4 and Parents did not rebut the presumption, the trial court did err when it adjudicated Child as a CHINS. Accordingly, we affirm.

[16] Affirmed.

Mathias, J., and Bradford, J., concur.