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IN THE COURT OF APPEALS OF INDIANA

In the Matter of K.W. and R.W., (Children in Need of Services)

and

D.W. (Father),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

October 21, 2021

Court of Appeals Case No. 21A-JC-598

Appeal from the Marion County Superior Court, Juvenile Division

The Honorable Mark A. Jones, Judge

The Honorable Diana J. Burleson, Magistrate

Trial Court Cause No.
49D15-2002-JC-430
49D15-2002-JC-431

Tavitas, Judge.

Case Summary

[1] D.W. ("Father") appeals the trial court's determination that his children, K.W. and R.W. (collectively, the "Children"), are children in need of services ("CHINS"). Father contends that: (1) the trial court erred by denying Father's two motions to dismiss for failure to complete the fact-finding and dispositional hearings within the statutory time deadlines; and (2) the evidence is insufficient to sustain the trial court's conclusion that the Children are CHINS. Finding that the fact-finding hearing and dispositional hearing were continued for good cause pursuant to Indiana Trial Rule 53.5 and that the evidence supports the trial court's conclusion that the Children are CHINS, we affirm.

Issues

[2] Father raises several issues, which we consolidate and restate as:

I. Whether the trial court abused its discretion by denying Father's motions to dismiss for failure to complete the fact-finding and dispositional hearings within the statutory time frames.

II. Whether sufficient evidence supports the CHINS adjudications.

Facts

[3] Father and K.A. ("Mother") had two children—R.W., born in November 2005, and K.W., born in September 2011. Father and Mother divorced in 2011 and were parties to a tumultuous domestic relations proceeding in Monroe County Circuit Court. Both Father and Mother have struggled with substance abuse. Multiple Department of Child Services ("DCS") assessments have been

performed over the years. Father has a history of failing to cooperate with DCS and refusing to participate in drug screens. A CHINS proceeding was initiated in 2016 and closed in 2017.

[4] In November 2019, the Monroe Circuit Court granted Father legal and physical custody of the Children and suspended Mother's parenting time in the domestic relations case. In December 2019, the trial court ordered Father to cooperate with DCS, allow DCS into his home, and allow DCS to speak with the Children. Father was ordered to submit to drug screens. In January 2020, the trial court found Father in contempt for his failure to cooperate with DCS. Father, however, continued to be uncooperative with DCS and refused to submit to drug screens.

[5] Kaitlyn Williams, her boyfriend, and her children lived with Father for a short time and slept downstairs in Father's house. Father's children, R.W. and K.W., each had their own bedrooms, and Father would sleep in K.W.'s bed. One night, Williams heard a repeating knocking noise that sounded like "the bed hitting the wall," and Williams went upstairs to investigate. Tr. Vol. II p. 33. Williams saw K.W. with blood dripping from her nightgown. K.W. had tears in her eyes and told Williams, "I need to tell you something," and Father pulled K.W. away. *Id.* at 34. That night, Williams, fearful of the situation in the home, took her children and moved out of Father's house.

[6] Williams also observed that Father "barely got [the Children] to school" and that Father was using methamphetamine. *Id.* at 37. Williams described Father as "just a weird individual all around." *Id.* at 38.

[7] On February 1, 2020, family case manager ("FCM") Breanna Kirk made contact with K.W. at Mother's residence. While FCM Kirk was talking with K.W., Father arrived. K.W.'s "demeanor changed," and she "basically shut down" and would not talk with FCM Kirk. *Id.* at 19, 20. Both Mother and Father refused to participate in a drug screen offered by FCM Kirk. Father informed a police officer on the scene that he had recently smoked marijuana. FCM Kirk removed the Children from the parents' care due to the allegations. K.W. "didn't want to have anything to do with [Father] at all" as she was leaving. *Id.* at 21.

[8] FCM Kirk immediately took K.W. to Riley Hospital for an examination. Forensic Nurse Nicole Johnson examined K.W. and found "some redness near the inferior portion of her vagina" and "some edema to her labia minora and majora." *Id.* at 70. It was recommended that K.W. take a "sitz bath" because "her vagina was swollen." *Id.* at 29. Nurse Johnson admitted that the cause of the trauma was "outside of [the] scope" of her examination. *Id.*

[9] DCS filed a petition alleging that the Children are CHINS on February 4, 2020. The petition alleged that K.W. was a CHINS based upon Indiana Code Section 31-34-1-1 (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 food, clothing, shelter, medical care, education, or supervision) and Indiana Code Section 31-34-1-3 (the child is a victim of a sex offense). The petition alleged that R.W. was a CHINS based upon Indiana Code Section 31-34-1-1 (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 food, clothing, shelter, medical care, education, or supervision) and Indiana Code Section 31-34-1-3(c) (a child living in the same household with another child who is a victim of a sex offense). Specifically, the petition alleged that Father failed to provide the Children with "a safe and appropriate living environment free from substance abuse and sexual abuse." Appellant's App. Vol. II p. 38. On March 9, 2020, at a pre-trial conference, the trial court noted that the parties did not waive the sixty-day deadline for conducting a fact-finding hearing and set the fact-finding hearing for March 20, 2020.

[10] Due to the COVID-19 emergency, the Indiana Supreme Court entered a series of orders tolling time limits beginning in March 2020. *See In the Matter of Administrative Rule 17 Emergency Relief for Indiana Trial Courts Relating to the 2019 Novel Coronavirus (COVID-19)*, 141 N.E.3d 388 (Ind. 2020); *In the Matter of Administrative Rule 17 Emergency Relief for Indiana Trial Courts Relating to the 2019 Novel Coronavirus (COVID-19)*, 141 N.E.3d 389 (Ind. 2020). On March 13, 2020, our Supreme Court issued an order granting Marion County's petition for emergency relief. *In the Matter of the Petition of the Courts of Marion County for Administrative Rule 17 Emergency Relief*, 20S-CB-00113 (Mar. 13, 2020). That

order provided: "The Court authorizes the tolling, beginning March 16, 2020 and until April 6, 2020, of all laws, rules, and procedures setting time limits for speedy trials in criminal and juvenile proceedings . . . and in all other civil and criminal matters before the courts of Marion County." Ultimately, the tolling of time limits was extended through August 14, 2020. *In the Matter of Admin. Rule 17 Emergency Relief for Indiana Trial Courts Relating to the 2019 Novel Coronavirus (COVID-19)*, 145 N.E.3d 787 (Ind. 2020). Accordingly, the time for conducting the fact-finding hearing was tolled from March 16, 2020, through August 14, 2020.

[11] The matter was set for a fact-finding hearing on August 14, 2020, but DCS filed a motion to convert the August 14th hearing to a pre-trial conference, which the trial court granted. Father did not appear for the pre-trial conference, and Father's counsel informed the trial court that Father did not wish counsel to represent him any longer. The trial court's order regarding the August 14, 2020 pre-trial conference provides: "DCS reports that the 60 day trial rule [sic] has not been waived. DCS requests the Court find good cause to waive the 60-day trial rule. Court makes specific findings on the record." Appellant's App. Vol. II p. 209. The trial court then set the matter for an additional pre-trial conference in September 2020.

[12] Father appeared at the September 2020 pre-trial conference, and the trial court appointed a public defender to represent Father; the trial court subsequently entered an order that provided: "Counsel requests this matter be set for in-person fact-finding. Court notes the 60 days was waived as the court found

good cause. Court sets this matter for virtual fact-finding noting scarcity of in-person hearings." *Id.* at 220. The trial court set the fact-finding hearing for October 30, 2020.

[13] On October 23, 2020, Father filed a motion to dismiss the CHINS proceedings claiming Father did not waive the statutory requirement to hold a fact-finding hearing within sixty days. Father contended that a fact-finding hearing should have been held on or before September 2, 2020. The trial court denied the motion to dismiss.

[14] The trial court held a fact-finding hearing on October 30, 2020. Christina Adkins, R.W.'s therapist, testified that R.W. disclosed physical abuse by Father, homelessness, and "educational abuse where she was not able to go to school." Tr. Vol. II p. 49. R.W. disclosed that Father "was either always high . . . or not taking his medicines properly and in a diabetic coma . . . and could not get her to school." *Id.* at 49-50. Therapist Adkins supervised R.W.'s phone calls with Father and observed that R.W. becomes "very, very agitated" and does not wish to speak with Father. *Id.* at 48. R.W. reported that she would "run away" if placed back into Father's care and that she would "take her sister with her." *Id.* at 53.

[15] LaKendra Martin, K.W.'s therapist, testified K.W. disclosed that Father "hit her sister" and that K.W. "witnessed him hit [R.W.] on numerous occasions." *Id.* at 95. Both K.W. and R.W. disclosed to Therapist Martin that Father "does use drugs." *Id.* Martin testified that, although K.W. did not disclose sexual

abuse by Father, it is "very common" for victims of sexual assault not to disclose. *Id.* at 94. K.W. did disclose to Martin that Father "would sleep in the bed with her." *Id.* at 97. Father also admitted that he slept in the same bed as K.W. "[w]henever she asks sometimes [sic]." *Id.* at 142.

[16] Kara Reagan, guardian ad litem ("GAL") from the Monroe County dissolution proceedings, testified that she has "serious concerns" about drug abuse, Father's ability to provide safe and stable housing, Father's ability to manage R.W.'s behaviors, and the Children's numerous absences and tardy notices from school. *Id.* at 81. Additionally, Father and Mother have been involved in "multiple open investigations by [DCS] in Monroe County that the parents were not cooperating with." *Id.* at 76.

[17] At the end of the fact-finding hearing, DCS requested to amend the pleadings pursuant to Indiana Trial Rule 15(B) to conform to the evidence to include allegations made during the testimony of physical abuse of R.W. by Father. Father did not object to the request. The trial court took the CHINS petition under advisement, and at the January 29, 2021 hearing, the trial court orally noted that it was finding the Children to be CHINS and that an order would follow. The trial court's written order after the January 29th hearing provided: "[Father's Counsel] objects to the disposition being set out 30 days. Court finds good cause to go outside the 30-day disposition due to Covid, transfer of new systems and docket congestion." Appellant's App. Vol. III p. 88. The judicial officer also advised that, due to a medical procedure, the dispositional hearing would be delayed until March 12, 2021.

[18] On March 10, 2021, Father filed a second motion to dismiss the CHINS proceedings. Father argued that the trial court was statutorily required to complete a dispositional hearing within thirty days after finding that the Children were CHINS, which occurred on January 29, 2021.

[19] On March 12, 2021, the trial court entered a written order finding that the Children were CHINS. Specifically, the trial court found, in part:

> 51. [R.W. and K.W.'s] physical and mental condition have been seriously endangered by [Father's] sexual abuse of [K.W.]; physical abuse of the children; reported drug use; and unstable housing.
>
> 52. The children need services that they are unlikely to receive without the court's intervention. Additionally, the Court is concerned because [Mother and Father] have not followed previous and current court orders in other cases.

Appellant's App. Vol. III p. 129. At the start of the dispositional hearing on March 12, 2021, the trial court stated, "for the record, I had surgery on February 3rd and was out for a couple of weeks. So, I'm going to add that to the good cause and deny the motion to dismiss." Tr. Vol. II p. 159. On April 5, 2021, the trial court entered a dispositional decree. Father now appeals.

Analysis

I. Motions to Dismiss

[20] Father challenges the trial court's denial of his two motions to dismiss for failure to comply with the statutory deadlines. "Matters of statutory interpretation present pure questions of law and are thus reviewed de novo." *Matter of M.S.*, 140 N.E.3d 279, 282 (Ind. 2020). "We 'presume[ ] that the legislature intended for the statutory language to be applied in a logical manner consistent with the statute's underlying policy and goals.'" *Id.* (quoting *Rodriguez v. State*, 129 N.E.3d 789, 793 (Ind. 2019)).

[21] We also note that "trial courts are afforded considerable discretion in ruling on motions for continuances, including determining whether the moving parties have shown good cause for requesting a continuance." *Id.* at 285. "We will reverse the trial court only for an abuse of that discretion." *Smith v. Smith*, 136 N.E.3d 656, 658 (Ind. Ct. App. 2019). "A trial court abuses its discretion when it reaches a conclusion which is clearly against the logic and effect of the facts or the reasonable and probable deductions which may be drawn therefrom." *Id.* at 659. "There are no 'mechanical tests' for determining whether a request for a continuance was made for good cause." *M.S.*, 140 N.E.3d at 285. "Rather, the decision to grant or deny a continuance turns on the circumstances present in a particular case[.]" *Id.*

A. Fact-Finding Statutory Deadline

[22] Indiana Code Section 31-34-11-1 provides:

> (a) Except as provided in subsection (b), unless the allegations of a petition have been admitted, the juvenile court shall complete a factfinding hearing not more than sixty (60) days after a petition alleging that a child is a child in need of services is filed in accordance with IC 31-34-9.
>
> (b) The juvenile court may extend the time to complete a factfinding hearing, as described in subsection (a), for an additional sixty (60) days if all parties in the action consent to the additional time.
>
> (c) If the factfinding hearing is not held immediately after the initial hearing as provided under IC 31-34-10-9, the department shall provide notice of any factfinding hearing to each foster parent or other caretaker with whom the child has been placed for temporary care. The court shall provide a person who is required to be notified under this subsection an opportunity to be heard at the factfinding hearing.
>
> (d) If the factfinding hearing is not held within the time set forth in subsection (a) or (b), upon a motion with the court, the court shall dismiss the case without prejudice.

[23] Here, DCS filed its CHINS petition on February 4, 2020. The matter was set for a fact-finding hearing on March 20, 2020, and the sixty-day deadline would have expired on April 6, 2020. In March 2020, the Indiana Supreme Court, however, entered a series of orders tolling time limits, including in juvenile matters, through August 14, 2020, due to the COVID-19 pandemic. Father

contends that the fact-finding hearing was then required to be completed by August 26, 2020.[1]

[24] The matter was set for a fact-finding hearing on August 14, 2020, but DCS filed a motion to convert the August 14th hearing to a pre-trial conference, which the trial court granted. Father did not object and did not appear for the hearing, and Father's counsel informed the trial court that Father did not wish counsel to represent him any longer. The trial court's order regarding the August 14, 2020 pre-trial conference provides: "DCS reports that the 60 day trial rule [sic] has not been waived. DCS requests the Court find good cause to waive the 60-day trial rule. Court makes specific findings on the record." Appellant's App. Vol. II p. 209. The trial court then set the matter for an additional pre-trial conference in September 2020.

[25] Father appeared at the September 2020 pre-trial conference, and the trial court appointed a public defender to represent Father. After that pre-trial conference, the trial court entered an order that provided: "Counsel requests this matter be set for in-person fact-finding. Court notes the 60 days was waived as the court found good cause. Court sets this matter for virtual fact-finding noting scarcity of in-person hearings." *Id.* at 220. Father filed a motion to dismiss, which the

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[1] In his motion to dismiss, Father contended that a fact-finding hearing should have been held on or before September 2, 2020. On appeal, Father claims that the fact-finding hearing was required to be completed by August 26, 2020.

trial court denied. The trial court held the fact-finding hearing on October 30, 2020.

[26] Father argues that he never agreed to a continuance of the fact-finding hearing. In *Matter of M.S.*, 140 N.E.3d 279 (Ind. 2020), our Supreme Court addressed the statutory deadlines of Indiana Code Section 31-34-11-1. There, the parents waived the requirement that the fact-finding hearing be completed not more than sixty days after the CHINS petition was filed. The mother, however, filed a motion to dismiss when the hearing was not completed within "the statutorily imposed 120-day limit" (the initial sixty-day requirement plus the additional sixty days where the parties consent). *M.S.*, 140 N.E.3d at 282.

[27] In addressing the trial court's denial of the motion to dismiss, the Court noted that, "to the extent a statute is at odds with our [Rules of Trial Procedure], the rule governs" on matters of procedure. *Id.* at 284.

> We think that here, Indiana Code section 31-34-11-1 is procedural because it includes mechanisms for extending the time by which factfinding hearings should be completed in CHINS proceedings. While section 31-34-11-1 provides a hard 120-day deadline, [Indiana Trial] Rule 53.5 provides, "Upon motion, trial may be postponed or continued in the discretion of the court, and shall be allowed upon a showing of good cause established by affidavit or other evidence." Thus, both the statute and Trial Rule 53.5 could not apply in the present situation because one mandates dismissal and the other allows for good cause extension of the timeframe.
>
> Because our trial rules trump statutes on matters of procedure, Rule 53.5 allows extension of the 120-day deadline in Indiana

> Code section 31-34-11-1(b) provided a party can show "good cause." Where, as here, the circumstances dictate good cause for a continuance, Trial Rule 53.5 controls and a trial court has discretion to grant a continuance without the risk of mandatory dismissal for failure to complete the factfinding hearing within 120 days.
>
> Allowing a "good cause" continuance beyond the 120-day deadline not only provides fairness for the parties involved but also allows the legislature's intent to "prevail[ ] over the strict literal meaning of any word or term." We have consistently observed the principle that "the purpose of a CHINS adjudication is to protect children, not punish parents." Accordingly, trial courts are afforded considerable discretion in ruling on motions for continuances, including determining whether the moving parties have shown good cause for requesting a continuance. There are no "mechanical tests" for determining whether a request for a continuance was made for good cause. Rather, the decision to grant or deny a continuance turns on the circumstances present in a particular case, and the circumstances of this particular case justified the trial court's decision.

Id. at 284-85 (internal citations and footnote omitted). Accordingly, the Court held that, "unlike the sixty-day deadline imposed by Indiana Code section 31-34-11-1(a) that may be waived by consent of the parties, the 120-day deadline contemplated by subsection 31-34-11-1(b) may be enlarged only if a party shows good cause for a continuance." *Id.* at 285.

[28] Based upon *M.S.* and Trial Rule 53.5, which provides, in relevant part: "Upon motion, trial may be postponed or continued in the discretion of the court, and shall be allowed upon a showing of good cause established by affidavit or other

evidence," the trial court here had authority to grant a continuance of the fact-finding hearing for good cause. Although the trial court's specific reasoning does not appear in its written order, it appears that trial court granted a continuance due to delays caused by the COVID-19 pandemic, Father's failure to appear for the August hearing, and Father's request for new counsel. Father, however, has not included in the record for appeal a transcript of the August 14, 2020 hearing in which the DCS moved for a continuance and the trial court found good cause for a continuance.

[29] Undisputedly, the trial court's written orders note that it found good cause for a continuance. Although Father contends that DCS did not provide "affidavits or evidence supporting their oral request for a continuance," Father provides no support for this assertion because he has not provided the transcript for that hearing. *See, e.g., Kocher v. Getz*, 824 N.E.2d 671, 675 (Ind. 2005) ("The defendant does not provide any transcript of the trial court's hearing . . . . We have only the assertions in the parties' filed motions, responses, and attachments. Upon this record, we cannot find that the trial court abused its discretion."). Father has failed to meet his burden, and we cannot say the trial court abused its discretion by finding good cause for continuing the fact-finding hearing.

B. Dispositional Hearing Statutory Deadline

[30] Indiana Code Section 31-34-19-1 provides:

> (a) The juvenile court shall complete a dispositional hearing not more than thirty (30) days after the date the court finds that a child is a child in need of services to consider the following:
>
> > (1) Alternatives for the care, treatment, rehabilitation, or placement of the child.
> >
> > (2) The necessity, nature, and extent of the participation by a parent, a guardian, or a custodian in the program of care, treatment, or rehabilitation for the child.
> >
> > (3) The financial responsibility of the parent or guardian of the estate for services provided for the parent or guardian or the child.
> >
> > (4) The recommendations and report of a dual status assessment team if the child is a dual status child.
>
> (b) If the dispositional hearing is not completed in the time set forth in subsection (a), upon a filing of a motion with the court, the court shall dismiss the case without prejudice.

[31] At a January 29, 2021 hearing, the trial court found that the Children are CHINS and noted that an order regarding the fact-finding hearing would follow. The trial court's written order regarding the January 29th hearing also provided: "[Father's Counsel] objects to the disposition being set out 30 days. Court finds good cause to go outside the 30-day disposition due to Covid, transfer of new systems and docket congestion." Appellant's App. Vol. III p. 88. The trial court advised of a medical procedure that would also delay the proceedings. The trial court then set the dispositional hearing for March 12,

2021. On March 10, 2021, Father filed a second motion to dismiss the CHINS proceedings based upon Indiana Code Section 31-34-19-1, which the trial court denied.

[32] Father does not challenge the trial court's finding of good cause. Rather, Father argues that our Supreme Court's decision in *M.S.* regarding the application of Trial Rule 53.5's continuances for good cause does not apply to the deadlines for dispositional hearings set forth in Indiana Code Section 31-34-19-1. According to Father, Trial Rule 53.5 can only apply to trials, and the dispositional hearing is not a "trial."[2] This argument, however, is inconsistent with our Supreme Court's determination in *M.S*. that Rule 53.5 applied to a CHINS fact-finding hearing, which is not a trial. Just like a CHINS fact-finding hearing, a dispositional hearing may also be an evidentiary hearing. *See* Ind. Code § 31-34-19-1.3(b) (requiring that the parents be given "an opportunity to be heard"); *In re T.N.*, 963 N.E.2d 467, 469 (Ind. 2012) (noting that a "contested dispositional hearing" was held). Applying Rule 53.5 to a dispositional hearing is, indeed, more strongly justified than applying it to a

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[2] Father also argues that the trial court could not sua sponte order the continuance pursuant to Trial Rule 53.5; rather, a motion of a party was required. We have held that "a trial judge may sua sponte grant a continuance because of a party's illness." *Farley v. Farley*, 172 Ind. App. 120, 123, 359 N.E.2d 583, 585 (1977) (discussing then Trial Rule 53.4, which provided: "'Upon motion, trial may be postponed or continued in the discretion of the court, and shall be allowed upon agreement of all the parties or upon a showing of good cause established by affidavit or other evidence"); *see also* 22B IND. PRAC., CIVIL TRIAL RULE HANDBOOK § 53.5:1, Continuance of court proceedings ("A trial court shall grant a motion to continue a trial or hearing upon a showing of good cause established by affidavit or other evidence. Continuances of a trial or hearing usually arise in three situations: the judge sua sponte continues the trial or hearing, a party moves for a continuance, and a continuance is granted upon stipulation and agreement of the parties.") (footnotes omitted) (citing in relevant part *Terry v. Terry*, 160 Ind. App. 653, 313 N.E.2d 83 (1974)). Accordingly, Father's argument fails.

CHINS fact-finding hearing, because, unlike a CHINS fact-finding hearing, a dispositional hearing results in a dispositional decree which renders the cause final and thereby an appealable order. *See In re D.J. v. Indiana Dep't of Child Servs.*, 68 N.E.3d 574, 578 (Ind. 2017) (holding that a CHINS determination is not a final, appealable order; the trial court is still required to hold a dispositional hearing and issue written findings and conclusions in a dispositional decree). The application of Rule 53.5 in CHINS fact-finding hearings but not dispositional hearings would be contradictory.

[33] Pursuant to our Supreme Court's holding in *M.S.*, Trial Rule 53.5 trumps Indiana Code Section 31-34-19-1 on matters of procedure. Accordingly, Trial Rule 53.5 allows an extension of the statutory deadline to conduct a CHINS dispositional hearing where "good cause" is shown. The trial court here found good cause for a continuance because of the COVID-19 pandemic, transfer of new systems to Odyssey, docket congestion, and the trial court judge's surgery. We recognize the unfortunate substantial delay here between the filing of the CHINS petition and the dispositional hearing caused mainly by the COVID-19 pandemic. Father, however, fails to argue that these reasons amount to insufficient good cause. Accordingly, the trial court did not err by denying Father's second motion to dismiss.

II. Sufficiency of the Evidence

[34] Father next challenges the sufficiency of the evidence to support the trial court's determination that the Children are CHINS. CHINS proceedings are civil actions; thus, "the State 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); *see* Ind. Code § 31-34-12-3. On review, we neither reweigh the evidence nor judge the credibility of the witnesses. *D.J.*, 68 N.E.3d at 577-78. Here, the trial court entered sua sponte findings of fact and conclusions thereon in granting DCS's CHINS petition. "As to the issues covered by the findings, we apply the two-tiered standard of whether the evidence supports the findings, and whether the findings support the judgment." *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). We review the remaining issues under the general judgment standard, which provides that a judgment "will be affirmed if it can be sustained on any legal theory supported by the evidence." *Id.* We will reverse a CHINS determination only if it is clearly erroneous. *D.J.*, 68 N.E.3d at 578.

[35] DCS must prove three elements for a juvenile court to adjudicate a child a CHINS: (1) the child is under the age of eighteen; (2) that one of eleven different statutory circumstances exist that would make the child a CHINS; and (3) the child needs care, treatment, or rehabilitation that he or she is not receiving and is unlikely to be provided or accepted without the coercive intervention of the court. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012).

[36] Here, DCS alleged that K.W. was a CHINS based upon Indiana Code Section 31-34-1-1 (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 food, clothing, shelter, medical care, education, or supervision) and Indiana Code Section 31-34-1-3 (the child is a victim of a sex offense). The petition alleged that R.W. was a CHINS based upon Indiana

Code Section 31-34-1-1 (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 food, clothing, shelter, medical care, education, or supervision) and Indiana Code Section 31-34-1-3(c) (a child living in the same household with another child who is a victim of a sex offense).

[37] The trial court found the children were CHINS under the general category of neglect as defined in Indiana Code Section 31-34-1-1, which provides:

> 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.

[38] "[T]he purpose of a CHINS adjudication is to protect children, not [to] punish parents." *N.E.*, 919 N.E.2d at 106. A CHINS adjudication is not a determination of parental fault but rather is a determination that a child is in need of services and is unlikely to receive those services without intervention of the court. *Id.* at 105. "A CHINS adjudication focuses on the condition of the child . . . . [T]he acts or omissions of one parent can cause a condition that creates the need for court intervention." *Id.* (citations omitted).

A. Findings of Fact

[39] Father argues that three of the trial court's findings of fact are not supported by the evidence. Father first challenges Finding No. 21, which provides: "Ms. Johnson performed a sexual assault examination. She observed swelling in [K.W.'s] mans [sic] pubis and in her libia [sic] minora and majora. There was also a small red area in [K.W.'s] fossa navicularis, which is the posterior portion of the vagina." Appellant's App. Vol. III p. 127. Father argues that this finding is not supported by the evidence and that it implies Father molested K.W. Nurse Johnson testified that she examined K.W. and found "some redness near the inferior portion of her vagina" and "some edema[3] to her labia

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[3] Edema is "an abnormal infiltration and excess accumulation of serous fluid in connective tissue or in a serous cavity." Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/edema (last visited Sept. 24, 2021).

minora and majora." Tr. Vol. II p. 70. Accordingly, the finding is supported by the testimony. The finding does not mention Father or the cause of the swelling and redness. In fact, Nurse Johnson was clear in her testimony that the cause of the trauma was "outside of [the] scope" of her examination. *Id.* We cannot say that the finding is clearly erroneous.

[40] Father next challenges Finding No. 30, which provides: "Since the divorce case between [Father] and [Mother] has been opened there have been multiple DCS investigations that the parents have not complied with." Appellant's App. Vol. III p. 128. Father argues that this finding had to be based upon the testimony of GAL Reagan, and GAL Reagan had no "role or personal knowledge [of] Monroe County DCS investigations." Appellant's Br. p. 15. GAL Reagan testified:

> So, there had been multiple open investigations by the Department here in Monroe County that the parents were not cooperating with. The feedback that I was getting from the Department down here is that there wasn't anything that they could do to force him – them to be cooperative unless there was a court order and that they felt that, you know, if there was a court order he should – they should both be cooperating with the investigation. By the time of the December hearing, I believe that there was also an assessment underway in Marion County with . . . which he was also not cooperating. So, I . . . made I believe it was an oral motion at that Court to ask the Judge to order him to comply with the investigation because he had been – I mean my big concern – concerns were, you know, him letting the Department into his home to make sure it was adequate housing, to talk to the kids to make sure they were safe and to – and to submit to drug screens which he had not been doing at the Court's request in Monroe County.

Tr. Vol. II p. 76. Father did not object to GAL Reagan's testimony on grounds that she lacked personal knowledge. Thus, he waived the objection. He cannot raise it now in the context of challenging the trial court's finding. The evidence supports the finding, and we cannot say the finding is clearly erroneous.

[41] Finally, Father challenges Finding No. 51, which provides: "[R.W.'s] and [K.W.'s] physical and mental condition ha[s] been seriously endangered by [Father's] sexual abuse of [K.W.]; physical abuse of the children; reported drug use; and unstable housing." Appellant's App. Vol. III p. 129. Father focuses on the sexual abuse finding and does not specifically challenge the findings of physical abuse, drug usage, or unstable housing in this section of his argument. Father argues that there was "no evidence whatsoever that Father sexually abused [K.W.]"; that K.W. and R.W. did not report any inappropriate touching; and that a DCS report stated there was no evidence K.W. was sexually abused. Appellant's Br. p. 15.

[42] DCS, however, presented evidence that Williams was living in Father's house and that she and her family slept downstairs. R.W. and K.W. each had their own bedrooms, and Father would sleep in K.W.'s bed. One night, Williams heard a repeating knocking noise that sounded like "the bed hitting the wall," and Williams went upstairs. Tr. Vol. II p. 33. Williams saw K.W. with blood dripping from her nightgown. K.W. had tears in her eyes and told Williams, "I need to tell you something," and Father pulled K.W. away. *Id.* at 34. An examination revealed that K.W.'s vagina was swollen and had some redness. Father admitted at the fact-finding hearing that he slept in the same bed as

K.W. "[w]henever she asks sometimes [sic]." *Id.* at 142. Father's argument is merely a request to reweigh the evidence and judge the credibility of witnesses, which we cannot do. The sufficient evidence and inferences support the finding, and we cannot say the finding is clearly erroneous.

B. Serious Endangerment

[43] Father next challenges the trial court's finding that the Children's physical and mental conditions have been seriously endangered. The trial court found: "[R.W. and K.W.'s] physical and mental condition[s] have been seriously endangered by [Father's] sexual abuse of [K.W.]; physical abuse of the children; reported drug use; and unstable housing." Appellant's App. Vol. III p. 129. We will address each of the endangerment findings separately.

1. Physical Abuse

[44] Father argues that his due process rights were violated because the trial court found that he physically abused the Children but he was not put on notice of that allegation in the CHINS petition. Indiana Code Section 31-34-9-3(4)(C) notes that a CHINS petition must contain "[a] concise statement of the facts upon which the allegations are based, including the date and location at which the alleged facts occurred." We have recognized that "the CHINS petition is an integral part of ensuring that the parents have notice of the allegations and an opportunity to contradict the [DCS's] evidence." *Maybaum v. Putnam Cnty. Off. of Fam. & Child.*, 723 N.E.2d 951, 954 (Ind. Ct. App. 2000). "This is, in part, so

because we have long recognized that parental rights have constitutional dimension." *Id.*

[45] We have also recognized, however, that Indiana Trial Rule 15 is applicable to CHINS proceedings. *Id.* (citing Indiana Code Section 31-32-1-3, which provides: "the Indiana Rules of Trial Procedure apply in all matters not covered by the juvenile law"). Trial Rule 15(B) provides:

> When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment, but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

[46] Here, the CHINS petition did not allege that Father physically abused the Children. At the fact-finding hearing, however, R.W.'s therapist testified that R.W. has disclosed physical abuse by Father. K.W.'s therapist also testified that K.W. disclosed Father "hit her sister" and that K.W. "witnessed [Father] hit [R.W.] on numerous occasions." Tr. Vol. II p. 95. Father did not object to the admission of this evidence. Moreover, at the end of the fact-finding

hearing, DCS requested to amend the pleadings pursuant to Indiana Trial Rule 15(B) to include allegations made during the testimony of physical abuse of R.W. by Father, and Father did not object to the request.

[47] Given the lack of an objection, we conclude that the issue of Father's physical abuse of the Children was tried by the parties' consent, and the trial court did not err by finding that the Children's physical and mental conditions have been seriously endangered by Father's physical abuse. *See, e.g., In re V.C.*, 867 N.E.2d 167, 178-79 (Ind. Ct. App. 2007) (holding that the issue was tried by consent under Trial Rule 15(B) and that the trial court did not err by adjudicating the child as a CHINS on grounds different than those set forth in the CHINS petition); *cf. Matter of Bi.B.*, 69 N.E.3d 464, 469 (Ind. 2017) (declining to find "consent, implied or otherwise," where the father expressly objected in closing arguments to an issue not raised in the termination of parental rights pleading).

2. Drug Usage

[48] Father also challenges the trial court's finding that his drug usage endangered the Children. According to Father, the finding is based on "nebulous and unexplained statements" made by the Children to therapists, and "DCS did not show Father's drug use by a preponderance of the evidence." Appellant's Br. p. 29.

[49] The GAL from Father's and Mother's dissolution proceedings testified that methamphetamine had been "a problem for both parents." Tr. Vol. II p. 73.

Father, however, repeatedly refused to comply with drug screen requests from both DCS and the dissolution court. DCS also presented evidence that: (1) Williams observed Father using methamphetamine; (2) R.W. disclosed to her therapist that Father "was either always high . . . . or not taking his medicines properly and in a diabetic coma . . . and could not get her to school," *id.* at 49-50; and (3) both K.W. and R.W. disclosed to another therapist that Father "does use drugs." *Id.* at 95. Father's argument is merely a request that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. The trial court's finding that the Children were seriously endangered by Father's drug usage is not clearly erroneous.

3. Sexual Abuse and Unstable Housing

[50] We have already addressed Father's arguments regarding the sexual abuse allegations and concluded that Father is merely asking that we reweigh the evidence, which we cannot do. *See supra* Section II(A). As for the finding of unstable housing, Father does not raise a challenge to that finding, and accordingly, we do not address it further.

[51] In conclusion, the trial court found: "[R.W. and K.W.'s] physical and mental condition[s] have been seriously endangered by [Father's] sexual abuse of [K.W.]; physical abuse of the children; reported drug use; and unstable housing." Appellant's App. Vol. III p. 129. Sufficient evidence supports each of those concerns. Accordingly, the trial court's finding that the Children's physical and mental health was seriously endangered by Father's conduct is not clearly erroneous.

C. Necessity of Court Intervention

[52] Finally, Father argues that DCS failed to show by a preponderance of the evidence that the Children's needs were unmet. Father's argument relates to the second element of Indiana Code Section 31-34-1-1—whether "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." This "final 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.'" *S.D.*, 2 N.E.3d at 1287 (quoting *Lake Cnty. Div. of Fam. & Child. Servs. v. Charlton*, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994)).

[53] The trial court here found: "The children need services that they are unlikely to receive without the court's intervention. Additionally, the Court is concerned because [Father and Mother] have not followed previous and current court orders in other cases." Appellant's App. Vol. III p. 129. Father, however, argues that a DCS report contained no evidence of sexual, physical, or emotional abuse; K.W. had no problems communicating, developmental delays, physical or mental problems, or issues at school; and R.W. had no physical or medical problems, developmental delays, or issues at school.

[54] DCS argues that the Children needed a home "that was free from sexual abuse and drug use" and that this need was "unmet." Appellee's Br. p. 45. DCS presented evidence of sexual abuse, physical abuse, drug usage, unstable housing, and problems attending school, and thus, the Children's needs were

not being met by Father. Again, Father's argument is merely a request to reweigh the evidence, which we cannot do. DCS presented sufficient evidence that the Children need care, treatment, or rehabilitation that they are not receiving. The trial court's finding is not clearly erroneous.[4]

Conclusion

[55] The trial court properly denied Father's motions to dismiss the CHINS proceedings, and the evidence supports the trial court's conclusion that the Children are CHINS. Accordingly, we affirm.

[56] Affirmed.

Mathias, J., and Weissmann, J., concur.

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[4] Father makes no argument regarding whether the care is "unlikely to be provided or accepted without the coercive intervention of the court." Ind. Code § 31-34-1-1. We note that, prior to the CHINS proceedings, the dissolution court repeatedly ordered Father to comply with its orders, and Father failed to comply. Moreover, despite repeated DCS assessments, Father refused to cooperate with DCS.