

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of:

J.M. and M.N. (Minor
Children),

Children in Need of Services,

and

S.L.L (Mother),

Appellant-Respondent,

v.

Indiana Department of Children
Services,

Appellee-Petitioner.

October 24, 2023

Court of Appeals Case No.
23A-JC-706

Appeal from the Madison Circuit
Court

The Honorable Stephen Koester,
Judge

Trial Court Cause No.
48C02-2209-JC-000265
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Memorandum Decision by Judge Felix
Judges Crone and Brown concur.

Felix, Judge.

Statement of the Case

[1] S.L. (“Mother”) appeals the trial court’s adjudication of her children J.M. and M.N. (“Children”) as children in need of services (“CHINS”).

[2] We affirm.

Facts and Procedural History

[3] On September 1, 2022, Mother began driving with 11-year-old J.M. (“Son”), six-year-old M.N. (“Daughter”), and one of their friends, 11-year-old V.C. (“Minor Friend”) in the car. The four were still traveling on September 2 and were in Bloomington, Indiana. Mother had been “drinking beer the whole time,” and the Children and the Minor Friend had had only one meal and snacks since the previous day. Appellant’s App. Vol. II at 17. At one point, Mother swerved off the road, exited the vehicle, and left the Children and the Minor Friend alone in the car while she walked into the woods. The Children¹ walked to a nearby hotel and telephoned Mother’s father (“Grandfather”). Law

¹ The record does not clarify whether the Minor Friend joined the Children in walking to the hotel to call Grandfather.

enforcement arrived and checked on Mother and all three children, determining them to be “ok at this time.” *Id.*

[4] At another point that day, Mother and all three children pulled into a gas station. The Minor Friend went inside, hid behind the cashier’s counter, and telephoned her mother, telling her she was afraid of Mother’s behavior. The gas station owner called law enforcement. The Minor Friend remained hidden behind the counter until law enforcement arrived.

[5] When law enforcement arrived, the officers observed the Children to be without shoes and to have “deplorable hygiene,” and Mother appeared to be intoxicated. Appellant’s App. Vol. II at 17, 28. An officer arrested Mother on two counts of child neglect.

[6] The Indiana Department of Child Services (“DCS”) was notified. DCS Family Case Manager (“FCM”) Jamie Bennett spoke with all three children. She contacted Grandfather, who reported he was already on his way to Son and Daughter’s location. FCM Bennett attempted to speak with Mother, who had fallen asleep in the back of a law enforcement vehicle. Mother refused to answer any questions, denied knowing Grandfather, and refused to talk about placement for the Children. FCM Bennett described Mother’s behavior as belligerent, erratic, and consistent with symptoms of psychosis.

[7] FCM Bennett placed the Children with Grandfather and his wife (“Grandparents”). Grandfather said that Mother had been struggling with mental health and substance abuse for a long time. He also reported that the

Children had only attended school when they had previously been placed with Grandparents.

- [8] DCS filed a petition requesting permission to file petition alleging the Children to be children in need of services (“CHINS”), which the trial court granted. Mother’s initial hearing date was continued multiple times due to lack of service.
- [9] On October 14, 2022, one of the initial hearing dates, the attorneys for DCS and for Mother appeared and observed on the record that service had been made on Mother and both fathers, although the proof of service on Mother had only been filed at that time in Daughter’s case. An affidavit shows personal service of the CHINS petition on Mother on September 30, 2022, at 805 N. 12th Street in Elwood. The trial court entered a denial on behalf of all parents and set the matter for a factfinding hearing and for mediation.
- [10] On December 5, 2022, Mother filed a motion to dismiss both CHINS cases, alleging she had not received notice of the October 14 initial hearing. At Mother’s initial hearing on December 6, 2022, she testified that she lived at 1038 N. 14th Street in Elwood, that she did not receive service, and that the service processor had lied about effecting personal service on her on September 30 at the 12th Street Elwood address. The trial court denied the motion to dismiss and conducted an initial and detention hearing on both Children as to Mother.

- [11] On February 6, 2023, the trial court held a factfinding hearing as to Mother, at which Mother did not appear despite her attorney having advised her of the hearing date. The court heard evidence from DCS regarding Mother's September 2, 2022, arrest for two counts of neglect and DCS's placement of the Children with Grandparents.
- [12] At the factfinding hearing, DCS personnel testified about difficulty making contact with Mother. On November 4, 2022, Madison County DCS FCM Breanne Hensley had left her card at 805 N. 12th Street in Elwood, which she believed to be Mother's address. That evening, Mother texted Hensley to introduce herself. Hensley replied via text the following day to arrange a meeting with Mother. The two exchanged emails until November 8, when Mother stopped responding.
- [13] Near the end of November, FCM Hensley found Mother at the 14th Street address, but Mother would not let her in the home. FCM Hensley testified further that her attempts to gain access to both the 12th Street and the 14th Street homes were unsuccessful, and, therefore, she could not determine whether either home had running utilities or food.
- [14] Mother also had refused FCM Hensley's request to schedule a child and family team meeting ("CFTM"). FCM Hensley described Mother's behavior with DCS caseworkers as "erratic," noting that Mother had emailed another DCS caseworker stating DCS had not been in touch with her even though Mother had already exchanged text messages with FCM Hensley. Tr. Vol. I at 104. At

the same hearing, FCM Bennett testified that Mother had refused drug screens requested by DCS.

[15] On February 15, 2023, the trial court entered an order finding the Children to be CHINS. The trial court held the disposition hearing on March 8, 2023. Mother did not appear. On March 13, the trial court entered a dispositional order as to each of the Children, which continued their placement with Grandparents. The dispositional order further provided in relevant part:²

Jurisdiction has been obtained upon the child. The Court, after hearing evidence, finds that *[Mother] shall participate in a treatment program or pay for services, consistent with the recommendations of DCS as follows:*

1. [Mother] shall:

* * *

c. Allow the Family Case Manager or other service providers to make announced or unannounced visits to the home of the child, permitting entrance into the home to ensure the safety of the child and to make the child available to the Family Case Manager and/or GAL/CASA.

* * *

² Mother's appellate brief incorrectly lists dispositional order item n. as item m. This decision uses the correct letter identification.

i. Assist in the formulation and implementation of a protection plan which protects the child from abuse or neglect from any person.

j. Ensure that the child is properly clothed, fed and supervised. If they are of school age, ensure the child is properly registered/enrolled in and attending school or provide verification that the child is participating in an approved educational program. Fully cooperate with each child's school regarding any issues concerning the child.

* * *

n. Ensure that the child will become engaged in a home-based counseling program referred by the Family Case Manager. All members of the family are to actively participate to the extent recommended by the provider and DCS. The family will demonstrate positive changes in their lives as a result of the counseling.

* * *

t. Meet all personal medical and mental health needs in a timely and complete manner. This includes, but is not limited to, following all directions of the nurses/doctors, attending all appointments, and taking medications in the appropriate doses of frequencies specified in the prescriptions.

Appellant's App. Vol. II at 8–11, 12–15 (emphasis added). Mother now appeals.

Discussion and Decision

Standard of Review

[16] “[A] CHINS adjudication under Indiana Code section 31-34-1-1 (often called a ‘CHINS 1,’ in reference to the section number) requires 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.” *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). “A CHINS proceeding is a civil action; thus, ‘the State must prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code.’” *Id.* (quoting *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010)).

[17] Where, as here, the trial court has not made specific findings of fact, we use a general judgment standard of review “under which a judgment will be affirmed on any legal theory supported by the evidence.” *In re S.D.*, 2 N.E.3d at 1287. We consider only the evidence that supports the trial court’s decision and reasonable inferences drawn therefrom. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). Additionally, we accept unchallenged findings as true. *In re Matter of A.C. (M.C. v. Ind. Dep’t of Child Servs.)*, 198 N.E.3d 1, 10 (Ind. Ct. App. 2022)

The Trial Court Did Not Abuse Its Discretion by Denying Mother’s Request for Home Visit and Drug Screen at Factfinding Hearing

[18] Mother first argues that the trial court abused its discretion by denying requests she made at the factfinding hearing for a home visit by DCS and for a drug screen. Mother is correct that courts should determine a CHINS status,

particularly the coercive intervention element, by considering the family's condition when the case was filed and when it was heard. See *In re D.J. v. Ind. Dep't of Child Servs.*, 68 N.E.3d 574, 580 (Ind. 2017). However, she incorrectly frames the issue as regarding the admission of evidence because there was no evidence offered or available to be offered at the factfinding hearing.

[19] Mother first demonstrated a willingness to receive services at the factfinding hearing when she asked to take a drug test and to have a home visit by DCS. To the extent Mother is arguing that she should have been given time to develop evidence regarding substance abuse or the condition of her home, we disagree. The evidence clearly shows that Mother had not cooperated with DCS in the five months between the date of her arrest and the date of the factfinding hearing. Further, the trial court received overwhelming evidence regarding Mother's lack of cooperation over the course of the case, namely: (1) Mother refused to answer questions, denied knowing Grandfather, and was unwilling to develop a safety plan with the FCM at the time of her arrest; (2) Mother refused any drug screens that DCS offered; (3) Mother did not keep DCS informed of her residence or how to reach her as demonstrated by an affidavit showing service on Mother at a 12th Street address, yet Mother testified that she lived on 14th Street and not 12th Street; (4) Mother responded via text to FCM Bennett's business card left November 4, 2022, at the 12th Street address requesting a meeting, but Mother's texts pertained only to parenting time, and Mother stopped responding on November 8, 2022; and (5) DCS was unable to observe the conditions at either address because FCM

Bennett never found Mother at the 12th Street address and Mother denied her entry to the 14th Street address.

[20] Mother admits that she was uncooperative with DCS. Her first attempt at cooperation at the factfinding hearing on February 6 is insufficient to show that the trial court abused its discretion when it refused her hearing-day request for a DCS home visit and a drug screen.

The Findings Are Sufficient to Support the CHINS Determinations

[21] Mother next argues in a single sentence that the dispositional order contains no “discussion in the dispositional orders of efforts by DCS to reunite the Children with their Mother in the decision [sic].” Appellant’s Br. at 13. Mother does not support this argument with any supporting authorities, statutes, the record on appeal, or any elaboration of her argument. Therefore, the issue is waived. *See* Ind. Appellate Rule 46(A)(8)(a).

[22] Mother also contends that the evidence fails to show that the conditions resulting in the removal of the Children continued to exist. This contention and the lack of any supporting citations to the record are, again, insufficient to state a cogent argument as required by Indiana Appellate Rule 46(A)(8)(a). Waiver notwithstanding, we briefly address the merits of this sufficiency of evidence argument.

[23] As noted above, we consider the evidence and inferences therefrom that support the decision. *In re K.D.*, 962 N.E.2d at 1253. Here, the evidence at the December 6 factfinding hearing shows that the Children were removed due to

Mother's neglect ("deplorable hygiene," lack of shoes on Children, failure to provide more than one meal over two days). Appellant's App. Vol. II at 17, 28. Prior to the factfinding hearing, Mother had utterly failed to remain in contact and engage with DCS or to accept any services. Mother admitted that she was uncooperative with DCS and first requested a home visit and drug screen at the factfinding hearing five months after the Children were removed. On this record, we reject Mother's contention that the evidence is insufficient to support the CHINS determination.

The Dispositional Orders Are Not Contrary to Law

[24] Finally, Mother argues that the dispositional orders are contrary to law for two reasons: (1) the record does not show that Mother was provided the predispositional report; and (2) the dispositional orders impose requirements on Mother that are impossible. Again, Mother's arguments fail.

[25] Mother asserts, without citation to supporting law, that the dispositional orders must be "reversed" because the "dispositional orders were based on information in predispositional reports which were not shown to have been provided to mother's attorney." Appellant's Br. at 9. On the contrary, Mother's counsel stated on the record at the dispositional hearing that he had "emailed her the ah prog [sic] Dispo on the seventh," which indicates that he had indeed received a copy of the predispositional report. Tr. Vol. I at 142. Moreover, he did not raise the lack of receipt of a dispositional report in any objection to moving forward with the dispositional hearing. Additionally, FCM Hensley testified at the dispositional hearing that she had exchanged texts

with Mother the previous day, reminding her of the date of the dispositional hearing, and had “emailed her the court reports.” *Id.* at 143.

[26] Regarding Mother’s argument that the dispositional order requires her to do tasks that are impossible to be done, we take a closer look at the trial court’s orders. Mother takes issue with the orders requiring her to do the following: (1) allow the FCM or other service providers to make announced or unannounced visits to the “home of the child” and to make the child available to the FCM and/or the guardian ad litem (“GAL”)/court appointed special advocate (“CASA”); (2) assist in the formulation and implementation of a plan to protect the child from abuse or neglect by any person; (3) ensure the child is properly clothed, fed, supervised, and registered/enrolled in and attending school, fully cooperating with said school; (4) ensure the child will participate in an home-based counseling plan referred by the FCM, Mother participating in same if recommended; and (5) timely and in a complete manner meet the child’s medical and mental health needs. Appellant’s App. Vol. II at 9–10.

[27] Mother argues that the orders listed above are impossible for her to perform because the Children have been removed from her care and custody. With regard to allowing visits to the “home of the child,” Mother’s residence would be the “home of the child” but for DCS’s removal of the Children. In any event, DCS would still need to evaluate the adequacy of Mother’s home before recommending return of the Children to her care and custody. Additionally, the Children’s out-of-home placement does not affect Mother’s ability to participate in the development and implementation of a safety plan. Thus,

Mother's argument that these requirements are impossible for her to perform must fail.

[28] Mother also ignores the language preceding these orders, which requires her to “participate in a treatment program or pay for services, consistent with the recommendations of DCS as follows.” Appellant’s App. Vol. II at 9. In other words, Mother could conceivably satisfy the orders requiring her to meet the children’s clothing, food, supervision, and educational needs; to ensure the Children participate in home-based counseling as referred by the FCM; and to timely and completely meet the children’s personal medical and mental health needs by providing financial support for the ordered items.

[29] Still, Mother relies on *In re V.H.*, 967 N.E.2d 1066 (Ind. Ct. App. 2012), to support her contention that the ordered programs and services must relate to some behavior or circumstances revealed by the evidence. In *V.H.*, the trial court ordered the mother to allow the FCM to make unannounced visits to ensure the safety of the child. *Id.* at 1073–74. However, the evidence had shown in *V.H.* that the child’s safety was not an issue because the child had been the aggressor in the prior altercations with the mother. *Id.* at 1074.

[30] Here, the trial court found the Children to be CHINS based on Mother’s neglect, which included driving intoxicated while they were in the car, feeding the Children only one meal and snacks over the course of two days, and the Children being shoeless and in “deplorable hygiene” at that time. There was also evidence that the Children had not been attending school. These factors

combined with Mother's admitted lack of cooperation with DCS, including her refusal to allow DCS to evaluate her living conditions, and her failure to stay in contact with, engage with, and receive services from DCS are sufficient to support the CHINS determinations as to the Children and their dispositional orders.

[31] Affirmed.

Crone, J., and Brown, J., concur.