

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT, MH

Daniel G. Foote
Indianapolis, Indiana

ATTORNEY FOR APPELLANT, TC

Steven J. Halbert
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Katherine A. Cornelius
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In Re: The Matter of K.C., a
Child in Need of Services;

M.H. (Mother) and T.C.
(Father),

Appellants-Respondent

v.

The Indiana Department of
Child Services,

Appellee-Petitioner,

and

Kids' Voice of Indiana,

April 29, 2022

Court of Appeals Case No.
21A-JC-2130

Appeal from the Marion Superior
Court

The Honorable Geoffrey Gaither,
Judge

The Honorable Scott B. Stowers,
Magistrate

Trial Court Cause No.
49D09-2103-JC-2450

Appellee-Guardian Ad Litem.

Pyle, Judge.

Statement of the Case

[1] In this consolidated appeal, M.H. (“Mother”) and T.C. (“Father”) each appeal the trial court’s order adjudicating their son, K.C. (“K.C.”), to be a Child in Need of Services (“CHINS”). Mother and Father both argue that there is insufficient evidence to support the CHINS adjudication. Concluding that the Department of Child Services (“DCS”) presented sufficient evidence to support the CHINS adjudication, we affirm the trial court’s order.

[2] We affirm.

Issue

Whether there is sufficient evidence to support the CHINS adjudication.

Facts

[3] The evidence most favorable to the CHINS adjudication reveals that Mother and Father are the parents of K.C., who was born in November 2016. In June 2017, when K.C. was seven months old, x-rays revealed that K.C. had multiple fractures, including his clavicle, ribs, and femurs, in various stages of healing. Mother and Father explained that K.C. had fallen out of bed. In addition, K.C. had bite marks on his back and upper chest. Mother explained that she and Father would “play bite” K.C. and might have gotten too rough. (Tr. Vol. 2 at 29). Father admitted that he sometimes playfully bit his son. K.C. also suffered from failure to thrive without a medical cause. DCS removed K.C. from Mother and Father, and the trial court adjudicated K.C. to be a CHINS. The case was closed a year later, in May 2018, and K.C. was returned to Mother and Father.

[4] In March 2021, K.C.’s daycare teacher noticed that K.C. had an unusual injury on his outer right thigh. K.C. told daycare workers that Father had hit him with a black belt. A daycare worker contacted DCS, and DCS Assessor Lauren McClellan (“Assessor McClellan”) went to the daycare that day to investigate the injury. Assessor McClellan spoke with K.C., who told her that Father had hit him with a black belt. In addition, Assessor McClellan took photographs of the injury, which she described as a semi-circle marking to the left of broken skin as well as a red and brown mark that looked like a boomerang.

[5] Assessor McClellan sent the photographs to pediatric nurse practitioner Anna Gordon (“Nurse Gordon”), who is a member of the Indiana University Child

Protection Team at Riley Children's Hospital. As a member of the Child Protection Team, Nurse Gordon collaborates with board certified child abuse pediatricians. Gordon and the pediatricians, who serve as a consulting service for DCS, do not determine the cause of an injury. Rather, Gordon and the pediatricians assess whether the history provided is a plausible explanation for an injury. For example, in this case, Assessor McClellen told Nurse Gordon that K.C. had reported that he had been hit with a belt. Nurse Gordon reviewed the photographs and told Assessor McClellen that she believed the injury in the photographs was consistent with K.C.'s report.

[6] After speaking with Nurse Gordon, Assessor McClellen went to K.C.'s home and told Mother and Father that K.C. had reported that he had been hit with a black belt. Father acknowledged that he had a black belt and showed it to Assessor McClellen. Father also admitted that he had disciplined K.C. with a ruler in the past but explained that he had stopped using the ruler, as well as physical punishment, the previous year. Father further acknowledged that he had seen K.C.'s recent thigh injury and had put Neosporin and a Band-Aid on it. Mother explained that she believed that K.C.'s injury had been caused when he had fallen at the park and landed in mulch. Father agreed with Mother and further explained that K.C. was clumsy and "ha[d] been known to tell stories." (Tr. Vol. 2 at 20).

[7] DCS removed K.C. from Mother and Father based upon K.C.'s past history with DCS and his consistent statements that Father had hit him with a belt. DCS placed K.C. with paternal relatives and, in March 2021, filed a petition

alleging that K.C. was a CHINS. During a DCS team and family meeting, Father stated that “no matter what services were put in place or anything recommended by DCS that he would still discipline how he felt necessary.” (Tr. Vol. 2 at 24).

[8] In April 2021, DCS Family Case Manager Abigail Jadrich (“FCM Jadrich”) referred Mother and Father to a parenting assessment, parenting education, and supervised visits with K.C. FCM Jadrich also referred K.C. to play therapy with Jasmine McCray (“Therapist McCray”).

[9] At the two-day July 2021 hearing on the CHINS petition, the trial court heard the evidence as set forth above. In addition, Nurse Gordon testified that the multiple curvilinear pattern bruises on K.C.’s thigh were:

consistent with an implement and so we – when we’re looking at photos of injuries and bruises there’s, you know, abusive bruises can occur anywhere on the body but there’s certain characteristics and locations that are more likely to be abusive versus accidental injuries. So, research has shown us that when we see bruises that are clustered, multiple, not overlined bony prominence and are patterned they have a higher rate of being associated with abusive injury, which patterned and very clustered non – not overlined bony prominence were all characteristics of his injuries seen in these photos.

(Tr. Vol. 2 at 77).

[10] Also at the hearing, the testimony revealed that both Mother and Father were consistently attending parenting education and supervised visits with K.C. In addition, Therapist McCray testified that she had begun working with K.C. in

April 2021. According to Therapist McCray, if she had been able to follow protocol, she would have seen K.C. weekly for fourteen private one-on-one sessions. However, because she had difficulty reaching family members, locating K.C. for scheduled appointments, and meeting with K.C. privately, Therapist McCray had only seen K.C. four times and only one of those sessions had been a private one-on-one meeting.

[11] In August 2021, the trial court issued an order adjudicating K.C. to be a CHINS pursuant to both INDIANA CODE § 31-34-1-1 and INDIANA CODE § 31-34-12-4. The trial court's order summarized the facts as set forth above in the findings and concluded, in relevant part, as follows:

24. [K.C.]'s physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of his parent, guardian or custodian to provide the child with necessary food, clothing, shelter, medical care, education, or supervision. After sustaining bodily injuries requiring hospitalization when he was seven months old, the child once again was injured, this time receiving bruising as a result of a lashing with a belt.

25. [K.C.] needs care, treatment, or rehabilitation that he is not receiving and is unlikely to be provided or accepted without the coercive intervention of the court.

(Father's App. Vol. 2 at 190). Pursuant to the trial court's order, K.C. was to remain in the care of his paternal relatives.

[12] Mother and Father now each appeal the trial court's adjudication that K.C. is a CHINS.

Decision

- [13] Mother and Father both argue that there is insufficient evidence to support the CHINS adjudication. The purpose of a CHINS adjudication is to protect the child, not to punish his parents. *Matter of R.G.*, 130 N.E.3d 1171, 1178 (Ind. Ct. App. 2019), *trans. denied*. “Our Supreme Court has noted that a separate analysis as to each parent is not required in making a CHINS determination because a CHINS adjudication reflects the status of a child without establishing the culpability of a particular parent.” *Id.* (internal citation and quotation marks omitted). Stated differently, a CHINS adjudication is not a determination of parental fault but rather is simply a determination that a child is in need of services and is unlikely to receive those services without the court’s intervention. *Id.*
- [14] A CHINS proceeding is a civil action. *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). Therefore, DCS must prove by a preponderance of the evidence that the child is a CHINS as defined by the juvenile code. *Id.* When determining whether there is sufficient evidence to support a CHINS adjudication, we consider only the evidence most favorable to the judgment and the reasonable inferences to be drawn therefrom. *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). This Court will not reweigh the evidence or reassess the credibility of the witnesses. *Id.* at 1286.
- [15] We further note that, as a general rule, appellate courts grant latitude and deference to trial courts in family law matters. *Matter of D.P.*, 72 N.E.3d 976,

980 (Ind. Ct. App. 2017). “This deference recognizes a trial court’s unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony, as opposed to this court’s only being able to review a cold transcript of the record.” *Id.*

[16] Where, as here, a trial court’s order contains specific findings of fact and conclusions of law, we engage in a two-tiered review. *In re A.G.*, 6 N.E.3d 952, 957 (Ind. Ct. App. 2014). First, we determine whether the evidence supports the findings, and then, we determine whether the findings support the judgment. *Id.* We will not set aside the findings or judgment unless they are clearly erroneous. *R.G.*, 130 N.E.3d at 1178. Findings are clearly erroneous when the record contains no facts to support them either directly or by inference. *Id.* at 1178-79. A judgment is clearly erroneous if the findings do not support the juvenile court’s conclusions or the conclusions do not support the resulting judgment. *A.G.*, 6 N.E.3d at 957.

[17] As a preliminary matter, we note that Mother does not challenge the trial court’s findings. Father, however, challenges three of them. We agree with Father that finding 17 is unsupported by the evidence. In that finding, the trial court stated that “[Father] admitted to [Assessor McClellen] that he sometimes disciplines the child with a ruler.” (Father’s App. Vol. 2 at 190). The record is clear that Father told Assessor McClellen that he had disciplined T.C. with a ruler in the past but that he had not done so in more than a year. Father’s remaining challenges to the findings are simply requests to reweigh the

evidence, which we will not do. *See R.G.*, 130 N.E.3d at 1179. We now turn to the substantive issue in this case.

[18] The Indiana Supreme Court has explained that INDIANA CODE §§ 31-34-1-1 through 31-34-1-11 specify the elements that DCS must prove in order to establish that a child is in need of services. *N.E.*, 919 N.E.2d at 105. Specifically, DCS must prove that: (1) the child is under the age of eighteen; (2) one or more particular set or sets of circumstances set forth in the statute exists; and (3) the care, treatment, or rehabilitation needed to address those circumstances is unlikely to be provided or accepted without the coercive intervention of the court. *Id.*

[19] For example, to establish that a child is a CHINS under INDIANA CODE § 31-34-1-1, DCS must prove the following set of circumstances: “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[.]” *N.E.*, 919 N.E.2d at 105 (citing I.C. § 31-34-1-1). This statute has been referred to as the “neglect statute.” *In re D.F.*, 83 N.E.3d 789, 795 (Ind. Ct. App. 2017) (internal citation omitted).

[20] Similarly, under INDIANA CODE § 31-34-1-2, DSC must prove that “the child’s physical or mental health is seriously endangered due to injury by the act or omission of the child’s parent, guardian, or custodian[.]” This statute has been

referred to as the “abuse statute.” *D.F.*, 83 N.E.3d at 795 (internal citation omitted).

[21] Further, a third way that DCS can allege and prove that a child is a CHINS is pursuant to INDIANA CODE § 31-34-12-4, which provides, in relevant part, as follows:

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.

This statute has been referred to as the “presumption statute.” *D.F.*, 83 N.E.3d at 795.

[22] Here, DCS alleged that K.C. was a CHINS under all three statutes. The trial court based its adjudication on INDIANA CODE § 31-34-1-1, the neglect statute, and INDIANA CODE § 31-34-12-4, the presumption statute. Mother and Father

both specifically argue that there is insufficient evidence to support the CHINS adjudication pursuant to INDIANA CODE § 31-34-1-1.

[23] Our review of the evidence reveals that Mother, Father, and K.C. first became involved with DCS in June 2017, when K.C. was seven months old. At that time, K.C. had multiple fractures in various stages of healing as well as bite marks on his back and chest. K.C. also suffered from failure to thrive without a medical cause. DCS removed K.C. from Mother and Father, and the trial court adjudicated him to be a CHINS. The case was closed a year later in May 2018, and K.C. was returned to Mother and Father.

[24] In March 2021, K.C.'s daycare teacher noticed an unusual injury on K.C.'s outer thigh. K.C. told daycare workers that Father had hit him with a black belt. Later that same day, K.C. told Assessor McClellan that Father had hit him with a black belt. Assessor McClellan sent photographs of the injury to Nurse Gordon, who is a member of the Indiana University Child Protection Team at Riley Children's Hospital. Nurse Gordon reviewed the photographs and opined that a plausible cause of the injury was a belt and that the injury was consistent with an abusive injury. When confronted with K.C.'s allegations, Mother explained that she believed that the injury had been caused when K.C. had fallen in mulch at the park. Father agreed and told Assessor McClellan that K.C. was clumsy and known to tell stories. DCS removed K.C. from Mother and Father and placed him with paternal family members.

[25] After DCS had filed a petition alleging that K.C. was a CHINS, Father stated that “no matter what services were put in place, or anything recommended by DCS that he would still discipline how he felt necessary.” (Tr. Vol. 2 at 24). Also following the filing of the petition, DCS referred K.C. for play therapy. However, the therapist had difficulty reaching family members, locating K.C. for scheduled sessions, and meeting in private one-on-one sessions with K.C.

[26] After hearing the evidence, the trial court concluded that K.C. had been lashed with a belt and that he needed care, treatment, or rehabilitation that he was not receiving and that was unlikely to be provided without the coercive intervention of the court. The trial court’s findings support these conclusions. There is sufficient evidence to support the CHINS adjudication pursuant to INDIANA CODE § 31-34-1-1.¹

¹ Father also challenges the trial court’s adjudication of K.C. as a CHINS pursuant to INDIANA CODE § 31-34-12-4. Father contends that: (1) this statute is unconstitutional because it “creates a lesser standard of proof for the juvenile court to find a CHINS . . . and then requires the parent to prove that they did not abuse their child[;]” and (2) Nurse Gordon’s testimony regarding the plausibility of K.C.’s injuries “does not satisfy the requirements of this statute[.]” because “DCS did not seek to qualify [Nurse] Gordon as an expert in child abuse and there was no attempt to show that she ha[d] any specialized knowledge or skills[.]” (Father’s Br. 15, 16, 18, 14). However, Father has waived both of these issues because he failed to raise them at the CHINS factfinding hearing. See *GKC Indiana Theatres, Inc. v. Elk Retail Investors, LLC.*, 764 N.E.2d 647, 651 (Ind. Ct. App. 2002) (“As a general rule, a party may not present an argument or issue in an appellate court unless the party raised that argument or issue to the trial court[.] The rule of waiver in part protects the integrity of the trial court; it cannot be found to have erred as to an issue or argument that it never had an opportunity to consider.”). Waiver notwithstanding, because we have found sufficient evidence to support the CHINS adjudication pursuant to INDIANA CODE § 31-34-1-1, we need not address Father’s argument pursuant to INDIANA CODE § 31-34-12-4. See *R.G.*, 130 N.E.3d at 1179 (declining to address Parents’ arguments regarding one section of the CHINS statute where there was sufficient evidence to support the CHINS adjudication pursuant to another section of the CHINS statute). We further note that this Court has previously addressed Father’s specific argument regarding the constitutionality of INDIANA CODE § 31-34-12-4. In *Matter of K.Y.*, 145 N.E.3d 854, 861 (Ind. Ct. App. 2020), *trans. denied*, we concluded that the rebuttable presumption applicable to CHINS proceedings does not affect the burden of proof, it simply shifts the burden of going forward with evidence to the parent. *Id.* Accordingly, we held that INDIANA CODE § 31-34-12-4 is

[27] Affirmed

May, J., and Brown, J., concur.

not unconstitutional. *See id.* To the extent that Father argues that *K.Y.* was “incorrectly” decided, we decline his implicit request that we change the law. (Father’s Br. 17).