

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In the matter of: N.N, and A.N.  
(Minor Children, Children in  
Need of Services)

T.N. (Father),  
*Appellant-Respondent,*

v.

Indiana Department of  
Child Services,  
*Appellee-Petitioner*

May 22, 2023

Court of Appeals Case No.  
23A-JC-26

Appeal from the Tipton Circuit  
Court

The Honorable Thomas R. Lett,  
Judge

Trial Court Cause Nos.  
80C01-2211-JC-137  
80C01-2211-JC-138

**Memorandum Decision by Judge Weissmann**  
Judges Bailey and Brown concur.

## **Weissmann, Judge.**

- [1] T.N. (Father) challenges the trial court’s determination that his two children are children in need of services (CHINS) based on domestic violence within the family. Father argues that the evidence on which the CHINS determination was based—that is, of Father’s altercations with the children’s mother, H.S. (Mother), in the presence of the children—either was inadequate or inadmissible. The remaining evidence, according to Father, could not establish the children were CHINS. We affirm the trial court’s judgment, concluding that even if the court erred in admitting the challenged testimony, the record supports the judgment.

## **Facts**

- [2] Mother and Father are the parents of N.N. and A.N. (collectively, Children). N.N. was five and A.N. was four when this CHINS action began with a report to the Indiana Department of Child Services (DCS) that Father had held a knife to A.N. and pushed Mother. Mother and Father participated in a previous CHINS case in 2019 based on domestic violence within the family home.
- [3] DCS Family Case Manager (FCM) Elizabeth Herndon investigated the latest report and interviewed both parents. Mother told FCM Herndon that Father’s fists or objects he threw had caused the many holes in the walls of the family home. Mother also reported that Father threw a knife, which created a hole in the floor where it landed. Mother also pointed to a baseboard heater on which she said she was injured by Father. FCM Herndon photographed the home.

When Father spoke to FCM Herndon, he did not deny most of Mother's reports of violence.

[4] DCS petitioned to find Children to be CHINS based on allegations of violence by Father toward Mother in the presence of Children. Father denied the allegations of the CHINS petition. But Mother entered an agreement with DCS in which she admitted that Children are CHINS "because Mother and Father have not provided the Children with a home free of domestic violence, and the Children are in need of care, treatment, or rehabilitation that [C]hildren are not receiving and are unlikely to be provided or accepted without the coercive intervention of the Court." Appellee's App. Vol. II, p. 3. In that agreement, Mother also waived her right to a CHINS fact-finding hearing.

[5] Two weeks later, the trial court conducted a fact-finding hearing at which Mother did not testify. Over Father's objection, FCM Herndon testified about Mother's reports of Father's violence toward Mother in their home and in the presence of Children. The court concluded Children were CHINS based on these findings:

- 1) The child is less than 18 years of age.
- 2) The child resides in Tipton County.
- 3) Based upon the evidence and testimony presented, the Court finds that there was a physical altercation between the parents, in the presence of the children on or about October 18, 2022.
- 4) That as a result of this incident, Mother suffered an injury to her ankle.

5) That as a result of the altercations between the parents, the home has been damaged several times, including

- a) Holes punched in interior walls[.]
- b) Hole punched through an interior wall, which broke the exterior siding on the home.
- c) The remains of several broken items (TV, Chairs, Storage Bins, Mirrors, etc.) in the home.
- d) Hole punch in the backsplash over the sink.

6) Subsequently, there was another altercation between the parents, in the presence of the minor children, where Father attempted to prevent Mother from leaving. Father testified that this was due to Mother throwing a cup at him.

7) That the parents have a history of physical violence as demonstrated by their prior involvement with the Indiana Department of Child Services over allegations of Domestic Violence.

8) The children require services, which they are unlikely to receive without the coercive intervention of the Court.

Appellant's App. Vol. II, p. 36.

[6] The court later entered a dispositional order requiring Mother and Father to participate in services. Father appeals the CHINS determination.

## **Discussion and Decision**

[7] Father contends DCS failed to meet its burden of proving Children were CHINS. DCS was required to prove three elements by a preponderance of the evidence: (1) Children are under the age of eighteen; (2) one of eleven different

statutory circumstances exists that would make Children CHINS; and (3) Children need care, treatment, or rehabilitation that they are not receiving and are unlikely to receive without the coercive intervention of the court. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). Father focuses on the second element, arguing that the trial court erroneously determined that DCS met the statutory circumstance element through proof that Children were CHINS under Indiana Code § 31-34-1-1.

[8] Indiana Code § 31-34-1-1 defines a child as a CHINS when

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

(C) is unlikely to be provided or accepted without the coercive intervention of the court.

[9] Children exposed to domestic violence in their homes have been found to be CHINS under Indiana Code § 31-34-1-1. *See, e.g., Matter of K.A.H.*, 119 N.E.3d

1115, 1123-24 (Ind. Ct. App. 2019) (involving violence by mother’s boyfriends against her and child’s sibling); *Matter of L. T.*, 145 N.E.3d 864, 871-72 (Ind. Ct. App. 2020) (involving violence by child’s father against mother and siblings).

[10] When reviewing the trial court’s CHINS judgment, we will neither reweigh the evidence nor judge witness credibility. *K.D.*, 962 N.E.2d at 1253. When, as here, the trial court enters findings of fact and conclusions of law *sua sponte*, we apply a two-tiered standard of review requiring that we first consider whether the evidence supports the findings and then whether the findings support the judgment. *Matter of A.R.B.*, 199 N.E.3d 1232, 1237 (Ind. Ct. App. 2022). “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 only if the CHINS determination is clearly erroneous. *Id.*

### ***Domestic Violence Evidence***

[11] Father argues that DCS did not prove any domestic violence occurred. He first contends that the record contains no evidence meeting the statutory definition of “domestic violence.” Even if that statutory definition does not apply, Father argues that most of the evidence of domestic violence was inadmissible hearsay and that the remainder could not prove Children are CHINS. We conclude that evidence of domestic violence meeting the statutory definition upon which Father relies was not required. Furthermore, any erroneously admitted hearsay

evidence of domestic violence was harmless because the remaining evidence and the unchallenged findings were sufficient to support the trial court’s CHINS determination.

***1. Statutory Definition of Domestic Violence***

[12] Father contends that the evidence did not reveal “domestic violence” as defined in Indiana Code § 31-9-2-42 and therefore could not support the CHINS determination. That statute specifies in relevant part:

“Domestic or family violence” means, except for an act of self-defense, the occurrence of one (1) or more of the following acts committed by a family or household member:

(1) Attempting to cause, threatening to cause, or causing physical harm to another family or household member without legal justification.

(2) Placing a family or household member in fear of physical harm without legal justification . . . .

Indiana Code § 31-9-2-42(1)-(2). The definitions in Indiana Code § 31-9-2-42 apply throughout Title 31 unless otherwise specified. Ind. Code § 31-9-1-1.

[13] Father’s argument omits a key consideration. Proof of domestic violence satisfying Indiana Code § 31-9-2-42 is not required to prove that Children were CHINS under Indiana Code § 31-34-1-1, commonly known as the CHINS “neglect” statute. *See Ar.B.*, 199 N.E.3d at 1237. DCS could prove Children were CHINS under Indiana Code § 31-34-1-1 by establishing, among other

things, that Mother and Father had failed to provide a safe home or appropriate supervision for Children due to alleged altercations between Mother and Father. *See, e.g., In re A.M.*, 121 N.E.3d 556 (Ind. Ct. App. 2019) (ruling that CHINS determination under Indiana Code § 31-34-1-1 was supported by findings showing child’s home was unsafe as a result of reported molestation by father in home and mother’s failure to act). As the CHINS determination did not require evidence compliant with Indiana Code § 31-9-2-42, Father’s reliance on this statute is misplaced.

## ***2. Hearsay Evidence***

[14] Father also argues that DCS failed to meet its burden of proof because much of the domestic violence evidence was inadmissible hearsay. During the factfinding hearing, Father objected on hearsay grounds to FCM Herndon’s testimony about Mother’s reports of domestic violence. DCS responded that the testimony was admissible as statements of a party opponent. The trial court overruled the objection without detailing its reasons.

[15] “Hearsay is not admissible unless [the Indiana Rules of Evidence] or other law provides otherwise.” Ind. Evidence Rule 802. A “statement of an opposing party” is not hearsay under Indiana Evidence Rule 801(d), which specifies in relevant part:

[A] statement is not hearsay if . . . [t]he statement is offered against an opposing party and: (A) was made by the party in an



individual or representative capacity; (B) is one the party manifested that it adopted or believed to be true; (C) was made by a person whom the party authorized to make a statement on the subject; (D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or (E) was made by the party's coconspirator during and in furtherance of the conspiracy . . . .

[16] On appeal, DCS offers no support for its view that Mother's statements qualified as statements of an opposing party under Rule 801(d). DCS also does not specify the subpart of Rule 801(d) under which Mother's statements allegedly qualify. Father's argument is similarly limited. He only addresses Rule 801(d)(2)(A), claiming that provision does not apply to statements made in an individual capacity by one "party opponent" (Mother) against "a different party opponent" (Father). Appellant's Br., p. 15. We need not resolve this underdeveloped dispute because, as DCS suggests, even if Rule 801(d) does not apply, any error in the admission of the challenged testimony was harmless.

[17] First, Father does not specifically challenge any of the trial court's findings that support the judgment, despite his general contention that the evidence could not support the judgment. Unchallenged findings stand as true. *See McMaster v. McMaster*, 681 N.E.2d 744, 747 (Ind. Ct. App. 1997) (accepting two unchallenged findings as true). When a parent does not specifically challenge findings, we simply determine whether the unchallenged findings are enough to support the judgment. *A.M.*, 121 N.E.3d at 562.

- [18] The trial court’s findings assert a history of physical violence between Mother and Father, various altercations between Mother and Father shortly before the CHINS filing that ultimately resulted in injury to Mother’s ankle, and Children’s presence at one of the altercations. Appellant’s App. Vol. II, p. 36. Those unchallenged findings were sufficient to support the trial court’s CHINS determination.
- [19] In addition, part of the allegedly inadmissible hearsay was cumulative of Father’s testimony. Father acknowledged that at the end of a visit with Children at his parents’ home, he attempted to prevent Mother from leaving because Mother threw a cup at Father. Tr. Vol. II, p. 26. Father testified he took such action because Mother was “demonstrating the domestic violence behavior.” *Id.*
- [20] Father’s testimony also confirmed the trial court’s finding of a history of domestic violence between the couple. Father testified that Mother and he had thrown items at each other and damaged the home several years earlier. *Id.* at 31. Thus, Father’s testimony amounted to an admission of a history of altercations including at least one altercation shortly before the CHINS filing. A single incident of domestic violence in a child's presence may support a CHINS finding, and it need not necessarily be repetitive.” *K.A.H.*, 119 N.E.3d at 1121.<sup>1</sup>

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<sup>1</sup> Father testified, and now contends on appeal, that the house damage arose three years earlier and was addressed in the CHINS case in 2019. He assumes without saying that such altercations could not be the basis of a CHINS finding in this later proceeding. It is true that “DCS must introduce new allegations of material fact in a subsequent petition.” *R.L. v. Ind. Dep’t of Child Servs.*, 144 N.E.3d 686, 690 (Ind. 2020). But

[21] The trial court also looked beyond Mother’s reports of domestic violence in determining Children were CHINS. When denying Father’s motion to dismiss at the close of DCS’s case-in-chief, the trial court stated:

We’re not here to try a battery case or a domestic violence case. We’re here to listen to evidence in a child in need of services case, and I can’t look at these [photographs] and find that they didn’t meet their burden of proving that children living in this condition are . . . children in need of services from what I’ve heard so far.

Tr. Vol. II, p. 30.<sup>2</sup>

[22] Father did not object to those photographs, which revealed that the home in which Children were living was extremely cluttered and dirty, had many broken items (such as furniture and storage bins) within it, and was riddled with patched or unpatched holes in the walls and floor. The trial court specifically noted that damage in its findings.

[23] And, finally, Mother’s CHINS admission amounted to independent confirmation of DCS’s allegations that domestic violence had occurred in front of Children. When a mother admits a child is a CHINS based on allegations

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Father’s claim that the home damage was attributable to altercations in 2019 is merely an improper request to reweigh the evidence, given Mother’s written admission affirming the allegations of recent damage. *See K.D.*, 962 N.E.2d at 1253 (standard of review in CHINS cases precludes reweighing the evidence or judging witness credibility).

<sup>2</sup> The transcript includes the word “not” where the ellipsis in this quotation appears. Given that the trial court was denying Father’s motion to dismiss, which was based on DCS’s alleged failure to meet its burden of proof, we are confident that the court’s use of “not” either is a mistake in the transcription or an unintentional error by the court.

that the father is endangering the child, that admission is not binding on the father nor is it conclusive evidence that the child is a CHINS. *Matter of D.P.*, 72 N.E.3d 976, 982 (Ind. Ct. App. 2017). But the trial court need not ignore such an admission, either. *Id.*

[24] A CHINS proceeding focuses on the best interests of the children, not the guilt or innocence of either parent. *In re N.E.*, 919 N.E.2d at 106. The purpose of a CHINS proceeding is to help families in crises and to protect children, not to punish parents. *Id.* Therefore, the conduct of one parent alone may be enough to warrant a CHINS finding. *Id.* Our Supreme Court has made clear that whether one parent’s CHINS admission is enough to support the CHINS determination when the other parent denies the CHINS allegations depends on the facts of the case. *K.D.*, 962 N.E.2d at 1256.

[25] Although Mother accused Father of domestic violence in her statements to FCM Herndon, a direct accusation that he was the perpetrator was absent from Mother’s written CHINS admission. In that document, Mother agreed:

Children are [CHINS] . . . because Mother and Father have not provided the Children with a home free of domestic violence, and the Children are in need of care, treatment, or rehabilitation that [C]hildren are not receiving and are unlikely to be provided or accepted without the coercive intervention of the Court.

Appellee’s App. Vol. II, pp. 2-3.

[26] A parent’s admission of her failure to protect children from exposure to domestic violence is evidence of inadequate “supervision” supporting a CHINS

determination under Indiana Code § 31-34-1-1. *See, e.g., Ar.B.*, 199 N.E.3d at 1238. Thus, Mother’s admission of her own failings—that is, not providing a home for Children free of violence—was evidence supporting a finding that Children were CHINS. *See In re N.E.*, 919 N.E.2d at 108 (one parent’s failure to protect children from exposure to domestic violence may support a CHINS finding).

[27] That evidence, combined with the photographic evidence showing the many holes in the home’s walls and Father’s admission of at least one altercation in front of Children, constitutes proof by a preponderance of the evidence that Children are CHINS due to a lack of appropriate supervision and lack of an appropriate—that is, safe—home. *See Ind. Code § 31-34-1-1; K.D.*, 962 N.E.2d at 1255 (“[T]he sole issue before the court [at the factfinding hearing] is whether the child is a CHINS based upon the criteria in the CHINS statute.”). Any error from the admission of Mother’s reports to FCM Herndon was harmless given the remaining evidence and unchallenged findings of domestic violence.

[28] We affirm the trial court’s CHINS judgment.

Bailey, J., and Brown, J., concur.