

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.



ATTORNEYS FOR APPELLANTS

William Elliott Happel
Columbus, Indiana

Miriam Huck
Columbus, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Katherine A. Cornelius
Deputy Attorney General

Robert J. Henke
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of:

J.A. (Minor Child),
Child in Need of Services,

and

E.A. (Father) and Z.E.
(Stepmother),

Appellant-Respondents,

v.

Indiana Department of Child
Services,

October 21, 2021

Court of Appeals Case No.
21A-JC-716

Appeal from the Bartholomew
Circuit Court

The Honorable Kelly S. Benjamin,
Judge

The Honorable Lindsey Holden-
Kay, Magistrate

Trial Court Cause No.
03C01-2010-JC-5177

Appellee-Petitioner.

Altice, Judge.

Case Summary

- [1] E.A. (Father) and Z.E. (Stepmother) separately appeal¹ from the juvenile court's determination that J.A. (Child) is a Child in Need of Services (CHINS). S.T. (Mother) admitted Child was a CHINS and does not appeal. Stepmother also challenges the trial court's dispositional order as it relates to services in which she is required to participate.
- [2] We affirm.

Facts & Procedural History

- [3] Father is married to Stepmother, and Child, born March 13, 2014, lives with them. Mother shares legal custody of Child and has visitation, but, according

¹ Upon motion by the Department of Child Services (DCS), this court consolidated Father's and Stepmother's appeals under this cause.

to Mother, Father did not allow her to see Child in the weeks leading up to these events.

[4] On October 22, 2020, Child was in the care of Father and Stepmother. The following day, Child went to school with a visibly injured arm. School employees noticed that Child could not open packaging for his breakfast items. It appeared to the school nurse that Child was unable to use his arm. When asked how he injured his arm, Child explained that he had broken a crockpot at home and that Father then dragged him across the floor and threw him down on his arm.²

[5] DCS family case manager Laura Cox (FCM Cox) went to the school and met with Child. She noted that Child was freely using his left arm, but his right arm was hanging limply by his side. Child was unable to lift his arm and “squealed or winced in pain” when asked to do so. *Transcript* at 64. Child needed assistance to remove his sweatshirt and “winced and sucked in a bunch of air through his teeth” as he backed his elbow out of the sleeve. *Id.* at 65. When asked how he injured his arm, Child told FCM Cox that he had broken something that belonged to Father and that Father “drug him across the floor by his foot and threw him down on the ground on his arm.” *Id.* FCM Cox noted that his arm was swollen around the area Child identified as the source of the pain. FCM Cox also noted red marks on Child’s neck and chest. Child

² About a month prior to this incident, the school had received a report that Stepmother had smacked Child in the back of the head.

explained that the marks were from a previous incident when he spilled hot coffee on himself. Mother was contacted, and she picked up Child from school and took him to the hospital to have his arm examined.

[6] FCM Cox contacted Father to inform him of the report made regarding Child's arm, and Father immediately told her that he would not speak with her without an attorney present. Shortly after the call ended, Father called FCM Cox back and explained that he knew Child injured his arm after he climbed on a kitchen counter and fell and that he thought the injury was just muscular. He also suggested that Child may have been injured while playing with the family's puppy. Father explained that he had Child put ice on his arm and gave him some medicine for the pain. He also claimed he had scheduled a doctor's appointment for October 26, 2020, to have Child's arm looked at. FCM Cox called Child's physician to verify the appointment and learned that the appointment was for pre-dental-surgery clearance and that Father scheduled the appointment the day before the injury occurred.

[7] At the hospital, Child gave medical staff the same explanation he told school officials and FCM Cox about how he hurt his arm, describing that "he was drug across the floor and dropped on his arm by his Father" after he broke something in the kitchen. *Id.* at 69. After Child was placed in a hospital gown, hospital staff and FCM Cox observed bruises at various stages of healing on other areas of Child's body, including across his back, his bottom, and on his arms and legs. It was eventually determined that Child had a fractured arm. FCM Cox then took Child to be interviewed at a child advocacy center.

During the interview Child demonstrated how Father dragged him across the floor, picked him up, and then threw him to the ground on his arm.

[8] At the direction of her supervisor, FCM Cox contacted the Riley Protection Team at Riley Hospital for Children in Indianapolis and talked to Dr. Ann Freshour. Dr. Freshour did not physically examine Child but thoroughly considered Child's medical records. Within the records it was noted that Child claimed he injured his arm when Father dragged him across the floor, picked him up, and threw him down on his arm. It was also noted that Father alleged Child may have injured his arm during a fall, but no further details were provided. Dr. Freshour noted that Child's explanation to hospital staff was consistent with what he reported to school officials. She acknowledged that Child's arm showed no external signs of injury but explained that Child would have experienced limited mobility and pain. She also noted that the area of petechial bruising, which is commonly inflicted due to friction, was unusual for an accidental injury. Considering the information before her, Dr. Freshour opined that the most plausible explanation for Child's injuries was inflicted injury, i.e., Father dragging Child across the floor and throwing him to the ground on his arm. She also found Child's injuries to be consistent with Child's explanation.

[9] On October 26, 2020, DCS removed Child from Father's care to ensure Child's safety. That same day, DCS filed a verified petition alleging Child to be a

CHINS. On October 27, 2020, the court ordered Child be placed with Mother. On December 15, 2020, Child was removed from Mother's home and placed with paternal grandparents.

[10] After Child was removed, Rachel Bennett, a mental health counselor with the National Youth Advocate Program, was referred to provide therapy services for Child and to supervise visits between Father and Child. Father informed her that Child had been diagnosed with ADHD and ODD. Bennett agreed that Child exhibited signs of ADHD, but she doubted the accuracy of the ODD diagnosis. Rather, Bennett viewed Child's behavior, including speaking like a child of a much younger age, as being indicative of having experienced trauma. She recommended that Child participate in trauma-focused therapy.

[11] The court held a factfinding hearing on December 11, 2020, and January 12, 2021. At the conclusion of the evidence, the court ruled from the bench, finding that Child was a CHINS. In its March 1, 2021 written order adjudicating Child a CHINS, the court set out its conclusions as follows:

31. Child is a CHINS as defined by Ind. Code § 34-31-1-1. Of all his caregivers, Child's Father was in the best position to know or suspect that his child was seriously injured and chose not to seek medical care for Child. Father and Stepmother's refusal to seek medical treatment seriously endangered Child's physical condition.

32. Child is a CHINS as defined by I.C. § 34-31-1-2. The Court heard direct evidence that Child's physical health was seriously endangered due to injuries as the result of an intentional act by Child's father. Child's health was further endangered by an

omission on the part of Father and Stepmother when they chose not to seek medical care for their injured child.

33. In addition, DCS raised a rebuttable presumption by I.C. § 34-31-12-4, that Child is a CHINS. There was not sufficient evidence presented to rebut the presumption that was raised. Child's account of the way Father inflicted his injuries remained consistent from the time Child reported it. Child's account is fully consistent with his physical injuries, as determined by the Riley Protective team. None of the parents' explanations are fully consistent with the medical evidence.

Father's Appendix Vol. 2 at 40-41.

[12] The court held a dispositional hearing on February 4, 2021. During the hearing, Stepmother testified that she did not need individual counseling because she "didn't do anything" and because she did not have "any records of violence." *Transcript* at 181. She also did not believe she would be able to understand any of the counseling due to a language barrier. Stepmother testified that she did not need to complete a domestic violence assessment because Father had never been abusive toward her. She also expressed concern with being able to complete services as she had just had a baby in January 2021. At the conclusion of the hearing, the court ordered Father and Stepmother to participate in various services as identified by DCS, including individual counseling, supervised visits, home-based case management, and domestic violence services. Father and Stepmother separately appeal. Additional facts will be provided as necessary.

Discussion & Decision

[13] A CHINS proceeding is a civil action that requires DCS to prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). On review, we neither reweigh the evidence nor judge the credibility of the witnesses and will consider only the evidence and reasonable inferences that support the trial court's decision. *Id.* We will reverse only upon a showing that the decision of the trial court was clearly erroneous. *Id.* Further, in family law matters, we generally grant latitude and deference to trial courts in recognition of the trial court's unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony. *In re A.M.*, 121 N.E.3d 556, 561-62 (Ind. Ct. App. 2019), *trans. denied.*

[14] There are three elements DCS must prove for a child to be adjudicated a CHINS.

DCS must first prove the child is under the age of eighteen; DCS must prove one of eleven different statutory circumstances exist that would make the child a CHINS; and finally, in all cases, DCS must prove the child needs care, treatment, or rehabilitation that he or she is not receiving and that he or she is unlikely to be provided or accepted without the coercive intervention of the court.

Id. (footnote omitted); *see also* Ind. Code § 31-34-1-1. The CHINS statutes do not require a court to wait until a tragedy occurs to intervene; rather, a child is a CHINS when he or she is endangered by parental action or inaction that is

unlikely to be remedied without coercive intervention by the court. *See In re C.K.*, 70 N.E.3d 359, 364 (Ind. Ct. App. 2016), *trans. denied*. It is well established that the purpose of a CHINS adjudication is to protect the children, not punish the parents. *K.D.*, 962 N.E.2d at 1255.

1. CHINS Determination

[15] Father and Stepmother argue that the court’s conclusion that they refused or neglected to provide Child with necessary medical care is not supported by the evidence. They note that Child sustained a nondisplaced fracture and that even Dr. Freshour indicated that there was no visible sign of a fracture. They each point to their testimony that Child was behaving normally the night before going to school and DCS getting involved. Under these circumstances, they maintain that by having Child ice his arm and take pain medicine, they “provided what [they] reasonably believed to be the necessary level of medical care” based on their observations. *Father’s Appellant’s Brief* at 9. They also point out that Father did not oppose Child’s arm being evaluated at the hospital. They argue that the evidence, considered in totality, does not support the court’s conclusion that they were neglectful in not seeking immediate medical treatment for Child and that, to the contrary, their actions demonstrate that they provided appropriate treatment given the circumstances.

[16] Their argument constitutes a request to reweigh the evidence. Although Father and Stepmother each testified that Child was behaving normally, there was evidence that upon arriving at school, school personnel readily observed that Child was not able to use his arm and was clearly in pain. The school nurse

observed that Child's arm hung limply by his side. Further, Child was consistent with his explanation to school officials and FCM Cox that he injured his arm when Father dragged him across the floor and then threw him down on his arm. Father initially refused to speak with FCM Cox and then called back and provided different explanations for how Child may have injured his arm. The evidence establishes by at least a preponderance of the evidence that Father was in the best position to know or suspect that Child was seriously injured and that Father chose not to seek medical care for Child. The trial court's conclusion that Child is a CHINS on this basis is not clearly erroneous.

[17] Father and Stepmother also argue that DCS did not establish that the presumption of CHINS applies on these facts. I.C. § 31-34-12-4 provides:

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.

Father and Stepmother do not dispute that there is evidence in the record that satisfies (1), (2), and (4). Their argument is that there is not competent evidence that Child's injuries would not ordinarily be sustained except for Father's actions. Father denies that he dragged Child and threw him down, and Father and Stepmother direct us to Father's explanation as to how Child sustained his injuries—i.e., that Child broke his arm when he fell after climbing onto a kitchen cabinet.

[18] Again, this argument is merely an invitation for this court to reweigh the evidence and assess the credibility of witnesses. The trial court, however, is best suited for these tasks. The court heard Child's and Father's differing explanations as to how Child's injuries occurred. The court found Child's consistent explanation to be most credible. Further, the court noted Dr. Freshour's finding that Child's injuries were consistent with Child's explanation as well as her opinion that such were intentionally inflicted by Father when Father dragged Child across the floor, picked him up, and then threw him down on his arm. This is sufficient evidence to establish by a preponderance of the evidence that Child sustained an injury that would not ordinarily have been sustained but for Father's actions as described by Child. Father's alternative

explanation for Child's injuries does not rebut the presumption that Child is a CHINS.

[19] Stepmother also challenges several of the trial court's findings as being unsupported by the evidence. For instance, she asserts that the court's finding that Father told FCM Cox that the family's puppy "may" have caused Child's injury is an incorrect characterization of her testimony. *Father's Appendix Vol. 2* at 40. FCM Cox testified that after she informed Father of the report about Child's arm, Father called her back and told her he was aware that Child had hurt his arm and then informed her that the family had a puppy before stating that Child fell from a kitchen counter. Although Father may not have expressly stated that Child injured his arm while playing with the puppy, in context, it is clear that FCM Cox believed Father was at least suggesting that Child may have injured his arm while playing with the puppy. Mother challenges several of the court's other findings by directing us to her arguments challenging the CHINS determination, i.e., pointing out evidence contrary to the court's findings. Mother, however, simply disagrees with the court's evaluation of the evidence and assessment of credibility of the witnesses as the court's findings are also supported by evidence in the record. In any event, we find that the court's unchallenged findings support the CHINS adjudication.

2. Stepmother's Challenge to Dispositional Order

[20] Stepmother argues that the court erred in requiring her to participate in services related to domestic violence, specifically, home-based case management, individual counseling, and a domestic violence assessment and program.

Stepmother believes all three services focus on the same goal and that requiring her to participate in three different services is “duplicative and unduly burdensome” and “sets her up for failure.” *Stepmother’s Appellant’s Brief* at 16.

[21] The court ordered Stepmother to participate in a domestic violence assessment and follow all recommendations, attend all scheduled visits with Child, participate in home-based case management, and participate in individual therapy. Each of the ordered services aid in different areas related to domestic violence. Domestic violence services address parenting skills, appropriate discipline, and provide an outside resource for responding to domestic violence. Home-based case management may address parenting skills, but also provides help with anything in the home, including financial concerns. Individual counseling addresses the above concerns but in a different setting. DCS explained that they could try to find a service provider that would use a translator or find a counselor who speaks in Mother’s native language. Although the ordered services may overlap, they each serve their own independent purpose. In the CHINS setting, of utmost importance is providing services to ensure that Child is returned to a home free of domestic violence and/or excessive discipline. Requiring Stepmother to complete the services at the same time is the best way to avoid delays and limit the State’s interference in the family’s privacy for the least amount of time. We cannot say that the court abused its discretion in ordering Stepmother to participate in multiple services.

[22] Judgment affirmed.

Bradford, C.J. and Robb, J., concur.