MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of:

G.H. (Minor Child)

and

R.H. (Father),

and

T.H. (Custodian)

Appellants-Respondents,

v.

Indiana Department of Child Services,

Appellee-Petitioner

April 6, 2023

Court of Appeals Case No. 22A-JC-2643

Appeal from the Wabash Circuit Court

The Honorable David Cox, Senior Judge

The Honorable Robert R. McCallen, III, Judge

Trial Court Cause No. 85C01-2206-JC-27

Memorandum Decision by Judge Mathias
Judges May and Bradford concur.

Mathias, Judge.

[1] R.H. ("Father") and T.H. ("Custodian") appeal the trial court's adjudication of Father's daughter G.H. ("Child") as a Child in Need of Services ("CHINS"). Father and Custodian raise three issues for our review, which we consolidate and restate as two issues:

> I. Whether the trial court erred when it granted the Department of Child Services' ("DCS") motion to continue the fact-finding hearing beyond a statutory deadline.
>
> II. Whether the trial court clearly erred when it adjudicated Child to be a CHINS.

[2] We affirm.

Facts and Procedural History

[3] Father has three children, including Child, who was born January 10, 2008. Child's mother ("Mother") and Father divorced, and Mother died by suicide in 2018. Later that year, Father and Custodian were dating, and Child and Child's siblings moved with Father into Custodian's house. Thereafter, Custodian began spanking Child on occasion as punishment. Child would have to remove her clothing and underwear and bend over, and Custodian used two paint "stir sticks" to spank Child. Tr. Vol. 2, p. 139. Custodian insisted that she spank Child because she believed that Father "didn't spank [Child] hard enough." *Id.*

at 142. Father and Custodian also occasionally punished Child by excluding her from family meals and family vacations. In addition, Father and Custodian prohibited Child from engaging in extracurricular activities as punishment. In addition, Custodian told Child that Child was like Mother and "would end up like her." *Id.* at 153. Child has been diagnosed with ADHD, and Father has sought treatment for Child, including individual therapy.

[4] On May 26, 2022, DCS received a report alleging that Child "was spanked, allegedly grabbed by her throat, and slapped. And then [sic] that Henna tattoos were scribbled out on her wrist. And also [sic] alleging that she was excluded from all family vacations and dinner." *Id.* at 17. On May 27, Brittany Strahm, a family case manager with DCS, met with both Father and Child. Father "admitted that [Child] was being spanked, and that she did have bruising, and that she was being excluded from family dinners and family vacations." *Id.* at 19. But Father denied that any of that conduct was abusive. Strahm saw bruises on Child's buttocks.

[5] On June 7, Strahm met with Custodian, who also admitted to the allegations, but she also denied that her conduct was abusive. At one point, Custodian approached Strahm, slapped her twice across the face, and said that "that's what she had done to [Child]" and that Custodian did not "consider it abuse." *Id.* at 23. On June 8, DCS removed Child from Father and Custodian's home and placed her with a relative. DCS also replaced Strahm as family case manager, with Monica Straight taking over the case.

[6] On June 9, DCS filed a petition alleging that Child was a CHINS. DCS also moved to exclude Child from the initial hearing and from "further hearings" due to her "mental state." Appellant's App. Vol. 2, p. 33. The trial court granted the motion to exclude Child from hearings. And at the initial hearing, Father and Custodian denied the allegations in the CHINS petition.

[7] The trial court scheduled the fact-finding hearing for July 26, which was within the statutory sixty-day deadline to hold the hearing. *See* Ind. Code § 31-34-11-1(a) (2022). The day before the scheduled hearing, on July 25, DCS filed a motion to rescind the order excluding Child from the fact-finding hearing. Father and Custodian objected to that motion. The day of the hearing, the trial court denied DCS' motion and continued the hearing to August 2, which was still within the sixty-day deadline.

[8] In the meantime, on July 27, DCS moved the trial court to permit Child to testify via closed-circuit television. DCS attached to its motion a "Psychological/Hearsay Assessment" prepared by psychologist who concluded that,

> [a]lthough [Child] expressed a desire to testify because she wants to be cooperative with the process, the current assessment indicated that her mental health is too fragile to do so without significant harm to her. However, [Child] is much less likely to have an acute worsening of her mental health symptoms ([a] panic attack) if she were to testify in the Judge's chambers (or another method which did not result in her testifying in front of her father).

Appellants' App. Vol. 2, p. 51. Father and Custodian objected to that motion and filed a motion to compel discovery.

[9] On August 2, the date of the fact-finding hearing, the trial court heard argument on the parties' competing motions. The court denied DCS' motion and took Father and Custodian's motion to compel under advisement. The court then heard evidence on the CHINS petition. Due to time constraints, the court continued the rest of the fact-finding hearing until August 16, over the objections of Father and Custodian. By statute, the CHINS fact-finding hearing had to be completed by August 7. On August 5, Father and Custodian filed a motion to dismiss the CHINS petition for the court's failure to hold the fact-finding hearing within sixty days of the petition. At the conclusion of the fact-finding hearing on August 16, the trial court heard argument on the motion to dismiss and denied the motion.

[10] During the fact-finding hearing, DCS presented evidence, including Child's testimony, regarding the abuse Child suffered at the hands of Father and Custodian and the impact of their conduct on Child's mental health. Following the hearing, the court issued extensive findings of fact and conclusions thereon. In relevant part, the court found and concluded:

> 12. Custodian noted that it is her rules in her house, that she has strict rules to maintain order, that a variety of disciplinary measures are used in a steadily escalating fashion, and that [Child] was constantly in trouble but did not respond consistently to punishment.

13. Discipline for [Child and her brother] resulted in eating cold meals or meals apart from the rest of the family.

14. Being confined to her room, staying behind on family vacations, not participating in extra-curricular activities, and withholding an outward sign of affection (Father refusing to hug [Child]) were other forms of discipline.

15. Father and Custodian both consider spanking as one of the ways to teach the values they want to impose, so as minors all the children were spanked for all the years they lived in the house.

16. In May of 2022 FCM [Brittany] Strahm observed bruising on both buttocks of [Child].

* * *

27. Father testified that it had always been difficult with [Child], that nothing "resonates" with her, and he is "kind of at a loss" with her.

28. Custodian admitted that what she and Father have tried with [Child] over the years has not worked.

* * *

30. Here, the spankings were not successful to compel obedience, [Child] was required to assume an unnecessarily degrading posture, and the discipline itself resulted in physical injury to [Child].

31. The Court finds that it was unreasonable in May of 2022 and in previous spanking sessions to use wooden stir-sticks on the bare skin of [Child], an adolescent girl, who was forced to fully expose herself, and to strike with such force as to leave black and blue marks and bruises.

32. Father and Custodian have since signed a Safety Plan with DCS that allows spanking only if age-appropriate and in a way that does not leave marks or bruises.

* * *

43. On one hand, Father and Custodian persisted in escalating the severity of punishment to the point of inflicting bodily harm to [Child] a number of times over the years, including the May 2022 incident, even though they acknowledged it was not working with her.

44. On the other hand, Father has engaged over the years seeking medical help and therapy for [Child]:

> (a) For years he has seen medical professionals for [Child]'s medication management.
>
> (b) After testing, he saw to it that [Child]'s Adderall treatment for ADHD was changed to Vyvanse.
>
> (c) He paid for [Child]'s counseling through the Bowen Center for fourteen months.
>
> (d) He requested a referral from Dr. Ahmad for more help with [Child] and contacted Dr. Lisa Wooley as a result.
>
> (e) Dr. Wooley accepted the referral and began meeting with the family members in June of 2022.

45. Dr. Lisa Wooley's Family Model approach to counseling is accepted by Father and Custodian.

46. Dr. Wooley has met [Child] and does not think suicidal thoughts are currently an issue.

47. With [Child], Dr. Wooley plans to provide individual therapy addressing (1) [Child]'s relationship with Father and Custodian, (2) the suicide of [Child's mother], and (3) difficulties that have occurred at the home.

48. To Dr. Wooley, an ADHD child requires utilizing different parenting approaches than with "typical" children.

49. As goals, Dr. Wooley wants to educate Father and Custodian about the developmental levels of children and provide alternative disciplinary strategies helpful with [Child].

50. Dr. Wooley said she can implement the Family Model approach for treatment if [Child] returns home.

51. [Child] is currently in kinship placement and Dr. Wooley does not consider [Child] as ready to return home because she has not processed everything that has happened in the family, and because Father and Custodian have not processed it all either.

52. Father and Custodian are taking affirmative steps now for [Child]:

> (a) Father started journaling back and forth with [Child] as a way of initiating more positive communication.
>
> (b) Father believes Dr. Wooley understands the severity of the problem, is committed to learning better disciplinary tools, and plans to follow Dr. Wooley's recommendations.
>
> (c) Father pays for Dr. Wooley's assistance himself and attends the counseling sessions as scheduled.

(d) Custodian keeps her counseling session appointments as scheduled.

(e) Father and Custodian testified that they would abide by the Safety Plan.

53. In the case of *In re E.K.*, 83 N.E.3d.1256 (Ind. Ct. App. 2017) *transfer denied*, the Court reversed the trial court's determination that coercive intervention was required: there was only one instance of bruising from spanking, the parents never violated the safety plan, and there was no evidence the child suffered from any psychological problems.

54. In contrast, the Court finds [Child] has suffered bruising more than once, and that continuing to live at home without changing disciplinary strategies and parenting approaches seriously endangers [Child]'s mental health.

55. Without the intervention of the Court, [Child] would return home even though [Child], Father, and Custodian are not ready for her return.

56. The Court finds that coercive intervention is needed for [Child] to continue receiving her recommended mental health treatment.

Id. at 20-25. As such, the court adjudicated Child to be a CHINS. Thereafter, the court entered a dispositional order and a parental participation order in which it ordered Father and Custodian to participate in services. This appeal ensued.

Discussion and Decision

Issue One: Motion to Dismiss

[11] Father and Custodian first contend that the trial court erred when it denied their motion to dismiss and concluded the fact-finding hearing beyond the sixty-day statutory deadline without good cause. Indiana Code section 31-34-11-1(a) provides that, "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[.]"

[12] Our Supreme Court recently addressed the issue of good cause for holding a fact-finding hearing beyond the statutory deadline in *A.C. v. Indiana Department of Child Services (In re M.S.)*, 140 N.E.3d 279 (2020). While *In re M.S.* involved a CHINS fact-finding hearing held beyond the optional 120-day deadline in Indiana Code section 31-34-11-1(b),[1] the Court's analysis applies here. As the Court held,

> [b]ecause our trial rules trump statutes on matters of procedure, [Trial] 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.

[1] That subsection of the statute provides for a 120-day deadline with the consent of all parties.

> 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." *State v. Int'l Bus. Mach. Corp.*, 964 N.E.2d 206, 209 (Ind. 2012) (quoting *Bushong v. Williamson*, 790 N.E.2d 467, 471 (Ind. 2003)). *See also Matter of J.S.*, 130 N.E.3d 109, 113 (Ind. Ct. App. 2019) (same). We have consistently observed the principle that "the purpose of a CHINS adjudication is to protect children, not punish parents." *Matter of Eq.W.*, 124 N.E.3d at 1209 (quoting *In re K.D.*, 962 N.E.2d at 1258). 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. *See F.M. v. N.B.*, 979 N.E.2d 1036, 1039-40 (Ind. Ct. App. 2012) (finding a trial court abuses its discretion in denying a request for a continuance if good cause has been shown). There are no "mechanical tests" for determining whether a request for a continuance was made for good cause. *See Blackford v. Boone County Area Plan Com'n*, 43 N.E.3d 655, 664 (Ind. Ct. App. 2015). Rather, the decision to grant or deny a continuance turns on the circumstances present in a particular case, *id.* . . .

Id. at 284-85.

[13] Here, the sixty-day deadline to hold the fact-finding hearing expired on August 7, 2022, but the hearing, which was held in part on July 26 and August 2, did not conclude until August 16. The reasons for the delay included the trial court's consideration of: DCS's July 25 motion to rescind the order excluding Child from the fact-finding hearing; DCS's July 27 motion to permit Child to testify via closed-circuit television; and Father and Custodian's August 1 motion to compel discovery. In opposition to Father and Custodian's motion to

dismiss the CHINS petition, DCS argued that the trial court should exercise its discretion to extend the deadline for good cause. In particular, DCS argued that "it was not its intention to squander the Court's time in addressing substantive related issues [during the hearings on July 26 and August 2], such as whether Child needed to testify by closed-circuit television for the sake of her mental health or in its response to [Father and Custodian's] Motion to Compel Discovery." Appellants' App. Vol. 2, p. 65.

[14] On appeal, Father and Custodian fault DCS for wasting time during the first two days of the fact-finding hearing and for waiting until August 1 to submit supplemental discovery to them. Father and Custodian allege that DCS was "poorly prepared for the allotted court time" and made "contradictory requests," first, to exclude Child from the hearing and second to have Child testify by closed circuit television. Appellants' Br. at 21. Father and Custodian also allege that they were prejudiced by the delayed conclusion of the hearing because "the minor child continued to live with" the foster placement. *Id.*

[15] In its brief on appeal, DCS contends that it showed good cause to support the continuance because the question of Child's mental health in the face of her testimony at the fact-finding hearing "was an issue that merited the court's attention and deserved the presentation of evidence and argument." Appellee's Br. at 16. In support, DCS cites *D.F. v. Department of Child Services (In re R.A.M.O.)*, 190 N.E.3d 385 (Ind. Ct. App. 2022).

[16] In *In re R.A.M.O.*, this Court held that the trial court had good cause to continue the CHINS fact-finding hearing beyond the statutory deadline where: DCS had difficulty procuring two essential witnesses; DCS requested additional time to assess the mother's mental capacity; and DCS had difficulty finding an attorney to cover the hearing. *Id.* at 391-92. We also noted that the mother had "not shown or even asserted that she was prejudiced by the [two-week] continuance," and we cited *Hinds v. McNair*, 413 N.E.2d 586, 609 (Ind. Ct. App. 1980) (explaining that we will not disturb a trial court's granting or refusing of a continuance absent a showing of clear and prejudicial abuse of discretion). *Id.* at 391.

[17] Here, we agree with DCS that the trial court did not abuse its discretion when it found good cause to delay the conclusion of the fact-finding hearing by only nine days. Indeed, Father and Custodian have not shown prejudice as a result of the short delay in concluding the fact-finding hearing. As DCS points out, the "overwhelming evidence" showed that Child was not yet ready to go home to Father and Custodian because "she did not feel safe" doing so at that time. Appellee's Br. at 17 (citing Tr. Vol. 2, p. 160). We hold that the trial court did not abuse its discretion when it denied Father and Custodian's motion to dismiss.

Issue Two: CHINS Adjudication

[18] Father and Custodian appeal the court's order adjudicating Child to be a CHINS. As our Supreme Court has stated:

> When reviewing a trial court's CHINS determination, we do not reweigh evidence or judge witness credibility. *In re S.D.*, 2 N.E.3d 1283, 1286 (Ind. 2014). "Instead, we consider only the evidence that supports the trial court's decision and [the] reasonable inferences drawn therefrom." *Id.* at 1287 (citation, brackets, and internal quotation marks omitted). When a trial court supplements a CHINS judgment with findings of fact and conclusions law, we apply a two-tiered standard of review. We consider, first, "whether the evidence supports the findings" and, second, "whether the findings support the judgment." *Id.* (citation omitted). We will reverse a CHINS determination only if it was clearly erroneous. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). A decision is clearly erroneous if the record facts do not support the findings or "if it applies the wrong legal standard to properly found facts." *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997) (citation omitted).

Gr.J. v. Ind. Dep't. of Child Servs. (In re D.J.), 68 N.E.3d 574, 577-78 (Ind. 2017) (alterations in original). "A CHINS adjudication focuses on the condition of the child." *In re N.E.*, 919 N.E.2d at 105. And, when determining whether a child is a CHINS under section 31-34-1-1, the juvenile court "should consider the family's condition not just when the case was filed, but also when it is heard." *In re S.D.*, 2 N.E.3d at 1290.

[19] Here, DCS alleged, and the trial court found, that Child was a CHINS pursuant to Indiana Code section 31-34-1-2(a), which provides that a child is a CHINS if the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent or custodian and the child needs care, treatment, or rehabilitation that the child is not receiving and which is unlikely to be provided or accepted without the coercive intervention of the court.

[20] Further, DCS alleged, and the trial court found, that DCS was entitled to the rebuttable presumption under Indiana Code section 31-34-12-4, which provides that a rebuttable presumption is raised that a child is a CHINS because of an act or omission of the child's parent or custodian if the State introduces competent evidence of probative value that the child has been injured and that, at the time the child was injured, the parent or custodian had the care, custody, or control of the child; the injury would not ordinarily be sustained except for the act or omission of the parent or custodian; and there is a reasonable probability that the injury was not accidental.

[21] As this Court has emphasized,

> the Presumption Statute creates a rebuttable presumption "that the child is a [CHINS.]" I.C. § 31-34-12-4. Accordingly, the presumption applies to all elements of I.C. § 31-34-1-2. In other words, there is a rebuttable presumption not only that Child's physical or mental health is endangered, but also that Child 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.

Indiana Dep't of Child Servs. v. J.D., 77 N.E.3d 801, 809 n.3 (Ind. Ct. App. 2017), *trans. denied*.

[22] On appeal, Father and Custodian do not challenge the trial court's determination that DCS was entitled to the rebuttable presumption that Child is a CHINS. Rather, Father and Custodian contend that they met their burden to prove that Child's needs would be met without the coercive intervention of the

court. In essence, then, they assert that they rebutted the presumption that Child is a CHINS. In support, Father and Custodian challenge several of the trial court's findings as not being supported by the evidence. However, Father and Custodian do not support any of their contentions with citations to the transcript or other evidence in the record, and they have waived this issue for our review. *See* Ind. Appellate Rule 46(A)(8)(a).

[23] Waiver notwithstanding, Father and Custodian's arguments amount to a request that we reweigh the evidence, which we will not do. At the fact-finding hearing, family case manager Monica Straight testified that Custodian did not have visitation with Child because Child did not want to visit with Custodian and because Child's therapist did not think that it was a good idea. Straight also testified that the conditions that led to Child's removal from the home had not yet been remedied. In particular, Straight testified that "all of the family are processing their individual needs" and "there's still lots of trauma to work through." Tr. Vol. 2, p. 208. Finally, Straight testified that she did not think Child should return to Father and Custodian's home. In addition, Child testified that she did not feel safe going home with Father and Custodian. She testified that she would only feel safe if Father and Custodian "broke up and [if

Father] got the help that he needed." *Id.* at 160. For all of these reasons, the trial court did not err when it found that Child is a CHINS.[2]

[24] Affirmed.

May, J., and Bradford, J., concur.

[2] Father and Custodian purport to challenge the findings of fact supporting the court's dispositional order. But we agree with DCS that their argument simply rehashes their challenges to the CHINS adjudication. Accordingly, we do not address their contentions separately.