

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of C.P. (Minor
Child),

Child in Need of Services,

and

S.K. (Mother),

Appellant-Respondent

v.

Indiana Department of Child
Services,

Appellee-Petitioner

May 26, 2022

Court of Appeals Case No.
21A-JC-2793

Appeal from the Owen Circuit
Court

The Honorable Kelsey B. Hanlon,
Judge

Trial Court Cause No.
60C02-2106-JC-101

May, Judge.

- [1] S.K. (“Mother”) appeals the trial court’s adjudication of her child, C.P. (“Child”), as a Child in Need of Services (“CHINS”). Mother argues the trial court’s findings do not support its conclusion that Child is a CHINS because: (1) Child was not seriously endangered, and (2) Child’s needs were met without coercive intervention of the court. We affirm.

Facts and Procedural History

- [2] Mother gave birth to Child on November 2, 2017. She and J.P. (“Father”)¹ (collectively with Mother, “Parents”) primarily lived together after Child’s birth. Twice in 2018, once at an unspecified time and once in September, the Department of Child Services (“DCS”) became involved with the family because Parents’ disputes resulted in domestic violence. After the September 2018 incident, the State charged Father with “Disorderly Conduct and Domestic Battery in the Presence of a Child Less than 16 years old.” (Amended App. Vol. II at 24-5.) Father was subsequently charged with domestic violence in Hawaii,² though the victim in that incident is not indicated in the record. All charges against Father in Indiana were eventually dismissed, and Father was not convicted of the charge in Hawaii.

¹ Child was adjudicated a CHINS as to Father as well, but he does not participate in this appeal.

² The date of this charge is unknown, but it seems to be subsequent to the charge in Indiana.

[3] In March 2020, DCS was again involved with the family because of a domestic violence incident between Parents during which Child was present. During that incident, Mother was intoxicated and a physical altercation ensued between Parents. Mother and Father have different versions of the events, but both stories include a BB gun. Based on this incident, the State charged Mother with Class C misdemeanor disorderly conduct.³ The trial court put a No-Contact Order in place, ordering Mother to not have contact with Father.

[4] During the DCS investigation, Parents disclosed to the Family Case Manager (“FCM”) that there had been other incidents of domestic violence between Mother and Father in the past. Father told the FCM that Mother “shattered a ceramic glass warmer over [Father’s] head while [he was] sleeping.” (Tr. Vol. II at 145.) Parents indicated Mother frequently used alcohol, and Parents accused one another of using marijuana. DCS substantiated the allegations as to Mother, but not as to Father. The FCM created a safety plan with Mother but did not petition to adjudicate Child as a CHINS because Mother and Child left Indiana to live with Mother’s family in Illinois. Mother and Child stayed with Mother’s parents in Illinois for six to eight months, during which Father had “video chats” with Child on the weekends. (*Id.* at 51.)

[5] Also in March 2020, Father pled guilty to an earlier charge of invasion of privacy involving Mother and was placed on probation. As a condition of his

³ During March 2020, the State also charged Mother with two counts of Class C misdemeanor invasion of privacy, but the record contains no explanation for these charges.

probation, Father was not allowed to have contact with Mother. When Mother and Child returned from Illinois, around September 2020, there remained a no-contact order between Mother and Father. Nevertheless, Mother and Child lived with Father upon their return to Indiana.

[6] In September 2020, Parents engaged in another incident of domestic violence in Child's presence. At the fact-finding hearing, Father testified regarding the altercation:

[Mother] completely wrecked my house, she was intoxicated, she threw syrup and laundry detergent and busted everything she could break, brand new TVs, she tried to stab her dad 9 times in my living room with a screw driver when the police came to take her, so the police wouldn't. I mean there was a mass amount of damage done to the house. Doors broken, she broke through a metal security door on the back of the house, completely broke it, knocked the glass out of it and knocked it out of the frame.

(*Id.* at 135) (errors in original). Regarding the same incident, Mother testified Father "hit [her] in the head and [she] had to go get 7 stitches at the hospital." (*Id.* at 30.) The record does not indicate whether the September 2020 incident was reported to DCS or the police.

[7] On May 30, 2021, DCS received a report from law enforcement that there was an active domestic violence incident at Father's residence. FCM Shelby Gaston testified at the initial hearing about her involvement with Parents on that day:

There was a verbal altercation off and on throughout the day at the residence and [Child] was present. [Father] called law enforcement after [Mother] had popped tires on his car with

[Child] present. Law enforcement responded to the home, [Mother] ran through the woods with [Child]. [Child] had a knife in his hand; she had her hand over it. She asked the officers to identify themselves who was there, and they said it was law enforcement and she proceeded to keep running.

* * * * *

[O]ne officer had responded to the home and located [Mother], she basically shows signs of impairment, she had red glossy eyes, she had abusive behavior towards the officers, she smelled of an alcoholic beverage, she was taken into custody at that time because she was breaking the No Contact Order between her and [Father] and she was going to get charges for resisting law enforcement and then when I spoke to [Child], he actually told me that [Mother] had popped the tires on the car while holding him.

(*Id.* at 16) (errors in original). Based on Mother's actions, the State charged her with invasion of privacy, criminal mischief, and resisting law enforcement. DCS left Child in Father's care.

[8] Mother was released from jail on bond on June 1, 2021, and went to the DCS office to speak with FCM Gaston. While Mother was there, Father arrived with Child. FCM Gaston testified:

I was going to meet with [Father] to touch base with [Father] that day and I was actually in the lobby to get him and bring him back to the office and [Mother] came in and took [Child] and ran to her parents' car while it was running.

* * * * *

[Father] came out of the DCS office and him and [Mother's] father kind of got into a verbal argument my local office Director I had called her to come out, we had to call the police, [Mother] wouldn't leave the vehicle it took the police about 30 minutes to get [Mother] out of the vehicle and come in and have a conversation with us.

(*Id.* at 66) (errors in original).

- [9] On June 2, 2021, DCS filed a petition to adjudicate Child as a CHINS. The petition alleged domestic violence between the Parents in Child's presence, Mother's substance abuse issues, and Mother's self-reported mental illness diagnoses of post-traumatic stress disorder and anxiety. On June 3, 2021, the trial court authorized Child's removal from the family home.
- [10] On September 20, 2021, the trial court held a fact-finding hearing. During the fact-finding hearing, DCS presented evidence that Parents had engaged in some services without order of the court. The trial court also received testimony from Mother's mental health intake specialist, who indicated Mother had been diagnosed with "[p]ost-traumatic stress disorder, major depression, alcohol use disorder, [and] cannabis use disorder." (*Id.* at 77.) Mother's therapist testified Mother had participated in eighteen hours of group therapy starting in June 2021. In addition to meeting with the therapist in half hour sessions, Mother also met with a life skills coach to address "parenting skills as well as alcohol use treatment." (*Id.* at 93.)
- [11] Mother's therapist testified she had seen "significant progress" in Mother's mental health, including "differences in regulating emotions . . . [and]

acknowledg[ing] both the painful emotions as well as the more positive emotions and [she] will articulate those completely.” (*Id.* at 95.) The court also received evidence that Mother was consistently participating in drug treatment classes, parenting classes, and domestic violence prevention classes.

Additionally, Mother had not tested positive for alcohol or drugs prior to the fact-finding hearing. The trial court took the matter under advisement and noted: “I do appreciate everybody getting into services and getting started on things[.]” (*Id.* at 153.)

[12] DCS also presented testimony about Child’s condition following removal from Parents. Child’s foster mother testified:

I think the physical nature of it was concerning, there was a lot of hitting and kicking and biting and spitting and it was my sense that this was not his norm so I was concerned about that, there was a couple of occasions, one in particular in which he punched me directly in the face, he is a very strong little boy, so those sort of things, but again those have really, really changed.

* * * * *

[O]ften times it was a physical manifestation of his anger, but sometimes it was verbal as well, again it is hard for me to distinguish what is normal for a three-year-old child here, I have not had a 3-year-old child in my house before and what is abnormal. But there were times in which, there was a couple of memorable times one time he said I am going to gut you with a knife which is not something that a 3 year old would usually not come up with on their own or other language like I am going to kill you, it is often with knives, I am going to cut you.

(*Id.* at 81, 83) (errors in original). When asked about whether Child had received services, the foster mother testified:

[E]arly on we did take him to Centerstone for an Intake because given some of the behaviors and the physical violence and the anger we thought it would probably be beneficial for some therapy. We did the intake, it was a virtual one, we showed up and there was some confusion about whether or not the therapist was supposed to be there and I didn't hear anything so after several weeks I started e-mailing and finally got a response in which they said he was on the wait list and they were understaffed and that is the last that I have heard.

(*Id.* at 82) (errors in original). The trial court received evidence Child was receiving life skills training during supervised visits.

[13] On September 24, 2021, Child began a trial home visit with Mother, with Father receiving regular visitation. On October 26, 2021, the trial court adjudicated Child as a CHINS. On November 12, 2021, the trial court held a dispositional hearing. At that hearing, the trial court heard testimony that Parents had engaged in the recommended services thus far and no additional services were needed. However, FCM Robert Cheeseman testified, regarding why the trial court should continue intervention via a dispositional order, “[i]t was the team’s determination that we have the Court continue the intervention with the parties just to ensure that [Child’s] safety was addressed due to some previous behaviors that led us to our involvement to begin with.” (*Id.* at 161.) The trial court spoke about Parents’ voluntary participation in services and how it felt that effected the case:

[T]here are some years long issues with domestic violence and potential exacerbation by alcohol use so to the extent that we are talking a lot today about how fast we are going to close this case, I would like everybody to know that is not the Court's position. If you are participating in your services, I wasn't to see that the parties have benefitted from the services. Because we have had multiple times basically similar incidents occurring whether [Child] was exposed to repeatedly domestic violence and substance abuse or domestic violence that has been exacerbated by substance abuse.

* * * * *

I don't want us to come back again in 6 months is what I am saying. I want us to close this case and really close it. I don't want to see either of you on the arrest list again, I don't want to have another CHINS case to where something wild has happened and [Child] has seen some other crazy scenario, it is not that I want to just keep dragging you back and inconvenience you and make you jump through hoops, I just want to know that services you have done have benefitted you . . . I just want to see how things unfold and make sure that things are going really well and you are able to maintain the progress that you have made and that you have really benefitted from the services and I really appreciate how quickly you got into services.

(*Id.* at 166-7) (errors in original).

[14] On November 16, 2021, the trial court entered its dispositional order, requiring Mother to continue with the services in which she was already engaged, as well as submit to home-based services as recommended by DCS. She was also required to remain drug and alcohol free, maintain a suitable home and source of income, and ensure she or Father are the only people disciplining Child. The

trial court set a review hearing for February 21, 2022. On February 1, 2022, DCS moved to terminate its wardship over Child because “[p]ermanency for [Child] has been achieved through Reunification” and Parents “have remedied the issues that has led to DCS involvement.” (Amended App. Vol. II at 21.) On February 2, 2022, the trial court granted DCS’s motion to terminate its wardship and the CHINS matter was closed.

Discussion and Decision

[15] Mother challenges Child’s adjudication as a CHINS. As an initial matter, we note that Child is no longer a CHINS, as the trial court granted termination of DCS’s wardship of Child on February 2, 2022, and thus it would seem the issues presented herein are moot. However, as we have explained:

A CHINS adjudication, even one as short-lived as this one, can have serious consequences for families. Indiana Code section 31-35-2-4(b)(2)(B)(iii) provides that two separate CHINS adjudications can be the basis for a petition to terminate parental rights. Although N.C. is not currently a CHINS, it is still on record that he has been adjudicated a CHINS and if that adjudication was erroneous, it must be corrected to protect the integrity of the family going forward. *See In re K.D.*, 962 N.E.2d 1249, 1259 (Ind. 2012) (noting “an abundance of caution should be used when interfering with the makeup of a family and entering a legal world that could end up in a separate proceeding with parental rights being terminated”).

Matter of N.C., 72 N.E.3d 519, 524 (Ind. Ct. App. 2017). Based thereon, we address the merits of this case.

[16] Because a CHINS proceeding is a civil action, DCS must prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code. *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010). The CHINS petition was filed pursuant to Ind. Code § 31-34-1-1, which states:

A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) 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; and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

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

DCS must also prove “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.” Ind. Code § 31-34-1-2.

[17] A CHINS adjudication focuses on the needs and condition of the child, rather than the culpability of the parent. *In re N.E.*, 919 N.E.2d at 105. The purpose of a CHINS adjudication is not to punish the parent, but to provide proper services for the benefit of the child. *Id.* at 106. “[T]he acts or omissions of one

parent can cause a condition that creates the need for court intervention.” *Id.* at 105. “A CHINS adjudication can also come about through no wrongdoing on the part of either parent[.]” *Id.*

While we acknowledge a certain implication of parental fault in many CHINS adjudications, the truth of the matter is that a CHINS adjudication is simply that - a determination that a child is in need of services. Standing alone, a CHINS adjudication does not establish culpability on the part of a particular parent. Only when the State moves to terminate a particular parent’s rights does an allegation of fault attach. We have previously made it clear that CHINS proceedings are “distinct from” involuntary termination proceedings. The termination of the parent-child relationship is not merely a continuing stage of the CHINS proceeding. In fact, a CHINS intervention in no way challenges the general competency of a parent to continue a relationship with the child.

Id. (citations omitted).

[18] When a trial court enters findings of fact and conclusions of law in a CHINS decision, we apply a two-tiered standard of review. *In re Des. B.*, 2 N.E.3d 828, 836 (Ind. Ct. App. 2014). We first consider whether the evidence supports the findings and then whether the findings support the judgment. *Id.* We may not set aside the findings or judgment unless they are clearly erroneous. *Id.* Findings are clearly erroneous when the record contains no facts to support them either directly or by inference, and a judgment is clearly erroneous if it relies on an incorrect legal standard. *Id.* We give due regard to the trial court’s ability to assess witness credibility and do not reweigh the evidence; we instead

consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. *Id.* We defer substantially to findings of fact, but not to conclusions of law. *Id.* Unchallenged findings “must be accepted as correct.” *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1991). Mother does not challenge any of the trial court’s findings.

[19] In its order adjudicating Child as a CHINS, the trial court found:

2. On May 30, 2021, Mother and Father were involved in an altercation at the home they shared with [Child]. Mother was intoxicated at the time. Mother was belligerent, slashed Father’s tires, and was driving the vehicle erratically in the yard. [Child] was at the home when this occurred. When Law Enforcement arrived, Mother fled into the woods with [Child].

3. The family has a history of significant domestic violence perpetration in front of [Child] dating back to at least 2018. Both Parents have been arrested during different incidents involving domestic violence. Both Parents have perpetrated domestic violence in the home and have allowed [Child] to be exposed to the same.

4. Father was arrested in 2018 and charged under Cause No. 60C01-1810-F6-590 with Disorder [sic] Conduct and Domestic Battery Committed in the Presence of a Child Less than 16 Years Old. Father’s charges were eventually dismissed. Father was also charged in Hawaii with a crime of domestic violence but was not convicted.

5. Mother was arrested twice in 2020 and once [in] 2021 and charged under Cause No. 60C01-2003-CM-152 with Disorderly Conduct, Cause No. 60C02-2003-CM-154 with two Counts of Invasion of Privacy, and under Cause No. 60[C]01-2106-CM-301

with Resisting Law Enforcement, Invasion of Privacy, and Criminal Mischief.

6. Both Parents have a history of disregarding Court Orders that restrict or prohibit contact between them.

7. Mother has significant mental health concerns and was not receiving treatment at the time the instant Cause was initiated. Mother suffers from Major Depression, PTSD, Generalized Anxiety Disorder, Alcohol Use Disorder, and Cannabis Use Disorder. Mother struggles with emotional regulation.

8. Prior to the initiation of this Cause, neither Parent was receiving services to address domestic violence, substance use/misuse, or mental health.

9. Since the Cause was initiated, both Parents have gotten engaged in services to address domestic violence, substance use/misuse, or mental health.

10. [Child] is not at an age and developmental stage that allows him to meet [his] own needs or provide for [his] own care, safety, or supervision. [Child] made age-inappropriate threats of violence toward his foster [m]other that may stem from [Child's] observation of domestic violence in his home.

11. [Child] need[s] care and supervision from sober, mentally stable caregivers, in a home that is free from domestic violence, that he is not receiving and is unlikely to be provided or accepted without coercive intervention of the Court.

(Amended App. Vol. II at 24-5) (original formatting omitted). Additionally, the trial court found:

The Court finds that reasonable efforts were made by DCS to prevent or eliminate the need for removal of [Child], including:

DCS has provided provisional services to Respondent Parents and they have engaged. Respondent Parents have made progress in addressing the initial safety concerns and DCS is working with the family to transition to [trial home visits], however continued supervision and monitoring is needed to ensure Mother remains sober and is able to regulate her emotions and to ensure that neither Party allows [Child] to be exposed further to domestic violence. DCS continues to be authorized [to] expand visitation and lift restriction plans without further court order.

(*Id.* at 26) (original formatting omitted).

1. Whether Child Was Seriously Endangered

[20] It is well-settled that “a CHINS adjudication may not be based solely on conditions that no longer exist.” *In re R.S.*, 987 NE.2d 155, 159 (Ind. Ct. App. 2013). Further, the trial court should consider “the parents’ situation at the time the case is heard by the court.” *Id.* Mother argues the trial court’s findings do not support its conclusion that Child was seriously endangered by Parents’ actions because the trial court focused on the familial situation in the past and speculated as to future possible scenarios instead of considering the family’s situation at the time of the fact-finding hearing.

[21] At the CHINS fact-finding hearing, the family’s FCM and Mother’s therapists testified that Mother had voluntarily complied with their requests that she participate in services. However, there was substantial evidence regarding a pattern of domestic violence between Parents, normally brought on by Mother’s

alcohol abuse and/or mental illness. Most of this domestic violence occurred when Child was present and Child’s foster mother testified about Child’s physically and verbally aggressive behavior, including punching foster mother and telling her he would “gut [her] with a knife.” (Tr. Vol. II at 84.)

[22] The trial court expressed its hesitancy to close the case during the fact-finding and the dispositional hearings based on Parents’ history of domestic violence. The trial court noted that, while Parents had been compliant in services thus far, it was unclear how they had benefitted from those services and whether they applied them on a consistent basis. Additionally, there is no information in the record regarding the status of Parents’ volatile relationship. While we commend Mother for voluntarily participating in services, we cannot ignore the pattern of behavior between Parents that prompted DCS involvement, and thus we hold the trial court’s findings supported its conclusion that Child was seriously endangered by Mother’s behavior. *See In re V.C.*, 867 N.E.2d 167, 182 (Ind. Ct. App. 2007) (affirming adjudication of child as a CHINS based on mother’s pattern of harmful behavior).

2. Whether Child’s Needs Were Met Without Coercive Intervention of the Court

[23] As noted *supra*, a CHINS adjudication cannot be based solely on conditions that no longer exist and the trial court must consider, along with other evidence, the family’s condition at the time of the fact-finding hearing. *In re R.S.*, 987 N.E.2d at 159. Mother argues Child’s needs were met without coercive intervention of the court because Mother participated in services

without a court order, such that by the time of the fact-finding hearing she had participated in services and had remedied the situation that prompted DCS involvement. Mother likens the facts in her case to those in *Matter of E.K.*, 83 N.E.3d 1256 (Ind. Ct. App. 2017), *trans. denied*, and *In re D.J. v. Indiana Department of Child Services*, 68 N.E.3d 574 (Ind. 2017).

[24] In *Matter of E.K.*, the trial court adjudicated a child as a CHINS based on an incident during which the father spanked E.K. too hard, causing a bruise. 83 N.E.3d at 1261-2. After the DCS investigation, the family agreed to a safety plan, and both parents fully cooperated with DCS and participated in the recommended services. *Id.* at 1262. Our court reversed the CHINS adjudication and noted in its holding that “the parents were readily accepting help and there is no evidence that they needed to be coerced into accepting such help.” *Id.*

[25] Similarly, in *In re D.J.*, children were removed from their parents’ care after one child sustained an injury requiring emergency medical intervention and based thereon, DCS investigated the family. 68 N.E.3d at 576-7. DCS observed clutter, animal feces, and a strong urine smell. *Id.* at 577. They also noticed that the family co-slept, which DCS cited, in combination with the emergency and state of the residence, as a basis to allege the children were CHINS. *Id.* By the time the trial court held its fact-finding hearing, the parents had completed or were near completion with all services recommended by DCS. *Id.* Nevertheless, the trial court adjudicated the children as CHINS, placed them with their grandparents, and awarded father unsupervised parenting time and

mother supervised parenting time. *Id.* Our Indiana Supreme Court reversed the CHINS adjudication because DCS had not proven the coercive intervention of the court was necessary based on the parents' participation and proof of benefit and application of those services. *Id.* at 581.

[26] While we recognize this case is similar to *Matter of E.K.* and *In re D.J.* based on Mother's participation in services without the coercive intervention of the court, it differs significantly from those cases because in *Matter of E.K.* and *In re D.J.* there did not exist evidence of a history of DCS involvement. Instead, in those cases, the CHINS adjudications were based on a single incident – in *Matter of E.K.*, a spanking, and in *In re D.J.*, a medical emergency combined with the state of the residence, which was quickly remedied. Here, however, Mother and Father have a long history of domestic violence, Mother has mental health and substance abuse issues, Parents have both been arrested on charges stemming from multiple domestic violence incidents, and Child has exhibited aggressive behaviors that, as the trial court found, are attributable to witnessing the violence between Parents. Based thereon, we hold the trial court's findings support its conclusions that Child's needs would not be met without the coercive intervention of the trial court. *Contra Matter of E.Y.*, 126 N.E.3d 872, 878 (Ind. Ct. App. 2019) (family did not have a history of DCS intervention or criminal charges and after initial DCS involvement based on unsubstantiated allegations of domestic violence, the coercive intervention of the court was not required as to father because he had participated in services and children were provided services).

Conclusion

[27] We would be remiss to not acknowledge Mother's voluntary, substantial progress in services without court intervention. However, given the history of domestic violence between Parents, Mother's criminal convictions resulting therefrom, and Child's behavior seemingly related to the domestic violence, we cannot say the trial court erred when it adjudicated Child as a CHINS. Accordingly, we affirm.

[28] Affirmed.

Riley, J., and Tavitas, J., concur.