

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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In the Matter of:

K.L.A. (Minor Child)

and

K.A. (Father),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner*

August 1, 2023

Court of Appeals Case No.  
23A-JC-577

Appeal from the Spencer Circuit  
Court

The Honorable Jon A. Dartt,  
Judge

Trial Court Cause No.  
74C01-2209-JC-178

**Memorandum Decision by Judge Mathias**  
Judges Vaidik and Pyle concur.

## **Mathias, Judge.**

- [1] K.A. (“Father”) appeals the Spencer Circuit Court’s adjudication of his minor child, K.L.A. (“Child”), as a child in need of services (“CHINS”). Father presents a single issue for our review, namely, whether the trial court clearly erred when it adjudicated Child to be a CHINS. We affirm.

### **Facts and Procedural History**

- [2] Father and S.T. (“Mother”) have one child together, Child, born August 5, 2021. After Child’s birth, the family lived with Father’s parents, K.A.III (“Grandfather”) and C.A. (“Grandmother”) (collectively, “Grandparents”). In December, Mother moved out, leaving Child with Father and Grandparents.<sup>1</sup> A short time later, Father’s new girlfriend, M.H., moved in.
- [3] In August 2022, Grandparents and Father got into a verbal altercation over a parking space, and Grandfather used a stick to hit the back of a chair in which Father was sitting. In response, Father became physically aggressive with Grandfather. Father’s sister, B.A., intervened in an attempt to protect Grandfather. Father “knocked [Grandfather] to the ground,” which caused Grandfather to hit his head on a chest on the floor. Tr. p. 9. Grandfather stood up and hit Father in his arm with the stick. Father took the stick from Grandfather and used it to hit him in the head and chest. Father also grabbed

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<sup>1</sup> Mother does not participate in this appeal.

B.A.'s hair and "started swingin'" at her, and he used the stick to hit B.A. *Id.* at 32. Father then placed B.A. in a chokehold. Eventually, B.A. freed herself, left the room, and called 9-1-1. Throughout the altercation, Grandmother was in the same room, holding Child.

[4] Amy Jarboe, a family case manager with the Indiana Department of Child Services ("DCS"), did an initial assessment with Grandparents and Father. Jarboe offered Father services, including anger management and parenting classes, and she proposed an informal adjustment. But Father did not agree to services or an informal adjustment. Instead, Father moved to Kentucky with M.H. and her two children. At some point, Kentucky's child protection services removed M.H.'s children due to her infant having a broken arm and her toddler's poor hygiene.

[5] The State charged Father with domestic battery in the presence of a child, domestic battery resulting in mild bodily injury, and strangulation.<sup>2</sup> DCS filed a petition alleging that Child, who was still living with Grandparents, was a CHINS. Following an evidentiary hearing, the trial court issued the following findings and conclusions:

7. Up until August 5, 2022, Father had resided at the residence with Child and [Grandparents].

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<sup>2</sup> Father was on probation for a felony assault in Michigan at the time, and the new charges were probation violations. Father had been able to transfer his probation from Michigan to Indiana so that he could live with Grandparents.

8. On August 5, 2022, a confrontation arose between [Grandparents] and Father.

\* \* \*

14. [Grandfather] and Father then engaged in a physical skirmish.

\* \* \*

16. At some point in this skirmish the Child was present and was able to see or hear what was happening.

\* \* \*

20. Father then left the residence and police were contacted by both sides.

21. Father was no longer permitted to or desired to live with [Grandparents] at that point.

22. Criminal charges were filed by the State of Indiana in relation to the incident against Father, and those charges are currently pending.

23. Father went to a residence in Owensboro, Kentucky.

24. The residence did not have electric or water when he moved in and needed work done to become habitable for him and others.

25. Father is on felony probation out of Michigan.

26. His probation was transferred to Indiana pursuant to the interstate compact.

27. Residing in Owensboro, without an approved transfer, is an ongoing violation of the Interstate Compact for Adult Supervision.

\* \* \*

29. Upon moving to Owensboro, Father established a household with [M.H.], his girlfriend, and her two small children.

30. [M.H.]’s children were removed from them by Kentucky family services and she admitted to needing services for them after among other things the four-month-old child was found to have a spiral fracture of the [humerus] bone.

31. Father indicates he works a variable schedule but [it] is not uncommon to work sixty (60) hours in a week.

32. There have been prior occasions of Father’s temper outburst leading to property destruction within the [Grandparents]’ home.

33. Father was the subject of a guardianship petition by [Grandparents] under cause 74C01-1709-GU-000032.

34. On December 7, 2017, the Court granted the petition for guardianship, however, [Grandparents], through counsel, or otherwise, never followed through with an Order, Oath, Letters of Guardianship, or any statutory obligations of guardians.

35. [Grandparents] expressed no recollection or understanding of this process at fact-finding.

36. Father has denied needing any services or assistance and has not cooperated with DCS as they have attempted to assess the ongoing concerns.

## CONCLUSIONS OF LAW

1. The Court is troubled by Father's outlook and discernment through the events as they have unfolded in this situation.
2. [Grandfather] did escalate and provoke the physical aspect of the altercation of August 5, 2022.
3. Being provoked and triggered into a physical altercation is not the same as defending oneself against imminent bodily harm.
4. While [Grandparents'] take on the altercation has adapted to attempt to minimize the consequences [Father] will face, the Court is not bound by their adapting conclusions.
5. This fluctuation and minimization seems a pattern that has helped enable and fuel Father's mindset of perceiving himself as the victim in the problems his actions have contributed to or created.
6. Father claims he bears no responsibility in this altercation and is just the innocent victim of his family's aggression.
7. Father claims he is the victim of unwarranted housing discrimination against felons that has "required" him to accept subpar housing in a jurisdiction he is not approved to live in.
8. Father claims to bear no responsibility in the fact that his live-in paramour's two small children were removed from his household.
9. In this situation, the Child was exposed to domestic violence in a situation that the father actively engaged in, even if he did not provoke or escalate the beginning of it.
10. He did not remove himself or the Child, until after engaging.
11. He further has a history of destroying property in the household and a prior conviction for battery.

12. This does create both a physical and emotional risk of harm to the Child. *In re N.E.*, 919 N.E.2d 102 (Ind. 2010); *K.B. v. Indiana Dep't of Child Services*, 24 N.E.3d 997, 1003 (Ind. Ct. App. 2015).

13. Upon leaving [Grandparents'] residence he then established his own residence in a jurisdiction he is not authorized to reside in under the terms of his probation at a house that by his own admission was not habitable for children at the time he moved in.

14. He indicates that he has alleviated those concerns but has not had DCS in to inspect it, and has located himself in a jurisdiction outside this Court's purview to order an inspection.

15. Since establishing that residence and moving in his girlfriend and her two children, those children were removed by Kentucky.

16. While not provided with all the facts, among the reasons for removal and intervention was a significant injury to an infant.

17. "A CHINS adjudication under [Indiana code section 31-34-1-1](#) requires proof of three basic elements: the parent's actions or inactions have seriously endangered the child; the child's needs are unmet; and 'perhaps most critically,' those needs are unlikely to be met unless the State intervenes." *In the Matter of L. T.*, 145 N.E.3d 864, 871 (Ind. Ct. App. 2020) (citing *In re S.D.*, 2 N.E.[3]d at 128[3].)

18. In this situation, the Child has been exposed to domestic violence and violent outbursts, and Father sees no issues to address.

19. Father has established a residence in a jurisdiction he is not authorized by probation to live in, creating the possibility of his arrest.

20. In that newly established residency, the presiding jurisdiction has found it necessary to remove similarly aged children because of safety concerns.

21. It has not been established that the newly established residence is able to safely accommodate a toddler due to Father's non-cooperation.

22. Father has shown that he will not avail himself to any services unless they are imposed upon him.

DCS has met its burden in establishing by a preponderance of the evidence that Child is a child in need of services as defined by [Indiana Code 31-34-1-1](#) in that the child is under eighteen

(18) years of age and (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 the child needs care, treatment, or rehabilitation that the child is not receiving or is unlikely to be provided or accepted without the coercive intervention of the court.

Appellant's App. Vol. 2, pp. 15-19. This appeal ensued.

## Discussion and Decision

[6] 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). [Indiana Code section 31-34-1-1](#) provides:

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 . . . to supply the child with necessary food, clothing, shelter, medical care, education, or supervision:

(A) when the parent . . . is financially able to do so;  
or

(B) due to the failure, refusal, or inability of the parent . . . 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

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

[7] When we review a CHINS adjudication, we neither reweigh the evidence nor judge the credibility of the witnesses, and we will consider only the evidence and reasonable inferences that support the trial court’s decision. *K.D.*, 962 N.E.2d at 1253. Importantly, 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*.

[8] 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. Therefore, the focus of a CHINS proceeding is on “the best interests of the child, rather than guilt or

innocence as in a criminal proceeding.” *In re N.E.*, 919 N.E.2d at 105. For this reason, the acts or omissions of one parent can cause a condition that creates the need for court intervention. *Id.*

[9] Finally, courts should consider the family’s condition not just when the case was filed, but also when it is heard to avoid punishing parents for past mistakes when they have already corrected them. See *Gr.J. v. Ind. Dep’t of Child Servs. (In re D.J.)*, 68 N.E.3d 574, 580-81 (Ind. 2017). This “guards against unwarranted State interference in family life, reserving that intrusion for families ‘where parents lack the ability to provide for their children,’ not merely where they ‘encounter difficulty in meeting a child’s needs.’” *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014) (quoting *Lake Cnty. Div. of Family & Child. Servs. v. Charlton*, 631 N.E.2d 526, 528 (Ind. Ct. App. 1994)).

[10] Father argues that the trial court erred when it adjudicated Child to be a CHINS. First, Father asserts that the trial court did not specify how Child was “actually and seriously endangered.” Appellant’s Br. at 16. We disagree. The trial court found that Father directly exposed Child to the incident of domestic violence in August 2022; Father had a prior battery charge; and Father had a “history of destroying property in the household” where Child lived. Appellant’s App. Vol. 2, p. 17. The trial court found that these incidents “create both a physical and emotional risk of harm to the Child.” *Id.*

[11] The evidence supports the trial court’s findings on this issue. During the final hearing, family case manager Jarboe testified in relevant part that

[w]hen any child's exposed to violence it can lead to emotional harm, it puts them at risk of physical harm, it can cause like mental health issues in the future as far as like anxiety or depression, it can [cause] issues in their relationships with -- like their future relationships. I mean, it could cause them to kind of imitate the things that they see as far as violence where they could become more violent things like that.

Tr. p. 62. We agree and conclude that Father's contention on this issue is without merit.

[12] Father also argues that there is no evidence that Child's needs were unmet; no evidence that the circumstances that led to M.H.'s children being removed from his home in Kentucky endangered Child; no evidence to show that his pending criminal charges and probation status endangered Child; and no evidence to support the trial court's finding that Father had a pattern of behavior that endangers Child. But Father's argument is merely a request for this Court to reweigh the evidence, which we will not do. DCS presented evidence that Father minimized his history of violent behaviors and refused services. That evidence, combined with the evidence that Father's violent tendencies endangered Child's well-being, is sufficient to support the CHINS adjudication.

[13] DCS presented ample evidence that the domestic violence committed by Father seriously impaired or seriously endangered Child's physical or mental condition and that Child needs care that Child is not receiving and is unlikely to be provided or accepted without the coercive intervention of the court. *See I.C. § 31-34-1-1; see M.P. v. Ind. Dep't of Child Servs. (In re D.P.)*, 72 N.E.3d 976, 984

(Ind. Ct. App. 2017) (stating that a single incident of domestic violence in a child's presence may support a CHINS finding, and it need not necessarily be repetitive). Thus, the trial court did not err when it adjudicated Child to be a CHINS.

[14] Affirmed.

Vaidik, J., and Pyle, J., concur.