

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of I.W. (Minor
Child);

K.W. (Mother),

Appellant-Respondent,

v.

The Indiana Department of
Child Services,

Appellee-Petitioner,

And

Child Advocates, Inc.,

Appellee-Guardian Ad Litem.

June 24, 2021

Court of Appeals Case No.
20A-JC-2215

Appeal from the Marion Superior
Court

The Honorable Marilyn Moores,
Judge

The Honorable Jennifer Hubartt,
Magistrate

Trial Court Cause No.
49D09-2002-JC-611

Pyle, Judge.

Statement of the Case

[1] K.W. (“Mother”) appeals the trial court’s adjudication of her daughter, I.W. (“I.W.”), as a Child in Need of Services (“CHINS”). Mother argues that there is insufficient evidence to support the CHINS adjudication. Concluding that the Indiana Department of Child Services (“DCS”) presented sufficient evidence to support the CHINS adjudication, we affirm the trial court’s determination.

[2] We affirm.

Issue

Whether there is sufficient evidence to support the CHINS adjudication.

Facts

[3] The evidence most favorable to the CHINS adjudication reveals that Mother is the parent of I.W., who was born in March 2018.¹ On February 4, 2020, Mother tested positive for methamphetamine. Two weeks later, Mother was

¹ I.W.’s father is not a party to this appeal.

observed hallucinating and having delusions while wandering around her neighborhood. Mother submitted to an instant drug screen, and tested positive for methamphetamine, amphetamine, and opiates. On February 24, 2020, DCS filed a verified petition alleging I.W. was a CHINS. Specifically, the petition alleged that due to Mother's recent drug use, she had failed to provide I.W. with a safe, stable, and appropriate living environment free from substance abuse.

[4] On September 15, 2020, the trial court held a factfinding hearing on the CHINS petition. Before presenting its case, DCS offered into evidence, without objection, ten exhibits relating to Mother's 2007 conviction for Level 6 felony theft. The trial court admitted this evidence and also took judicial notice of the existence of Mother's two other CHINS matters involving her older children.

[5] Also at the hearing, DCS family case manager, Kali Wilburn ("FCM Wilburn"), testified that she had been assigned to perform an initial assessment based on allegations of drug use by Mother. FCM Wilburn explained that she had been unable to speak or visit with Mother because Mother had never been home and had failed to return her phone calls. FCM Wilburn further testified that she had substantiated the assessment after determining that the allegations of Mother's drug use were true.

[6] DCS family case manager Kemamee Fatormah ("FCM Fatormah") also testified and discussed Mother's drug use. FCM Fatormah explained that Mother had "mentioned her drug of choice was meth . . . [and that] she had

ongoing problems with mental health issues.” (Tr. Vol. 2 at 12). FCM Fatormah also testified about her concern for I.W.’s safety and explained that, in February 2020, Mother had “mentioned to [her] that she used [methamphetamine].” (Tr. Vol. 2 at 17). Thereafter, the following exchange occurred:

[DCS]: Okay. And why [] does DCS believe it’s necessary for the coercive intervention of the court in this...with this family?

[FCM Fatormah]: I believe the court involvement is necessary so that we can better make sure...the child is safe and help parents, you know, get to where they need to be in order for them to be able to safely care for the child. To put services in place [] to help them with ongoing mental and illegal drug use.

[DCS]: Can you describe your specific safety concerns for [I.W.]?

[FCM Fatormah]: Specific safety concerns for [I.W.] is that Mom...Mom was using while [I.W.] was in [her] care and that was a concern that I have. Mom was using illegal drugs while [I.W.]...

* * *

[DCS]: And if Mother’s [sic] using in...while in the care of her child, while taking care of her child, if she’s specifically using methamphetamine, why does that cause a safety concern?

[FCM Fatormah]: It’s illegal drugs and we’re not sure when she uses, if she’s able to properly supervise and care for the child.

(Tr. Vol. 2 at 18-19).

[7] Christopher Denzler (“Denzler”), who had been Mother’s home-based therapist, also testified about Mother’s admitted drug use. Denzler explained that he had been Mother’s home-based therapist from December 2018 under the

CHINS case involving Mother's older children until February 2020 during the beginning of I.W.'s CHINS case. Denzler further testified that, in either January or February 2020, Mother had disclosed that she had been "struggling with methamphetamine use" and had been using for "several weeks." (Tr. Vol. 2 at 36, 38). Denzler also described his last meeting with Mother in February 2020. During this interaction, Mother had "appeared to become confused and was reporting that she had a microphone and a speaker in her purse and someone was communicating with her." (Tr. Vol. 2 at 37). Mother also attempted to enter unlocked cars while wandering around the neighborhood. Denzler's concern for Mother was serious enough that he called law enforcement.

[8] Montoan Butler ("Butler"), who was assigned to supervise visitations between Mother and I.W., testified that he had supervised approximately fifty visitations and that Mother had missed around ten visitations. When asked whether he had ever observed anything that had caused him concern, Butler responded that he had concerns about Mother's mental capacity. Butler's concerns are illustrated in the following exchange:

[Butler]: Okay, I've seen Mom talk to herself. I've seen Mom yell at times out of frustration, not at the child, but if she and her mother ha[d] gotten into an altercation or if something on the phone or something like that frustrated her.

[DCS]: Okay. And when you say that she was talking to herself, can you go into a bit more detail about that?

[Butler]: Yeah, full blown conversations. The, yea, make...making mention of things that I couldn't readily see there,

you know, as far as see or hear, you know, if...if some...you know, 'did you hear that', 'did you see that' sort of thing.

(Tr. Vol. 2 at 53-54).

[9] Butler also detailed the most recent visitation he had supervised, which had occurred the day before the factfinding hearing. During this visitation, Mother and maternal grandmother had argued and “it [had] really just got out of hand to the fact where language was extremely foul and [Mother’s] temper [had been] to the point where it wasn’t going to change anytime soon.” (Tr. Vol. 2 at 55). Butler had ended the visitation early because Mother had been unable to appropriately parent I.W. due to being “irate and at a level of frustration, or anxiety, or stress that she couldn’t come down . . . soon enough to be able to attend to [I.W.]” (Tr. Vol. 2 at 55). Butler further explained that he had had to end another visitation early and that there had been other times when he had had to remove I.W. from the environment without cancelling the visit due to altercations between Mother and maternal grandmother. Butler also testified that he had never recommended unsupervised visits between Mother and I.W. and that he would not recommend placement of I.W. with Mother.

[10] Following the hearing, the trial court issued the following relevant findings and conclusions in support of its order adjudicating I.W. to be a CHINS:

Findings of Fact

7. Maternal grandmother . . . brought [I.W.] to the DCS East office on 2/21/20 to facilitate the child’s removal from her parents’ care.

8. FCM Wilburn substantiated the assessment regarding the child in February 2020 and a CHINS petition was filed on 2/2[4]/20.

9. DCS recommended removal of the child from the care of parents following the substantiated assessment due to safety concerns involving the child in the care of parents.

10. FCM Kemamee Fatormah is familiar with parents, the child, and their families due to being assigned to CHINS cases involving parents' older children.

* * *

13. Mother admitted to FCM Fatormah that she has mental health issues which require treatment.

14. FCM Fatormah and DCS recommend that [M]other participate in [] rehabilitative services to assist in achieving reunification, including dual diagnosis treatment for substance abuse and mental health issues and random drug screens.

15. Mother has submitted to only one drug screen since February[] 2020.

16. Mother and DCS agreed that Mother could do those services through probation with the proper releases of information signed, so that reports could be made available to DCS.

17. Mother has told FCM Fatormah that she participates in independent mental health and substance abuse treatment, but FCM Fatormah has not verified the same due to lack of releases of information being signed by [M]other and/or information from [M]other[']s providers.

18. Mother declined services through DCS providers for substance use treatment and home-based therapy.

19. The referrals for services through DCS are still open and the services are available to [M]other, but she has not participated in the same.

20. Father is currently incarcerated at the Hamilton County Jail and unable to provide care for the child.

* * *

23. Mr. Denzler and [M]other developed therapeutic goals, including healthy coping skills to manage substance abuse and mood regulation.

24. Mother made limited progress with Mr. Denzler regarding her therapeutic goals.

* * *

26. Mr. Denzler observed [M]other to display paranoid and erratic behaviors in early 2020.

* * *

29. Mr. Denzler reported that, based upon his training and experience, he believed this behavior to be a result of withdrawal from methamphetamine.

30. Mr. Denzler was concerned about [M]other's safety in early 2020 due to her methamphetamine use.

31. Mr. Denzler believed that [M]other will need significant support to address her substance abuse issues. Mother told Mr. Denzler that her support system was her mother.

32. Mr. Denzler discontinued work with [M]other at her request in mid-February[] 2020. At that time, [M]other had not met her therapeutic goals and was in need of additional mental health treatment.

* * *

35. Mr. Butler has observed [M]other to miss several parenting time sessions with the child. Despite Mr. Butler providing [M]other with a consistent monthly parenting time schedule, Mother has told Mr. Butler that she either forgot the visit, was tired, or didn't have the parenting time session written in her calendar.

36. Mr. Butler has provided [M]other with constructive suggestions on improving interactions with the child. Mother has been inconsistently receptive to suggestions.

* * *

40. Mr. Butler has observed Mother to have memory issues and to exhibit paranoia and delusions, including at the visit on or about September 14, 2020.

* * *

42. Since the filing of the CHINS petition, Mother[']s communication with DCS has been inconsistent.

43. FCM Fatormah[']s last interaction with Mother was on August 27, 2020, when Mother texted to tell FCM Fatormah that she had missed the CHINS mediation due to being incarcerated.

44. Mother was criminally charged with felony theft on October 19, 2017 (Petitioners Exhibit 2).

45. Mother entered a guilty plea to the theft charge[] and agreed to serve one hundred eighty (180) days in the Indiana Department of Corrections and seven hundred thirty (730) days on probation (Petitioners Exhibit 4).

46. On or about August 24, 2020, Mother committed the offense of Battery Against a Public Safety Officer, a Level 6 felony, and Resisting Law Enforcement, a Class A Misdemeanor (Petitioners Exhibit 9).

47. At the time of the fact finding, Mother had an open warrant for her arrest, without bond, for the violation of probation (Petitioners Exhibit 1, Petitioners Exhibit 10-11).

Conclusions of Law[]

1. [I.W.] is a child under the age of 18 years.
2. The child's physical or mental condition is seriously impaired or endangered as a result of her parents' inability to provide the child with basic care and necessities, including food, clothing, shelter, medical care, supervision, parental nurturing, and parental involvement because [M]other has untreated substance abuse and mental health issues which preclude her from appropriately parenting the child and has an open warrant for her arrest, father is currently incarcerated, and both parents have an extensive DCS history due to drug use and instability.

3. The child needs basic care and necessities, including food, clothing, shelter, medical care, supervision, parental nurturing, and parental involvement, which she is unlikely to receive without the coercive intervention of the Court because [M]other has untreated substance abuse and mental health issues which preclude her from appropriately parenting the child and has an open warrant for her arrest, father is currently incarcerated, and both parents have an extensive DCS history due to drug use and instability.

Based upon the Findings and Conclusion, the Court now adjudicates the child to be a Child in Need of Services.

(App. Vol. 2 at 145-49).

[11] In November 2020, the juvenile court held a dispositional hearing. Mother now appeals.

Decision

[12] Mother argues that there is insufficient evidence to support the CHINS adjudication. When determining whether there is sufficient evidence to support a CHINS determination, we consider only the evidence most favorable to the judgment and the reasonable inferences to be drawn therefrom. *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014), *reh'g denied*. This Court will not reweigh the evidence or reassess the credibility of the witnesses. *Id.* at 1286. Where, as here, a juvenile court's order contains specific findings of fact and conclusions of law, we engage in a two-tiered review. *In re A.G.*, 6 N.E.3d 952, 957 (Ind. Ct. App. 2014). First, we determine whether the evidence supports the findings, and then, we determine whether the findings support the judgment. *Id.* Findings are clearly erroneous when there are no facts or inferences in the

evidence to support them. *Id.* A judgment is clearly erroneous if the findings do not support the juvenile court’s conclusions, or the conclusions do not support the resulting judgment. *Id.* We note that, as a general rule, appellate courts grant latitude and deference to trial courts in family law matters. *Matter of D.P.*, 72 N.E.3d 976, 980 (Ind. Ct. App. 2017). “This deference recognizes a trial court’s unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony, as opposed to this court’s only being able to review a cold transcript of the record.” *Id.*

[13] We further note that Mother does not challenge the trial court’s findings. As a result, she has waived any argument relating to whether these unchallenged findings are clearly erroneous. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (explaining that failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied*. We now turn to the substantive issue in this case.

[14] A CHINS proceeding is a civil action, and 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 in this case was filed pursuant to INDIANA CODE § 31-34-1-1, which has been referred to as the “neglect statute.” *In re D.F.*, 83 N.E.3d 789, 795 (Ind. Ct. App. 2017). This statute provides that a child is a CHINS 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 the necessary food, clothing, shelter, medical care, education, or supervision:

* * *

(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.

I.C. § 31-34-1-1.² Our supreme court has interpreted INDIANA CODE § 31-34-1-1 to require “three basic elements: that the parent’s actions or inactions have seriously endangered the child, that the child’s needs are unmet, and (perhaps most critically) that those needs are unlikely to be met without State coercion.” *In re S.D.*, 2 N.E.3d at 1287.

[15] The purpose of a CHINS adjudication is to protect children, not to punish the parent. *In re N.E.*, 919 N.E.3d at 106. To that end, the CHINS statute does not require the juvenile court and DCS to wait until a child is physically or emotionally harmed to intervene; rather, a child may be determined to be a CHINS if his or her physical or mental condition is endangered. *In re R.P.*, 949 N.E.2d 395, 401 (Ind. Ct. App. 2011). Moreover, when determining whether a child is a CHINS under INDIANA CODE § 31-34-1-1, the juvenile court “should

² Effective July 1, 2019, the CHINS statute was amended to include the following under subsection (1): “(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[.]” Because the arguments in this case do not implicate the amendment, we have not cited that portion of the statute.

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.

[16] Here, Mother contends that DCS failed to prove the statutory elements that I.W. is a CHINS by a preponderance of the evidence. We address each of her arguments in turn.

[17] Mother first argues that DCS failed to prove by a preponderance of the evidence that I.W. was “abused, malnourished, or neglected.” (Mother’s Br. 11). However, the statute does not required proof of an abused, malnourished, or neglected child. Instead, DCS was required to prove that I.W.’s physical or mental condition was “seriously impaired or seriously endangered as a result of the inability, refusal, or neglect” of Mother to “supply the child with the necessary food, clothing, shelter, medical care, education, or supervision” I.C. § 31-34-1-1. As a result of the evidence submitted at the hearing, the trial court found that I.W.’s physical or mental condition was seriously impaired or endangered due to Mother’s substance abuse and mental health issues, which impaired her ability to parent I.W. Our review of the record reveals that Mother had admitted to using methamphetamine and that she had been struggling with using methamphetamine. This Court has previously recognized that extensive drug use by a parent endangers the child’s well-being and safety in the home. *See In re Des.B.*, 2 N.E.3d 828, 837-38 (Ind. Ct. App. 2014). As to Mother’s mental health, Mother’s former home-based therapist detailed his last interaction with Mother, wherein he observed Mother display paranoid and erratic behavior. Additionally, Mother’s visitation supervisor testified that he

had witnessed Mother talking to herself and had observed Mother “exhibit paranoia and delusions, including at the visit on or about September 14, 2020.” (App. Vol. 2 at 148). Thus, we conclude that DCS presented sufficient evidence to support a reasonable inference that I.W.’s physical or mental condition was seriously impaired or endangered due to Mother’s substance abuse and mental health issues.

[18] Mother next argues that DCS failed to prove by a preponderance of the evidence that I.W.’s needs were unmet. However, our review of the evidence reveals that FCM Fatormah testified that she had safety concerns for I.W. due to Mother’s illegal drug use. Specifically, FCM Fatormah explained that she was “not sure when [Mother] uses, if she’s able to properly supervise and care for the child.” (Tr. Vol. 2 at 19). Moreover, during the visitation the day before the factfinding hearing, Mother became so irate and frustrated that the visitation supervisor did not believe Mother could calm down to attend to I.W. and ended the visit early. Thus, sufficient evidence supports a reasonable inference that I.W.’s needs were unmet.

[19] Lastly, Mother argues that DCS failed to prove by a preponderance of the evidence that I.W.’s needs were likely to remain unmet without the court’s intervention. However, our review of the evidence reveals that Mother had not complied with DCS’ recommendations or services offered. Specifically, DCS recommended Mother participate in dual diagnosis treatment for substance abuse and mental health issues. DCS had agreed to allow Mother to participate in substance abuse and mental health treatment through probation. However,

DCS had been unable to verify Mother's participation due to Mother's failure to provide the necessary releases. Additionally, in eight months, DCS had received one drug screen result. Finally, we note that on the date of the factfinding hearing, Mother had an open warrant for her arrest with a no bond hold for an alleged violation of probation. Under these facts, Mother has demonstrated that she would not participate in mental health or substance abuse treatment unless it was court ordered. Moreover, Mother's open warrant shows that it is likely that she will be incarcerated, leaving I.W. without appropriate care. Therefore, we conclude that the trial court had sufficient evidence to find that I.W.'s needs were likely to remain unmet and that coercive intervention was required. *See In re V.H.*, 967 N.E.2d 1066, 1072 (Ind. Ct. App. 2012) (explaining that "the State has the authority under its *parens patriae* power to intervene when necessary to protect the health and safety of children.").

[20] Based on the above, we reject Mother's invitation to reweigh the evidence and conclude that the evidence and reasonable inferences favorable to the trial court's decision support the CHINS adjudication. *See In re S.D.*, 2 N.E.3d at 1286. Accordingly, we affirm the trial court's determination that I.W. is a CHINS.

[21] Affirmed.

Najam, J., and Tavitas, J., concur.