MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of Z.B., a Child Alleged to be in Need of Services,

J.E. (Father), C.S. (Stepmother),

Appellants-Respondents,

v.

Indiana Department of Child Services,

Appellee-Petitioner

May 18, 2021

Court of Appeals Case No. 21A-JC-61

Appeal from the Wabash Circuit Court

The Honorable Robert R. McCallen, III, Judge

Trial Court Cause No. 85C01-2009-JC-54

Vaidik, Judge.

Case Summary

[1] J.E. ("Father") and C.S. ("Stepmother") appeal the trial court's determination that Z.B. is a child in need of services (CHINS). We affirm.

Facts and Procedural History

[2] N.B. ("Mother") and Father have two children, Z.B., born in 2012, and J.E., born in 2016. When Mother and Father divorced in 2019, Father was awarded physical custody of the children. Mother was awarded parenting time but rarely saw the children.

[3] Thereafter, Father married Stepmother, and they lived in Wabash County with Z.B., J.E., and Stepmother's children, fourteen-year-old P.C. and fifteen-year-old L.C. Father and Stepmother worked third shift at a factory and often left Z.B. and J.E. in the care of P.C. and L.C.

[4] On Monday, September 14, 2020, the Department of Child Services (DCS) received a report that Z.B., then eight years old, had injuries. A DCS family case manager (FCM) went to Z.B.'s school and observed he had "[d]eep purple" "severe bruising on the side of his face" that went "down the side of his neck . . . to his shoulder area behind his ear." Tr. p. 72, Exs. 1-5; *see also* Tr. p. 94 (describing Z.B.'s injuries as a "monstrous set of bruises"). Later that day, the FCM went to Z.B.'s home and met with Father, Stepmother, and Z.B. According to the FCM, Father and Stepmother knew about Z.B.'s injuries when he went to school that day but didn't know how they occurred. The next

day, September 15, the FCM called Father and told him she had consulted with a child-abuse pediatrician, who said Z.B. needed to be seen by a doctor. During the call, Father told the FCM that P.C. had "slapped" Z.B. on September 13, when he and Stepmother were at work and had left Z.B. in the care of P.C. and L.C. Tr. p. 73. Father also said P.C. had been "overly punishing" J.E. *Id.* at 95.

[5] DCS removed Z.B. from the home and filed a petition alleging he is a CHINS. On December 1, a hearing was held regarding whether Z.B. could return home on a trial home visit. The trial court allowed Z.B. to return home under two conditions: (1) Z.B. could not be left alone with Stepmother or P.C. "at any time" and (2) if Father could not supervise Z.B., then Z.B. would have to "be under the care and supervision of paternal grandparents." Appellant's App. Vol. II p. 101.

[6] A fact-finding hearing was held on December 16. Father testified he and Stepmother observed Z.B.'s injuries when they got home from work on Sunday morning. According to Father, they asked Z.B. what happened, and he said he didn't know. When Father and Stepmother went back to work on Sunday night, they left Z.B. home with P.C. and L.C. again. *See* Tr. p. 95. On Monday, after DCS got involved, Father said he and Stepmother "expressed to the kids what could happen if they didn't . . . come out with the truth if we was hit with charges," at which point "the kids finally came out with the truth." *Id.* at 92. In addition, Father testified he and Stepmother no longer worked at the factory, she stayed home, and he had recently started working as a correctional officer on the 6 a.m. to 6 p.m. shift. Finally, Father testified that pursuant to the

conditions of the trial home visit, Z.B. went to paternal grandparents' house if Father wasn't home.

[7] Following the hearing, the trial court issued an order finding Z.B. is a CHINS. The court noted the key issue was whether the coercive intervention of the court was necessary:

> The bigger issue is whether or not the coercive intervention of the Court is necessary to provide [Z.B.] with the necessary care, treatment and/or or rehabilitation he may require as a result of his injuries.
>
> The Court does not believe either [Father] or [Stepmother] handled the situation appropriately or in [Z.B.'s] best interests. Instead, it believes they acted only out of concern for their own personal self-interests and only after the involvement of the DCS. But for that, the Court believes [Z.B.'s] injury and [P.C.'s] inappropriate behavior would have not been addressed at all and, further, that any necessary care or treatment for [Z.B.] (or [P.C.] for that matter) will not occur. It is not clear what action, if any, has been taken for [Z.B.] to help him recover from his injuries, either physically or mentally. Reportedly, [P.C.] has engaged in some counseling.
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> While [Father] and [Stepmother] discussed some remedial measures they have taken since DCS and the Court became involved, [Z.B.'s] injuries were serious and their efforts, to date, fall short. Further, some of their remedial measures were done as a condition of allowing [Z.B.] to return home and the Court has serious reservations they would have occurred otherwise.
>
> The coercive intervention of the Court is needed to ensure necessary services for [Z.B.] and the family will be received.

Appellant's App. Vol. II p. 44. Following a dispositional hearing, the court ordered Father and Stepmother to participate in a variety of services.

[8] Father and Stepmother now appeal.

Discussion and Decision

[9] Father and Stepmother appeal the trial court's determination that Z.B. is a CHINS. On appellate review of a court's determination that a child is in need of services, we do not reweigh the evidence or judge the credibility of the witnesses. *In re S.D.*, 2 N.E.3d 1283, 1286 (Ind. 2014), *reh'g denied*. Rather, we consider only the evidence supporting the court's decision and any reasonable inferences arising therefrom. *Id.* at 1287.

[10] Because a CHINS proceeding is a civil action, the State must prove by a preponderance of the evidence that a child is a CHINS as defined by the juvenile code. Ind. Code § 31-34-12-3. There are three basic elements DCS must prove: (1) the child is under the age of eighteen; (2) one or more of the statutory circumstances outlined in Indiana Code sections 31-34-1-1 through -11 exists; and (3) the care, treatment, or rehabilitation needed to address those circumstances is unlikely to be provided or accepted without the coercive intervention of the court. *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010).

[11] DCS alleged Z.B. is a CHINS under Indiana Code section 31-34-1-1, which provides the child's physical or mental condition is seriously impaired or endangered as a result of the inability, refusal, or neglect of the child's parent to

supply the child with, among other things, necessary medical care and supervision, and Indiana Code section 31-34-1-2, which provides the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent. Father and Stepmother do not dispute that these provisions are satisfied. They argue only that "DCS has failed to prove beyond a preponderance of the evidence how coercive intervention was needed by the trial court to provide for the well-being of [Z.B.] as Father undertook all the actions necessary on his own volition."[1] Appellant's Br. p. 20.

[12] On the issue of coercive intervention, the trial court heard testimony at the fact-finding hearing that Z.B. had been injured by his stepsister while Father and Stepmother were at work and that the stepsister had also used inappropriate discipline on Z.B.'s younger brother. When Father and Stepmother returned home from work on Sunday morning, they saw Z.B.'s injuries but took no action. Instead of taking Z.B. to see a doctor, they left him in the care of his stepsiblings again when they went back to work on Sunday night and then sent him to school on Monday. It wasn't until DCS got involved later on Monday that Father and Stepmother pressed the children to discover what happened to Z.B. Based on this evidence, the court rejected Father and Stepmother's argument that the coercive intervention of the court was not needed. *See* Tr. p. 99. That is, the court found Father and Stepmother acted "only out of concern

[1] The trial court found "DCS met the burden in establishing the rebuttable presumption provided by I.C. 31-34-12-4." Appellant's App. Vol. II p. 44. On appeal, Father does not acknowledge this statute or the trial court's finding. Because we are affirming the trial court even without the presumption, we do not address it.

for their own personal self-interests and only after the involvement of the DCS." In addition, the court found that but for DCS's involvement, Z.B.'s injuries and P.C.'s behavior wouldn't have been addressed "at all." The court noted it wasn't clear what actions had been taken for Z.B. to recover from his injuries, either physically or mentally.[2] The court acknowledged Father and Stepmother had taken remedial measures, such as Stepmother staying home, Father getting a new job, and not allowing Z.B. to be home if Father wasn't there; however, it found these measures had "fall[en] short." In addition, the court found some measures were taken so Z.B. could return home on the trial home visit and that they wouldn't have occurred otherwise. Father and Stepmother are asking us to reweigh the evidence and judge the credibility of the witnesses, which we cannot do. *See S.D.*, 2 N.E.3d at 1286. We therefore affirm the court's determination that Z.B. is a CHINS.

[13] Affirmed.

Bradford, C.J., and Brown, J., concur.

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[2] Father and Stepmother claim Father "ensured that [Z.B.] was receiving services at [school] via an IEP and a skills coach" and "soug[ht] out assistance from [Z.B.'s] physician to get Child diagnosed for ADHD." Appellant's Br. p. 19. In support, they cite to testimony from the December 1 hearing. But as DCS points out, they did not present this evidence at the fact-finding hearing and therefore the trial court did not consider it. Neither do we.