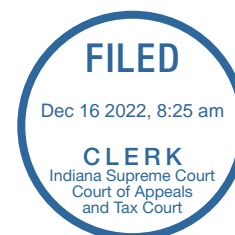


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In the Matter of S.U. and M.V.,
Minor Children Alleged to be
Children in Need of Services;
B.O. (Father) and D.P. (Mother),
Appellants-Respondents,

v.

Department of Child Services,
Appellee-Petitioner.

December 16, 2022

Court of Appeals Case No.
22A-JC-1169

Appeal from the Allen Superior
Court

The Honorable Lori K. Morgan,
Judge

The Honorable Sherry A. Hartzler,
Magistrate

Trial Court Cause Nos.
02D08-2112-JC-388
02D08-2112-JC-389

Tavitas, Judge.

Case Summary

- [1] D.P. (“Mother”) and B.O. (“Father”) (collectively, “Parents”) appeal the trial court’s adjudication of S.U. and M.V. (“Children”) as children in need of services (“CHINS”). Parents raise one issue, which we restate as whether the evidence is sufficient to support the CHINS adjudication. Finding that the evidence is sufficient, we affirm.

Issue

- [2] Parents raise one issue, which we restate as whether the evidence is sufficient to support the CHINS adjudication.

Facts

- [3] S.U. was born in August 2012 to Mother and J.U.¹ M.V. was born in November 2019 to Mother and Father, who is Mother’s husband and S.U.’s stepfather.
- [4] In October 2020, Parents and Children lived in a home with Mother’s brother and Father’s cousin. On October 12, 2020, S.U. told Mother that “someone had entered into her bedroom that night and had touched her.” Tr. Vol. II p. 29. Mother notified law enforcement, and S.U. was examined at the Sexual

¹ J.U. admitted that S.U. is a CHINS and is not a party to this appeal. For simplicity, we will refer to B.O. as Father, and we will refer to Mother and B.O. as Parents even though B.O. is S.U.’s stepfather.

Assault Treatment Center (“Treatment Center”). S.U. reported that a “male subject . . . came into the bedroom and touched her on top of [her] clothes but also on skin on her female sex organ but also on her anus with a hand.” *Id.* at 22. S.U. was found to have an injury to her anus. DNA evidence was collected and provided to law enforcement. At the Treatment Center, Mother met with DCS Family Case Manager (“FCM”) Cherie Toland. FCM Toland spoke to Mother through a nurse who spoke Spanish.

[5] S.U. then went to the Dr. Bill Lewis Center (“Lewis Center”) for a forensic interview, and her statements were consistent with her statements at the Treatment Center. At the Lewis Center, FCM Toland asked if Mother wanted an interpreter, and Mother declined. FCM Toland and Mother created a safety plan, which provided: “[S.U.] will not be around these men until the investigation concludes.” Ex. Vol. I p. 63. Mother acknowledged that FCM Toland told her that S.U. “could not keep with [sic] the three (3) men in [Mother’s] house and that we had to wait for the result of the DNA.” Tr. Vol. II p. 31. Mother also acknowledged that FCM Toland told her that S.U. “should not be having any communication with [the men].” *Id.* at 34. Mother “understood . . . that [S.U.] could not be near them.” *Id.* Mother told Father that he “couldn’t have any communication with [S.U.]” *Id.* at 105.

[6] Mother and the Children left the house and stayed with maternal grandmother. Mother arranged for S.U. to begin therapy and took S.U. to a follow-up examination. The day after Thanksgiving, Mother and the Children could no

longer live with maternal grandmother and moved back into the residence. Mother asked Father and the other two men to leave the residence.

[7] DCS later received a second report, and FCM Toland went to Mother's residence to investigate. FCM Toland saw "several items in the home that indicated males staying in the home including work boots, work clothes, [and] seven (7) or eight (8) toothbrushes." *Id.* at 70. Mother informed FCM Toland that Father had stayed at the residence "a few days" because M.V. was ill. *Id.* at 71. Mother said that S.U. slept with Mother and that Father slept in S.U.'s bed. Father admitted to spending one night at the residence when M.V. was ill.

[8] DCS then removed the Children from Mother's care due to a violation of the safety plan and filed a petition alleging that the Children are CHINS under Indiana Code Section 31-34-1-1 and Indiana Code Section 31-34-1-3. The trial court held a fact finding hearing in January 2022. The trial court then entered findings of fact and conclusions thereon finding that the Children are CHINS under both Indiana Code Section 31-34-1-1 and Indiana Code Section 31-34-1-3. The trial court found, in part:

F. Mother denies understanding what was expected of her during the Department's investigation; however, the Court finds that [Father], who only spoke to Mother during the investigation (prior to the removal), moved out and acknowledged that he was not to have any communication with [S.U.]. The Court concludes the only way he would have known to move out would have been from Mother. This calls into question Mother[']s credibility.

G. The Court also finds that during the Department[']s investigation, [uncle and cousin] moved out of the residence. The Court finds that the Department did not communicate with these individuals either. This further calls into question Mother[']s credibility.

H. The Court finds that during the investigation Mother was offered an interpreter by the Department of Child Services; however, she refused the assistance of an interpreter. Although Mother denies she was offered translation services, the Court does not find this credible.

I. Despite the contention of Mother that she has provided therapy for the child without the State[']s aid, the Court finds this does not negate the need to provide for the child[']s protection. But for the intervention of the State and this Court, Mother would not and has not ensured the children[']s safety against the perpetrator, for which this Court finds by a preponderance of the evidence is one of the occupants of the home as set forth herein.

* * * * *

5. CONCLUSIONS OF THE COURT:

A. The Court concludes that Mother knew that her child was the victim of a sex offense, admitted that the perpetrator was unknown, and yet permitted her husband to return to the home. The Court notes that Mother previously admitted that on October 12, 2021, she and the children initially moved into her Mother[']s home to ensure [S.U.'s] safety. The circumstances surrounding the child s safety did not change after October 12.

B. Therefore, the Court concludes that the child is a victim of a sex offense causing her injury and thus, a Child in Need of

Services. The Court further concludes that the child, [M.V.], was living in the same household with [S.U.], who is the victim of a sex offense and thus, she is a Child in Need of Services as well.

C. The Court finds that both children require care, treatment and rehabilitation. Without the coercive intervention of the Court, Mother is unwilling to protect the children. The Court finds that the parties require services to assist them with understanding safety, protection, and trauma related to the sexual abuse. These services include among other things, a diagnostic assessment to assess the needs of the parents as it relates to the care and protection of the children.

Father's App. Vol. II pp. 3-4; Mother's App. Vol. II pp. 30-31. The trial court then entered a dispositional order. Mother and Father now appeal.

Discussion and Decision

[9] Mother and Father challenge the trial court's adjudication of the Children as CHINS. CHINS proceedings are civil actions; thus, "the State 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); *see* Ind. Code § 31-34-12-3. On review, we neither reweigh the evidence nor judge the credibility of the witnesses. *In re D.J. v. Indiana Dep't of Child Servs.*, 68 N.E.3d 574, 577-78 (Ind. 2017). Here, the trial court entered, sua sponte, findings of fact and conclusions thereon in granting the CHINS petition. "As to the issues covered by the findings, we apply the two-tiered standard of whether the evidence supports the findings, and whether the findings support the judgment." *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014). We review the remaining issues under

the general judgment standard, which provides that a judgment “‘will be affirmed if it can be sustained on any legal theory supported by the evidence.’” *Id.* (quoting *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997)). We will reverse a CHINS determination only if it is clearly erroneous. *D.J.*, 68 N.E.3d at 578.

[10] DCS must prove three elements for a juvenile court to adjudicate a child a CHINS: (1) the child is under the age of eighteen; (2) that one of eleven different statutory circumstances exist that would make the child a CHINS; and (3) the child needs care, treatment, or rehabilitation that he or she is not receiving and is unlikely to be provided or accepted without the coercive intervention of the court. *Id.* at 580.

[11] Here, the trial court found the Children were CHINS under the general category of neglect as defined in Indiana Code Section 31-34-1-1, which 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, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision:

(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; 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.

[12] The trial court also found the Children were CHINS due to the sexual abuse of one of the Children in the home pursuant to Indiana Code Section 31-34-1-3, which provides:

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

(1) the child is the victim of [an enumerated sex offense, 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.

* * * * *

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

(1) the child lives in the same household as another child who is the victim of an offense described in subsection (a)(1);

(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; and

(3) a caseworker assigned to provide services to the child:

(A) places the child in a program of informal adjustment or other family or rehabilitative services based on the existence of the circumstances described in subdivisions (1) and (2), and the caseworker subsequently determines further intervention is necessary; or

(B) determines that a program of informal adjustment or other family or rehabilitative services is inappropriate.

[13] “[T]he purpose of a CHINS adjudication is to protect children, not [to] punish parents.” *N.E.*, 919 N.E.2d at 106. A CHINS adjudication is not a determination of parental fault but rather is a determination that a child is in need of services and is unlikely to receive those services without intervention of

the court. *Id.* at 105. “A CHINS adjudication focuses on the condition of the child [T]he acts or omissions of one parent can cause a condition that creates the need for court intervention.” *Id.* (citations omitted).

[14] Mother and Father both argue only that DCS failed to prove Parents are unlikely to provide the Children’s care or treatment without the coercive intervention of the court. This element “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.’” *D.J.*, 68 N.E.3d at 580 (quoting *S.D.*, 2 N.E.3d at 1287) (internal quotation marks omitted). When analyzing this element, courts “‘should consider the family’s condition not just when the case was filed, but also when it is heard.’” *Id.* (quoting *S.D.*, 2 N.E.3d at 1290). “Doing so avoids punishing parents for past mistakes when they have already corrected them.” *Id.* at 581.

[15] Mother argues that she is providing S.U. with therapy and has ensured S.U.’s safety. According to Mother, allowing Father to spend one night at the residence does not indicate that the coercive intervention of the court is necessary here. Similarly, Father contends that they are “ready, willing, and able to provide for the needs of S.U. and M.[V], without the coercive intervention of the Court.” Father’s Br. p. 12. Father argues that the safety plan was ambiguous and that Mother should have been provided with an interpreter to explain the safety plan.

[16] DCS presented evidence that Mother agreed to a safety plan, and Mother knew that: (1) S.U. was not allowed to be around the men until the investigation concluded; (2) Mother should refrain from S.U. having “any communication with [the men]”; and (3) Mother would ensure that S.U. was not near the men. Tr. Vol. II pp. 34. Mother told Father that he “couldn’t have any communication with [S.U.]” *Id.* at 105. FCM Toland later visited Mother’s residence and saw “several items in the home that indicated males staying in the home including work boots, work clothes, [and] seven (7) or eight (8) toothbrushes.” *Id.* at 70. Mother admitted that Father had stayed at the residence “a few days” because M.V. was ill. *Id.* at 71. Mother stated that S.U. slept with Mother and that Father slept in S.U.’s bed. Father also admitted to spending one night at the residence when M.V. was ill.

[17] We acknowledge that Mother immediately reported the assault on S.U., took S.U. to follow-up appointments, secured therapy for S.U., changed the locks on the residence, and installed security cameras. It is undisputed, however, that Mother allowed Father to sleep at the residence in violation of the safety plan. To the extent Father argues that Mother did not understand the safety plan, we note that the trial court found that Mother was not credible on this point. Father’s argument is merely a request that we reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Given the violation of the safety plan, DCS presented sufficient evidence to prove that Parents are unlikely to provide the necessary care or treatment for the Children without the coercive intervention of the court.

Conclusion

[18] DCS presented sufficient evidence to prove that the Children are CHINS.

Accordingly, we affirm.

[19] Affirmed.

Brown, J., and Altice, J., concur.