

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of R.M. and A.M.
(Children in Need of Services):

A.M. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

May 14, 2021

Court of Appeals Case No.
20A-JC-2194

Appeal from the Allen Superior
Court

The Honorable James R. Heuer,
Senior Judge

Trial Court Cause Nos.
02D08-2001-JC-43
02D08-2001-JC-44

Bailey, Judge.

Case Summary

- [1] Following fact-finding and dispositional hearings and orders, A.M. (“Mother”) appeals¹ the trial court’s order adjudicating her children to be Children in Need of Services (“CHINS”). She raises one issue on appeal, which we restate as whether there was sufficient evidence to support the determination that her children are CHINS.
- [2] We affirm.

Facts and Procedural History

- [3] Mother and Father are the parents of R.M., Jr., born January 12, 2012, and A.M., born July 16, 2013 (collectively, “Children”). Children were removed from Mother’s care and found to be CHINS in January of 2017 due to Mother’s drug use. Ultimately, those CHINS cases were closed and Children were returned to Mother’s custody.
- [4] In late 2019 to early 2020, the Indiana Department of Child Services (“DCS”) received three additional reports of Mother’s alleged abuse or neglect of Children. The first such report—in November 2019—pertained to Children’s appearance and Mother’s alleged erratic behavior. DCS opened an investigation and, in January 2020, received a second report of alleged neglect

¹ R.M. (“Father”) does not actively participate in this appeal.

or abuse. The second report alleged that Mother's untreated mental health issues, possible substance abuse, and exposure of Children to excessive cold temperatures in her home were harming Children. In February of 2020, DCS received a third report which repeated the concerns stated in the January 2020 report, and added concerns that Mother had delusions of smelling formaldehyde or natural gas in her home and repeatedly called the police regarding the same.

- [5] In February of 2020, DCS filed a CHINS petition as to Children and initially placed Children with Mother. On August 6, 2020, DCS removed Children from Mother's home due to concerns about Mother's possible untreated mental health issues as demonstrated by her erratic and paranoid behaviors, inappropriate housing, and potential homelessness. Regarding Mother's behavior, she articulated beliefs—in Children's presence—to DCS family case manager Dwila Lewis-Hess ("FCM Lewis-Hess") that someone was trying to poison her, that her "ex-husband was spying on her through the television," and that toothpaste manufacturers "were putting something in the toothpaste" to cause cavities. Tr. at 74-75. Mother texted FCM Lewis-Hess as many as sixty times in one day to report her paranoid beliefs, including her belief that FCM Lewis-Hess had caused her to be evicted from her apartment. Regarding Mother's housing, FCM Lewis-Hess observed that the residence was "in disarray" with piles of clothing blocking the entrance, dirty dishes, broken items, and no furniture. *Id.* at 81.

- [6] DCS referred Mother to obtain a psychological assessment, home-based services, and random drug screenings. Mother refused to obtain the psychological evaluation. Mother initially participated in home-based services designed to help her find housing and employment and provide her with parenting education; however, Mother stopped participating in the services before they were completed. DCS referred Mother to therapeutic visitation with Children, but Mother refused to participate in such visitation.
- [7] On August 27, 2020, the court heard evidence on the CHINS petition and, on September 2, the court issued its order on the fact-finding hearing. The court found that Mother was to be evicted from her apartment on August 29, 2020, for violations of her lease. Those violations included complaints that Children were disturbing other residents and were observed on a security camera damaging property in the common area of a building in the apartment complex during the hours of 1:00 a.m. to 3:00 a.m. while unsupervised. The court also found that Mother displayed erratic and paranoid behavior, including an incident in November of 2019 in which Mother opened all the windows and doors of her apartment because she believed “people were dumping chemicals in the apartment,” and police found Children “huddled in a hallway covered with blankets” because the interior apartment temperature was 30 degrees. App. at 29.
- [8] The court also found that Children had eleven tardies and eight absences from school during the period from September 30, 2019, through February 21, 2020. The court found that Mother had refused services, refused to participate in a

psychological evaluation, and refused to participate in therapeutic visitation with Children. The court concluded that Children’s “lives are seriously endangered” by the actions or inactions of Mother due to her “erratic and delusional behavior, her failure to provide appropriate supervision, ... the unstable housing she has provided[,] and her failure to meet [Children’s] educational needs.” *Id.* at 30. The court further concluded that Children need care, treatment, or rehabilitation that they are not receiving and that is unlikely to be provided to them without the coercive intervention of the court. Therefore, the court entered judgment that Children are CHINS.

[9] On October 1, 2020, the court held a dispositional hearing at which it heard further evidence. In an order dated October 20, the court accepted DCS’s recommendations for services to be provided to Mother in the best interests of Children. The court ordered Mother to comply with a parent participation plan that included maintaining safe and appropriate housing, enrolling in home-based services, obtaining a psychological evaluation and following any resulting recommendations, submitting to random drug testing, and obtaining a drug and alcohol assessment and following any resulting recommendations. The court also ordered Mother to have therapeutic, supervised visitation with Children.

[10] Mother now appeals the CHINS adjudication.

Discussion and Decision

[11] Mother challenges the sufficiency of the evidence to support the CHINS determination. In reviewing a CHINS determination,

we give due regard to the trial court's ability to assess the credibility of witnesses. *In re Des.B.*, 2 N.E.3d 828, 836 (Ind. Ct. App. 2014). We neither reweigh evidence nor judge witness credibility; rather, we consider only the evidence and reasonable inferences most favorable to the trial court's decision. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). Where the trial court issues findings of fact and conclusions thereon, we apply a two-tiered standard of review. *In re R.P.*, 949 N.E.2d 395, 400 (Ind. Ct. App. 2011). We consider first whether the evidence supports the findings and then whether the findings support the judgment. *Id.* We will set aside the trial court's findings and conclusions only if they are clearly erroneous and a review of the record leaves us firmly convinced that a mistake has been made. *Id.* Appellate courts generally grant latitude and deference to trial courts in family law matters. *Matter of E.K.*, 83 N.E.3d 1256, 1260 (Ind. Ct. App. 2017), *trans. denied* (2018). This deference recognizes the 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.*

In re A.M., 121 N.E.3d 556, 561-62 (Ind. Ct. App. 2019), *trans. denied*.

[12] A CHINS adjudication under Indiana Code Section 31-34-1-1² requires three basic elements: "that the parent's actions or inactions have seriously

² Indiana Code Section 31-34-1-1 provides:

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 1283, 1287 (Ind. 2014). Courts should consider the family's condition not only at the time the CHINS case was filed, but also when the case is heard at the fact-finding hearing. *In re D.J.*, 68 N.E.3d 574, 580 (Ind. 2017). DCS has the burden of proving by a preponderance of the evidence that the child is a CHINS. *See, e.g., In re K.S.*, 78 N.E.3d 740, 744 (Ind. Ct. App. 2017). DCS may not simply rely upon allegations; rather, it must gather the facts and the evidence to support its CHINS petition. *In re D.B.*, 43 N.E.3d 599, 606 (Ind. Ct. App. 2015).

[13] Here, the trial court based its CHINS determination on its findings that Mother engaged in erratic and delusional behavior, failed to provide appropriate supervision of Children, failed to provide stable housing for Children, and failed to meet Children's educational needs. The finding of erratic and delusional behavior was supported by the testimony of FCM Lewis-Hess, Fort Wayne Police Department officers, and the apartment property manager of Mother's former residence that they had all witnessed such behaviors taking place in

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.

Children's presence. FCM Lewis-Hess specifically testified that Mother expressed, in Children's presence, paranoid beliefs regarding conspiracies to harm her and Children. Moreover, the apartment property manager of Mother's most recent residence testified that he had observed Children unsupervised in the apartment complex in the early morning hours and during the school day. FCM Lewis-Hess and the property managers of Mother's former apartment complexes also testified that Mother had been evicted from both of her most recent residences. And FCM Lewis-Hess, the property manager of Mother's former residence, and the assistant principal of Children's elementary school all testified that Children repeatedly were late for school or missed school altogether.

[14] The above testimony was sufficient evidence that Mother seriously endangered Children by failing to adequately house, supervise, and educate them, thus leaving their needs unmet. And Mother's refusal to engage in services such as a psychological assessment and treatment, home-based services, and therapeutic visitations with Children is sufficient evidence that court intervention is necessary in order for Children's needs to be met. While Mother attempts to counter the evidence by pointing to her own testimony, she is simply asking that we reweigh the evidence and judge witness credibility, which we cannot do. *See In re A.M.*, 121 N.E.3d at 561-62.

[15] Because there was sufficient evidence that Children were seriously endangered by Mother's actions and inactions at the time of removal, Children's needs for

safety were unmet, and Mother was unlikely to meet Children's needs for safety without court intervention, the CHINS adjudication was not clearly erroneous.

[16] Affirmed.

May, J., and Robb, J., concur.