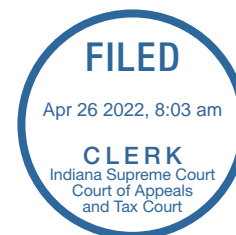


## MEMORANDUM DECISION

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

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In the Matter of: D.H. and K.H.  
(Children in Need of Services),  
and M.W. (Mother),

*Appellant-Respondent,*

v.

April 26, 2022

Court of Appeals Case No.  
21A-JC-2134

Appeal from the Marion Superior  
Court

The Honorable Alicia A. Gooden,  
Judge

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Indiana Department of Child  
Services,

*Appellee-Petitioner,*

and

Kids' Voice of Indiana,

*Appellee-Guardian Ad Litem.*

The Honorable Jennifer J. Hubartt,  
Magistrate

Trial Court Cause Nos.

49D14-2102-JC-634

49D14-2102-JC-635

**Brown, Judge.**

- [1] M.W. (“Mother”) appeals the trial court’s determination that her two children were children in need of services (“CHINS”). We affirm.

***Facts and Procedural History***

- [2] Mother and B.H. (“Father”) are the parents of D.H. and K.H.<sup>1</sup> On February 2, 2021, the Indiana Department of Child Services (“DCS”) filed petitions alleging that D.H. and K.H. were CHINS. DCS alleged that: Mother failed to provide the children with a safe, stable, and appropriate living environment free from substance abuse; Mother was arrested on February 2, 2021, for criminal confinement and resisting law enforcement; Mother refused to provide information on where her children could go in her absence; Mother appeared to be under the influence of “wet stuff” or cigarettes dipped in various fluids or

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<sup>1</sup> Mother testified that she has three other children, one resides with her grandmother, and two reside with their paternal grandparents. The court found that Father never appeared in the proceeding and entered default judgment as to him.

laced with additional substances; and the family case manager observed what appeared to be marijuana in the home. DCS also alleged that Mother had a history of illegal drug use; Mother was previously involved with DCS through a prior CHINS case; Mother was currently involved with DCS through an informal adjustment due to illegal drug use while pregnant with K.H.; Mother tested positive for PCP on January 4 and 15, 2021; Mother had a history of domestic violence with Father despite a no contact order; and D.H. disclosed during a forensic interview that Father lived in the home.

[3] On June 22, 2021, July 14, 2021, and August 4, 2021, the court held a factfinding hearing. DCS presented the testimony of Tesia Baker, a substance abuse counselor, Jamie Anderson, Mother's therapist, Kristie Teague, a service provider who provided drug screens for Mother, Mother's mother, Mark Blackstad, a home-based therapist, Kimberly Kent, a home-based case worker and parenting educator, Patrick Stimpson, an assessment family case manager, Mother, and Family Case Manager Emily Cherni ("FCM Cherni"). After DCS rested, Mother moved for judgment on the evidence and argued that DCS did not present evidence that she seriously endangered the children during her parenting time, and the court denied the motion.

[4] On September 1, 2021, the court issued an order finding D.H. and K.H. were CHINS. That same day, the court entered an Order Regarding Children in Need of Services Fact Finding Ruling Order. On September 15, 2021, the court held a dispositional hearing and entered an Order Regarding a Child in Need of Services Dispositional Decree.

## *Discussion*

[5] Mother argues DCS did not offer evidence that the children suffered a mental or physical condition that was seriously impaired or seriously endangered prior to their removal. She asserts that she was available and willing to provide for the children at least by February 24, 2021, and that she attempted to provide information for her grandmother to pick up the children before they were removed. She asserts she completed “an IOP at Fairbanks in November 2020,” participated in services to help with parenting education and mental health, had consistent employment and stable housing, and parented the children well. Appellant’s Brief at 20. Mother contends that Paragraph 42 of the court’s order incorrectly found that she suggested to Kent that Father lives with her. She also argues that DCS failed to demonstrate that coercive intervention of the court was necessary.

[6] The State must prove by a preponderance of the evidence that a child is a CHINS. *Matter of Eq. W.*, 124 N.E.3d 1201, 1208 (Ind. 2019). We do not reweigh the evidence or judge the credibility of witnesses and consider only the evidence which supports the trial court’s decision and reasonable inferences drawn therefrom. *In re S.D.*, 2 N.E.3d 1283, 1286-1287 (Ind. 2014), *reh’g denied*. We apply the two-tiered standard of whether the evidence supports the findings and whether the findings support the judgment. *Id.* We will reverse a CHINS determination only if it is clearly erroneous. *In re D.J.*, 68 N.E.3d 574, 578 (Ind. 2017). A decision is clearly erroneous if the record facts do not

support the findings or if it applies the wrong legal standard to properly found facts. *Id.*

[7] Ind. Code § 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, 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.

[8] The statute does not require a court to wait until a tragedy occurs to intervene. *In re A.H.*, 913 N.E.2d 303, 306 (Ind. Ct. App. 2009). Rather, a child is a CHINS when he or she is endangered by parental action or inaction. *Id.* The purpose of a CHINS adjudication is to protect children. *Id.*

[9] To the extent Mother challenges Paragraph 42 of the trial court’s order, that Paragraph states: “Mother suggested to Ms. Kent that she currently resides with

Father and she told Ms. Kent that [Father] was the father of her children and he could reside in her home if she wanted him to.” Appellant’s Appendix Volume III at 59. Kent, the home-based case manager and parenting educator, testified:

When we discussed her – where it was just simple questions like where she was living at, who was living in the house, “none of my d - a - m - n business.” She was very, very – we’re not – I’m not going to tell her who can live in her house, these are the father of her children and I don’t have say in that and – and she became verbal[ly] aggressive so I changed the subject.

Transcript Volume III at 90. The record also reveals that Blackstad, the home-based therapist who provided therapeutic visits for Mother, testified that Mother did “[n]ot really” tell him anything about B.H., she was “a little evasive about him,” and he “gather[ed] [B.H.] does stay or he stays very nearby.” *Id.* at 69. We cannot say that Paragraph 42, which states that Mother *suggested* to Kent that she currently resides with Father, is erroneous.

[10] Moreover, Mother does not specifically challenge most of the trial court’s findings of fact, and the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied*.

[11] The trial court found that Mother has an extensive history with DCS including prior CHINS and Informal Adjustment cases; she has criminal history and pending criminal charges; she displayed bizarre and erratic behavior when she met with a substance abuse counselor to complete a substance use assessment;

she acknowledged past drug use, refused a drug screen on June 7, 2021, admitted that she tested positive for PCP in January 2021, and stopped submitting to drug screens with Teague after February 2021. She told Stimpson, the assessment family case manager, during the assessment that if she tested positive for PCP she would also test positive for marijuana and refused to drug screen with him; Mother's mother observed Mother using a "wet stick" or PCP when she was pregnant with K.H.; Mother's mother moved out of the home she shared with Mother when she was attacked by one of Mother's friends who was high on PCP; Mother admitted to Teague that she wrecked her car when she was intoxicated in February 2021; and Mother asserted that she was currently drug free and participated in IOP services but provided DCS with no verification. Appellant's Appendix Volume III at 58. It found that Father resided with Mother in 2020, pulled a gun on Mother's mother, and had pending criminal charges regarding the incident. It found Mother admitted that she is diagnosed with bi-polar disorder but was not receiving any current treatment; Anderson, Mother's therapist, recommended Mother continue in therapy to process through past trauma, accept responsibility for DCS intervention with her family, and develop strategies to prevent further DCS intervention; Blackstad did not recommend unsupervised parenting time; Mother refused to meet with Kent despite Kent's numerous attempts to engage Mother in parenting education; and Kent had safety concerns for the children in Mother's care due to Mother's aggression, temper, and volatile statements and behavior. It found FCM Cherni had concerns regarding Mother's mental health due to the erratic and incomprehensible

nature of Mother's statements and Mother failed to communicate with her over the prior three weeks despite FCM Cherni's multiple efforts. It found DCS believed the services provided to Mother were necessary to assist her in providing a home "free from exposure to substance abuse, domestic violence, and to ensure [the children] have a mentally stable care giver." *Id.* at 60. The court heard testimony on three different days and noted "marked differences in Mother's speech, thought process, and overall demeanor throughout the fact finding hearing." *Id.* at 59. It also noted that Mother's speech "was frequently difficult to understand or inaudible and her thought process was disjointed and incongruent, both of which are indicative of active mental instability, substance abuse, or both." *Id.*

[12] The court was able to consider the testimony and evidence and Mother's actions, omissions, and ability to provide for and protect the children. In light of the record, including the evidence regarding Mother's behavior, Mother's wrecked car and admission she was intoxicated, the incidents involving those associated with Mother including Father pulling a gun and the attack by Mother's friend on Mother's mother while she was high on PCP, Mother's positive test for PCP, and her failure to submit to drug screens, we conclude the judgment reached by the trial court is not clearly erroneous.

[13] For the foregoing reasons, we affirm the trial court's order.

[14] Affirmed.

May, J., and Pyle, J., concur.