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 H.M. and I.M. (Children in Need of Services)

and

P.M. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

September 28, 2021

Court of Appeals Case No. 21A-JC-593

Appeal from the Jefferson Circuit Court

The Hon. Carl H. Taul, Senior Judge

Trial Court Cause Nos.
39C01-2011-JC-80
39C01-2002-JC-17

Bradford, Chief Judge.

Case Summary

[1] Children H.M. and I.M. (collectively, "the Children") were born to P.M. ("Mother") in March of 2019 and October of 2020, respectively. In January of 2020, the Indiana Department of Child Services ("DCS") received a report that H.M. was being neglected and, following an investigation which revealed Mother's habitual marijuana use and deplorable living conditions, removed him from Mother's care and petitioned the juvenile court to have him found to be a child in need of services ("CHINS"). Services were offered to Mother, but she did not consistently take advantage of them. After I.M.'s birth in October of 2020, DCS gave Mother thirteen days in which to make her residence habitable, but she failed to do so. On November 16, 2020, DCS petitioned to have I.M. declared a CHINS. In January of 2021, Mother moved to dismiss the CHINS petition relating to H.M. because the factfinding hearing had not taken place within the 120-day limit provided for by statute and the Indiana Rules of Trial Procedure. The juvenile court denied Mother's motion to dismiss, and, after the factfinding hearing, found the Children to be CHINS. Mother contends that the juvenile court erred in denying her motion to dismiss and abused its discretion in finding the Children to be CHINS. Because we disagree, we affirm.

Facts and Procedural History

[2] H.M. was born on March 8, 2019,[1] and DCS's involvement with Mother began seven months later in October. On one occasion during this early involvement, H.M.'s diaper rash was severe enough to warrant a visit to an emergency room. On January 16, 2020, DCS received a report that H.M. was being neglected and again had a bad diaper rash, conditions in Mother's home were unsafe, and Mother had used marijuana around H.M. The next day, DCS family case manager Emily Goins ("FCM Goins") found H.M. in the care of others, who had had him since the previous day. On January 23, 2020, FCM Goins met with Mother, at which meeting Mother admitted that she was afraid that she would drop H.M. while caring for him after using marijuana.

[3] On February 5, 2020, FCM Goins made an unannounced visit to the apartment where Mother was staying and observed it to be in disarray, with trash on the floor and animal feces in the corners. H.M. was in the care of Daniel Bennet while Mother and her boyfriend slept upstairs. H.M.'s diaper was soggy to the point that urine dripped down his leg when he was picked up. FCM Goins and Mother walked to Mother's nearby apartment, where FCM Goins observed that there was trash on the floor, the bathroom was filthy, and small objects were within H.M.'s reach.

[4] On February 21, 2020, DCS issued a report following its preliminary inquiry. The report noted that there was a history of Mother complying with specific

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[1] K.P. is the biological father of H.M. but does not participate in this appeal.

requests but rarely accomplishing a goal without intervention. (Ex. Vol. II p. 4). The report also noted that H.M. had only actually been in Mother's care for approximately two days since January 16, 2020. On February 26, 2020, DCS petitioned to have H.M. found to be a CHINS, and, on March 6, 2020, removed H.M. from Mother's care.

[5] Also in March of 2020, FCM Jayme Brashier became H.M.'s permanency worker after taking over from FCM Goins, and Beth Mink became a family support specialist for Mother. After months of trying to engage with Mother, Mink was finally able to arrange a face-to-face meeting on August 22, 2020. Mink drove to Mother's apartment but decided not to go inside because of the smell, which she detected at a distance of ten to fifteen feet from Mother's door. Mink met with Mother and her boyfriend in Mink's vehicle, and Mink noticed that Mother was "in very poor hygiene." Tr. Vol. II p. 52. At no time after the referral to Mink was Mother ever in compliance with the services offered.

[6] Therapist Brianne Swango was referred to Mother on March 20, 2020, and diagnosed her with PTSD and cannabis use–severe. Swango recommended weekly therapy, but Mother did not comply, cancelling or failing to keep many appointments over the next several months, keeping no appointments at all in May, September, and October. Swango also recommended a recovery coach to Mother, but Mother did not attend any recovery coaching sessions.

[7] I.M. was born on October 29, 2020,[2] and, although Mother had admitted using marijuana throughout the pregnancy, DCS agreed to allow Mother to keep I.M. at her grandmother's until Mother could complete the services already in place. DCS also informed Mother that she had thirteen days in which to make her home livable. When FCM Teresa Turner returned to Mother's home on November 13, 2020, it reeked of smoke, urine, "rotten feces, body odor and like decaying food"; dog feces were observed throughout; and there was no baby bed. Tr. Vol. II p. 30. DCS learned that Mother had not been participating in mental-health or drug-screening services and had left I.M. in the care of her father and his fiancée, Melinda Stephan. DCS removed I.M. from Mother's care. On November 16, 2020, DCS petitioned to have I.M. found to be a CHINS. In December of 2020, Mother purchased a home with the proceeds of an insurance settlement.

[8] On January 7, 2021, Mother moved to dismiss the CHINS petition regarding H.M. on the basis that the factfinding hearing had not occurred within the 120-day limit provided for by Indiana Code section 31-34-11-1(b). At the factfinding hearing the next day, the juvenile court denied Mother's motion to dismiss. FCM Goins testified that she had, in over five years of experience with DCS, never seen a home in as bad a condition as Mother's had been on February 5, 2020. FCM Goins testified that Mother had a history of not

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[2] A DNA test confirmed D.C. as I.M.'s father on December 14, 2020. D.C. does not participate in this appeal.

following up with services that were offered to her. FCM Turner testified that when she had visited Mother's residence on November 13, 2020, "it [was] absolutely the worst smell [she'd] ever smelled" and that she had never seen an apartment in similar condition in all of her time with DCS. Tr. Vol. II p. 35.

[9] FCM Brashier testified that Mother's apartment was in very poor condition and the worst she had seen in her four and one-half years at DCS. For example, according to FCM Brashier, a dead cat was kept in a shopping bag inside the apartment "for a considerable amount of time." Tr. Vol. II p. 40. Moreover, FCM Brashier indicated that H.M. required speech, occupational, and physical therapy and may be autistic and she was concerned about Mother's ability to assure that he received the needed services. FCM Brashier also noted Mother's history of delegating her parental responsibilities to her father and Stephan. Finally, FCM Brashier indicated that while conditions in Mother's new home were "vastly improved" over previous residences, Mother's history suggested that they would not stay that way. Tr. Vol. II p. 41. Swango testified that Mother had not made significant progress between March of 2020 and February of 2021. Stephan testified that H.M. had been in her care since March of 2020 and I.M. had been since November of 2020. Stephan also indicated that Mother had admitted to her that she had used marijuana throughout her pregnancy with H.M. and that she had used a "trick" to help her more recent pass drug screens. Tr. Vol. II p. 114. On February 8, 2021, the juvenile court issued its order, reiterating its denial of Mother's motion to dismiss and adjudicating the Children to be CHINS.

Discussion and Decision

I. Motion to Dismiss

[10] Mother contends that the juvenile court erred in denying her motion to dismiss the petition to have H.M. found a CHINS, which petition was based on her contention that the factfinding hearing was not conducted within the statutory time limit. Indiana Code section 31-34-11-1 provides that, in a contested CHINS proceeding, the juvenile court must hold a factfinding hearing within sixty days, which deadline may be extended by an additional sixty days if all parties agree. Moreover, "[w]hile section 31-34-11-1 provides a hard 120-day deadline, [Trial] Rule 53.5 provides, 'Upon motion, trial may be postponed or continued in the discretion of the court, and shall be allowed upon a showing of good cause established by affidavit or other evidence.'" *Matter of M.S.*, 140 N.E.3d 279, 284–85 (Ind. 2020). "Because our trial rules trump statutes on matters of procedure, Rule 53.5 allows extension of the 120-day deadline in Indiana Code section 31-34-11-1(b) provided a party can show 'good cause.'" *Id*.

[11] We need not reach the merits of Mother's argument, however, because she invited the alleged error of which she now complains. While a party's failure to object to an alleged trial error results in waiver of that claim on appeal, "[w]hen the failure to object accompanies the party's affirmative requests of the court, it becomes a question of invited error." *Durden v. State*, 99 N.E.3d 645, 651 (Ind. 2018) (internal quotation marks omitted). "[T]he invited-error doctrine is based on the doctrine of estoppel and forbids a party from taking advantage of an

error that she commits, invites, or which is the natural consequence of her own neglect or misconduct." *Matter of J.C.*, 142 N.E.3d 427, 432 (Ind. 2020) (citing *Durden*, 99 N.E.3d at 651). "Where a party invites the error, she cannot take advantage of that error." *Id.* (citing *Witte v. Mundy ex rel. Mundy*, 820 N.E.2d 128, 134 (Ind. 2005)). In short, "invited error is not reversible error." *Id*. (citing *Booher v. State*, 773 N.E.2d 814, 822 (Ind. 2002)).

[12] Here, DCS filed its petition regarding child H.M. on February 25, 2020. After many delays, including an agreement by the parties to extend the sixty-day deadline, the juvenile court set the factfinding hearing for November 13, 2020, a date all agree was with within the 120-day limit. On November 5, 2020, K.P. moved to continue the factfinding date, noting that the other parties did not object. Moreover, on November 12, Mother filed her own motion to continue on the basis that her attorney would be "out of the State and unavailable for trial[,]" Appellant's App. Vol. II p. 38, after which the juvenile court reset the factfinding hearing to January 8, 2021, outside the 120-day limit. Even though K.P.'s motion to continue came first, Mother invited any error the juvenile court may have committed by affirmatively asking for a continuance herself, and we therefore need not address her argument further.

II. Whether the Juvenile Court Abused its Discretion in Adjudicating the Children to be CHINS

[13] Indiana Code section 31-34-1-1 provides that a child is a CHINS before the child becomes eighteen years of age if

> (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
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> (2) the child needs care, treatment, or rehabilitation that:
>
> (A) the child is not receiving; and
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> (B) is unlikely to be provided or accepted without the coercive intervention of the court.

[14] The purpose of a CHINS adjudication is to "protect children, not [to] punish parents." *In re D.J. v. Ind. Dep't of Child Servs.*, 68 N.E.3d 574, 580–81 (Ind. 2017) (citations omitted). DCS bears the burden of proving that a child is a CHINS by a preponderance of the evidence. Ind. Code § 31-34-12-3; *see also In re N.E.,* 919 N.E.2d 102, 105 (Ind. 2010). The Indiana Supreme Court has stated that

> [a] CHINS proceeding is a civil action; 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 [at] 105[.] We neither reweigh the evidence nor judge the credibility of the witnesses. *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992). We consider only the evidence that supports the [juvenile] court's decision and reasonable inferences drawn therefrom. *Id*. We reverse only upon a showing that the decision of the [juvenile] court was clearly erroneous. *Id*.

In re K.D., 962 N.E.2d 1249, 1253 (Ind. 2012) (footnote omitted). A juvenile court need not wait until a tragedy occurs before adjudicating a child a CHINS. *In re R.S.*, 987 N.E.2d 155, 158 (Ind. Ct. App. 2013). "[T]he government is permitted to forcibly intervene in a family's life only if the family cannot meet a

child's needs without coercion[.]" *Matter of E.K.*, 83 N.E.3d 1256, 1261 (Ind. Ct. App. 2017), *trans. denied*. "[T]he question is whether the parent[] must be coerced into providing or accepting necessary treatment for their child." *Id.* at 1262.

[15] Mother contends that the record does not support conclusions that (1) the Children's physical or mental condition is seriously impaired or seriously endangered or (2) that they need care, treatment, or rehabilitation that they are not receiving and is unlikely to be provided or accepted without the coercive intervention of the juvenile court. As for the Children's condition being impaired or seriously endangered, the record contains evidence of Mother's long history of drug abuse and keeping homes in deplorable and unsafe condition. Mother has been diagnosed with cannabis use–severe, has claimed to use marijuana daily, and has admitted that she used marijuana throughout both of her pregnancies. Multiple long-time DCS employees described conditions in her apartment as unsafe and the worst they had even seen. Mother admitted early in the case that she was concerned that she might drop H.M. while high on marijuana. This evidence is more than sufficient to support a finding that the Children's physical and/or mental conditions would be impaired or endangered if they were to be left in Mother's care.

[16] As for the need for coercion, the juvenile court also heard testimony regarding Mother's history of failing to comply with offered services. It was noted early in the case that Mother already had a history of complying with specific requests but seldom achieving an objective without intervention. Mink, who

was assigned to Mother's case in March of 2020, attempted for months to engage with Mother without success, finally succeeding in arranging a meeting with her in August of 2020. Mother has failed to attend therapy consistently or even meet one time with a recovery coach, and when Mother was given thirteen days in which to make her apartment livable after I.M.'s birth, she failed to do so. In short, the record supports a reasonable conclusion that Mother is not likely to provide for the Children's needs without coercion.

[17] Mother argues that any issues with her parenting have been remedied and points to evidence that she has recently purchased a house which is not in deplorable condition and has passed several recent drug screens. First, FCM Brashier indicated that while conditions in Mother's new home were better than in previous residences, Mother's history suggested that they would not stay that way for long. Swango also testified that Mother had not made significant progress between March of 2020 and February of 2021. Finally, the significance of Mother's recent, negative drugs screens is undercut by her admissions that she used marijuana daily and her claim that she had found a way to cheat the tests. All in all, the record supports an inference that Mother has not made much real progress and that, without coercion, it would be just a matter of time before conditions in her new home deteriorated. Mother's argument in this regard is nothing more than an invitation to reweigh the evidence, which we will not do. *See In re K.D.*, 962 N.E.2d at 1253. In summary, Mother has failed to establish that the juvenile court's judgment is unsupported by its findings. *See In re V.C.*, 867 N.E.2d 167, 182 (Ind. Ct. App.

2007) (affirming CHINS adjudication based on mother's pattern of harmful behavior).

[18] We affirm the judgment of the juvenile court.

Robb, J., and Altice, J., concur.