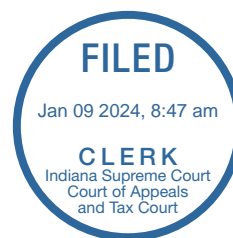


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Danielle L. Gregory
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE INDIANA DEPARTMENT OF CHILD SERVICES

Theodore E. Rokita
Attorney General

Katherine A. Cornelius
Deputy Attorney General
Indianapolis, Indiana

ATTORNEY FOR APPELLEE KIDS' VOICE OF INDIANA

Katherine Meger Kelsey
Chief Legal Counsel
Kids' Voice of Indiana
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of K.M.P., A Child
in Need of Services,
and

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

v.

January 9, 2024

Court of Appeals Case No.
23A-JC-1377

Appeal from the Marion Superior
Court

The Honorable Danielle Gaughan,
Judge

The Honorable Kelly Scanlan,
Magistrate

Indiana Department of Child
Services,

Appellee-Petitioner,

and

Kids' Voice of Indiana,

Appellee-Guardian Ad Litem.

Trial Court Cause No.
49D15-2303-JC-1748

Memorandum Decision by Judge Kenworthy
Chief Judge Altice and Judge Weissmann concur.

Kenworthy, Judge.

Case Summary

- [1] The trial court adjudicated K.M.P. (“Child”) a child in need of services (“CHINS”). The trial court found Child was endangered because of the inability and refusal of T.M. (“Mother”) to provide Child with necessary supervision and medical care and determined Child needs services he is unlikely to receive without the coercive intervention of the court. Mother appeals, arguing the Marion County Department of Child Services (“DCS”) presented insufficient evidence to demonstrate Child was a CHINS.¹ Determining there is sufficient evidence to adjudicate Child a CHINS, we affirm.

¹ Child’s father (“Father”) does not participate in the appeal.

Facts and Procedural History

- [2] Child was born in August 2016. In 2019, Mother called DCS and reported Father was sexually abusing Child. At the time, Mother was homeless and staying at a shelter, while Father exercised his parenting time based in part on a court order. Mother removed Child from Father’s care with the help of law enforcement. Father has not seen Child since Child was removed. Mother met with DCS and was told the case was substantiated, but “Mother feels DCS did not follow through with the investigation . . . and does not trust in DCS’s ability to protect children.” *Appellant’s App. Vol. 2* at 110.
- [3] In February 2023, DCS received a call “for concern of Mother’s mental health with the Child as a possible victim.” *Id.* at 111. Family Case Manager (“FCM”) Haley Shipp went to Mother’s apartment to investigate. When she arrived, the apartment door was open, but Mother would not allow Shipp inside, saying she and Child “do not deal with DCS.” *Tr. Vol. 2* at 175.
- [4] On March 1, 2023, Mother’s neighbor called police officers to the apartment, complaining about Mother and Child. Mother spoke with the officers for approximately half an hour but was not detained. An hour later, Mother and Child walked to a liquor store. Child waited outside the store—outside of Mother’s supervision—while she purchased vodka.
- [5] A few hours later, Officer Johnathan Miers spotted Mother sitting in a grassy area outside a fast-food restaurant, drinking vodka and “yelling at the air.” *Id.* at 80. Child was nearby, running back and forth on a concrete wall close to a

busy street. Mother was not watching Child. When asked if she was intoxicated, Mother stated she had two to three shots, but was engaging in a “spiritual libation” where she spit out the alcohol. *Id.* at 39. She testified the alcohol was a form of self-healing for her stomach ulcers.

[6] Officer Miers continued to observe Mother and Child as they began walking home. He determined Mother was intoxicated based on her bloodshot eyes and one-fourth of the vodka missing from her bottle. Once other officers arrived, Officer Miers informed Mother she was being detained. Mother responded by putting her hands behind her back and against a fence. Officer Justin Davis helped the other officers take Mother into custody and noticed signs of Mother’s intoxication, including the odor of alcohol, bloodshot eyes, and aggressive behavior. Meanwhile, Child was led away by law enforcement and taken into DCS custody. Child was upset and crying. Mother called the officers “devils” and said they needed to die. *Id.* at 75. She claimed they had “a hidden agenda” and were “following orders from pedophiles.” *Appellant’s App. Vol. 2* at 112.

[7] Paramedics were called to the scene as Mother began to express health concerns, stating she wanted the “mics and chips” in her body removed. *Id.* After over an hour with the officers, Mother was placed under immediate detention, taken to Community Hospital South, and released later that day.

[8] Mother spoke with FCM Ryan Heavrin on the phone and in-person over the next two days. Despite Heavrin showing her his badge, Mother did not believe

he worked for DCS and refused to be advised of her rights. When Heavrin tried to perform an assessment, Mother refused to let him into her apartment, accused him of kidnapping Child, took a picture of his license plate, and called law enforcement on him. Heavrin recommended Child be placed in foster care.

[9] Mother had her first supervised visit with Child on March 3, 2023. Mother required multiple re-directs because she continued to tell Child he had been kidnapped and raped by officers. Child was excited to see Mother prior to the visit and “calm and questioning” afterward. *Id.* at 113.

[10] The second supervised visit was scheduled for March 9, 2023. Visitation supervisor Tequilla Wolfing was supposed to pick up Mother and Child, then take them to her office. However, when Wolfing and Child arrived at the apartment complex, Mother was still inside the building. She eventually came outside to greet Child and “scanned” his eyes by holding her phone close to his face. Mother then returned to the apartment building. When she re-emerged, she went to the front of the vehicle and began crying and rolling around in the grass. Then, she reached inside the van to hug Child, unbuckled him from his car seat, and instructed him to go inside the building. She apologized to Wolfing, telling her, “[y]ou’ve been exposed” and “I know you’re just doing your job. But this . . . is over. He’s staying home, this is where he belongs.” *Tr. Vol. 2* at 133.

[11] Wolfing responded by calling her supervisor and trying to engage Mother in conversation about the planned visit. Wolfing’s supervisor called 911 and

officers arrived shortly after. They spoke with Mother, who told them she would not allow them to rape or kidnap Child. While she was talking, Child emerged from the apartment building. He was agitated and attempted to run toward Mother to help her. Wolfing and another officer were able to redirect Child to Wolfing's vehicle, where he began kicking, screaming, and trying to exit the vehicle.

[12] Wolfing removed Child from the scene by driving to a nearby parking lot. After an hour, Wolfing was able to calm Child down with ice cream and an offer to call Mother. Mother was agitated at the beginning of the call but calmed down as Child used "deescalating techniques," allowing them to have a full conversation. *Id.* at 139. A few days later, Mother's visits were temporarily suspended and Wolfing requested Mother undergo a psychological evaluation.

[13] On March 10, 2023, FCM Elizabeth Kellham was assigned as Mother's permanency supervisor. On March 15, she spoke on the phone with Mother twice to discuss why Mother's parenting time was suspended. During the first call, Mother accused Kellham and other FCMs on her case of kidnapping and raping Child. During the second call, Mother claimed she did not know Kellham and was upset that Kellham had not contacted her sooner. Mother was only convinced of Kellham's identity once she saw Kellham's number was saved on her phone.

[14] Later in the month, Mother had a team meeting with two FCMs, the guardian ad litem, and Wolfing. During the meeting, she disclosed her untreated bipolar,

depression, and anxiety diagnoses. Mother claimed she was planning to treat with “herbs” but was unable to do so because there is medicine in her body “they” have snuck inside her because of COVID. *Id.* at 12.

[15] A fact-finding hearing was held in April 2023. The trial court observed Mother “frequently demonstrated a demeanor that seemed odd or inappropriate for the situation.” *Appellant’s App. Vol. 2* at 114. She giggled on the witness stand while awaiting a ruling on an objection, used copious amounts of hand sanitizer during her testimony, and delayed proceedings by shutting off four cell phones after one went off during the hearing.

[16] During the hearing, Mother testified she believes medical personnel falsify her and her son’s records, so she does not take Child for wellness checkups or dentist appointments. She chose not to vaccinate Child because he “was prophetically speaking” through her prior to his birth. *Tr. Vol. 3* at 10. On one occasion, Child nearly died from an untreated, month-long respiratory infection. When Mother took him to the hospital, she claimed his condition was caused by an unauthorized B12 shot. When Child was released from the hospital, Mother treated him with her nephew’s leftover antibiotic and claimed she “transmuted” the sickness onto herself. *Appellant’s App. Vol. 2* at 111.

[17] Mother also provided inconsistent testimony and demonstrated an inability to regulate emotions. When asked if she left Child outside of the liquor store unsupervised, Mother first stated he waited alone “all the time,” then said he waited with her friend, Ashley. *Tr. Vol. 3* at 22. Further questions about

Ashley made Mother so agitated she left the courtroom in the middle of her testimony. Once the hearing resumed, Mother remained agitated and did not provide any further information about Ashley.

- [18] The trial court found Child was a CHINS. The trial court also found it was in Child’s best interest to remain in foster care due to “Mother’s inability and refusal to provide him with necessary supervision and medical care[.]” *Appellant’s App. Vol. 2* at 116. A dispositional hearing was held a month later and Mother was ordered to complete substance abuse, parenting, and psychological assessments. No changes were made to Child’s CHINS status or his custody status.

Sufficient Evidence Supports the CHINS Adjudication

- [19] Mother claims DCS did not present sufficient evidence for the trial court to adjudicate Child a CHINS. When reviewing a CHINS proceeding, we neither reweigh the evidence nor judge the credibility of witnesses, and we consider “only the evidence that supports the trial court’s decision and reasonable inferences drawn therefrom.” *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). “We will reverse a CHINS determination only if it was clearly erroneous”—if the facts do not support the findings or the wrong legal standard is applied to properly found facts. *In re D.J. v. Ind. Dep’t of Child Serv.*, 68 N.E.3d 574, 578 (Ind. 2017). The purpose of a CHINS proceeding “is to protect children, not punish parents.” *In re N.E.*, 919 N.E.2d 102, 106 (Ind. 2010).

[20] 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.” *In re K.D.*, 962 N.E.2d at 1253 (quoting *In re N.E.*, 919 N.E.2d at 105). Here, the trial court adjudicated Child a CHINS under Indiana Code Section 31-34-1-1. In relevant part, DCS was required to prove Child’s physical or mental condition is seriously impaired or seriously endangered because of Mother’s inability, refusal, or neglect to supply the child with necessary food, clothing, shelter, medical care, education, or supervision. *See* I.C. § 31-34-1-1(1). “That is to say, DCS was required to present evidence that there is a nexus between . . . [a parent’s] mental health . . . and [c]hild’s actual endangerment.” *In re Matter of L.N.*, 118 N.E.3d 43, 49 (Ind. Ct. App. 2019). DCS was also required to prove Child’s needs are unlikely to be met without the coercive intervention of the court. *See* I.C. § 31-34-1-1(2); *In re S.D.*, 2 N.E.3d 1283, 1287 (Ind. 2014).

[21] Mother argues the trial court found Child was endangered “but did not find he was *seriously* endangered as required by I.C. 31-34-1-1.” *Appellant’s Br.* at 20. Mother contends DCS presented no evidence Child required medical attention he did not receive or that Mother placed his health in danger. Mother claims there is no evidence Child was denied or delayed an education. Mother says the only evidence of her diagnoses of bipolar disorder, anxiety, and depression was her own testimony; and there is no evidence Mother’s mental health status caused a substantial and ongoing impact on Child’s housing, supervision, necessary medical treatment, education, food, safety, security, or affections.

Mother compares her case to *L.N.*, where a panel of this Court found there was no nexus between the parents' mental health and low intellect and the child's serious endangerment. *See L.N.*, 118 N.E.3d at 49. Mother argues DCS did not provide sufficient evidence to show Child required services he would not receive without the coercive intervention of the court.

[22] By her own admission, Mother has untreated mental illnesses. Mother's testimony was the only evidence of diagnoses at least in part *because she refuses to participate in DCS services*, including a substance abuse assessment with subsequent recommendations and a full psychological evaluation with subsequent recommendations. She refuses to participate because she distrusts DCS workers. Although Mother believes alternative, "holistic" methods could help her mental illnesses, she says she cannot treat herself using those methods because there are "chips" in her body. *Tr. Vol. 2* at 12–15.

[23] There is ample evidence connecting Mother's untreated mental illness and substance abuse to Child's actual endangerment. First, Mother's mental health issues and/or substance abuse issues cause her to have unsupported beliefs about healthcare providers. These beliefs ultimately deprive Child of medical and dental treatment. Mother believes healthcare providers falsified her and Child's medical records, poisoned Child with a B12 injection, and implanted chips in Mother's body. Mother gave Child an antibiotic left over from her nephew's illness to cure Child's respiratory infection. Another time when Child was sick, Mother claims to have cured him by taking his illness into her

stronger immune system. Mother has not taken Child to the doctor or dentist for the past three years.

[24] Second, Mother’s mental health issues and/or substance abuse issues cause her to be unable to adequately supervise Child. Mother self-medicates by drinking alcohol and venting to the universe, but these methods take her attention away from Child. Before Mother was detained on March 1, Officer Miers saw her drinking from a bottle of vodka and yelling at the sky. Officer Davis smelled the odor of alcohol coming from Mother and saw her bloodshot eyes. Mother did not appear to be supervising Child—“she was actually looking in the opposite direction of where he was running.” *Tr. Vol. 2* at 70. Officer Miers was concerned for Child because “the situation of [Child] running up and down the wall could have put his life in danger as there was a busy street that he could have tripped and fallen into.” *Id.* at 74. Officer Davis said he thought Mother was undergoing a mental crisis while she was being detained because she was “speaking to things that no one else could see, mics and chips in her body, the . . . underlying agenda that none of [the police officers] had.” *Id.* at 104.

[25] The trial court found Mother’s inadequate supervision of Child on March 1 was not isolated because Child stands outside the liquor store by himself “all the time” while Mother is inside. *Tr. Vol. 3* at 22. In her brief, Mother quotes her testimony about a friend standing outside the liquor store with Child, but the trial court did not find this testimony credible. *See Appellant’s Br.* at 22; *Appellant’s App. Vol. 2* at 115. We will not substitute our judgment for the trial

court's determination of Mother's credibility. *See In re K.D.*, 962 N.E.2d at 1253.

[26] Third, Mother's mental health issues and/or substance abuse issues cause her to have unsupported beliefs about DCS and law enforcement, greatly distressing and confusing Child. During her first visit with Child after Child was removed from Mother's care, Mother "let him know that she wasn't sure if he had been alive." *Tr. Vol. 2* at 127. Mother told Child he had been raped and kidnapped by police officers, which made Child become "visibly upset." *Id.* at 153. Wolfing had to redirect Mother during visits to stop Mother from discussing with Child her belief he had been kidnapped and raped.

[27] On what was going to be Mother and Child's second visit, Mother scanned Child's eyes with her phone, "almost touching his eyeballs looking in . . . both eyes[,] " making Child confused and anxious. *Id.* Mother cried and rolled on the ground before telling Child to go into the apartment. Mother told Wolfing Child "was staying home where he belonged." *Id.* at 135. Wolfing's supervisor called the police. After the police arrived, Child came back outside and "attempted to run to [Mother] and the officer[,] " saying, "You're not going to hurt my mom this time, I'm going to help her." *Id.* at 137. Once Wolfing was able to guide Child into her vehicle, Child kicked the seats and tried to exit through the back doors of the vehicle. When Wolfing drove away from Mother's apartment with Child, Child was on the phone with Mother, engaging Mother in "deescalating techniques" to calm Mother. *Id.* at 139. Wolfing said

Child—at six years of age—often took on the parent role by providing emotional comfort to Mother.

[28] Fourth, Mother’s mental health issues and/or substance abuse issues cause her to be unable to regulate her anger and frustration, which seriously endangers Child. At the April 28 hearing, Mother was increasingly upset when confronted about leaving Child alone outside of the liquor store. Mother stood from her seat, exited the courtroom, and remained agitated after a brief recess. She only calmed down after the court instructed DCS to move on from that line of questioning.

[29] There is also sufficient evidence Child required services he would not receive without the coercive intervention of the court. This Court has found sufficient evidence under similar circumstances. In *In re D.F.*, 83 N.E.3d 789, 797 (Ind. Ct. App. 2017), the mother admitted she had been diagnosed with bipolar disorder, schizophrenia, and post-traumatic stress disorder. Instead of receiving treatment, she self-medicated with alcohol and marijuana. She blamed others for her problems parenting the children. Here, Mother’s distrust of police officers, DCS workers, and healthcare providers will likely continue to seriously endanger Child if her mental illnesses go untreated. Mother’s mental illnesses will likely continue to go untreated if she does not participate in DCS services. It is unlikely Mother will be able to break out of this pattern of distrust and mental illness without the coercive intervention of the court.

Conclusion

[30] Concluding there is sufficient evidence to adjudicate Child a CHINS, we affirm.

[31] Affirmed.

Altice, C.J., and Weissmann, J., concur.