

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Matter of Ca.J., Ci.J.,
and B.J. (Minor Children),
M.J. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

July 6, 2021

Court of Appeals Case No.
21A-JC-44

Appeal from the Henry Circuit
Court

The Honorable Bob A. Witham,
Judge

Trial Court Cause Nos.
33C01-2008-JC-60
33C01-2008-JC-61
33C01-2008-JC-62

Mathias, Judge.

[1] M.J. (“Mother”) appeals the Henry Circuit Court’s order finding her minor children, Ca.J., Ci.J., and B.J., in need of services. M.J. argues that the trial court’s adjudication is not supported by sufficient evidence.

[2] We affirm.

Facts and Procedural History

[3] Mother and D.J. (“Father”)¹ are the biological parents of Ca.J. (born September 7, 2016), Ci.J. (born July 5, 2017), and B.J. (born May 29, 2019) (collectively “Children”). In August 2020, Mother and Children were living at Father’s grandparent’s house, but Father was not allowed in the home due to his known drug abuse. Occasionally, the family would stay at a hotel on the weekends so the Children could spend time with Father.

[4] On Sunday, August 23, 2020, the family was staying at a hotel and traveled to a local Walmart. They either walked to the store or C.A., a family friend, drove them. Shortly after they arrived, Mother and Father were involved in a loud verbal altercation in the parking lot. C.A. removed the Children from the situation by driving them in her vehicle around the lot. At some point, law enforcement was contacted, and officers arrived soon after.

[5] The officers quickly determined that all three adults were impaired. Therefore, law enforcement contacted the Department of Child Services (“DCS”) and

¹ Father does not participate in this appeal.

reported that the Children were victims of neglect. On arrival, DCS case managers also noticed that Mother was showing signs of impairment.

[6] Family case manager Paige Williamson (“FCM Williamson”) observed that Mother acted “calm and compliant and then [would] sometimes escalate and not be compliant with us.” Tr. p. 58. Additionally, Mother “seemed that she really couldn’t sit still. She was pacing a lot. Just talking a lot, talking fast.” *Id.* Case manager Carrie Matthews (“FCM Matthews”) was familiar with Mother from previous encounters when Mother admitted to using and relapsing on methamphetamine. During a previous encounter, FCM Matthews noted that Mother’s behavior in the Walmart parking lot was similar to how Mother had previously acted while under the influence of methamphetamine. Appellant App. p. 136. DCS requested Mother take a drug screen, but she declined. Tr. p. 59.

[7] Meanwhile, Father admitted to both case managers that he used marijuana daily and agreed to take an instant drug screen. Appellant App. p. 136. When the results came back invalid, DCS asked Father to take another screen; he declined. Tr. p. 59.

[8] FCM Matthews believed that C.A. was also impaired, observing that she “couldn’t even hardly walk” or “stand and she was slurring [her] words.” Tr. p. 85. The FCM was concerned with C.A.’s impairment because she had been driving the Children around the parking lot before law enforcement arrived. Furthermore, C.A. did not have a valid driver’s license at the time. Tr. p. 9.

[9] Although the police did not cite or arrest anyone for the events that took place outside Walmart, DCS needed to quickly determine who could care for the Children because all three adults were impaired. DCS and Mother tried to find an alternative to detaining the Children, such as Mother’s parents, but they were unavailable to care for the Children at that time. Thus, DCS removed the children from Mother’s and Father’s care and subsequently placed them in foster care.

[10] The next day, DCS filed a petition alleging that Ca.J., Ci.J., and B.J. were children in need of services (“CHINS”). Before the fact-finding hearing on that petition, DCS offered Mother services. For example, she was given the opportunity to attend supervised visitation with the Children. But in the nearly two months preceding the hearing, Mother missed several scheduled visits. On one occasion Mother failed to attend because she was stranded in Chicago. Therefore, Mother’s initial service provider closed out homebased case management, and FCM Matthews referred Mother to a second provider. DCS also offered Mother drug screening. But she participated in only one screen—administered in court—the results of which came back positive for marijuana and Tramadol.

[11] On October 22, the trial court held the fact-finding hearing on DCS’s petition. At the hearing, Father admitted to his drug abuse and that the Children were CHINS because they lacked a “substance abuse free environment.” Tr. p. 29. However, citing both his Fifth Amendment right against self-incrimination and spousal privilege, Father declined to answer certain questions about his and

Mother's substance abuse. Tr. p. 32–33. The trial court ultimately drew negative inferences about Mother's substance abuse from Father's refusal to testify. Appellant App. p. 157.

[12] As to Mother, DCS expressed concerns about returning the Children to her care. The case managers expressed difficulty getting in contact with Mother and noted that, without court intervention, Mother had not engaged in any services. Tr. pp. 79, 81. While Mother claimed she had an issue with her phone, DCS presented evidence that she was simply unresponsive. *Id.* Mother testified that since the August 23 incident she acquired a lease to a duplex where she and Father have been residing. *Id.* at 49–50. Yet, she has not provided a copy of a lease to the FCM or the trial court. Appellant App. p. 137. In fact, Mother did not notify DCS of a changed address until the hearing on October 22, 2020. When Mother eventually notified DCS, she requested that the case managers not share her new address with anyone. Tr. p. 78.

[13] As additional support for DCS's concern with returning the Children to Mother's care, they presented the following evidence: Mother's parents contact with FCM Matthews to request that DCS remain involved; Mother's unemployment and unsuccessful attempts to obtain disability; Mother's untreated mental health diagnoses, including mild depression and anxiety; Mother's habitual involvement with DCS, over the previous five years, involving allegations of substance abuse and unstable housing; and Mother's previous participation in drug assessments and treatments due to her known methamphetamine use. Tr. pp. 6, 47, 51, 72.

[14] On October 28, the trial court issued an order adjudicating B.J., Ci.J., and Ca.J. as CHINS. In that order, the court concluded,

[T]he children are seriously endangered by their lack of a sober caregiver and their lack of stable housing, when the caregivers have failed to, are unable to, or refuse to seek the means to provide for these needs. Further, these needs are likely to go unmet without the coercive intervention of the [c]ourt.

Appellant App. p. 137. The dispositional hearing was held about a month later, and the court issued its dispositional order on December 8. Mother now appeals.

Discussion and Decision

[15] Mother argues that the evidence is insufficient to support the trial court's finding that her Children are CHINS. We disagree.

[16] When reviewing a CHINS determination, we neither reweigh the evidence nor judge the credibility of the witnesses; rather, we only consider evidence and inferences drawn therefrom that support the trial court's decision. *In re K.D.*, 962 N.E.2d 1249, 1253 (Ind. 2012). The trial court here entered sua sponte findings and conclusions supporting the CHINS determination. We will apply a two-tiered standard of review. First, we determine whether the evidence supports the findings, and second, whether the findings support the judgment. *In re R.P.*, 949 N.E.2d 395, 400 (Ind. Ct. App. 2011). We do not set aside the trial court's CHINS determination unless the conclusion is clearly erroneous and the record firmly shows that a mistake was made. *Id.*

[17] To establish that the children are CHINS, DCS is required to prove the following by a preponderance of the evidence:

- (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.

[18] [I.C. § 31-34-1-1](#). The latter 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.’” [In re D.J.](#), 68 N.E.3d 574, 580 (Ind. 2017) (quoting [In re S.D.](#), 2 N.E.3d 1283, 1287 (Ind. 2014)).

[19] When making a CHINS determination, the trial court’s focus is to “protect children, not punish parents.” [In re N.E.](#), 919 N.E.2d 102, 106 (Ind. 2010). This determination is based on “the best interests of the child, rather than guilt or innocence as in a criminal proceeding.” *Id.* Moreover, the trial court cannot adjudicate CHINS on circumstances that are no longer present, but on parents’

circumstances when the case is being heard. *In re R.S.*, 987 N.E.2d 155, 159 (Ind. Ct. App. 2013).

[20] Here, in adjudicating the Children as CHINS, the trial court found that (1) Children lack “a sober caregiver”; (2) Children lack “stable housing”; and (3) Mother has “failed to, [is] unable to, or refuse[s] to seek the means” to provide for Children’s needs. Appellant App. pp. 136–37. Ample evidence in the record supports the trial court’s findings which in turn supports the court’s CHINS determination.

[21] First, the record reveals that Children lack a “sober caregiver.” Mother has a history of methamphetamine use over the past five years, *id.* at 136., and FCM Matthews testified that Mother’s behavior when the Children were detained resembled Mother’s past behavior when she admitted to methamphetamine use. Tr. pp. 58, 65–66. Officers at the scene similarly reported that Mother exhibited signs of impairment. Mother not only declined a drug screen that day, *id.* at 67., but she also declined multiple drug screens after the Children’s removal. Appellant App. p. 151. Mother told her case manager that “she would pass drug screens so she didn’t care to do them”, but Mother tested positive for illegal substances in the only screen she did participate in during these proceedings. Tr. pp. 69, 71–72. Father admitted to daily drug use. He acknowledged at the fact-finding hearing that “there has been substance abuse issues in the home” and the Children deserved to be raised in a “substance abuse free environment.” *Id.* at 7, 29. Further, Mother has not taken any steps to address her substance-abuse issues.

[22] Thus, contrary to Mother’s position, the evidence established that the Children remain in “serious danger as a result of the parent’s unwillingness or inability to act.” Appellant’s Br. at 12. Plus, Mother’s argument is a request to reweigh evidence, which we will not do. Mother’s own parents even personally contacted FCM Matthews and requested DCS’s continued involvement. Tr. p. 72. Simply put, the evidence supports the trial court’s finding that the Children “are seriously endangered” by the lack of a sober caregiver. Appellant App. p. 137.

[23] Similarly, evidence supports the finding that the Children lack “stable housing.” DCS presented evidence that Mother “repeatedly moved the children to live with her in others’ homes in various counties for the last several months.” Appellant App. p. 136. DCS was aware of this concern before August 23, as they received multiple reports alleging Mother and Father had unstable housing. *Id.* at 97. The family was also homeless for some time in spring of 2020. Tr. p. 6.; *see also* Appellant App. p. 32. Because the Children lack stable housing, FCM Matthews was concerned that the Children’s physical well-being was seriously impaired. Tr. p. 86. Mother claims that after the Children were removed, she obtained a lease to a rental property in Connerville. Appellant’s Br. at 11. The trial court found that Mother’s testimony was less than credible because Mother failed to provide a copy of her lease agreement. Appellant App. p. 137.

[24] Lastly, Mother “failed to, [was] unable to, or refuse[d] to seek the means” to engage in DCS’ offered services. *Id.* Mother poorly engaged in supervised

parenting time, homebased case management, and pursuit of disability claims. *Id.* Mother failed to adequately communicate with her case managers. FCM Matthews testified that on multiple occasions Mother failed to attend scheduled visitations, and therefore, the homebased case management had been closed out. Tr. pp. 69–70. FCM Matthews indicated further that DCS offered services to help Mother get approved for disability and find housing, and Mother agreed. However, Mother failed to engage in the services she had agreed to take advantage of. *Id.* at 71. FCM Matthews believed that family would not engage in services without the court’s intervention. *Id.* at 81.

[25] For all of these reasons we conclude, that DCS proved by a preponderance of the evidence that the Children’s physical conditions were endangered by Mother’s substance abuse and failure to provide stable housing, and the Children needed care they would likely not receive without the coercive intervention by the court. [I.C. § 31-34-1-1](#).

Conclusion

[26] Mother has not established reversible error in this appeal. The Children, Ca.J., Ci.J., and B.J., are CHINS. We therefore affirm the trial court’s order.

[27] Affirmed.

Riley, J., and Crone, J., concur.