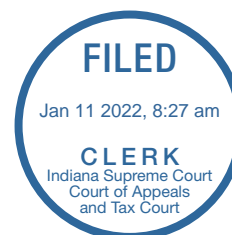


MEMORANDUM DECISION

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:
L.J., H.J., J.J., and J.J. Jr.,

N.W. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner,

and

Kids' Voice of Indiana,
Appellee-Guardian ad Litem.

January 11, 2022

Court of Appeals Case No.
21A-JC-1598

Appeal from the Marion Superior
Court

The Honorable Geoffrey A.
Gaither, Judge
The Honorable Scott B. Stowers,
Magistrate

Trial Court Cause Nos.
49D09-2104-JC-2822
49D09-2104-JC-2826
49D09-2104-JC-2827
49D09-2104-JC-2828

Weissmann, Judge.

- [1] N.W.'s four young children—two toddlers and twin infants—were found to be children in need of services (CHINS) after the toddlers were discovered unattended on Indianapolis streets while clad in little more than their diapers. The trial court ordered N.W. (Mother) to undergo a psychological evaluation and random drug screens. Mother appealed, claiming those requirements were inappropriate because DCS presented no evidence that she was a person with drug or mental illness issues. As the record contains evidence establishing Mother's drug history and concerns about her cognition, we find the trial court's actions reasonable and affirm.

Facts

- [2] In March 2021, two of Mother's children, then nearly 2 and 3 years old, were discovered outside a motel room where Mother and the children's father (Father) were sleeping with their twin infants. The toddlers were clad only in t-shirts and dirty diapers. Mother and Father did not know how the children escaped the room, although they speculated that the children turned over a trash can and stood on it to reach the door lock. The DCS investigator was concerned that the parents were impaired, but Mother and Father refused a drug screen.
- [3] Mother and Father offered conflicting reasons as to why they were in the motel room. The DCS investigator who visited their apartment found feces on the

walls and no furniture. When confronted about these conditions, Mother and Father claimed their apartment had been burglarized.

[4] Nine days later the toddlers were found at 2 a.m. in the middle of a street near a different motel where Mother and Father were staying with the children.

Although the temperature was in the 50s, the oldest child was wearing a t-shirt and a diaper soaked in urine. The other was wearing only a diaper full of feces and urine. Mother told police that one of the toddlers must “have crawled up on the car seat and stood on the handle and unlatched the latch and opened the door.” Tr. Vol. II, p. 51. Mother and Father were arrested on charges of neglect of a dependent. When a DCS investigator visited them in jail, Mother and Father refused drug screens.

[5] Mother and Father’s four children were removed and placed in foster homes, with the toddlers together in one home and the twin infants in another. The infants, then about a year old, were found to be developmentally delayed. They only drank from a bottle, which they were unable to hold, and would not eat solid foods. The backs of their heads were flat, and they could not sit up by themselves, crawl, or walk.

[6] After a factfinding hearing, the trial court determined all four children were CHINS. Over Mother’s objection, the trial court ordered Mother, among other things, to undergo random drug testing and a psychological evaluation. Mother appeals.

Discussion and Decision

- [7] Mother does not challenge the CHINS determination; she challenges only the trial court's order requiring random drug tests and a psychological evaluation. Mother contends the record does not establish any need for those services. Contrary to Mother's assertions, the record establishes Mother has a substance abuse history and potential cognitive issues that justified the trial court's order.

I. Applicable Law

- [8] At issue is Indiana Code § 31-34-20-3, which provides:

If the juvenile court determines that a parent, guardian, or custodian should participate in a program of care, treatment, or rehabilitation for the child, the court may order the parent, guardian, or custodian to do the following:

- (1) Obtain assistance in fulfilling the obligations as a parent, guardian, or custodian.
- (2) Provide specified care, treatment, or supervision for the child.
- (3) Work with a person providing care, treatment, rehabilitation for the child.
- (4) Participate in a program operated by or through the department of correction.

- [9] The CHINS court has broad discretion in choosing the programs and services that it orders parents to complete. *In re A.C.*, 905 N.E.2d 456, 464 (Ind. Ct. App. 2009). But the requirements must relate to some behavior or circumstance revealed by the evidence. *Id.* Forcing unnecessary requirements upon parents whose children have been adjudicated as CHINS could set the parents up for

failure, with dire consequences such as the termination of their parental rights. *Id.* at 464-65. An order requiring a parent to engage in particular services is reviewed on appeal for an abuse of discretion. *Matter of R.G.*, 130 N.E.3d 1171, 1181 (Ind. Ct. App. 2019), *trans. denied*.

II. Propriety of Services

[10] Mother contends the trial court abused its discretion in ordering the drug testing and psychological examination because the record contains no evidence that she is a person with substance abuse problems or mental illness. Mother focuses on evidence suggesting that Mother and Father were not impaired at the time of removal. But dispositional requirements are not limited by the allegations at the onset of the CHINS action. *See A.C.*, 905 N.E.2d at 464. Mother ignores evidence in the record of her behavior and circumstances suggesting drug testing and a psychological evaluation were merited.

[11] Mother's substance abuse prompted an earlier CHINS proceeding—opened in 2019 and closed a year later—involving the two older children. At the time, both parents smoked “a little bit of marijuana.” Tr. Vol. II, p. 57. Mother admitted in that proceeding that the family needed assistance from DCS to provide her two children with a safe, stable, and drug-free living environment. App. Vol. II, pp. 131-32. In fact, Mother agreed to undergo random drug testing in that case, which closed just nine months before the present CHINS action was opened. Exhs., p. 15. Mother and Father later told a service provider in the present case that the earlier CHINS proceeding involved positive drug tests for

cocaine. However, both parents denied having substance abuse problems and alleged that someone had laced their marijuana blunt with cocaine without their knowledge.

[12] Also, when the children escaped from the first motel, the DCS investigator was concerned that Mother was impaired and requested that Mother undergo a drug screen. Mother refused that screen as well as another screen requested by DCS when she was jailed after the second toddler escape. Given Mother's prior drug use, her agreed submission to random drug testing only two years earlier, and the investigator's unresolved concerns about her sobriety, the trial court was justified in again ordering Mother to undergo random drug testing.

[13] The record also reveals troubling behavior by Mother that justified the trial court's order of psychological testing. Mother's family case manager was concerned that Mother did not recognize her children's needs, given gaps in her care of them. Mother also displayed difficulty in following directions and resistance to suggested changes. For instance, she exposed the children to secondhand smoke, contrary to doctor's orders, and did not use a readily available inhaler for one child when he needed it. Mother's case manager believed Mother's conduct might be attributable to cognitive issues, which could be detected through a psychological evaluation. The twins showed "global" developmental delays, for which heredity was one possible cause. Tr. Vol. II, p. 113.

[14] Mother also expressed bizarre thoughts about the toddlers' second escape. She told service providers that she believed the man who found the toddlers lied about finding them on the street and that he essentially had kidnapped them. The evidence of Mother's behavior and circumstances justified the trial court's order that Mother undergo a psychological evaluation. *See R.G.*, 130 N.E.3d at 1180-81 (rejecting parents' claim that order requiring parents to engage in services was not related to reasons for children's removal and not tailored to particular needs in the case).

[15] We affirm the judgment of the trial court.

Najam, J., and Vaidik, J., concur.